

EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR ENERGY

Directorate C - Renewables, Research and Innovation, Energy Efficiency

**TENDER SPECIFICATIONS**  
**ATTACHED TO THE INVITATION TO TENDER**  
**ENER/C3/2014-563**

**Regarding "Delivering informed investment decisions for  
energy efficiency investments through accessible data,  
standardized procedures and benchmarking of performance"  
also supporting the "Smart Finance for Smart Buildings  
Initiative"**

## TABLE OF CONTENTS

1.	INFORMATION ON TENDERING .....	3
	1.1. Participation.....	3
	1.2. Contractual conditions.....	3
	1.3. Joint tenders.....	3
	1.4. Subcontracting.....	3
	1.5. Content of the tender .....	4
	1.6. Identification of the tenderer: legal capacity and status .....	4
2.	EVALUATION AND AWARD .....	5
	2.1. Evaluation steps.....	5
	2.2. Exclusion criteria.....	5
	2.3. Selection criteria.....	5
	2.4. Award criteria.....	8
	2.5. Technical offer .....	9
	2.6. Financial offer .....	9
	2.7. Estimate of the amount of work involved .....	10
3.	TECHNICAL SPECIFICATIONS .....	10
	3.1. Introduction and objectives of the services .....	10
	3.2. Description of services .....	18
	3.3. Reports and documents to produce – timetable to observe.....	27
	3.4. Report format and publication.....	31
	3.5. Duration of the tasks.....	31
	3.6. Organisation of Work.....	31
4.	CONTENT, STRUCTURE AND GRAPHIC REQUIREMENTS OF THE FINAL DELIVERABLES .....	32
5.	ANNEXES .....	32

## **1. INFORMATION ON TENDERING**

### **1.1. Participation**

Participation in this tender procedure is open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons 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 WTO applies, the participation to the call for tender is also open to nationals of 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. Joint tenders**

A joint tender is a situation where a tender is submitted by a group of economic operators (consortium). Joint tenders may include subcontractors in addition to the joint tenderers.

In case of joint tender, all economic operators in a joint tender assume joint and several liability towards the Contracting Authority for the performance of the contract as a whole.

These economic operators shall designate one of them to act as leader with full authority to bind the grouping or the consortium and each of its members. It shall be responsible for the receipt and processing of payments for members of the grouping, for managing the service administration and for coordination. The composition and constitution of the grouping or consortium, and the allocation of the scope of tasks amongst the members, shall not be altered without the prior written consent of the Commission.

The tenderers should indicate in their offer whether the partnership takes the form of:

a) a new or existing legal entity which will sign the contract with the Commission in case of award

or

b) a group of partners not constituting a new legal entity, who via a power of attorney, signed by an authorised representative of each partner (except the lead partner), designate one of the partners as lead partner, and mandate him as lead contractor to sign the contract with the Commission in case of award.

### **1.4. Subcontracting**

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

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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)

Tenderers must give an indication of the part of the services and proportion of the contract that they intend to subcontract.

Tenderers are required to identify subcontractors whose share of the contract is above 20%.

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

### 1.5. Content of the tender

The tenders must be presented as follows:

Part A: Identification of the tenderer (see section 1.6)

Part B: Evidence for exclusion criteria (see section 2.2)

Part C: Evidence for selection criteria (see section 2.3)

Part D: Technical offer (see section 2.5)

Part E: Financial offer (see section 2.6)

Part F: Power of attorney (for consortia only)

### 1.6. Identification of the tenderer: legal capacity and status

- The tenderer's **identification form in Annex 1 shall be filled in and signed** by:
  - The tenderer (including any member of a consortium or grouping)
  - subcontractor(s) whose share of the work represent more than 20% of the contract
- In order to prove their legal capacity and their status, all tenderers (including any member of a consortium of grouping) 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)

**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.**

- **If it has not been included with the Legal Entity Form, tenderers must provide the following information**
  - 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 which applies to the legal entity concerned requires such publication. Any delegation of this authorisation to another representative not indicated in the official appointment must be evidenced.

- For natural persons, where applicable, a proof of registration on a professional or trade register or any other official document showing the registration number.

