



EUROPEAN COMMISSION

Directorate-General for Trade

Directorate A
The Director

Brussels, 10 September 2010

Dear Sir/Madam,

Subject: Invitation to tender related to a framework contract to provide economic analysis in support of trade negotiations and trade policy issues

1. The European Commission is planning to conclude a framework contract with up to five contractors to provide economic analysis in support of trade negotiations and trade policy issues. The contractor(s) shall produce studies on specific subjects and contribute to trade workshops. The framework contract will initially be concluded for a period of 36 months and may be renewed for a period of one year. For each assignment, a specific contract will be concluded with one the contractors.

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

(a) either by registered mail or private courier service, posted not later than **30 November 2010** (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 07/13)
TRADE10/A2/A16
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 07/13)
TRADE10/A2/A16
Avenue du Bourget n° 1
B - 1140 Brussels (Evere)
Belgium**

not later than **30 November 2010**, in which case a receipt must be obtained as proof of submission, signed and dated by the official in the Commission's central mail department who took delivery. Please note that this 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: '**TRADE 10/A2/A16**'.

The inner envelope, addressed to the department indicated in the invitation to tender, should be marked: *'Invitation to tender related to TRADE 10/A2/A16 - 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 (i.e. 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 10 and 11 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 30 November 2010.
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 Lucian Cernat
Head of Unit, Chief Economist Unit
CHAR 7/108
B - 1049 Brussels
e-mail: Lucian.cernat@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 Lucian Cernat, Head of Unit, Chief Economist Unit, 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]

Jens SCHAPS
Director

¹ You are informed that for the purposes of safeguarding the financial interest of the Union, your personal data may be transferred to internal audit services, to the 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, upon request to the accounting officer of the Commission.

TERMS OF REFERENCE

Related to a framework contract to provide economic analysis in support of trade negotiations and trade policy issues, Ref.: TRADE10/A2/A16

Reference of the contract notice: OJ 2010/S 184-280254 of 22/09/2010

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

Under the direction of Commissioner de Gucht, DG Trade is in charge of conducting the Union's commercial policy in accordance with the objectives set out in Articles 207 and 207 of the Treaty on the Functioning of the EU.

DG Trade helps through the EU's trade policy to secure prosperity, solidarity and security in Europe and around the globe. We support the EU's Trade Commissioner and the whole of the European Commission in shaping a trade environment that is good for people and for business.

We are committed to helping world trade and development, thereby boosting competitiveness, jobs and growth in the process.

We have a full agenda: negotiating bilateral and multilateral trade agreements, ensuring that the rules we agree are actually applied, and working closely with the WTO and other multilateral institutions. This allows us to tackle international trade and customs barriers, backed up where needed with EU legislation. Our aim is to meet the challenges posed by globalisation and to ensure that as many people as possible can seize the opportunities it offers.

We cover all areas of activity from manufactured goods to services, intellectual property and investment. We ensure that our businesses can operate fairly in the EU and across the world and are ready to make full use of our powers to tackle unfair competition and dumping. We work closely with many other services of the Commission - both those shaping our external agenda and those making sure our internal market works - in order to deliver joined up, coherent policies that strengthen Europe's voice in the world and allow people to learn from our experience of integration.

Our success in Europe is inextricably bound up with the success of our trading partners, both in the developed and developing world. For this reason, sustainable development and development policy in general are central to our overall approach. And as the EU's negotiator in most areas our success is equally dependent on our close working relationship with the other European Institutions and with the Member States.

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

2. OBJECTIVES

The objective of the current project, which is tendered by DG Trade, is to set up a framework contract for conducting economic studies, providing economic advice on trade dispute cases, developing analytical tools for trade policy and contributing to workshops and seminars in support of trade negotiations and trade policy issues.

