

**EUROPEAN COMMISSION**  
**DIRECTORATE-GENERAL FOR ENERGY**

Directorate E - Euratom Safeguards  
The Director

Luxembourg,  
DG ENER/E1-FL-mf/ARES(2016)

**Subject: Invitation to tender N° ENER/E1/2016-30-17 for a supply contract concerning the purchase of 8 HPGe detectors which combine electric cooling with liquid nitrogen cooling (hybrid systems)**

**Contract notice in OJEU 2016/S 075-130321 of 16/04/2016**

Dear Sir/Madam,

1. The European Commission is planning to award the contract referred to above. The procurement documents consist in the contract notice referred to above, this invitation letter, the tender specifications with their annexes and the draft contract.
2. If you are interested in this contract, you must submit your tender exclusively on paper, in one original and two copies, in one of the official languages of the European Union. A copy of the offer on a USB stick has also to be submitted.

The tender must be placed inside two closed envelopes addressed as indicated below. The inner envelope should be marked as follows: "CALL FOR TENDERS – NOT TO BE OPENED BY THE INTERNAL MAIL DEPARTMENT". If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across this tape.

The inner envelope must also contain two closed envelopes, one containing the administrative and technical parts of the tender and the other the financial part. Each of these envelopes must clearly indicate the content ("Administrative and technical" and "Financial").

For your bid to be found admissible the confidentiality thereof must have been ensured and the deadline for submission met.

The tender must be received no later than 20 May 2016. You must use one of the following means of submission:

Means of submission	Time limit	Evidence of dispatch	Address for delivery
Post	<b>24:00 CET</b>	Postmark	CALL FOR TENDERS ENER/E1/2016-30-17 European Commission Directorate-Energy Direction E – EURATOM Safeguards Complexe Euroforum For the attention of Mr Meylemans/ Mr Stamatopol EUFO 3485 1, rue Henri M. Schnadt Zone d'activités Cloche d'Or L-2530 Luxembourg
Courier	<b>24:00 CET</b>	Deposit slip of courier service	
In person (hand delivery)	<b>17:00 CET</b>	Proof of receipt, signed and dated by the official in the central mail department who takes delivery	

Mail can be received from Monday to Friday (08.30 - 16.30). The service is closed on Saturdays, Sundays and official holidays of the contracting authority.

3. Tenders will be opened at 15:00 p.m. on 3 June 2016, at 1, rue Henri M. Schnadt, Zone d'activités Cloche d'Or L-2530 Luxembourg - Directorate- General for Energy.

Tenderers may attend the meeting but be represented by not more than one person. At the end of the opening session, the Chairman of the opening committee will indicate the name of the tenderers and the decision concerning the admissibility of each offer received. The prices mentioned in the bids will not be communicated.

Tenders must be:

- signed by a duly authorised representative of the tenderer. The original signature of the single tenderer's or lead partner's authorised representative) (preferably in blue ink) on the identification form (Annex 1 of the technical specifications) shall be considered as the signature of the tender, binding the single tenderer or the group of partners to the terms included in the tender;
- perfectly legible so that there can be no doubt as to words and figures;

4. The period of validity of the tender, during which tenderers may not modify the terms of their tenders in any respect, is six months from the date indicated in point 3.

5. Submission of a tender implies acceptance of all the terms and conditions set out in the procurement documents and, where appropriate, waiver of the tenderer's own general or specific terms and conditions. The submitted tender is binding on the tenderer to whom the contract is awarded for the duration of the contract.

6. All costs incurred for the preparation and submission of tenders are to be borne by the tenderers and will not be reimbursed.

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

Before the date of receipt indicated in point 3:

Upon request, the contracting authority may provide additional information solely for the purpose of clarifying the procurement documents.

Any request for additional information must be made in writing only to peter.schwalbach@ec.europa.eu and ENER-E1-CFT@ec.europa.eu.

The contracting authority may, on its own initiative, inform interested parties of any error, inaccuracy, omission or any other type of clerical error in the text of the procurement documents.

Any additional information including that referred to above will be posted on <https://ec.europa.eu/energy/en/funding-and-contracts/calls-tender>. The website will be updated regularly and it is your responsibility to check for updates and modifications during the submission period.

After the opening of tenders:

If obvious clerical errors in the tender need to be corrected or confirmation of a specific or technical element is necessary, the contracting authority will contact the tenderer provided this does not lead to substantial changes to the terms of the submitted tender.

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

9. Up to the point of signature, the contracting authority may cancel the award procedure without the candidates or tenderers being entitled to claim any compensation. This decision must be substantiated and the candidates or tenderers notified.

10. Once the Commission has opened the tender, it becomes its property and it shall be treated confidentially.

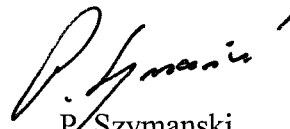
11. You will be informed of the outcome of this procurement procedure by e-mail only. It is your responsibility to provide a valid e-mail address together with your contact details in your tender and to check this e-mail address regularly.

12. If processing your reply to the invitation to tender involves the recording and processing of personal data (such as your name, address and CV), 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

Director of the Shared Resource Directorate. Details concerning the processing of your personal data are available on the privacy statement at:

[http://ec.europa.eu/dataprotectionofficer/privacystatement\\_publicprocurement\\_en.pdf](http://ec.europa.eu/dataprotectionofficer/privacystatement_publicprocurement_en.pdf).

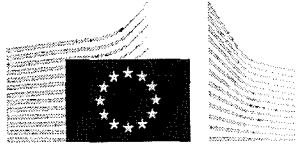
13. Your personal data may be registered in the Early Detection and Exclusion System (EDES) if you are in one of the situations mentioned in Article 106 of the Financial Regulation<sup>1</sup>. For more information, see the Privacy Statement on [http://ec.europa.eu/budget/explained/management/protecting/protect\\_en.cfm](http://ec.europa.eu/budget/explained/management/protecting/protect_en.cfm) )



P. Szymanski  
Director

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<sup>1</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298 of 26.10.2012, p. 1) as amended.



**EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR ENERGY**

**Directorate E - Euratom Safeguards  
The Director**

## **CALL FOR TENDERS**

**N° ENER/E1/2016-30-17**

**Supply contract concerning the purchase of 8 HPGe detectors which combine electric cooling with liquid nitrogen cooling (hybrid systems)**

# **TENDER SPECIFICATIONS**

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## **1. INFORMATION ON TENDERING**

### **1.1. Participation**

Participation in this procurement procedure is open on equal terms to all natural and legal persons coming within the scope of the Treaties, as well as to international organisations. It is also open to all natural and legal persons established in a third country which has a special agreement with the Union in the field of public procurement on the conditions laid down in that agreement. Where the multilateral Agreement on Government Procurement<sup>1</sup> concluded within the World Trade Organisation applies, the participation to this procedure is also open to all natural and legal persons established in the countries that have ratified this Agreement, on the conditions it lays down.

### **1.2. Contractual conditions**

The tenderer should bear in mind the provisions of the draft contract which specifies the rights and obligations of the contractor, particularly those on payments, performance of the contract, confidentiality, and checks and audits.

### **1.3. Compliance with applicable law**

The tender must comply with applicable environmental, social and labour law obligations established by Union law, national legislation, collective agreements or the international environmental, social and labour conventions listed in Annex X to Directive 2014/24/EU<sup>2</sup>.

### **1.4. Joint tenders**

A joint tender is a situation where a tender is submitted by a group of economic operators (natural or legal persons). Joint tenders may include subcontractors in addition to the members of the group.

In case of joint tender, all members of the group assume joint and several liability towards the Contracting Authority for the performance of the contract as a whole, i.e. both financial and operational liability. Nevertheless, tenderers must designate one of the economic operators as a single point of contact (the leader) for the Contracting Authority for administrative and financial aspects as well as operational management of the contract.

After the award, the Contracting Authority will sign the contract either with all members of the group, or with the leader on behalf of all members of the group, authorised by the other members via powers of attorney.

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<sup>1</sup> See [http://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm)

<sup>2</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

## **1.5. Subcontracting**

Subcontracting is permitted but the contractor will retain full liability towards the Contracting Authority for performance of the contract as a whole.

Tenderers are required to identify subcontractors whose share of the contract is above 20 % and those whose capacity is necessary to fulfil the selection criteria.

During contract performance, the change of any subcontractor identified in the tender or additional subcontracting will be subject to prior written approval of the Contracting Authority.

## **1.6. Structure and content of the tender**

The tenders must be presented as follows:

Part A: Identification of the tenderer (see section 1.7)

Part B: Non-exclusion (see section 4.1)

Part C: Selection (see section 4.2)

Part D: Technical offer

The technical offer must cover all aspects and tasks required in the technical specifications and provide all the information needed to apply the award criteria. Offers deviating from the requirements or not covering all requirements may be rejected on the basis of non-compliance with the tender specifications and will not be evaluated.

Part E: Financial offer

The price for the tender must be quoted in euro. Tenderers from countries outside the euro zone have to quote their prices in euro. The price quoted may not be revised in line with exchange rate movements. It is for the tenderer to bear the risks or the benefits deriving from any variation.

Prices must be quoted free of all duties, taxes and other charges, including VAT, as the European Union is exempt from such charges under Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union. The amount of VAT may be shown separately.

The quoted price must be a fixed amount which includes all charges (including travel and subsistence). Travel and subsistence expenses are not refundable separately.

Part F: Power of attorney (for consortia only)

## **1.7. Identification of the tenderer**

The tender must include a **cover letter** signed by an authorised representative presenting the name of the tenderer (including all entities in case of joint tender) and identified subcontractors if applicable, and the name of the single contact point (leader) in relation to this procedure.

In case of joint tender, the cover letter must be signed either by an authorised representative for each member, or by the leader authorised by the other members with powers of attorney. The signed powers of attorney must be included in the tender as well. Subcontractors that are



identified in the tender must provide a letter of intent signed by an authorised representative stating their willingness to provide the services presented in the tender and in line with the present tender specifications.