- **The tenderer (only the leader in case of joint tender) must provide a Financial Identification Form and supporting documents. 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)**

## **2. EVALUATION AND AWARD**

### **2.1. Evaluation steps**

The evaluation is based on the information provided in the submitted tender. It takes place in three steps:

- (1) Verification of non-exclusion of tenderers on the basis of the exclusion criteria
- (2) Selection of tenderers on the basis of selection criteria
- (3) Evaluation of tenders on the basis of the award criteria (technical and financial evaluation)

Only tenders meeting the requirements of one step will pass on to the next step.

### **2.2. Exclusion criteria**

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

The declaration on honour is also required for identified subcontractors whose intended share of the contract is above 20%.

The successful tenderer shall provide the documents mentioned as supporting evidence in Annex 2 before signature of the contract and within a deadline given by the contracting authority. This requirement applies to all members of the consortium in case of joint tender. In case of doubt on this declaration on the honour, the contracting authority may also request the evidence for subcontractors whose intended share of the contract is above 20%.

### **2.3. Selection criteria**

Tenderers must prove their economic, financial, technical and professional capacity to carry out the work subject to this call for tender.

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.

### **Economic and financial capacity criteria and evidence**

In order to prove their economic and financial capacity, the tenderer (in case of a joint tender the combined capacity of all tenderers and identified subcontractors) must comply with the following criteria:

- The tenderer (or, for a consortium, total turnover of its members) must have an average annual turnover of each of the last two financial years for which the accounts are closed of at least EUR 500,000.00

The following evidence should be provided:

- Copy of the profit & loss account for the last two years for which accounts have been closed,
- 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, he or she may prove his or her 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 in the tender. The Commission reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity.

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

#### **a. Criteria relating to tenderers**

Tenderers (in case of a joint tender the combined capacity of all tenderers and identified subcontractors) must comply with the following criteria:

The tenderer must prove experience:

- In the field of energy efficiency investing and financing (including banking) and monitoring, verification and analysing of financial and technical performance of energy efficiency investments in both buildings and corporate sectors.
- In the field of econometric and financial (investment) modelling and development of financing products relevant for energy efficiency investing.
- With the development and maintenance of professional databases relevant to this tender, covering both the methodology for processing and management of large-scale datasets including the data protection and cyber-security.
- With the development and drafting of technical analyses, studies and reports in the area of energy efficiency policy and market.
- With the development of energy efficiency investment projects with the list of related projects in the last three years including their value(s).
- And capacity to produce, on very high expert level (covering all areas under this tender), reports and analyses in English and capacity to ensure professional translation into French, German, Italian, Spanish and Polish languages including document quality management.

- With international dissemination and communication activities in the area of energy efficiency, including organisation of high-level international conferences, experience with public and media relations and management of high-level international event logistics.

The tenderer must prove the requested experience with **at least** 10 projects covering as a whole all the above-mentioned fields of activity in the last three years with a minimum value for each project of EUR 50,000.00.

**b. Criteria relating to the team delivering the service:**

The tenderer should provide sufficient expertise for all areas covered under this tender, i.e.:

- energy renovation of buildings at national level and across the EU, related to the different market segments - both technical and financial expertise;
- energy efficiency in corporate sector (industry, services) - both technical and financial expertise;
- data collection, processing, monitoring and analysis;
- financial modelling of investment projects, knowledge of banking and financial sector with regards to energy efficiency, development of financing products;
- communication and dissemination of results, public and media relations, organisation of high-level international events;
- ability to work and produce results at a high professional standard, in areas covered under this tender, in English, German, French, Italian, Spanish and Polish at native-level (or equivalent, as guaranteed by a certificate or past relevant experience).
- Moderation of multi-stakeholder expert groups in the area of energy efficiency finance.
- database development and management

The team members shall have a higher education degree relevant to this tender (Master of Science in the fields of economics, finance, engineering, physics or equivalent).

The proposed project team must cover as a whole the expertise for all the above-mentioned areas and include at **least** the following members:

- One Project director: with at least 10 years' experience in project management, including overseeing project delivery, quality control of delivered service, client orientation and conflict resolution experience in project of a similar size (at least EUR 1,000,000.00) and coverage (geographical scope), with experience in managing a multi-disciplinary team of at least 20 people.
- One project manager, with at least 5 years' experience in investment, banking or finance in the area of energy efficiency.