3. THE PROJECT FOCUS

The analytical scope and subject areas of the tasks to be carried out within the contract is large and covers all fields of trade policy as described in DG TRADE's mission statement (see above). The following non-exhaustive list of subjects is given as an example of the issues that may come up for studies:

1. Market access priorities and trade protection analysis, including analysis of tariff and non-tariff barriers for specific sectors, products and regions;
2. Regional trade agreements: quantitative (general and partial equilibrium models) and qualitative macro-economic and sectoral impact studies and trade preference analysis;
3. WTO issues analysis including public procurement, trade facilitation, environment, foreign direct investment, intellectual property rights etc.; also includes economic implications of systemic changes in the multilateral trading system;
4. Trade in services and regulatory barriers to trade: the impact of specific non-tariff regulatory barriers on competition in the market, the behaviour of market operators, prices and profit margins, investment and consumer welfare;
5. Trade disputes: economic expertise and studies required on cases or issues under investigation in the context of Trade Barriers Regulation, the World Trade Organisation (WTO) Dispute Settlement Body or any other trade or international agreement;
6. Links between trade, development and poverty, including GSP, rules of origin, preference erosion and other specific issues linked to developing countries
7. Macro-economic environment of trade policy and long-term development of European and world trade;
8. The impact of worldwide and EU climate change policy on trade and competitiveness of the EU economy; quantitative modelling of trade policy implications of specific energy and environmental policy issues;
9. Trade and competitiveness of the EU economy, examining the link between external and internal EU policies in the context of the Lisbon strategy, the impact of trade policies on the welfare of EU citizens, trade and labour issues;
10. Studies and analyses in the field of trade defence measures (anti-dumping, anti-subsidy and safeguard measures).

4. PROCEDURES

This is a multiple framework contract. It is concluded on the same terms with a maximum of five service providers based on the results of the evaluation of the offers. After the awarding and signature of the framework contract, specific contracts will be concluded between the contractors and the European Commission, detailing the specific terms of reference (inter alia, budget, outputs, activities, timing, and reporting) for each task requested.

The invitation to tender for a specific contract (including its specific terms of reference) shall be sent to all the contractors under this framework contract. Within ten calendar days of an invitation to tender for a specific contract being sent by the Commission to a Contractor, the Commission shall receive a tender describing the methodologies and resources the Contractor intends to apply in execution of the specific contract. In the event of failure to observe these conditions the Contractor shall be considered to waive the participation in the specific competition. The Commission may sign a specific contract with the contractor who has submitted the best specific tender on the basis of the award criteria set out in point 15 of this Terms of reference.

Within eight calendar days of a specific contract being sent by the Commission to the Contractor, the Commission shall receive it back duly signed and dated. In the event of failure to observe this deadline, the Contractor may be considered unavailable and the Commission may sign a specific contract with the contractor ranked second in the reopened competition. This procedure shall apply mutatis mutandis to the contractors ranked after the second.

5. WORK TO BE CARRIED OUT / SERVICES TO BE RENDERED

The description below is an informative and non exhaustive list of the tasks and services that the Commission may request to be performed in the specific contracts. The specific tasks, budget and organisational details for each specific contract under this framework contract will be agreed between the Commission and the Contractor.

Specific contracts may request the contractor to carry out the following work:

5.1 Tasks and services

- **Studies:** Studies constitute the bulk of the tasks to be carried out under this framework contract. They range from very short studies or reports that should not take more than a few weeks and give a general overview of issues on a specific subject in economics, often based on a literature survey and on specific knowledge of the authors, to broader and more complex in-depth studies that may take several months. The terms of reference specify the time limit within which the studies need to be delivered, from the date of signature of the specific contract.

The studies are meant to give a (usually quantitative) economic answer to questions related to trade negotiations (for instance the impact of a specific formula for cutting tariffs peaks, the impact of a specific bilateral agreement on a sector/ country, the economic environment of trade negotiations). They should mobilise analytical tools such as econometric analysis, gravitational modelling, computable general and partial equilibrium models, or micro-economic models of market behaviour, pricing and consumer welfare, or macro-econometric models, depending on the case.

The specific contract for a given study may include access to specific original databases produced by the tenderer.

A study may also relate to the development of modelling tools that will subsequently be used by DG TRADE for more specific applications.

- **Contribution to workshops** : on trade policy analysis and international economics issues: these seminars would focus on a specific topic, usually but not necessarily organised within Commission premises. The aim of these workshops is to organize a debate and presentation on state-of-the-art economic theories, models and empirical analysis of a specific issue related to trade policy followed by a discussion with Commission's officials and, depending on the case, participants from outside the Commission. The required services would comprise: 1. Drafting a conference programme in close co-operation with the Chief Economist Unit or the relevant services in DG Trade; 2. Drafting of background and discussion documents to be provided beforehand; 3. Selection of relevant experts, in agreement with the Chief Economist Unit and the relevant services in DG Trade; 4. Drafting of the conference proceedings. The services required do not include the logistics for the organisation of workshops on Commission premises.