All tenderers (including all members of the group in case of joint tender) must provide a signed Legal Entity Form with its supporting evidence. The form is available on:

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/legal\\_entities/legal\\_entities\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm)

The tenderer (including each member of the group in case of joint tender) must provide the following information in its tender if it has not been provided with the Legal Entity Form:

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

- For natural persons, if required under applicable law, proof of registration in a professional or trade register or any other official document showing the registration number.

Tenderers that are already registered in the Contracting Authority's accounting system (i.e. they have already been direct contractors) must provide the form but are not obliged to provide the supporting evidence.

The tenderer (or the leader in case of joint tender) must provide a Financial Identification Form with its supporting documents. Only one form per tender should be submitted. No form is needed for subcontractors and other members of the group in case of joint tender. The form is available on: [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/index\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/index_en.cfm)

The tenderer (and each member of the group in case of joint tender) must declare whether it is a Small or Medium Size Enterprise in accordance with Commission Recommendation 2003/361/EC. This information is used for statistical purposes only.

## **2. TECHNICAL SPECIFICATIONS**

### **a) Introduction**

The EURATOM Safeguards Directorate of the European Commission, acting on the basis of article 77 of the Treaty Establishing the European Atomic Energy Community (EURATOM Treaty), implements Nuclear Safeguards in the Member States of the European Union.

To ensure that nuclear material is only used as declared, physical verification of nuclear material throughout the nuclear fuel cycle is required. In reprocessing plants, for example a large number of samples are taken to control concentration and composition of materials in different stages of the plant. These samples are analysed in Commission-owned on-site laboratories on the sites of the reprocessing parts in France and the United Kingdom. In the course of modernizing existing equipment, a number of High Purity Germanium Detectors (HPGe) have to be replaced, which are used in routine operations in the on-site laboratories as building blocks of systems carrying out high precision measurements.

## **b) Purpose of the contract**

In order to cover the needs arising from the inspection activities mentioned above, 8 HPGe detectors which combine electric cooling with liquid nitrogen cooling (hybrid systems), will be purchased in the framework of this contract.

Due to the fact that the replacement of existing equipment has to be harmonized with the inspection schedules, the successful tenderer needs to take into account, that the delivery of the new devices may not exceed the contract duration.

The detectors will be integrated in an existing system. For this reason, it is essential that this equipment is compatible with the existing hardware, e.g. in terms of dimensions of the equipment, in terms of their electrical connectors and other parameters, and particularly in their spectrometric performance.

Reliability and low maintenance needs of the equipment are key factors to be taken into consideration.

The successful tenderer will be required to supply equipment conforming to the following technical specifications:

## **c) General requirements**

The following features are considered essential:

- Liquid nitrogen redundancy,
- Non CFC (Chloro-Fluoro Carbon) and non-flammable refrigerant,
- Same footprint as standard liquid nitrogen dewar, equal or less than 44 cm diameter
- Lifetime: more than 60000 hours of continuous cooling operation,
- Alarm and autofill relay outputs (DB9-M),
- Remote control and read-out (RS-232 and/or USB connectors),
- Power requirements: 100-240V ac, 50-60 Hz, 700 VA max (Auto-ranging power supply), nominal power consumption (not more than 250 W in steady-state operation, with a maximum of 450 W during transient operation),
- All indicators, controls and connectors integrated in a front panel,
- Low vibration and low electrical noise,
- Audible noise less than 60 db (A) measured at 1 meter,
- Operating temperature: +10 to +35 °C,
- Operating humidity: range 20% to 80% relative.

## **d) Physical dimensions and weight**

The maximum physical dimensions shall be the following:

- Diameter of the Dewar 43 cm (tolerance ~1 cm) x height between bottom end of the Dewar and horizontal centreline of the detector 70 cm (tolerance ~1 cm).
- Dimension of the detector's aluminium end-cap: diameter: 76 mm (tolerance ~1 mm) approximately 1.5 mm thick.

-Dimension between the front of the detector's end-cap and the vertical centreline of the Dewar 316 mm.

-Total height 73 cm (tolerance ~1 cm).

The weight of the cold head, excluding the detector, should be less than 35 kg when empty.

#### **e) Detector cooler**

High-Purity Germanium Detectors require cooling to approximately the temperature of liquid nitrogen to record gamma spectra of best resolution.

The hybrid cryostat system shall combine a liquid nitrogen vessel (Dewar) with a minimum 20 litres capacity and a Cryo-electric cooler that condenses the boiled-off nitrogen gas back into the Dewar.

This system will allow operation of HPGe Detector for at least 12 months before adding liquid nitrogen.

Liquid nitrogen loss rate shall not exceed 3 litres/ day and allow a fully autonomous operation of the detector for approximately one week, when the cryo-cooler is OFF.

Upon power-on, cool-down time of the crystal shall not exceed 8 hours.

#### **f) Detector construction**

Horizontal dipstick HPGe detector having specifications as follows:

- Active area of the crystal: 200 mm<sup>2</sup> and thickness: 10mm,
- Resolution (eV Full width at Half Maximum): 200 eV or less at 5.9 keV and 550 eV or less at 122 keV,
- Optimized for use with gamma energies in the range 50-300 keV,
- Optimum bias high voltage (preferably negative) within the range -3500/+3500V.

The crystal must be contained in a robust aluminium end-cap.

#### **g) Preamplifier**

The preamplifier will offer the following features:

- Cooled FET input high speed preamplifier, diode protected,
- Maximum count rate > 100000 counts per second,
- High count rate warning LED,
- High Voltage input up to ~5000 V DC,
- Nonlinearity < ~0.05%,
- Gain 1X or 5X,
- Control of the HV power supply by HV inhibit output,
- Monitoring of the Ge crystal temperature

#### **h) Drawing**

The offer should contain a dimensioned schematic drawing of the complete hybrid cooled HPGe unit with Dewar.

#### **i) Miscellaneous**

Each hybrid cooled HPGe unit will be fitted with 1m-long trailing cables (preamplifier power (9-pin D), test (BNC female), signal (BNC female), bias shutdown (BNC female) and HV (SHV male) cables all grouped in 1 sleeve).

All cables must be clearly labelled and the pin-assignment of the pre-amplifier connector should be clearly described.

#### **j) Warranty**

A full warranty of minimum two years shall be included in the offer.

#### **k) Delivery**

The contractor may be required to send an appointed person to the European Commission in Luxembourg or Karlsruhe, Germany, to discuss technical details prior to the delivery of the equipment.

All charges (including packaging, transport fees and any other related expenses incurred by the contractor) will be borne by the tenderer.

The tenderer will deliver the eight hybrid cooled High-Purity Germanium Detectors to the premises of the European Commission in Luxembourg or Karlsruhe, Germany, not later than 6 months after the tenderer has received the signed purchase order, which will specify the exact delivery location.

#### **l) Acceptance of performed services**

In accordance with Article 1.5.3 of the draft contract the Commission will have 60 days to approve or reject the goods and to make the payment.

### **3. CONTENT, STRUCTURE AND GRAPHIC REQUIREMENTS OF THE DELIVERABLES**

Not applicable.

### **4. EVALUATION AND AWARD**

The evaluation is based solely on the information provided in the submitted tender. It involves the following:

- Verification of non-exclusion of tenderers on the basis of the exclusion criteria
- Selection of tenderers on the basis of selection criteria

- Verification of compliance with the minimum requirements set out in these tender specifications
- Evaluation of tenders on the basis of the award criteria

The contracting authority may reject abnormally low tenders, in particular if it established that the tenderer or a subcontractor does not comply with applicable obligations in the fields of environmental, social and labour law.

The Contracting Authority will assess these criteria in no particular order. The successful tenderer must pass all criteria to be awarded the contract.

#### **4.1. Verification of non-exclusion**

All tenderers must provide a declaration on honour (see Annex 2), signed and dated by an authorised representative, stating that they are not in one of the situations of exclusion listed in that declaration on honour.

In case of joint tender, each member of the group must provide a declaration on honour signed by an authorised representative.

In case of subcontracting, subcontractors whose share of the contract is above 20% and those whose capacity is necessary to fulfil the selection criteria must provide a declaration on honour signed by an authorised representative.

The successful tenderer must provide the documents mentioned as supporting evidence in the declaration on honour before signature of the contract and within a deadline given by the contracting authority. This requirement applies to each member of the group in case of joint tender, to subcontractors whose share of the contract is above 20% and to subcontractors whose capacity is necessary to fulfil the selection criteria.

The obligation to submit supporting evidence does not apply to international organisations.

A tenderer (or a member of the group in case of joint tender, or a subcontractor) is not required to submit the documentary evidence if it has already been submitted for another procurement procedure and provided the documents were issued not more than one year before the date of their request by the contracting authority and are still valid at that date. In such cases, the tenderer must declare on its honour that the documentary evidence has already been provided in a previous procurement procedure, indicate the reference of the procedure and confirm that there has been no change in its situation.

A tenderer (or a member of the group in case of joint tender, or a subcontractor) is not required to submit a specific document if the contracting authority can access the document in question on a national database free of charge.

#### **4.2. Selection criteria**

Tenderers must prove their legal, regulatory, economic, financial, technical and professional capacity to carry out the work subject to this procurement procedure.

The tenderer may rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the Contracting Authority 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.

The tender must include the proportion of the contract that the tenderer intends to subcontract.

#### **4.2.1. Declaration and evidence**

The tenderers (and each member of the group in case of joint tender) and subcontractors whose capacity is necessary to fulfil the selection criteria must provide the declaration on honour (see Annex 2), signed and dated by an authorised representative, stating that they fulfil the selection criteria applicable to them. In case of joint tender or subcontracting, the criteria applicable to the tenderer as a whole will be verified by combining the various declarations for a consolidated assessment.

This declaration is part of the declaration used for exclusion criteria (see section 4.1) so only one declaration covering both aspects should be provided by each concerned entity.

The Contracting Authority will evaluate selection criteria on the basis of the evidence to be submitted with the tenders.