- One moderator/rapporteur with at least 3 years' experience with moderating multi-stakeholder expert groups in the area of energy efficiency finance.
- 2 project officers, with at least 3 years' experience in one or more of the above-mentioned areas of expertise.

**c. Evidence:**

The following evidence should be provided to fulfil the above criteria:

- **Explanation on the relevance of proposed team members** to the expertise required under this tender, divided according to the covered Work packages.
- **List of relevant services** provided in the past three years, with sums, dates and recipients, public or private.
- **The educational and professional qualifications of the persons who will provide the service for this tender (CVs)** including the management staff. Each CV provided should indicate the intended function in the delivery of the service.

**2.4. Award criteria**

The tender will be awarded according to the best-value-for-money procedure. The quality of the tender will be evaluated based on the following criteria. The maximum total quality score is 100 points.

N°	Award Criteria	Weighting (pts.)
1	<p><b><u>Methodology of work</u></b>  <b>Fulfilment of the needs, the objective and the scope of the tender specifications.</b>                      These criteria will assess the clarity, understanding, completeness and full coverage of the tasks described in the tender specifications, the quality and appropriateness of the proposed detailed approach for the delivery of desired results as well as the quality and appropriateness of the proposed approach for methodology and for validating, analysing and presenting information. Sound methodology for data collection and processing should as much as possible be considered and will be considered of higher value for the scoring.</p>	40
2	<p><b><u>Quality of the team and management</u></b>                      This criterion will assess how the roles and responsibilities of the proposed team and of the economic operators (in case of joint tenders, including subcontractors if applicable) are distributed for each work package, task, sector or country (as appropriate). It also assesses the global allocation of time and resources to the project and to each task or deliverable, and whether this</p>	40



**Call for tender ENER/C3/2014-563**

	allocation is adequate for the work. The tender should provide details on the allocation of time and resources and the rationale behind the choice of this allocation.	
3	<p><b><u>Quality control measures</u></b></p> <p>This criterion will assess the quality control system applied to the service foreseen in this tender specification concerning the quality of the deliverables, the objectivity of the technical assessment, the language quality check, and continuity of the service in case of absence of the member of the team. The quality system should be detailed in the tender and specific to the tasks at hand; a generic quality system will result in a lower score.</p>	<b>20</b>
<b>Total number of points</b>		<b>100</b>

Tenders must score at least 60% for each criterion and sub-criterion, and at least 70% in total. Tenders that do not reach the minimum quality thresholds will be rejected and will not be ranked.

After evaluation of the quality of the tender, the tenders are ranked using the formula below to determine the tender offering best value for money.

$$\text{Score for tender A} = \frac{\text{Price of lowest tender}}{\text{Price of tender A}} \times 0.3 + \frac{\text{Total quality score for award criteria for tender A}}{100} \times 0.7$$

**2.5. Technical offer**

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

**2.6. 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 assume 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, translations or any other costs deriving from the execution of the contract. Travel and subsistence expenses are not refundable separately.

## **2.7. Estimate of the amount of work involved**

It is up to the tenderer to submit a financial proposal on the basis of his estimation of the number of man-days needed to perform the requested services. Tenderers are informed that the Commission estimates the workload to be no more than 800 man-days. No maximum budget indication can be provided.

## **3. TECHNICAL SPECIFICATIONS**

### **3.1. Introduction and objectives of the services**

#### **3.1.1 Introduction**

Energy Efficiency has been described as the EU's biggest energy resource<sup>2</sup> and one of the most cost effective ways to enhance the security of its energy supply and decrease the emissions of greenhouse gases and other pollutants. This is why the EU has primary energy consumption saving targets for 2020, 2030 and a comprehensive legislation in place (notably the Energy Performance of Buildings Directive, Energy Efficiency Directive and Eco design and Labelling framework).