- **Economic expertise on trade dispute cases**: a task force (usually one to three economists) shall be available at short notice to answer short economic questions or to give economic analysis and advice on case studies related to the Trade Barriers Regulation (TBR), the WTO Dispute Settlement Body (DSB), or any other international agreements.

5.2 Reporting Requirements

For studies or workshops, detailed reporting requirements shall be included in the specific terms of reference of the study or workshops. All studies and workshops have to produce a final report. Longer studies may require preliminary and midterm reports too. Some studies will require the contractor to submit underlying electronic modelling files along with the written final reports.

Concerning the economic expertise on trade dispute cases, both short notices answering to questions sent by DG Trade and a final report could be included in the reporting requirements and will be specified in the specific contracts.

Reports should be written in English.

6. TIMING

The framework contract will be awarded for a duration of 36 months with the possibility of a 12-month renewal.

Specific contracts can be subsequently issued to submit the requested reports and services. Each specific contract shall specify the nature of the work / services to be rendered, including time allotted for completion of the assignment.

7. BUDGET

The total maximum amount paid by the Commission under this framework contract for its total duration (including the possible renewal) may not exceed 3.000.000 €.

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 rejected. The Commission shall not reimburse travel or subsistence expenses, nor any other costs such as translation costs, database management or administrative costs necessary to carry out the tasks of the contract (offices, secretarial assistance, communications, printing costs of documents, dispatch costs, etc.). Therefore, the tenderer is requested to take into account all these costs when preparing the offer.

8. PAYMENT

Payment shall be made in Euro (€).

Payment shall be made on services rendered (and time spent) based on the submission to, and acceptance by, the Commission of the reports and duly established invoices.

Interim payment (only for specific contracts not shorter than three months):

As defined in article I.5.1. of the model contract, at the request of the Contractor, an interim payment of up to 35% of the total value of the specific contract shall be made, after presentation and acceptance of an interim report and an invoice.

Payment of the balance:

The request for payment of the balance by the Contractor shall be made according to the provisions of article I.5.2 of the model contract.

9. CONTRACTUAL CONDITIONS

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

The tenderer must not include in the offer conditions or clauses that are not specified in, or that modify, this Terms of Reference, on pain of his/her tender being rejected.

Initiation of a tendering procedure imposes no obligation on the Commission to award the contract. 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.

10. THE FRAMEWORK CONTRACT TENDER MUST INCLUDE (SEE ANNEX 1 AND ANNEX 2 FOR THE STANDARD FORM 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 12, 13 and 14. The details of educational and professional qualifications of the persons providing the services and statement of exclusivity and availability;
- A fixed price per unit of time (daily rates), in accordance with point 11 and by using the quotation form in Annex 2;
- Tenders from consortiums of firms or groups of service providers must specify the role, qualifications and experience of each member or group;
- A duly completed banking reference form²;
- A duly completed legal entity form³, including certificate of trade and VAT registration.

Tenders can be submitted by groupings of service providers who will not be required to adopt a particular legal form prior to the contract being awarded, but may be required to do so after the award. However, a grouping of firms must nominate one party to be responsible for the receipt and processing of payments for members of the grouping, for managing the service administration, and for coordination. Each member of the grouping assumes a joint and several liability towards the Commission.

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

Candidates or tenderers and, if they are legal entities, persons who have powers of representation, decision-making or control over them, are informed that, should they be in one of the situations mentioned in:

- the Commission Decision of 16.12.2008 on the Early Warning System (EWS) for the use of authorising officers of the Commission and the executive agencies (OJ, L 344, 20.12.2008, p. 125), or
- the Commission Regulation of 17.12.2008 on the Central Exclusion Database – CED (OJ L 344, 20.12.2008, p. 12),

their personal details (name, given name if natural person, address, legal form and name and given name of the persons with powers of representation, decision-making or control, if legal person) may be registered in the EWS only or both in the EWS and CED, and

² 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.

³ 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.

communicated to the persons and entities listed in the above-mentioned Decision and Regulation, in relation to the award or the execution of a procurement contract or a grant agreement or decision.

As already mentioned in point 9, 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, on pain of his/her tender being rejected.

11. 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.

The offer must also indicate the prices for unit of time (in EUR per day) that are fixed and non-revisable amounts.