A tenderer (or a member of the group in case of joint tender, or a subcontractor) is not required to submit the documentary evidence if it has already been submitted for another procurement procedure and provided the documents were issued not more than one year before the date of their request by the contracting authority and are still valid at that date. In such cases, the tenderer must declare on its honour that the documentary evidence has already been provided in a previous procurement procedure, indicate the reference of the procedure and confirm that there has been no change in its situation.

A tenderer (or a member of the group in case of joint tender, or a subcontractor) is not required to submit a specific document if the contracting authority can access the document in question on a national database free of charge.

#### **4.2.2. Regulatory capacity**

Tenderers must prove that they are allowed to pursue the professional activity necessary to carry out the work subject to this call for tenders.

#### **4.2.3. Economic and financial capacity criteria**

The tenderer must have the necessary economic and financial capacity to perform this contract until its end. In order to prove their capacity, the tenderer must comply with the following selection criteria.

- **Criterion F1:** Turnover of the last two financial years above EUR 200000; this criterion applies to the tenderer as a whole, i.e. the combined capacity of all members of a group in case of a joint tender.

#### **Evidence (to be provided on request):**

- Copy of the profit and loss accounts for the last two years for which accounts have been closed from each concerned legal entity;

- Failing that, appropriate statements from banks.

If, for some exceptional reason which the Contracting Authority considers justified, a tenderer is unable to provide one or other of the above documents, it may prove its economic and financial capacity by any other document which the Contracting Authority considers appropriate. In any case, the Contracting Authority must at least be notified of the exceptional reason and its justification. The Commission reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity.

#### **4.2.4. Technical and professional capacity criteria and evidence**

Tenderers (in case of a joint tender the combined capacity of all members of the group and identified subcontractors) must comply with the criteria listed below. The project references indicated below consist in a list of relevant services provided in the past three years, with the sums, dates and clients, public or private, accompanied by statements issued by the clients.

- **Criterion A1:** The tenderer must prove experience in the field of nuclear industry.

**Evidence A1:** the tenderer must provide references for 1 project delivered in these fields in the last three years with a minimum value for the project of € 100000.

- **Criterion A2:** The tenderer must prove capacity to work in English language.

**Evidence A2:** the tenderer must provide references for 1 project delivered in the last three years showing the necessary language coverage.

#### **4.3. Award criteria**

The contract will be awarded based on the most economically advantageous tender, according to the 'best price-quality ratio' award method. The quality of the tender will be evaluated based on the following criteria. The maximum total quality score is 100 points.

<b>No.</b>	<b>Award Criteria</b>	<b>Weighting maximum no. of points</b>
1	<p>Performance of the detector</p> <p>The tenderer receives 18 points for meeting at least the minimal specification for the resolution at 5.9 keV and 122 keV. 3 points will be attributed for each 10 eV less up to a maximum of 30 points.</p>	30
2	<p>Performance of the cooler (autonomy)</p> <p>The tenderer receives 12 points for meeting at least 12 months operation of the HPGe Detector before adding liquid nitrogen. For each month in addition, 1 point will be attributed up to a maximum of 20 points.</p>	20

3	<p>Performance of the preamplifier</p> <p>The tenderer receives 12 points for meeting at least the minimal specification for the count rate. 1 point will be attributed for each additional 20.000 counts/sec up to a maximum of 20 points.</p>	20
4	<p>Delivery time</p> <p>The tenderer receives 6 points for meeting the maximum delivery time of 6 months. For each month less than 6, 1 point will be attributed up to a maximum of 10 points.</p>	10
5	<p>Warranty</p> <p>The tenderer receives 12 points for meeting the minimum time of warranty of 2 years. For each month above 24, 0,25 points will be attributed up to a maximum of 20 points.</p>	20
<b>Total number of points ('quality')</b>		<b>100</b>

Tenders must score minimum 60% for each criterion to be taken into consideration for awarding the contract. Tenders that do not reach the minimum quality levels will be rejected and will not be ranked.

#### 4.4. Ranking of tenders

The contract will be awarded to the most economically advantageous tender, i.e. the tender offering the best price-quality ratio determined in accordance with the formula below.

$$R=Q/P$$

**The tender ranked first after applying the formula will be awarded the contract.**

## 5. ANNEXES

1. Tenderer 's Identification Form
2. Declaration of honour on exclusion criteria and selection criteria
3. Power of attorney (mandate in case of joint tender)
4. Draft Contract or purchase order



# ANNEX 1

## IDENTIFICATION OF THE TENDERER

(Each service provider, including any member of a consortium or grouping and subcontractor(s) whose share of the work is more than 20% of the contract must complete and sign this identification form)

### Call for tenders ENER/E1/2016-30-17

Identity	
Name of the tenderer	
Legal status of the tenderer	
Date of registration	
Country of registration	
Registration number	
VAT number	
Description of statutory social security cover (at the level of the Member State of origin) and non-statutory cover (supplementary professional indemnity insurance) <sup>3</sup>	
Address	
Address of registered office of tenderer	
Where appropriate, administrative address of tenderer for the purposes of this invitation to tender	
Contact Person	
Surname: First name: Title (e.g. Dr, Mr, Ms) : Position (e.g. manager): Telephone number: Fax number:	

<sup>3</sup> For natural persons.

E-mail address:	
<b>Legal Representatives</b>	
<b>Names and function of legal representatives</b> and of other representatives of the tenderer who are authorised to sign contracts with third parties	
<b>Declaration by an authorised representative of the organisation<sup>4</sup></b> I, the undersigned, certify that the information given in this tender is correct and that the tender is valid.	
Surname: First name:	Signature:

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<sup>4</sup> This person must be included in the list of legal representatives; otherwise the signature on the tender will be invalidated.

## ANNEX 2

### Declaration of honour on exclusion criteria and selection criteria

The undersigned [*insert name of the signatory of this form*], representing:

<i>(only for natural persons)</i> himself or herself	<i>(only for legal persons)</i> the following legal person:
ID or passport number:	Full official name: Official legal form: Statutory registration number: Full official address: VAT registration number:

➤ declares whether the above-mentioned person is in one of the following situations or not:		
SITUATION OF EXCLUSION CONCERNING THE PERSON	YES	NO
a) it is bankrupt, subject to insolvency or winding up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors, its business activities are suspended or it is in any analogous situation arising from a similar procedure provided for under national legislation or regulations;	<input type="checkbox"/>	<input type="checkbox"/>
b) it has been established by a final judgement or a final administrative decision that the person is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the law of the country in which it is established, with those of the country in which the contracting authority is located or those of the country of the performance of the contract;	<input type="checkbox"/>	<input type="checkbox"/>
c) it has been established by a final judgement or a final administrative decision that the person is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:		
(i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;	<input type="checkbox"/>	<input type="checkbox"/>
(ii) entering into agreement with other persons with the aim of distorting competition;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) violating intellectual property rights;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) attempting to influence the decision-making process of the contracting authority during the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>
(v) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>

d) it has been established by a final judgement that the person is guilty of any of the following:		
(i) fraud, within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995;	<input type="checkbox"/>	<input type="checkbox"/>
(ii) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of EU Member States, drawn up by the Council Act of 26 May 1997, and in Article 2(1) of Council Framework Decision 2003/568/JHA, as well as corruption as defined in the legal provisions of the country where the contracting authority is located, the country in which the person is established or the country of the performance of the contract;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA;	<input type="checkbox"/>	<input type="checkbox"/>
iv) money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
(v) terrorist-related offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA, respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision;	<input type="checkbox"/>	<input type="checkbox"/>
(vi) child labour or other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
e) the person has shown significant deficiencies in complying with the main obligations in the performance of a contract financed by the Union's budget, which has led to its early termination or to the application of liquidated damages or other contractual penalties, or which has been discovered following checks, audits or investigations by an Authorising Officer, OLAF or the Court of Auditors;	<input type="checkbox"/>	<input type="checkbox"/>
f) it has been established by a final judgment or final administrative decision that the person has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95;	<input type="checkbox"/>	<input type="checkbox"/>
g) for the situations of grave professional misconduct, fraud, corruption, other criminal offences, significant deficiencies in the performance of the contract or irregularity, the applicant is subject to: <ul style="list-style-type: none"> <li>i. facts established in the context of audits or investigations carried out by the Court of Auditors, OLAF or internal audit, or any other check, audit or control performed under the responsibility of an authorising officer of an EU institution, of a European office or of an EU agency or body;</li> <li>ii. non-final administrative decisions which may include disciplinary measures taken by the competent supervisory body responsible for the verification of the application of standards of professional ethics;</li> <li>iii. decisions of the ECB, the EIB, the European Investment Fund or international organisations;</li> <li>iv. decisions of the Commission relating to the infringement of the Union's competition rules or of a national competent authority relating to the infringement of Union or national competition law; or</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>

v. decisions of exclusion by an authorising officer of an EU institution, of a European office or of an EU agency or body.		
--	--	--

***[Only for legal persons other than Member States and local authorities, otherwise delete this table]***

➤ declares whether a natural person who is a member of the administrative, management or supervisory body of the above-mentioned legal person, or who has powers of representation, decision or control with regard to the above-mentioned legal person (this covers the company directors, members of the management or supervisory bodies, and cases where one natural person holds a majority of shares) is in one of the following situations or not:

SITUATIONS OF EXCLUSION CONCERNING NATURAL PERSONS WITH POWER OF REPRESENTATION, DECISION-MAKING OR CONTROL OVER THE LEGAL PERSON	YES	NO
Situation (c) above (grave professional misconduct)	<input type="checkbox"/>	<input type="checkbox"/>
Situation (d) above (fraud, corruption or other criminal offence)	<input type="checkbox"/>	<input type="checkbox"/>
Situation (e) above (significant deficiencies in performance of a contract )	<input type="checkbox"/>	<input type="checkbox"/>
Situation (f) above (irregularity)	<input type="checkbox"/>	<input type="checkbox"/>

➤ declares whether a natural or legal person that assumes unlimited liability for the debts of the above-mentioned legal person is in one of the following situations or not:

SITUATIONS OF EXCLUSION CONCERNING NATURAL OR LEGAL PERSONS ASSUMING UNLIMITED LIABILITY FOR THE DEBTS OF THE LEGAL PERSON	YES	NO	N/A
Situation (a) above (bankruptcy)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (b) above (breach in payment of taxes or social security contributions)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

➤ declares whether the above-mentioned person is in one of the following situations or not:

GROUPS FOR REJECTION FROM THIS PROCEDURE	YES	NO
h) has not distorted competition by being previously involved in the preparation of procurement documents for this procurement procedure;	<input type="checkbox"/>	<input type="checkbox"/>
i) has provided accurate, sincere and complete information to the contracting authority within the context of this procurement procedure;	<input type="checkbox"/>	<input type="checkbox"/>
➤ acknowledges that the above-mentioned person may be subject to rejection from this procedure and to administrative sanctions (exclusion or financial penalty) if any of the declarations or information provided as a condition for participating in this procedure prove to be false.		