The Communication on an Energy Union<sup>3</sup> recognises energy efficiency contributing to moderation of energy demand as one of the key dimensions to achieve the core goal of a resilient Energy Union, based on an ambitious climate policy. The Communication puts forward the principle of "energy efficiency first", treating energy efficiency as an energy source in its own right. In this regard, the Commission will pay particular attention to those sectors with major energy efficiency potential, in particular buildings, industry and services.

The Communication foresees a review and possible revision of Directive 2010/31/EU on the Energy Performance of Buildings (EPBD) including the "Smart Finance for Smart Buildings" (SFSB) Initiative to make existing buildings more energy-efficient, facilitating access to existing financial instruments. Further efforts are also needed to ensure unrestricted access to affordable financing for energy efficiency measures in the corporate sector.

Estimates suggest that around EUR 100 billion is needed to be invested annually in the EU to achieve Europe's 2020 energy efficiency targets. Yet, current investments are below half of these requirements and five times lower than required to deliver 2050 decarbonisation targets<sup>4</sup>.

A major part of these investments are needed in the buildings sector, in particular for renovation of existing buildings stock. Current renovation rate (around 1%) is not sufficient – at least doubling is needed.

As well, industry and services (including SMEs) represent a significant untapped energy saving potential. The economic rationale of making the corporate sector more

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<sup>2</sup> COM 2011 (0109) final.

<sup>3</sup> COM(2015) 80 final

<sup>4</sup> Energy Efficiency Financial Institutions Group Report: "Energy Efficiency – the first fuel for the EU Economy. How to drive new finance for energy efficiency investments", February 2015, [www.eefig.eu](http://www.eefig.eu)

competitive thanks to increased effectiveness and lower energy costs is there, but progress is slow. A "business case" for energy efficiency needs to be demonstrated and understood at the board level.

From the EU perspective, the Multi-annual Financial Framework (MFF) 2014 – 2020 brings more than doubled allocations under European Structural and Investment Funds (ESIF) for supporting the shift towards a low-carbon economy, including energy efficiency, and steps up efforts to use financial instruments instead of grants. Discussions with Member States on a number of Cohesion Policy programmes for 2014-2020 are still ongoing. Nevertheless, the trends are clear from the programmes proposed so far (of which a large number has already been adopted). In particular, a very strong focus will be on energy efficiency, especially energy efficiency in buildings, with around EUR 7 billion estimated to be allocated to investments energy efficiency in public infrastructure, including buildings, and around EUR 6 billion for energy efficiency renovation of residential buildings. Around EUR 3.5 billion is estimated to be allocated to energy efficiency in enterprises, mainly SMEs, of which as certain share could also be expected to be invested in their premises.<sup>5</sup> According to DG REGIO, 25 financial instruments investing in energy efficiency were set up in 12 Member States in the 2007-2013 period, and 20 Member States are currently considering using financial instruments with ESIF contribution in this area for 2014-2020.

There are also other existing instruments outside ESIF, and far larger funding is being provided by either national budgets and/or commercial and public financiers.

The European Fund for Strategic Investments can provide further boost for private financiers or appropriately structured financing instruments using public funds.

However, as confirmed in the recent Energy Efficiency Financial Institutions Group Report<sup>6</sup>, without **addressing the main drivers of energy efficiency investments** financing supply and demand, such as issues related to standardisation (common investment "language" based on accepted market benchmarks or protocols) and aggregation (reducing the transaction costs and enabling entry to large scale private capital), **there will still be a risk of unspent funds and sub-optimal investment situations.**

The major bottleneck is that **financial and economic effects** of making buildings or corporates more efficient **are neither reflected in** the broader policy and investment financing **considerations nor have led to a strong increase of demand** for these investments.

Traditional sources of funding for energy efficiency are own resources of corporates or property owners, mortgages, consumer loans or corporate debt products, leasing, dedicated credit lines (often subsidised), and direct subsidies. Energy performance contracts are growing in importance. Risk-sharing facilities may prove useful, but need more time to develop. Private equity financing instruments are rare.

Today, **financial products** offered on the market and their terms of financing (interest, tenor, or grant intensity) normally **do not take into account the appreciation of value**

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<sup>5</sup> All amounts given are preliminary estimates, subject to adoption of all ESIF Operational Programmes.