Prices must be quoted free of all duties, taxes and other charges, including VAT, as the Union is exempt from such charges under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union annexed to the Treaty of the European Union and to the Treaty on the Functioning of the European Union. 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.

12. 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 Union's' 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 12 (letters (a) to (f)).

Tenderers must provide a declaration on honour that they are not in one of the above-mentioned situations.

Only the tenderer to whom the contract is to be awarded shall be required to submit, before signing the Contract, evidence confirming his declaration on honour, by providing:

- for point (a), (b) or (e), a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied.
- for point (d), a recent certificate issued by the competent authority of the State concerned.

Where no such certificate is issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

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, in case 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.

13. 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 all the proposed experts providing the services (detailed CV's have to be included for this framework

contract). This should clearly indicate: their expertise in economic analysis of trade policy (especially in the fields under point 3: the project focus); their knowledge of quantitative tools (including knowledge of models and databases) ; their knowledge of trade policy issues including on trade dispute cases ; their knowledge of international macro-economic issues. Team leaders and senior economists must at least have a PhD-level qualification.

- Evidence of the tenderer's **technical capacity** to perform the tasks involved in this contract notice. The team must therefore include proven expertise and professional experience in delivering high-quality studies and consulting services in each of the following areas:
 - trade policy analysis and policy advice to senior policy makers;
 - quantitative/econometric analysis (general equilibrium and gravity models, micro-economic models of market behaviour and competition issues);
 - databases (trade and services flows; foreign direct investments; trade barriers, notably non-tariff barriers);
 - trade applications of economic modelling, including in services trade;
- A list of the relevant projects in the above domains (for example studies and workshops) that were carried out under the applicant's direct responsibility during the past 3 years, proving merit and experience in carrying out studies commissioned by public authorities in the field of international economics and trade policy.
- 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 banker's statement, evidence of professional risk indemnity insurance etc.).

The Commission will conclude a contract following this tender with a single legal counterparty. 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.

14. AWARD CRITERIA FOR THE CHOICE OF THE CONTRACTORS TO THE FRAMEWORK CONTRACT.

The Contract will be awarded to the " most economically advantageous tender", to be decided in accordance with the following criteria and weighting:

a) Technical quality of the offer (--%) assessed on the basis of the following sub-criteria (70% weighting):

- Understanding of trade policy issues 35 points
- Team coverage of the fields listed in point 3 of this Terms reference 35 points
- Scope of access to relevant databases, availability of trade models 30 points

Total: 100 points

A minimum score of 60 points is required for these qualitative and technical award criteria in order for the tender to be acceptable. Tenders that do not reach this threshold shall be disqualified.

b) Price, expressed in € per working day (including all overheads) (30% weighting) for the following components :

- Team leader 30 points
- Senior economist 35 points
- Junior economist 35 points

Total: 100 points

The price components of the tender are measured as a ratio of the tendered price compared to the lowest tender by using the following formula:

Point allocation to the tender = Price of the lowest tender / Price of the tender * maximum points available

15. CRITERIA FOR AWARDING SPECIFIC CONTRACTS UNDER THE FRAMEWORK CONTRACT

Each specific contract will be awarded to the " most economically advantageous tender" among the contractors covered by the framework contract, to be decided in accordance with the following criteria and weighting:

a) Quality in terms of technical quality of the offer (--%) assessed on the basis of the following sub-criteria (70% weighting):

| | |
|--|------------|
| - Quality and appropriateness of the proposed methodology and resources | 50 points |
| - Technical quality of the proposed team for the assignment in the fields covered by the specific contract | 50 points |
| ----- | |
| Total: | 100 points |

A minimum score of 70 points is required for these qualitative and technical award criteria in order for the tender to be acceptable. Tenders that do not reach this threshold shall be disqualified.

b) Budget ((working days * daily rate)), distinguishing between team leaders, senior and junior economists (30% weighting)

| | |
|--------------------|-----------|
| - Team leader | 30 points |
| - Senior economist | 35 points |
| - Junior economist | 35 points |

Total: 100 points

The price of the tender is measured as a ratio of the tendered price compared to the lowest tender by using the following formula:

Point allocation to the tender = Price of the lowest tender / Price of the tender * maximum points available.

The Commission may specify a maximum budget for each specific contract.

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 contract, which will be proposed to the selected Contractor(s).

ANNEX 1.