**REMEDIAL MEASURES**

If the person declares one of the situations of exclusion listed above, it should indicate the measures it has taken to remedy the exclusion situation, thus demonstrating its reliability. They may include e.g. technical, organisational and personnel measures to prevent further occurrence, compensation of damage or payment of fines. The relevant documentary evidence which appropriately illustrates the remedial measures taken should be provided in annex to this declaration. This does not apply for the situations referred in point (d) of this declaration.

#### **EVIDENCE UPON REQUEST**

Upon request and within the time limit set by the contracting authority the person shall provide information on the persons that are members of the administrative, management or supervisory body, as well as the following evidence concerning the person or the natural or legal persons which assume unlimited liability for the debt of the person:

For situations described in (a), (c), (d) or (f), production of a recent extract from the judicial record is required or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of establishment of the person showing that those requirements are satisfied.

For the situation described in point (a) or (b), production of recent certificates issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the person is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions. Where any document described above is not issued in the country concerned, it may be replaced by a sworn statement made before a judicial authority or notary or, failing that, a solemn statement made before an administrative authority or a qualified professional body in its country of establishment.

If the person already submitted such evidence for the purpose of another procedure, its issuing date does not exceed one year and it is still valid, the person shall declare on its honour that the documentary evidence has already been provided and confirm that no changes have occurred in its situation.

➤ declares whether the above-mentioned person complies with the selection criteria as provided in the tender specifications:		
<b>SELECTION CRITERIA</b>	YES	NO
(a) It has the legal and regulatory capacity to pursue the professional activity needed for performing the contract as required in section [insert] of the tender specifications;	<input type="checkbox"/>	<input type="checkbox"/>
(b) It fulfills the applicable economic and financial criteria indicated in section [insert] of the tender specifications;	<input type="checkbox"/>	<input type="checkbox"/>
(c) It fulfills the applicable technical and professional criteria indicated in section [insert] of the tender specifications.	<input type="checkbox"/>	<input type="checkbox"/>
➤ declares that the above-mentioned person will be able to provide the necessary supporting documents listed in the relevant sections of the tender specifications and which are not available electronically upon request and without delay.		

Full name

Date

Signature

ANNEX 3  
POWER OF ATTORNEY

**mandating one of the partners in a joint tender as lead partner and lead contractor<sup>5</sup>**

The undersigned:

— Signatory (Name, Function, Company, Registered address, VAT Number)

having the legal capacity required to act on behalf of his/her company,

HEREBY AGREES TO THE FOLLOWING:

- 1) To submit a tender as a partner in the group of partners constituted by Company 1, Company 2, Company N, and led by Company X, in accordance with the conditions specified in the tender specifications and the terms specified in the tender to which this power of attorney is attached.
- 2) If the European Commission awards the Contract to the group of partners constituted by Company 1, Company 2, Company N, and led by Company X on the basis of the joint tender to which this power of attorney is attached, all the partners shall be co-signatories of the Contract in accordance with the following conditions:
  - (a) All partners shall be jointly and severally liable towards the European Commission for the performance of the Contract.
  - (b) All partners shall comply with the terms and conditions of the Contract and ensure the proper delivery of their respective share of the services and/or supplies subject to the Contract.
- 1) Payments by the European Commission related to the services and/or supplies subject to the Contract shall be made through the lead partner's bank account: [Provide details on bank address, account number].
- 2) The partners grant to the lead partner all the necessary powers to act on their behalf in the submission of the tender and conclusion of the Contract, including:
  - (a) The lead partner shall submit the tender on behalf of the group of partners.
  - (b) The lead partner shall sign any contractual documents — including the Contract, and Amendments thereto — and issue any invoices related to the Services on behalf of the group of partners.
  - (c) The lead partner shall act as a single contact point with the European Commission in the delivery of the services and/or supplies subject to the Contract. It shall co-ordinate the delivery of the services and/or supplies by the group of partners to the European Commission, and shall see to a proper administration of the Contract.

Any modification to the present power of attorney shall be subject to the European Commission's express approval. This power of attorney shall expire when all the contractual obligations of the group of partners towards the European Commission for the delivery of the services and/or supplies subject to the Contract have ceased to exist. The parties cannot terminate it before that date without the Commission's consent.

Signed in ..... on [dd/mm/yyyy]

Place and date:

Name (in capital letters), function, company and signature:

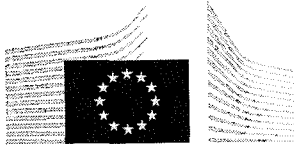
\_\_\_\_\_

<sup>5</sup> To be filled in and signed by each partner in a joint tender except the lead partner.



ANNEX 4  
**DRAFT CONTRACT**

*Please see separate document*



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR ENERGY

Directorate E - Euratom Safeguards  
The Director

## **CONTRACT FOR SUPPLIES**

NUMBER – [complete]

The European Atomic Energy Community ('the Community'), represented by the [European Commission] ('the contracting authority') [and the following contracting authorities [insert relevant list] (collectively, 'the contracting authority')] represented for the purposes of signing this contract by [forename, surname, function, department of authorising officer]

on the one part, and

[Full official name]

[Official legal form]

[Statutory registration number or ID or passport number]

[Full official address]

[VAT registration number]

[appointed as the leader of the group by the members of the group that submitted the joint tender]

([collectively] 'the contractor'), represented for the purposes of the signature of this contract by [forename, surname, function of legal representative and name of company in the case of a joint tender].

on the other part,

HAVE AGREED

to the **special conditions**, the **general conditions for supply contracts** and the following annexes:

**Annex I** Tender specifications (reference No [complete] of [insert date])

**Annex II** Contractor's tender (reference No [complete] of [insert date])

which form an integral part of this contract ('the contract').

This contract sets out the obligations of the parties during and after the duration of this contract.

All documents issued by the contractor (end-user agreements, general terms and conditions, etc.) except its tender are held inapplicable, unless explicitly mentioned in the special conditions of this contract. In all circumstances, in the event of contradiction between this contract and documents issued by the contractor, this contract prevails, regardless of any provision to the contrary in the contractor's documents.

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## **I SPECIAL CONDITIONS**

### **I.1. ORDER OF PRIORITY OF PROVISIONS**

If there is any conflict between different provisions in this contract, the following rules must be applied:

- (a) The provisions set out in the special conditions take precedence over those in the other parts of the contract.
- (b) The provisions set out in the general conditions take precedence over those in the other annexes.
- (c) The provisions set out in the tender specifications (Annex I) take precedence over those in the tender (Annex II).

### **I.2. SUBJECT MATTER**

The subject matter of the contract is the purchase of 8 HPGe detectors which combine electric cooling with liquid nitrogen cooling (hybrid systems).

### **I.3. ENTRY INTO FORCE AND DURATION**

**I.3.1** The contract enters into force on the date on which the last party signs it.

**I.3.2** The *performance of the contract* cannot start before its entry into force.

**I.3.3** The duration of the *performance of the contract* must not exceed [complete] months. *Performance of the contract* starts from [the date of entry into force of the contract].

The period of *performance of the contract* may be extended only with the express written agreement of the parties before the expiration of such period.

**I.3.4** The supplies must be delivered to the premises of the European Commission in Luxembourg or Karlsruhe, Germany.

The contractor must notify the contracting authority of the exact date of delivery at least 14 days in advance. All deliveries must be made between 10:00 hours and 16:00 hours at the agreed place of delivery

### **I.4. PRICE**

#### **I.4.1. Maximum price of the contract**

The maximum price covering all purchases under the contract is EUR [amount in figures and in words].

#### **I.4.2. Price revision index**

Price revision is not applicable to this contract.

## **I.5. PAYMENT ARRANGEMENTS**

### **I.5.1. Pre-financing**

Pre-financing is not applicable to this contract.

### **I.5.2. Interim payment**

Interim payment is not applicable to this contract.

### **I.5.3. Payment of the balance**

1. The contractor (or leader in the case of a joint tender) may claim the payment of the balance in accordance with Article II.20.6.

The contractor (or leader in the case of a joint tender) must send an invoice in paper format for payment of the balance due under the contract, as provided for in the tender specifications and accompanied by the delivery of goods.

2. The contracting authority must approve the submitted documents or deliverables and pay within 60 days from receipt of the invoice.

3. If the contracting authority has observations to make, it must send them to the contractor (or leader in the case of a joint tender) and suspend the time limit for payment in accordance with Article II.20.7.

The contractor (or leader in the case of a joint tender) has 10 days to submit additional information or corrections or a new version of the documents if the contracting authority requires it.

4. The contracting authority must give its approval and pay within the remainder of the time-limit indicated in point (2.) unless it rejects partially or fully the submitted documents or deliverables.]

\*\*\*

*[Option: for contractors for which VAT is due in Belgium, the provisions of the contract constitute a request for VAT exemption No 450, Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the contractor includes the following statement in the invoice(s): "Exonération de la TVA, Article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)" or an equivalent statement in the Dutch or German language.]*

*[Option: for contractors for which VAT is due in Luxembourg]*

[In Luxembourg, the contractor must include the following statement in the invoices: 'Commande destinée à l'usage officiel de l'Union européenne. Exonération de la TVA Article 43 § 1 k 2ième tiret de la loi modifiée du 12.02.79.' In case of intra-Community purchases, the statement to be included in the invoices is: 'For the official use of the European Union. VAT Exemption / European Union/ Article 151 of Council Directive 2006/112/EC.']