<sup>6</sup> Energy Efficiency Financial Institutions Group Report: "Energy Efficiency – the first fuel for the EU Economy. How to drive new finance for energy efficiency investments", February 2015, [www.eefig.eu](http://www.eefig.eu)

**of the assets** (i.e. building, machine, production process) **based on qualitative elements** (new technology installed, increased market value) **and quantitative effects in terms of available liquidity** (due to the lower operating costs stemming from energy savings thus lower energy bills). The **real level of achieved energy savings is not measured** in most of the cases. Under such circumstances, **increased volumes of investment are unlikely**.

To achieve significant increase of private capital activity in the sector, **energy efficiency market has to become an "investible market"** for global investors and financiers. On such market a) **investors and financiers fully understand the associated risks and benefits** and can properly price their capital offer and target their financial products and b) **there is a demand** for these products and capital, based on their terms and affordability for users.

The common denominator of the problem lies in the level of understanding based on (lacking) evidence and data, and a missing common investment framework based on pan-European accepted standards, principles and processes - **"common language"** - for **investors and financiers**. Such an issue needs therefore to be addressed at the EU level, in connection with the underlying regulatory framework, as appropriate.

Therefore, **the Commission seeks external expertise and services to assist in developing this "common language" for energy efficiency investments in buildings, industry and services and achieving its wide acceptance by the market players, in particular financiers.**

In this context, the Commission intends to conclude a service contract to deliver the work packages as described hereunder, significantly contributing, among others, to the Smart Finance for Smart Buildings Initiative.

### 3.1.2 Background

The broader framework and main drivers of supply (of) and demand for financing of energy efficiency investments are analysed in the recent Report of the Energy Efficiency Financial Institutions Group<sup>7</sup>, available at [www.eefig.eu](http://www.eefig.eu). The main elements and recommendations, forming the basis for this tender are the following:

*The energy efficient renovation of existing buildings is certainly a complex task to undertake<sup>8</sup>. This is due to the wide range of building types, their age, different uses, materials and energy consumption patterns...*

*Financing corporate energy efficiency investments is complex because the sectors themselves are so diverse in terms of their scope, size, structure and exposure to global competition. Companies also have very different financial capacity to make the required upfront investment in times of strong market competition and volatile energy prices...*

According to the Report:

- ***There is no "silver bullet": Stimulating greater volumes of energy efficiency investments cannot be resolved with a single policy or instrument or stakeholder***

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<sup>7</sup> Energy Efficiency Financial Institutions Group Report: "Energy Efficiency – the first fuel for the EU Economy. How to drive new finance for energy efficiency investments", February 2015, [www.eefig.eu](http://www.eefig.eu)

<sup>8</sup> World Business Council for Sustainable Development. (2009). *Energy Efficiency in Buildings: Transforming the Market*. Retrieved from: <http://www.wbcsd.org/transformingthemarketeeb.aspx>

*group. Different approaches, instruments and solutions will be required for different segments of the market.*

**As regards buildings:**

*...There are a clearly identifiable set of drivers which must be in-place to create the necessary conditions for energy efficiency investments to flow in greater volume into building renovations across all segments. These include:*

- ***Standardisation of key aspects of the energy efficiency investment process, that should be “open source” establishing a common vocabulary, shared knowledge and performance data between stakeholders and financial institutions...***
- ***Common Underwriting and Investment Procedures:*** *Launch of an EU-wide initiative to develop a common set of procedures and standards for energy efficiency and building renovation underwriting for both debt and equity investments (references were made to the US Investor Confidence Project<sup>9</sup> as a relevant model initiative);*