**TENDER SUBMISSION FORM
TENDERER'S DECLARATION(S)
STATEMENT OF EXCLUSIVITY AND AVAILABILITY
BANKING REFERENCES FORM
LEGAL ENTITIES FORM**

(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 [...]

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 [...]

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 (and will produce the correspondent certificates if we are awarded the contract) that we are not in any of the situations excluding us from participating in contracts, as set out in point 12 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 Union.

<Signature of authorised representative of the tenderer>

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

STATEMENT OF EXCLUSIVITY AND AVAILABILITY⁴

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

- [I confirm that I am not engaged in another EU-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 EU-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 not, by reason of my involvement in both this project under tender and the other aforementioned EU project(s), be any double-financing of time spent or work carried out under any of these projects.

I also confirm that my involvement in other EU-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 EU-funded contracts with due impartiality.]

| | |
|------------------|--|
| Name | |
| Signature | |
| Date | |

⁴ To be completed by all key experts

BANKING REFERENCES FORM AND LEGAL ENTITY FORM

Please **complete and sign**:

- the banking references form⁵.
- the form providing details on the “legal entity”⁶: 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 Union 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 Union.

⁵ Tenderers may prefer completing the banking references form on-line at this address http://ec.europa.eu/budget/execution/fiers_en.htm. Once completed, it must be printed, signed and attached to the tender.

⁶ 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⁾ |
|---|
| <input type="text"/> |

| DATE + SIGNATURE ACCOUNT HOLDER : (Obligatory) |
|---|
| <input type="text"/> |
| 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"/> | | |
| 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"/> |
| | D D | MM | Y Y Y Y |
| 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>DD</small> | <small>MM</small> | <small>YYYY</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

ANNEX 2. QUOTATION FORM FOR PRICE⁷

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

HONORARIA (including overheads):

**rate
per working day
(Euro)**

Proposed Economists

- Team leader
- Senior economist
- Junior economist

| |
|--|
| |
| |
| |

⁷ Listing of other costs will render the tender inadmissible.

ANNEX 3. MODEL CONTRACT

EUROPEAN COMMISSION

Directorate-General for Trade

Directorate A – Policy Coordination

The Director

FRAMEWORK SERVICE CONTRACT

CONTRACT NUMBER – TRADE10/A2/A16

The European Union (hereinafter referred to as "the Union"), represented by the European Commission (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this contract by:

Jens Schaps, Director, Directorate A
On behalf of the Directorate General for Trade,
on the one part,

and

[Contractor name and contact details]

VAT: [number]

(hereinafter referred to as "the Contractor"), represented for the purposes of the signature of this contract by Mr [name], [title]

on the other part,

HAVE AGREED

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

Annex I – Tender Specifications

Annex II –Contractor's Tender, including unit price offer (No [complete] of [complete])

Annex III – Specific contract

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

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

Subject to the above, the several instruments forming part of the Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the Commission, subject to the rights of the Contractor under Article I.10 should he dispute any such instruction.

I – SPECIAL CONDITIONS

ARTICLE I.1 – SUBJECT

I.1.1 The subject of the Contract is, within the framework of the Common Commercial Policy of the European Union, to provide economic analysis in support of trade negotiations and trade policy issues. The contractor shall produce studies on specific subjects and provide economic advice on trade dispute cases and contribute to workshops and seminars in support of trade negotiations and trade policy issues.

I.1.2 Signature of the Contract imposes no obligation on the Commission to purchase. Only implementation of the Contract through specific contracts is binding on the Commission.

I.1.3 Once implementation of the Contract has been asked or has commenced, the Contractor shall reply and execute the tasks in accordance with all terms and conditions of the Contract.

I.1.4 The Contract does not confer on the Contractor any exclusive right to provide the services described in Annex I to the Commission. The Contractor is selected as one of contractors for a multiple framework contract with reopening competition which shall be implemented as provided for in Article I.4

ARTICLE I.2 - DURATION

I.2.1 The Contract shall enter into force on the date on which it is signed by the last contracting party.

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

I.2.3 The Contract is concluded for a period of 36 months with effect from the date on which it enters into force. This contractual period and other periods in the Contract are calculated in calendar days unless otherwise indicated.

I.2.4 The specific contracts shall be returned signed before the Contract to which they refer expires.

The Contract shall continue to apply to such specific contracts after its expiry, but no later than six months.

I.2.5 The Contract may be renewed once for a period of one year, only before expiry of the Contract and with the express written agreement of the parties. Extension does not imply any modification or deferment of existing obligations.