## **I.6. GUARANTEES**

Guarantees are not applicable to this contract.



### **I.6.1. Performance guarantee**

Performance guarantee is not applicable to this contract.

### **I.6.2. Retention money guarantee**

Retention money guarantee is not applicable to this contract.

## **I.7. BANK ACCOUNT**

Payments must be made to the contractor's (or leader's in the case of a joint tender) bank account denominated in euro, identified as follows:

Name of bank:

Full address of branch:

Exact denomination of account holder:

Full account number including bank codes:

[IBAN<sup>1</sup> code:]

## **I.8. COMMUNICATION DETAILS**

For the purpose of this contract, communications must be sent to the following addresses:

Contracting authority:

European Commission

Directorate-General [complete]

[Directorate [complete]]

[Unit [complete]]

[Postcode and city]

Email: [insert functional mailbox]

Contractor (or leader in the case of a joint tender):

[Full name]

[Function]

[Company name]

[Full official address]

Email: [complete]

## **I.9. DATA CONTROLLER**

For the purpose of Article II.9, the data controller is the Director of the Shared Resource Directorate MOVE/ENER.

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1 BIC or SWIFT code for countries with no IBAN code.

**I.10. TERMINATION BY EITHER PARTY**

Either party may, terminate the contract by sending *formal notification* to the other party with **one month** written notice.

If the contract is terminated:

- (a) neither party is entitled to compensation;
- (b) the contractor is entitled to payment only for the supplies delivered before termination takes effect.

The second, third and fourth paragraphs of Article II.17.4 apply.

**I.11. APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

**I.11.1** The contract is governed by Union and Community law, complemented, where necessary, by the law of Luxembourg

**I.11.2** The courts of Luxembourg have exclusive jurisdiction over any dispute regarding the interpretation, application or validity of the contract.

**I.12. OTHER SPECIAL CONDITIONS**

Not applicable.

**SIGNATURES**

For the contractor,

For the contracting authority,

[Company name/forename/surname/position]

[forename/surname/position]

Signature[s]: \_\_\_\_\_

Signature[s]: \_\_\_\_\_

Done at [place], [date]

Done at Luxembourg, [date]

In duplicate in English.

## **II GENERAL CONDITIONS FOR THE SUPPLIES CONTRACT**

### **II.1. DEFINITIONS**

For the purpose of this contract, the following definitions (indicated in *italics* in the text) apply:

**‘Back office’**: the internal system(s) used by the parties to process electronic invoices;

**‘Confidential information or document’**: any information or document received by either party from the other or accessed by either party in the context of the *performance of the contract*, that any of the parties has identified in writing as confidential. It may not include information that is publicly available;

**‘Conflict of interest’**: a situation where the impartial and objective *performance of the contract* by the contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other shared interest with the contracting authority or any third party related to the subject matter of the contract;

**‘EDI message’** (electronic data interchange): a message created and exchanged through the electronic transfer, from computer to computer, of commercial and administrative data using an agreed standard;

**‘e-PRIOR’**: the service-oriented communication platform that provides a series of web services and allows the exchange of standardised electronic messages and documents between the parties. This is done either through web services, with a machine-to-machine connection between the parties’ *back office* systems (*EDI messages*), or through a web application (the *supplier portal*). The Platform may be used to exchange electronic documents (e-documents) such as electronic *requests for supplies*, electronic specific contracts, and electronic delivery of the certificate of conformity or electronic invoices between the parties. Technical specifications (i.e. the *interface control document*), details on access and user manuals are available at the following website: [http://ec.europa.eu/dgs/informatics/supplier\\_portal/documentation/documentation\\_en.htm](http://ec.europa.eu/dgs/informatics/supplier_portal/documentation/documentation_en.htm)

**‘Force majeure’**: any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the contract. The situation or event must not be attributable to error or negligence on the part of the parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as *force majeure*, unless they stem directly from a relevant case of *force majeure*;

**‘Formal notification’** (or ‘formally notify’): form of communication between the parties made in writing by mail or email, which provides the sender with compelling evidence that the message was delivered to the specified recipient;

**‘Fraud’**: any intentional act or omission affecting the Union’s and Community’s financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents or to non-disclosure of information in violation of a specific obligation;

**‘Interface control document’**: the guideline document which lays down the technical specifications, message standards, security standards, checks of syntax and semantics, etc. to facilitate machine-to-machine connection. This document is updated on a regular basis;

**‘Irregularity’**: any infringement of a provision of Union and Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the Union’s budget.

**‘Notification’** (or ‘notify’): form of communication between the parties made in writing including by electronic means;

**‘Performance of the contract’**: the execution of tasks and delivery of the purchased supplies by the contractor to the contracting authority;

**‘Personnel’**: persons employed directly or indirectly or contracted by the contractor to perform the contract;

**‘Professional conflicting interest’**: a situation in which the contractor’s previous or ongoing professional activities affect its capacity to perform the contract to an appropriate quality standard.

**‘Related person’**: any person who has the power to represent the contractor or to take decisions on its behalf;

**‘Substantial error’**: any infringement of a contract provision resulting from an act or omission, which causes or might cause a loss to the Union’s budget.

**‘Supplier portal’**: the e-PRIOR portal, which allows the contractor to exchange electronic business documents, such as invoices, through a graphical user interface; its main features can be found in the supplier portal overview document available on: [http://ec.europa.eu/dgs/informatics/supplier\\_portal/doc/um\\_supplier\\_portal\\_overview.pdf](http://ec.europa.eu/dgs/informatics/supplier_portal/doc/um_supplier_portal_overview.pdf)

## **II.2. ROLES AND RESPONSIBILITIES IN THE EVENT OF A JOINT TENDER**

In the event of a joint tender submitted by a group of economic operators and where the group does not have legal personality or legal capacity, one member of the group is appointed as leader of the group.

## **II.3. SEVERABILITY**

Each provision of this contract is severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the contract. This does not affect the legality, validity or enforceability of any other provisions of the contract, which continue in full force and effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute provision which corresponds as closely as possible with the actual intent of the parties under the illegal, invalid or unenforceable provision. The replacement of such a provision must be made in accordance with Article II.11. The contract must be interpreted as if it had contained the substitute provision as from its entry into force.

## **II.4. DELIVERY OF SUPPLIES**

**II.4.1** The contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union and Community

law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU<sup>2</sup>.

**II.4.2** All periods specified in the contract are calculated in calendar days, unless otherwise specified.

**II.4.3** The contractor must not present itself as a representative of the contracting authority and must inform third parties that it is not part of the European public service.

**II.4.4** The contractor is responsible for the *personnel* who perform the contract and exercises its authority over its *personnel* without interference by the contracting authority. The contractor must inform its *personnel* that:

- (a) they may not accept any direct instructions from the contracting authority; and
- (b) their participation in providing the supplies does not result in any employment or contractual relationship with the contracting authority.

**II.4.5** The contractor must ensure that the *personnel* performing the contract and any future replacement personnel possess the professional qualifications and experience required to provide the supplies, as the case may be on the basis of the selection criteria set out in the tender specifications.

**II.4.6** At the contracting authority's reasoned request, the contractor must replace any member of *personnel* who:

- (a) does not have the expertise required to provide the supplies; or
- (b) has caused disruption at the premises of the contracting authority.

The contractor bears the cost of replacing its *personnel* and is responsible for any delay in providing the supplies resulting from the replacement of *personnel*.

**II.4.7** The contractor must record and report to the contracting authority any problem that affects its ability to deliver the supplies. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

#### **II.4.8 Delivery**

- (a) Time allowed for delivery

The time allowed for delivery is calculated in accordance with Article I.3.

- (b) Date, time and place of delivery

The Commission must be notified in writing of the exact date of delivery within the period indicated in Article I.3. All deliveries must be made at the agreed place of delivery during the hours indicated in Article I.3.

The contractor must bear all costs and risks involved in delivering the supplies to the place of delivery.

- (c) Consignment note

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<sup>2</sup> OJ L 94 of 28.03.2014, p. 65

Each delivery must be accompanied by a consignment note in duplicate, duly signed and dated by the contractor or its carrier, giving the contract number and particulars of the supplies delivered. One copy of the consignment note must be countersigned by the contracting authority and returned to the contractor or to its carrier.

#### **II.4.9 Certificate of conformity**

Signature of the consignment note by the contracting authority, as provided for in point (c) of Article II.4.10 is simply an acknowledgment of the fact that the delivery took place and in no way implies conformity of the supplies with the contract.

Conformity of the supplies delivered must be evidenced by the signature of a certificate to this effect by the contracting authority no later than one month after the date of delivery, unless otherwise specified in the special conditions or in the tender specifications.

Conformity must be declared only where the conditions laid down in the contract are satisfied and the supplies conform to the tender specifications.

If, for reasons attributable to the contractor, the contracting authority is unable to accept the supplies, the contractor must be notified in writing at the latest by the deadline for conformity.

#### **II.4.10 Conformity of the supplies delivered with the contract**

The supplies delivered by the contractor to the contracting authority must be in conformity in quantity, quality, price and packaging with the contract.

The supplies delivered must:

- (a) correspond to the description given in the tender specifications and possess the characteristics of the supplies provided by the contractor to the contracting authority as a sample or model;
- (b) be fit for any specific purpose required of them by the contracting authority and made known to the contractor at the time of conclusion of this contract and accepted by the contractor;
- (c) be fit for the purposes for which supplies of the same type are normally used;
- (d) demonstrate the high quality standards and performance which are normal in supplies of the same type and which the contracting authority can reasonably expect, given the nature of the supplies and taking into account any public statements on the specific characteristics of the supplies made by the contractor, the producer or its representative, particularly in advertising or on labelling; in accordance with the state of the art in the industry and the provisions of this contract, in particular the tender specifications and the terms of its tender.
- (e) be packaged according to the usual method for supplies of the same type or, failing this, in a way designed to preserve and protect them.