**As regards corporate energy efficiency investments:**

- ***Energy Efficiency Performance Benchmarking Database:*** *The quality of baselines and data has been an underlying theme expressed by energy service companies and financial institutions as well as representatives from industry and SMEs. An “anonymised” benchmarking energy efficiency performance database covering manufacturing industries and industrial processes by sector as well as best practices among significant consumers will require the commitment and engagement from companies and their energy managers in the key sectors and energy consumers. To make this initiative useful, financial institutions and specialist investors should clarify what data and data architecture they will require and then work directly with EU policy-makers to determine how this is achieved – e.g. agreeing on specific data points to be uniformly collected and reported during energy audits and EnMS certification processes...*
- ***Energy Efficiency Investment Approach and Procedures imbedded within “Standard” Corporate Finance:*** *Financial Institutions need to adopt the “best practice” model of mainstreaming energy efficiency in three dimensions: ‘strategic mainstreaming’ meaning defining energy efficiency in key governing policies as ‘core’ business of the Financial Institution, having a dedicated in-house team of experts with technical and financial expertise to support banking origination, structuring and monitoring of investments and a so called ‘operational mainstreaming’ with investment targets and objectives set for client facing staff in each sector. Financial Institutions should work closely with technical specialists to help support the design and specification of energy audits, identify investable energy saving opportunities, select economically viable “finance ready” projects and develop a long-term investment programme*

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<sup>9</sup> Investor Confidence Project. (2014). *Enabling Markets for Energy Efficiency Investment* [Website]. Retrieved from: <http://www.eepformance.org/>

*for energy efficiency which can be presented to a company's management and financial decision-makers to raise the priority of energy efficiency projects and ensure that viable projects are incorporated into the company's long-term investment plan and financed fully or partially by the Financial Institution.*

First projects driven by market actors have started to address the "readability" of energy efficiency business case, namely:

- The *Investor Confidence Project Europe*, started in 2015. The project aims to develop performance protocols related to renovation of buildings, through setting the measurement and verification framework right for financiers, ensuring better understanding of economic value of energy and thus financial savings resulting from energy efficiency investments.
- The *Trust EPC South Project*, started in 2015. The project aims to extend the existing Green rating label to certify the credibility of energy performance contracts on private commercial buildings.

These (and other, similar) projects need to be studied, integrated and involved as appropriate in this tender, under a coordinated initiative, to ensure cross-fertilisation and development of a commonly agreed and accepted framework for fully informed energy efficiency investment decisions by financing providers and demandeurs. This framework needs to be built on solid performance data and agreed methods of their processing and interpretation, underpinned by accepted common procedures for underwriting of financial products for debt and equity financing for energy efficiency investments.

### 3.1.3. Available information

The following information sources (non-exhaustive list) should be used and considered for the work on this tender, as appropriate:

- Energy Efficiency Financial Institutions Group Report "Energy Efficiency – the first fuel for the EU Economy. How to drive new finance for energy efficiency investments", February 2015, [www.eefig.eu](http://www.eefig.eu)
- Investor Confidence Project Europe, <http://europe.eepperformance.org/>
- Sustainable Energy Investment Metrics project, [http://cordis.europa.eu/project/rcn/194638\\_en.html](http://cordis.europa.eu/project/rcn/194638_en.html); [www.2degrees-investing.org](http://www.2degrees-investing.org)
- Member States' shared data standards and collection protocols<sup>10</sup>
- Portfolio benchmarking analysis such as those being piloted in the UK<sup>11</sup> by JLL and in France and Germany by the Green Rating Alliance<sup>12</sup>.

<sup>10</sup> Such as those outlined in the documents below:

Eurostat. (2013). *Manual for statistics on energy consumption in households*. Retrieved from: [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-GO-13-003/EN/KS-GO-13-003-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-GO-13-003/EN/KS-GO-13-003-EN.PDF)

INSPIRE. (2010). *D2.8.III.2 Data Specification on Buildings – Technical Guidelines*. Retrieved from: [http://inspire.jrc.ec.europa.eu/documents/Data\\_Specifications/INSPIRE\\_DataSpecification\\_BU\\_v3.0.pdf](http://inspire.jrc.ec.europa.eu/documents/Data_Specifications/INSPIRE_DataSpecification_BU_v3.0.pdf)

- MSCI's IPD index on real estate portfolios holds almost 80,000 searchable properties, valued at approximately USD 1.7trillion, which are located in 33 countries. The information provides a long performance history (25+ years for many markets) which is mostly appraised quarterly.

- US DOE's Buildings Performance Database, <http://energy.gov/eere/buildings/buildings-performance-database>.