ARTICLE I.3 – CONTRACT PRICE

I.3.1. Prices shall be expressed in euros.

I.3.2 Prices shall not be affected by any changes in the rate of the Euro against other currencies. Unit prices shall be fixed and not subject to revision during the entire period of validity of the Contract.

I.3.3 The total maximum amount paid by the Commission under this contract for its total duration (including any renewal) may not exceed 3,000,000 €. It is agreed that the said amount shall cover all expenditure incurred by the Contractor in performance of this Contract.

No reimbursable costs are foreseen in the Contract.

The detailed unit prices per level of expert, agreed upon by both parties, for carrying out the duties as described in Annex I, are detailed in Annex II.

ARTICLE I.4 – IMPLEMENTATION OF THE CONTRACT

I.4.1. Specific contract

Within ten calendar days of a specific invitation to tender being sent by the Commission to the Contractor, the Commission shall receive a tender including the methodologies and resources the Contractor intends to apply in execution of the specific contract. In the event of failure to observe these conditions the Contractor shall be considered to waive the participation in the specific competition. The Commission may sign a specific contract with the contractor who has submitted the best specific tender on the basis of the award criteria set out in Annex I. The specific contract may modify the terms of the present framework contract provided that such modifications are not substantial. Prices may not be modified.

Within eight calendar days of a specific contract being sent by the Commission to the Contractor, the Commission shall receive it back duly signed and dated. In the event of failure to observe this deadline, the Contractor may be considered unavailable and the Commission may sign a specific contract with the contractor ranked second in the reopened competition. This procedure shall apply *mutatis mutandi* to the contractors ranked after the second.

I.4.2. Experts

The Contractor undertakes to use the experts proposed in his Tender (Annex II). In case of replacement of personnel, the Contractors shall send the relevant detailed CV's to the responsible Commission service and seek prior the approval of the responsible Commission service.

ARTICLE I.5 – PAYMENT PERIODS

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

I.5.1 Interim payment

For specific contracts not shorter than three months, requests for interim payment by the Contractor shall be admissible if accompanied by:

- An interim report as defined in the specific contract, and provided the report has been approved by the Commission.

- The relevant invoice, indicating the reference number of the Contract and of the Specific Contract to which they refer.

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

Within 30 days of the date on which the report is approved by the Commission, an interim payment not exceeding 35% of the total amount of the specific contract shall be made.

I.5.2 Payment of the balance:

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

- The final report in accordance with the instructions laid down in Annex I, provided the report has been approved by the Commission.
- The relevant invoices, indicating the reference number of the Contract and of the specific contract to which they refer.

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

Within thirty days of the date on which the report is approved by the Commission, payment of the remaining balance (in case of an interim payment) or the total amount (in case of no interim payment) referred to in the specific contract shall be made.

For Contractors established in Belgium, the orders shall include the following provision: “En Belgique, l’utilisation de ce bon de commande vaut présentation d’une demande d’exemption de la TVA n° 450” or an equivalent statement in the Dutch or German language. The Contractor shall include the following statement in his invoice(s): “Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA” or an equivalent statement in the Dutch or German language.

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.6 – GENERAL ADMINISTRATIVE PROVISIONS

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

For the European Commission:

Commission of the European Communities, Directorate-General for Trade

**Mr Lucian Cernat, Head of the Chief Economist Unit A2
CHAR 7/108
B-1049 Brussels**

On behalf of the European Commission, supervision of this Contract will be provided by:

**Commission of the European Communities
Directorate-General for Trade
Mr Kay Parplies
Senior Economist, Chief Economist Unit A2
CHAR 7/99, B-1049 Brussels**

Fax: 32-2-29-52231

Contractor:

[name and contact details]

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

European Commission
Directorate-General for Trade
Unit A.1 Resources and Strategic Planning
CHAR 07/003
B - 1049 Brussels

ARTICLE I.7 – BANK ACCOUNT

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

[contractor bank account details]

ARTICLE I.8– APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- I.8.1** The Contract shall be governed by Union law which shall be complemented, where necessary, by the national substantive law of Belgium.
- I.8.2** Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Brussels.