#### **II.4.11 Remedy**

The contractor must be liable to the contracting authority for any lack of conformity which exists at the time the supplies are verified.

In case of lack of conformity, without prejudice to Article II.14 on liquidated damages applicable to the total price of the supplies concerned, the contracting authority is entitled:

- (a) either to have the supplies brought into conformity, free of charge, by repair or replacement;
- (b) or to have an appropriate reduction made in the price.

Any repair or replacement must be completed within a reasonable time and without any significant inconvenience to the contracting authority, taking account of the nature of the supplies and the purpose for which they are required by the contracting authority.

The term 'free of charge' in paragraph (b) refers to the costs incurred to bring the supplies into conformity, particularly the cost of postage, labour and materials.

#### **II.4.12 Assembly**

If required by the tender specifications, the contractor must assemble the supplies delivered within a period of one month unless otherwise specified in the special conditions.

Any lack of conformity resulting from incorrect installation of the supplies must be deemed to be equivalent to lack of conformity of the supplies if installation forms part of the contract and the supplies were installed by the contractor or under its responsibility. This applies equally if the product was to be installed by the contracting authority and was incorrectly installed owing to a shortcoming in the installation instructions.

#### **II.4.13 Services provided to supplies**

If required by the tender specifications, services to supplies must be provided accordingly.

#### **II.4.14 General provisions concerning supplies**

##### **(a) Packaging**

The supplies must be packaged in strong boxes or crates or in any other way that ensures that the contents remain intact and prevents damage or deterioration. Packaging, pallets, etc., including contents, must not weigh more than 500 kg.

Unless otherwise specified in the special conditions or in the tender specifications, pallets must be considered as one-way packaging and must not be returned. Each box must be clearly labelled with the following information:

- name of contracting authority and address for delivery;
- name of contractor;
- description of contents;
- date of delivery;
- number and date of specific contract;
- EC code number of article.

##### **(b) Guarantee**

The supplies must be guaranteed against all defects in manufacture or materials for two years from the date of delivery, unless provision is made for a longer period in the tender specifications.

The contractor must guarantee that any permits and licences required for manufacturing and selling the supplies have been obtained.

The contractor must replace at its own expense, within a reasonable time limit to be determined by agreement between the parties, any items which become damaged or defective in the course of normal use during the guarantee period.

The contractor is responsible for any conformity defect which exists at the time of delivery, even if this defect does not appear until a later date.

The contractor is also responsible for any conformity defect which occurs after delivery and is ascribable to non-compliance with its obligations, including failure to provide a guarantee that, for a certain period, supplies used for the purposes for which they are normally used or for a specific purpose will preserve their qualities or characteristics as specified.

If part of an item is replaced, the replacement part must be guaranteed under the same terms and conditions for a further period of the same duration as that specified above.

If a defect is found to originate in a systematic flaw in design, the contractor must replace or modify all identical parts incorporated in the other supplies that are part of the order, even though they may not have been the cause of any incident. In this case, the guarantee period must be extended as stated above.

## **II.5. COMMUNICATION BETWEEN THE PARTIES**

### **II.5.1. Form and means of communication**

Any communication of information, notices or documents under the contract must:

- (a) be made in writing in paper or electronic format in the language of the contract;
- (b) bear the contract number;
- (c) be made using the relevant communication details set out in Article I.8; and
- (d) be sent by mail, email or, for the documents specified in the special conditions, via *e-PRIOR*.

If a party requests written confirmation of an e-mail within a reasonable time, the other party must provide an original signed paper version of the communication as soon as possible.

The parties agree that any communication made by email has full legal effect and is admissible as evidence in judicial proceedings.

### **II.5.2. Date of communications by mail and email**

Any communication is deemed to have been made when the receiving party receives it, unless this contract refers to the date when the communication was sent.

E-mail is deemed to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in Article I.8. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending



party is not held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the contracting authority is deemed to have been received by the contracting authority on the date on which the department responsible referred to in Article I.8 registers it.

*Formal notifications* are considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the message was delivered to the specified recipient.

### **II.5.3. Submission of e-documents via e-PRIOR**

If provided for in the special conditions, the exchange of electronic documents (e-documents) such as invoices between the parties is automated through the use of the *e-PRIOR* platform. This platform provides two possibilities for such exchanges: either through web services (machine-to-machine connection) or through a web application (the *supplier portal*).

The contracting authority takes the necessary measures to implement and maintain electronic systems that enable the *supplier portal* to be used effectively.

In the case of machine-to-machine connection, a direct connection is established between the parties' *back offices*. In this case, the parties take the measures necessary on their side to implement and maintain electronic systems that enable the machine-to-machine connection to be used effectively. The electronic systems are specified in the *interface control document*. The contractor (or leader in the case of a joint tender) must take the necessary technical measures to set up a machine-to-machine connection and at its own cost.

If communication via the *supplier portal* or via the web services (machine-to-machine connection) is hindered by factors beyond the control of one party, it must *notify* the other immediately and the parties must take the necessary measures to restore this communication.

If it is impossible to restore the communication within two working days, one party must *notify* the other that alternative means of communication specified in Article II.5.1 will be used until the *supplier portal* or the machine-to-machine connection is restored.

When a change in the *interface control document* requires adaptations, the contractor (or leader in the case of a joint tender) has up to six months from receipt of the *notification* to implement this change. This period can be shortened by mutual agreement of the parties. This period does not apply to urgent measures required by the security policy of the contracting authority to ensure integrity, confidentiality and non-repudiation of information and the availability of *e-PRIOR*, which must be applied immediately.

### **II.5.4. Validity and date of e-documents**

The parties agree that any e-document, including related attachments exchanged via *e-PRIOR*:

- (a) is considered as equivalent to a paper document;
- (b) is deemed to be the original of the document;
- (c) is legally binding on the parties once an *e-PRIOR* authorised person has performed the 'sign' action in *e-PRIOR* and has full legal effect; and

- (d) constitutes evidence of the information contained in it and is admissible as evidence in judicial proceedings.

The parties expressly waive any rights to contest the validity of such a document solely on the grounds that communications between the parties occurred through *e-PRIOR* or that the document has been signed through *e-PRIOR*. If a direct connection is established between the parties' *back offices* to allow electronic transfer of documents, the parties agree that an e-document, sent as mentioned in the *interface control document*, qualifies as an *EDI message*.

If the e-document is dispatched through the *supplier portal*, it is deemed to have been legally issued or sent when the contractor (or leader in the case of a joint tender) is able to successfully submit the e-document without any error messages. The generated PDF and XML document for the e-document are considered as a proof of receipt by the contracting authority.

In the event that an e-document is dispatched using a direct connection established between the parties' *back offices*, the e-document is deemed to have been legally issued or sent when its status is 'received' as defined in the *interface control document*.

When using the *supplier portal*, the contractor (or leader in the case of a joint tender) can download the PDF or XML message for each e-document for one year after submission. After this period, copies of the e-documents are no longer available for automatic download from the *supplier portal*.

### **II.5.5. Authorised persons in e-PRIOR**

The contractor submits a request for each person who needs to be assigned the role of 'user' in *e-PRIOR*. These persons are identified by means of the European Communication Authentication Service (ECAS) and authorised to access and perform actions in *e-PRIOR* within the permissions of the user roles that the contracting authority has assigned to them.

User roles enabling these *e-PRIOR* authorised persons to sign legally binding documents such as specific tenders or specific contracts are granted only upon submission of supporting documents proving that the authorised person is empowered to act as a legal representative of the contractor.

## **II.6. LIABILITY**

**II.6.1** The contracting authority is not liable for any damage or loss caused by the contractor, including any damage or loss to third parties during or as a consequence of performance of the contract.

**II.6.2** If required by the relevant applicable legislation, the contractor must take out an insurance policy against risks and damage or loss relating to the performance of the contract. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the contractor must provide evidence of insurance coverage to the contracting authority.

**II.6.3** The contractor is liable for any loss or damage caused to the contracting authority during or as a consequence of performance of the contract, including in the event of subcontracting, but only to an amount not exceeding three times the total amount of the contract. However, if the damage or loss is caused by the gross

negligence or wilful misconduct of the contractor or of its *personnel* or subcontractors, the contractor is liable for the whole amount of the damage or loss.

**II.6.4** If a third party brings any action against the contracting authority in connection with the *performance of the contract*, the contractor must assist the contracting authority in the legal proceedings, including by intervening in support of the contracting authority upon request.

If the contracting authority's liability towards the third party is established and that such liability is caused by the contractor during or as a consequence of the *performance of the contract*, Article II.6.3 applies.

**II.6.5** If the contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they are all jointly and severally liable to the contracting authority for the *performance of the contract*.

**II.6.6** The contracting authority is not liable for any loss or damage caused to the contractor during or as a consequence of *performance of the contract*, unless the loss or damage was caused by wilful misconduct or gross negligence of the contracting authority.

## **II.7. CONFLICT OF INTERESTS AND PROFESSIONAL CONFLICTING INTERESTS**

**II.7.1** The contractor must take all the necessary measures to prevent any situation of *conflict of interest or professional conflicting interest*.

**II.7.2** The contractor must *notify* the contracting authority in writing as soon as possible of any situation that could constitute a *conflict of interest* or a *professional conflicting interest* during the *performance of the contract*. The contractor must immediately take action to rectify the situation.

The contracting authority may do any of the following:

- (a) verify that the contractor's action is appropriate;
- (b) require the contractor to take further action within a specified deadline;

**II.7.3** The contractor must pass on all the relevant obligations in writing to:

- (a) its *personnel*;
- (b) any natural person with the power to represent it or take decisions on its behalf;
- (c) third parties involved in the *performance of the contract*, including subcontractors.

The contractor must also ensure that the persons referred to above are not placed in a situation which could give rise to conflicts of interest.

## **II.8. CONFIDENTIALITY**

**II.8.1** The contracting authority and the contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally relating to the *performance of the contract* and identified in writing as confidential.