The Concerted Action on Energy Performance of Buildings Directive (EPBD) supports the implementation of the Directive at national level. Its findings can be found in the 2012 Concerted Action report (<http://www.epbd-ca.org/Medias/Pdf/CA3-BOOK-2012-ebook-201310.pdf>). The next review of this book is due in June 2015. In the meantime, the latest information at country level is available at <http://epbd-ca.eu/countries/country-information>.

During the process for adoption of the EPBD it was highlighted that compliance was critical to tap the savings potential in the building sector. As a result, one of the new features of the EPBD is to require Member States to set up an independent control system for energy performance certificates and inspection of heating and air-conditioning systems. In this regard, several Member States have developed national databases that are publicly available. Similarly, the IEA building database includes information in IEA-EU countries (<http://www.sustainablebuildingscentre.org/pages/beep>).

In addition, some relevant projects were funded in the past by the European Union. In particular, the tenderer should get in touch with the consortia of the following projects funded under Intelligent Energy Europe (IEE), as well as any other databases, notably those arising from EU financed projects (key deliverables indicated):

- ODYSSEE-MURE<sup>13</sup>
  - Database<sup>14</sup>
  - Indicators<sup>15</sup>
  - Energy trends for the building sector<sup>16</sup>
- ENTRANZE<sup>17</sup>
  - Database of buildings<sup>18</sup>

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<sup>11</sup> JLL. (2014). *Real Estate Environmental Benchmark: An initiative by JLL and Better Buildings Partnership*. Retrieved from: <http://www.joneslanglasalle.co.uk/UnitedKingdom/EN-GB/Pages/Real-Estate-Environmental-Benchmark.aspx>

<sup>12</sup> Green Rating. (2014). [Website]. Retrieved from: <http://www.green-rating.com/>

<sup>13</sup> <http://www.odyssee-mure.eu/>

<sup>14</sup> <http://www.indicators.odyssee-mure.eu/energy-efficiency-database.html>

<sup>15</sup> <http://www.indicators.odyssee-mure.eu/online-indicators.html>

<sup>16</sup> <http://www.odyssee-mure.eu/publications/efficiency-by-sector/buildings/>

<sup>17</sup> <http://www.entranze.eu/>

- Report per country analysed<sup>19</sup>
- EPISCOPE<sup>20</sup>
  - Building typology<sup>21</sup>
  - Web tool on building typology<sup>22</sup>
  - Energy performance indicators for the building stock<sup>23</sup>
  - Guideline for building stock monitoring activities<sup>24</sup>
- iSERV<sup>25</sup>
  - Paper on Benchmarking HVAC system energy use<sup>26</sup>
  - Report on results on the Benchmarking exercise (to be published before 21/07/2014)<sup>27</sup>
- AFTER<sup>28</sup>
  - Assessment of performance of energy saving measures

The tenderers should use data sources available at national level, which in most cases do not track actual energy savings; additional data will therefore need to be gathered on the projects previously identified.

Moreover, the tenderers will have access to sources for **data collection from concrete energy efficiency investment projects** through the project pipelines of the EU-funded Project Development Assistance Facilities <http://ec.europa.eu/energy/intelligent/getting-funds/project-development-assistance/#eib-elena> :

- European Local Energy Assistance (ELENA) Facility

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<sup>18</sup> <http://www.entranze.enerdata.eu/>

<sup>19</sup> <http://www.entranze.eu/publications/data>

<sup>20</sup> <http://episcope.eu/welcome/>

<sup>21</sup> <http://episcope.eu/building-typology/>

<sup>22</sup> <http://webtool.building-typology.eu/>

<sup>23</sup> <http://episcope.eu/monitoring/>

<sup>24</sup> <http://episcope.eu/monitoring/guideline/>

<sup>25</sup> <http://www.iservcmb.info/>

<sup>26</sup> [http://www.iservcmb.info/system/files/iSERVcmb\\_Benchmarking\\_CLIMA\\_2013.pdf](http://www.iservcmb.info/system/files/iSERVcmb_Benchmarking_CLIMA_2013.pdf)

<sup>27</sup> <http://www.iservcmb.info/downloads>

<sup>28</sup> [www.afterproject.eu](http://www.afterproject.eu)



- Project Development Assistance call of Horizon 2020 and its predecessor MLEI (Mobilising local energy investment) call of the Intelligent Energy Europe Programme
- Project pipeline of the European Energy Efficiency Fund, [www.eeef.eu](http://www.eeef.eu)

Additional research will be required to collect the financial and energy performance data from energy efficiency projects funded under other applicable schemes in the EU, addressing both buildings and corporate sectors. Tenderers are required to present a sound methodology and potential sources for data collection.