ARTICLE I.9 – DATA PROTECTION

Any personal data included in 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 European Commission, DG Trade without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in conformity with Union 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 Lucian Cernat, Head of the Chief Economist Unit A2, DG Trade. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

ARTICLE I.10 – TERMINATION BY EITHER CONTRACTING PARTY

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

ARTICLE I.11 – LIQUIDATED DAMAGES

By way of derogation from Article II.16, the Commission may decide to impose liquidated damages of 1% of the amount of the relevant purchase per calendar day of delay, instead of 0.2%.

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

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

ARTICLE II. 4 – INVOICING AND PAYMENTS

II.4.1 Pre-financing:

Where required by Article I.5.1, the Contractor shall provide a financial guarantee in the form of a bank guarantee or equivalent supplied by a bank or an authorised financial institution (guarantor) equal to the amount indicated in the same Article to cover pre-financing under the Contract. Such guarantee may be replaced by a joint and several guarantee by a third party.

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

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

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

II.4.2 Interim payment:

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

- an interim technical report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract and of the order or specific 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 each order or specific contract, the Contractor shall submit to the Commission a formal request for payment accompanied by those of the following documents, which are provided for in the Special Conditions:

- a final technical report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract and of the order or specific 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.5 may be suspended by the Commission at any time if it informs the Contractor that his payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the payment request, the Commission may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.

The Commission shall notify the Contractor accordingly and set out the reasons for the suspension by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.5 shall begin to run again once the suspension has been lifted.

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

ARTICLE II. 6 – RECOVERY

II.6.1 If total payments made exceed the amount actually due or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the

appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by the Commission.

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

II.6.3 In the event of failure to pay by the deadline specified in the request for reimbursement, the Commission may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Union or the European Atomic Energy Community that is certain, of a fixed amount and due. The Commission may also claim against the guarantee, where provided for.

ARTICLE II. 7 - REIMBURSEMENTS

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

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

II.7.3 Travel expenses shall be reimbursed as follows:

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

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

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

d) daily subsistence allowance, where applicable, shall be reimbursed at the rate specified in Article I.3.

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

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

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

ARTICLE II. 9 – CONFIDENTIALITY

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

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

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

- II.10.1** The Contractor shall authorise the Commission to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports. Where personal data is concerned, Article I.9 shall apply.
- II.10.2** Unless otherwise provided by the Special Conditions, the Commission shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Commission.
- II.10.3** Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Commission and shall mention the amount paid by the Union. It shall state that the opinions expressed are those of the Contractor only and do not represent the Commission's official position.
- II.10.4** The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Commission has specifically given prior written authorisation to the contrary.

ARTICLE II. 11 – TAXATION

- II.11.1** The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.
- II.11.2** The Contractor recognises that the Commission is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.
- II.11.3** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.
- II.11.4** Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

ARTICLE II. 12 – FORCE MAJEURE

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

ARTICLE II. 13 – SUBCONTRACTING

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

ARTICLE II. 14 – ASSIGNMENT

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

ARTICLE II. 15 – TERMINATION BY THE COMMISSION

II.15.1 The Commission may terminate the Contract, a pending order or a specific contract in the following circumstances:

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (c) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;
- (d) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- (e) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
- (f) where the Contractor is in breach of his obligations under Article II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks under a pending order or a specific contract has not actually commenced within fifteen days⁸ 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;

⁸ This period can be modified in the Special Conditions depending on the nature of the contract.

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

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

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

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

II.15.4 Consequences of termination:

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

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

On termination the Commission may engage any other contractor to execute or complete the services. The Commission shall be entitled to claim from the Contractor all extra costs incurred in doing so, without prejudice to any other rights or guarantees enforceable under the Contract.

ARTICLE II.15a – SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR

Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Contractor, the Commission may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with the Contractor, in proportion to the seriousness of the errors, irregularities of fraud.

ARTICLE II. 16 – LIQUIDATED DAMAGES

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

ARTICLE II. 17 – CHECKS AND AUDITS

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

ARTICLE II. 18 – AMENDMENTS

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties. An oral agreement shall not be binding on the contracting parties. An order or a specific contract may not be deemed to constitute an amendment to the Contract.

ARTICLE II. 19 – SUSPENSION OF THE CONTRACT

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

SIGNATURES

For the Contractor,

[Contractor]

For the Commission,

Jens SCHAPS, Director
Directorate A
On behalf of the Directorate General for
Trade

signature[s]: _____

signature[s]: _____

Done at _____, [date]

Done at Brussels, [date]

In duplicate in English.

ANNEX I

Tender Specifications

ANNEX II

Contractor's Tender