**II.8.2** Each party must:

- (a) not use *confidential information or documents* for any purpose other than to perform its obligations under the contract without the prior written agreement of the other party;
- (b) ensure the protection of such *confidential information or documents* with the same level of protection as its own confidential information or documents, and in any case with due diligence;
- (c) not disclose directly or indirectly *confidential information or documents* to third parties without the prior written agreement of the other party.

**II.8.3** The confidentiality obligation set out in this Article are binding on the contracting authority and the contractor during the performance of the contract and for as long as the information or documents remain confidential unless:

- (a) the disclosing party agrees to release the receiving party from the confidentiality obligation earlier;
- (b) the *confidential information or documents* become public through other means than in breach of the confidentiality obligation
- (c) the applicable law requires the disclosure of the *confidential information or documents*.

**II.8.4** The contractor must obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the performance of the contract, a commitment that they will comply with this Article .At the request of the contracting authority, the contractor must provide a document providing evidence of this commitment.

## **II.9. PROCESSING OF PERSONAL DATA**

**II.9.1** Any personal data included in the contract must be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 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. Such data must be processed by the data controller solely for the purposes of the performance, management and monitoring of the contract. This does not affect its possible transmission to the bodies entrusted with monitoring or inspection tasks in application of the Community and Union law.

**II.9.2** The contractor has the right to access its personal data and the right to rectify any such data. The contractor should address any queries concerning the processing of its personal data to the data controller.

**II.9.3** The contractor has right of recourse at any time to the European Data Protection Supervisor.

**II.9.4** If the contract requires the contractor to process any personal data, the contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.

**II.9.5** The contractor must grant *personnel* access to the data to the extent strictly necessary for the performance, management and monitoring of the contract.

**II.9.6** The contractor must adopt appropriate technical and organisational security measures giving due regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
  - (i) unauthorised reading, copying, alteration or removal of storage media;
  - (ii) unauthorised data inputting, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
  - (iii) unauthorised use of data-processing systems by means of data transmission facilities;
- (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- (c) record which personal data have been communicated, when and to whom;
- (d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting authority;
- (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- (f) design its organisational structure in such a way that it meets data protection requirements.

## **II.10. SUBCONTRACTING**

**II.10.1** The contractor must not subcontract and have the contract performed by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the contracting authority.

**II.10.2** Even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the *performance of this contract*.

**II.10.3** The contractor must ensure that the subcontract does not affect the rights of the contracting authority under this contract, particularly those under Article II.8 and II.24.

**II.10.4** The contracting authority may request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.17.1.

## **II.11. AMENDMENTS**

**II.11.1** Any amendment to the contract must be made in writing before all contractual obligations have been fulfilled.

**II.11.2** Any amendment must not make changes to the contract that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers.

## **II.12. ASSIGNMENT**

- II.9.1** The contractor must not assign any of the rights and obligations arising from the contract, including claims for payments or factoring, without prior written authorisation from the contracting authority. In such cases, the contractor must provide the contracting authority with the identity of the intended assignee.
- II.9.2** Any right or obligation assigned by the contractor without authorisation is not enforceable against the contracting authority.

## **II.13. FORCE MAJEURE**

- II.13.1** If a party is affected by *force majeure*, it must immediately *notify* the other party, stating the nature of the circumstances, their likely duration and foreseeable effects.
- II.10.3** A party is not liable for any delay or failure to perform its obligations under the contract if that delay or failure is a result of *force majeure*. If the contractor is unable to fulfil its contractual obligations owing to *force majeure*, it has the right to remuneration only for the supplies actually delivered and which obtain a certificate of conformity.
- II.13.3** The parties must take all necessary measures to limit any damage due to *force majeure*.

## **II.14. LIQUIDATED DAMAGES**

### **II.14.1. Delay in delivery**

If the contractor fails to perform its contractual obligations within the applicable time limits set in this contract, the contracting authority may claim liquidated damages for each day of delay using the following formula:

$$0.3 \times (V/d)$$

where

V is the price of the relevant purchase or supply;

d is the duration specified in the contract for delivery of the relevant purchase or supply or, failing that, the duration of performance of the contract specified in Article I.3 expressed in days.

Liquidated damages may be imposed together with a reduction in price under the conditions laid down in Article II.15.

### **II.14.2. Procedure**

The contracting authority must *formally notify* the contractor of its intention to apply liquidated damages and the corresponding calculated amount.

The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the contractor submits observations, the contracting authority, taking into account the relevant observations, must *notify* the contractor:

- (a) of the withdrawal of its intention to apply liquidated damages; or
- (b) of its final decision to apply liquidated damages and the corresponding amount.

#### **II.14.3. Nature of liquidated damages**

The parties expressly acknowledge and agree that any amount payable under this Article is not a penalty and represents a reasonable estimate of fair compensation for the damage incurred due to failure to provide the supplies within the applicable time limits set out in this contract.

#### **II.14.4. Claims and liability**

Any claim for liquidated damages does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.17.

### **II.15. REDUCTION IN PRICE**

#### **II.15.1. Quality standards**

If the contractor fails to deliver the supply in accordance with the contract ('unperformed obligations') or if it fails to deliver the supply in accordance with the expected quality levels specified in the tender specifications ('low quality delivery'), the contracting authority may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This includes in particular cases where the contracting authority cannot approve a document or deliver a certificate of conformity for supply as defined in Article I.5 after the contractor has submitted the required additional information, correction or new version.

A reduction in price may be imposed together with liquidated damages under the conditions of Article II.14.

#### **II.15.2. Procedure**

The contracting authority must *formally notify* the contractor of its intention to reduce payment and the corresponding calculated amount.

The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the contractor submits observations, the contracting authority, taking into account the relevant observations, must *notify* the contractor:

- (a) of the withdrawal of its intention to reduce payment; or
- (b) of its final decision to reduce payment and the corresponding amount.

#### **II.15.3. Claims and liability**

Any reduction in price does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.17.

## **II.16. SUSPENSION OF THE PERFORMANCE OF THE CONTRACT**

### **II.16.1. Suspension by the contractor**

If the contractor is affected by *force majeure*, it may suspend the *performance of the contract*.

The contractor must immediately notify the contracting authority about the suspension. The notification must include a description of the *force majeure* and state when the contractor expects to resume the performance of the contract.

The contractor must *notify* the contracting authority as soon as it is able to resume performance of the contract, unless the contracting authority has already terminated the contract.

### **II.16.2. Suspension by the contracting authority**

The contracting authority may suspend the *performance of the contract* or any part of it:

- (a) if the procedure for awarding the contract or the *performance of the contract* proves to have been subject to *substantial errors, irregularities or fraud*;
- (b) in order to verify whether the presumed *substantial errors, irregularities or fraud* have actually occurred.

The contracting authority must *formally notify* the contractor of the suspension. Suspension takes effect on the day of *formal notification*, or at a later date if the *formal notification* so provides.

The contracting authority must *notify* the contractor as soon as possible whether:

- (a) it is lifting the suspension; or
- (b) it intends to terminate the contract under Article II.17.1(f) or (j).

The contractor is not be entitled to compensation for suspension of any part of the contract.

## **II.17. TERMINATION OF THE CONTRACT**

### **II.17.1. Grounds for termination by the contracting authority**

The contracting authority may terminate the contract in the following circumstances:

- (a) if provision of the supplies under the contract has not actually started within 15 days of the scheduled date and the contracting authority considers the new date proposed, if any, unacceptable, taking into account Article II.11.2;
- (b) if the contractor is unable, through its own fault, to obtain any permit or licence required for *performance of the contract*;
- (c) if the contractor does not perform the contract in accordance with the tender specifications or is in breach of another substantial contractual obligation.
- (d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 106(1) of the Financial Regulation ;
- (e) if the contractor or any *related person* is subject to any of the situations provided for in points (c) to (f) of Article 106(1) or to Article 106(2) of the Financial Regulation.



- (f) if the procedure for awarding the contract or the *performance of the contract* prove to have been subject to *substantial errors, irregularities or fraud*;
- (g) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union and Community law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- (h) if the contractor is in a situation that could constitute a *conflict of interest* or a *professional conflicting interest* as referred to in Article II.7;
- (i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the *performance of the contract* or substantially modify the conditions under which the contract was initially awarded;
- (j) in the event of *force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;

### **II.17.2. Grounds for termination by the contractor**

The contractor may terminate the contract if:

- (a) it has evidence that the contracting authority has committed *substantial errors, irregularities or fraud* in the procedure for awarding the contract or the *performance of the contract*;
- (b) the contracting authority fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to perform the contract as provided for in the tender specifications.

### **II.17.3. Procedure for termination**

A party must *formally notify* the other party of its intention to terminate the contract and the grounds for termination.

The other party has 30 days following the date of receipt to submit observations, including the measures it has taken to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

If the other party submits observations, the party intending to terminate must *formally notify* it either of the withdrawal of its intention to terminate or of its final decision to terminate.

In the cases referred to in points (a) to (d) and (g) to (i) of Article II.17.1 and in Article II.17.2, the date on which the termination takes effect must be specified in the *formal notification*.

In the cases referred to in points (e), (f) and (j) of Article II.17.1, the termination takes effect on the day following the date on which the contractor receives *notification* of termination.

In addition, at the request of the contracting authority and regardless of the grounds for termination, the contractor must provide all necessary assistance, including information, documents and files, to allow the contracting authority to complete, continue or transfer

the delivery of the supplies to a new contractor or internally, without interruption or adverse effect on the quality or continuity of the delivery of the supplies. The parties may agree to draw up a transition plan detailing the contractor's assistance unless such plan is already detailed in other contractual documents or in the tender specifications. The contractor must provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

#### **II.17.4. Effects of termination**

The contractor is liable for damage incurred by the contracting authority as a result of the termination of the contract including the cost of appointing another contractor to provide or complete the supplies, unless the damage was caused by the situation specified in Article II.17.1 (j) or in Article II.17.2. The contracting authority may claim compensation for such damage.

The contractor is not entitled to compensation for any loss resulting from the termination of the contract, including loss of anticipated profits, unless the loss was caused by the situation specified in Article II.17.2.

The contractor must take all appropriate measures to minimise costs, prevent damage and cancel or reduce its commitments.

Within 60 days of the date of termination, the contractor must submit any report and any invoice required for supplies that were provided before the date of termination.

In the case of joint tenders, the contracting authority may terminate the contract with each member of the group separately on the basis of points (d), (e) or (g) of Article II.17.1, under the conditions set out in Article II.11.2.

### **II.18. INVOICES, VALUE ADDED TAX AND E-INVOICING**

#### **II.18.1. Invoices and value added tax**

Invoices must contain the contractor's (or leader's in the case of a joint tender) identification data, the amount, the currency and the date, as well as the contract reference.

Invoices must indicate the place of taxation of the contractor (or leader in the case of a joint tender) for value added tax (VAT) purposes and must specify separately amounts not including VAT and amounts including VAT.

The contracting authority is exempt from all taxes and duties, including VAT, in accordance with Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union.

The contractor (or leader in the case of a joint tender) must complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for *performance of the contract* are exempt from taxes and duties, including VAT.

#### **II.18.2. E-invoicing**

If provided for in the special conditions, the contractor (or leader in the case of a joint tender) submits invoices in electronic format if the conditions regarding electronic signature specified by Directive 2006/112/EC on VAT are fulfilled, i.e. using a qualified electronic signature or through electronic data interchange.

Reception of invoices by standard format (pdf) or email is not accepted.

## **II.19. PRICE REVISION**

If a price revision index is provided in Article I.4.2, this Article applies to it.

Prices are fixed and not subject to revision during the first year of the contract.

At the beginning of the second and every following year of the contract, each price may be revised upwards or downwards at the request of one of the parties.

A party may request a price revision in writing no later than three months before the anniversary date of entry into force of the contract. The other party must acknowledge the request within 14 days of receipt.

At the anniversary date, the contracting authority must communicate the final index for the month in which the request was received, or failing that, the last provisional index available for that month. The contractor establishes the new price on this basis and communicates it as soon as possible to the contracting authority for verification.

The price revision is calculated using the following formula:

$$Pr = Po \times \left( \frac{Ir}{Io} \right)$$

where: Pr = revised price;  
Po = price in the tender;  
Io = index for the month in which the contract enters into force;  
Ir = index for the month in which the request to revise prices is received.

## **II.20. PAYMENTS AND GUARANTIES**

### **II.20.1. Date of payment**

Payments are deemed to be effected on the date when they are debited to the contracting authority's account.

### **II.20.2. Currency**

Payments are made in euros or in the currency provided for in Article I.7.

### **II.20.3. Conversion**

The contracting authority makes any conversion between the euro and another currency at the daily euro exchange rate published in the Official Journal of the European Union, or failing that, at the monthly accounting exchange rate, as established by the European Commission and published on the website indicated below, applicable on the day when it issues the payment order.

The contractor makes any conversion between the euro and another currency at the monthly accounting exchange rate, established by the Commission and published on the website indicated below, applicable on the date of the invoice.

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/inforeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm)

### **II.20.4. Costs of transfer**

The costs of the transfer are borne as follows:

- (a) the contracting authority bears the costs of dispatch charged by its bank,
- (b) the contractor bears the cost of receipt charged by its bank,
- (c) the party causing repetition of the transfer bears the costs for repeated transfer.

#### **II.20.5. Pre-financing, performance and money retention guarantees**

If, as provided for in Article I.6, a financial guarantee is required for the payment of pre-financing, as performance guarantee or as retention guarantee, it must fulfil the following conditions:

- (a) the financial guarantee is provided by a bank or a financial institution approved by the contracting authority or, at the request of the contractor and with the agreement of the contracting authority, by a third party;
- (b) the guarantor stands as first-call guarantor and does not require the contracting authority to have recourse against the principal debtor (the contractor).

The contractor bears the cost of providing such guarantee.

Pre-financing guarantees must remain in force until the pre-financing is cleared against interim payments or payment of the balance. Where the payment of the balance takes the form of a debit note, the pre-financing guarantee must remain in force for three months after the debit note is sent to the contractor. The contracting authority must release the guarantee within the following month.

Performance guarantees cover compliance with substantial contractual obligations until the contracting authority has given its final approval for the supply. The performance guarantee must not exceed 10 % of the total price of the contract. The contracting authority must release the guarantee fully after final approval of the supply, as provided for in the contract.

Retention money guarantees cover full delivery of the supply in accordance with the contract including during the contract liability period and until its final approval by the contracting authority. The retention money guarantee must not exceed 10 % of the total price of the contract. The contracting authority must release the guarantee after the expiry of the contract liability period as provided for in the contract.

The contracting authority must not request a retention money guarantee where it has requested a performance guarantee.

#### **II.20.6. Interim payments and payment of the balance**

The contractor (or leader in the case of a joint tender) must send an invoice for interim payment, as provided for in Article I.5 or in the tender specifications.

The contractor (or leader in the case of a joint tender) must send an invoice for payment of the balance within 60 days of the end of the period of provision of the supplies, as provided for in Article I.5 or in the tender specifications.

Payment of the invoice and approval of documents does not imply recognition of the regularity, authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

## **II.20.7. Suspension of the time allowed for payment**

The contracting authority may suspend the payment periods specified in Article I.5 at any time by *notifying* the contractor (or leader in the case of a joint tender) that its invoice cannot be processed. The reasons the contracting authority may cite for not being able to process an invoice are:

- (a) because it does not comply with the contract;
- (b) because the contractor has not produced the appropriate supplies or documents or
- (c) because the contracting authority has observations on the supplies or documents submitted with the invoice.

The contracting authority must *notify* the contractor (or leader in the case of a joint tender) as soon as possible of any such suspension, giving the reasons for it.

Suspension takes effect on the date the contracting authority sends the *notification*. The remaining payment period resumes from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the contractor (or leader in the case of a joint tender) may request the contracting authority to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of this Article and the new document produced is also rejected, the contracting authority reserves the right to terminate the contract in accordance with Article II.17.1(c).

## **II.20.8. Interest on late payment**

On expiry of the payment periods specified in Article I.6, , the contractor (or leader in the case of a joint tender) is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros (the reference rate), plus eight points. The reference rate is the rate in force, as published in the C series of the *Official Journal of the European Union* on the first day of the month in which the payment period ends.

Suspension of the payment period as provided for in Article II.20.7 is not considered as giving rise to late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of actual payment as defined in Article II.20.1.

However, when the calculated interest is EUR 200 or less, it must be paid to the contractor (or leader in the case of a joint tender) only if requests it within two months of receiving late payment.

## **II.21. RECOVERY**

**II.21.1.** If an amount is to be recovered under the terms of the contract, the contractor must repay the contracting authority the amount in question.

### **II.21.2. Recovery procedure**

Before recovery, the contracting authority must *formally notify* the contractor of its intention to recover the amount it claims, specifying the amount due and the reasons for recovery and inviting the contractor to make any observations within 30 days of receipt.

If no observations have been submitted or if, despite the observations submitted, the contracting authority decides to pursue the recovery procedure, it must confirm recovery by *formally notifying* a debit note to the contractor, specifying the date of payment. The contractor must pay in accordance with the provisions specified in the debit note.

If the contractor does not pay by the due date, the contracting authority may, after informing the contractor in writing, recover the amounts due:

- (a) by offsetting them against any amounts owed to the contractor by the European Atomic Energy Community;
- (b) by calling in a financial guarantee if the contractor has submitted one to the contracting authority;
- (c) by taking legal action.

### **II.21.3 Interest on late payment**

If the contractor does not honour the obligation to pay the amount due by the date set by the contracting authority in the debit note, the amount due bears interest at the rate indicated in Article II.20.8. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the contracting authority receives the full amount owed.

Any partial payment is first entered against charges and interest on late payment and then against the principal amount.

### **II.21.4. Recovery rules in the case of joint tender**

If the contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article II.6 (liability). The contracting authority first claims the full amount to the leader of the group.

If the leader does not pay by the due date and if the amount cannot be offset in accordance with Article II.21.2 (a), the contracting authority may claim the full amount to any other member of the group by notifying the debit note already sent to the leader under Article II.21.2.

## **II.22. CHECKS AND AUDITS**

**II.22.1.** The contracting authority and the European Anti-Fraud Office may check or require an audit on the *performance of the contract*. This may be carried out either by OLAF's own staff or by any other outside body authorised to do so on their behalf.

Such checks and audits may be initiated at any moment during the provision of the supplies and to five years starting from the the payment of the balance.

The audit procedure is initiated on the date of receipt of the relevant letter sent by the contracting authority. Audits are carried out on a confidential basis.

**II.22.2.**The contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of five years starting from the payment of the balance.

**II.22.3.**The contractor must grant the contracting authority's staff and outside *personnel* authorised by the contracting authority the appropriate right of access to sites and premises where the contract is performed and to all the information, including information in electronic format, needed to conduct such checks and audits. The contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate form.

**II.22.4.**On the basis of the findings made during the audit, a provisional report is drawn up. The contracting authority or its authorised representative must send it to the contractor, who has 30 days following the date of receipt to submit observations. The contractor must receive the final report within 60 days following the expiry of that deadline to submit observations.

On the basis of the final audit findings, the contracting authority may recover all or part of the payments made in accordance with Article II.21 and may take any other measure which it considers necessary.

**II.22.5.**In accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against *fraud* and other *irregularities* and Regulation (EC) No 883/2013 of the European Parliament and the Council of 11 September 2013 concerning investigation conducted by the European Anti-Fraud Office, the European Anti-Fraud Office may carry out investigations, including on-the-spot checks and inspections, to establish whether there has been *fraud*, corruption or any other illegal activity under the contract affecting the financial interests of the Union and the Community. Findings arising from an investigation may lead to criminal prosecution under national law.

The investigations may be carried out at any moment during the performance of the contract and up to five years starting from the payment of the balance.

**II.22.6** The Court of Auditors has the same rights as the contracting authority, particularly right of access, for the purpose of checks and audits.