The tenderers will be also asked also to make contact with the consortia operating the European Buildings Stock Observatory and the Buildings Performance Institute Europe, [www.bpie.eu](http://www.bpie.eu).

### 3.1.4. Purpose of this Service contract

**This service contract forms an essential part of the "Smart finance for smart buildings initiative"** put forward in the Energy Union Communication, through addressing key hurdles of "investibility" of energy efficiency market. It addresses the fundamentals of energy efficiency investments in buildings and corporate sectors.

The purpose of this tender is to develop and launch an **EU-wide initiative to work out a common set of procedures and standards** for corporate energy efficiency and building renovation underwriting for both debt and equity financing products.

Thus it focuses on **creating an investible market framework by addressing the investment drivers** for both demand for financing and supply of finance for energy efficiency investments and enabling conditions for scaling-up of existing instruments and schemes in the EU. It tackles the following challenges:

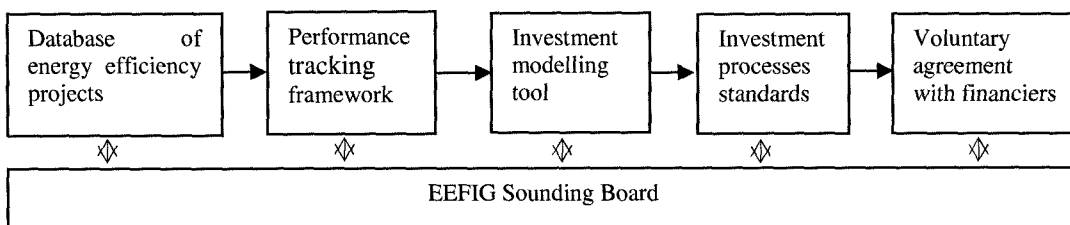
- Driving the demand for investments, drawing on the role of the legislative framework and following up on the analysis of demand for and supply of financing in the EEFIG Report;
- Managing uncertainty through making energy efficiency market "readable" and understandable for investors, property owners and corporates;
- Developing a methodology enabling to aggregate investments and activating the appropriate distribution channels for financing (leading to reduction of transaction costs and risk perception as well as preparing the basis for capital market based refinancing of energy efficiency loan portfolios).

The Financial Institutions, investors and market players will gain access to **fully informed, standardized and mutually accepted evidence based framework** for the development and roll-out of tailored financing products for energy efficiency investments in the buildings stock and corporates. The tender work will engage the market participants in an expert dialogue and **joint development of standardised investment processes and protocols, enabling the proper assessment and valuation of underlying risks and benefits** while reflecting the fundamentals related to energy costs reduction and additional available liquidity due to energy savings. If these fundamentals are confirmed, the initiative aims at providing stronger impetus for aggregation of energy efficiency investments at a bigger scale leading to significant flow of private capital. Finally, this tender should lead to **development of a Voluntary Agreement with**

**Financial Institutions and Investors**, adhering to the agreed standards and principles, thus increasing the market confidence. As it can be expected that some of the current underlying bottlenecks can be effectively addressed by a regulatory framework, there is strong causal connection with the EPBD review, which will run in parallel to this tender and to which this tender will contribute.

### 3.2. Description of services

The required services under this tender are organised around six inter-connected work-packages:



#### Work package 1: A database for project performance monitoring and benchmarking

The tenderer will develop an energy efficiency project performance tracking matrix, based on a database composed of running investment projects in buildings and corporate sectors.

The **Commission will facilitate access to data for investment projects (on buildings) triggered by the EU's project development assistance facilities (ELENA, MLEI PDA, EE20 PDA)** and to investments funded by the European Energy Efficiency Fund managed by Deutsche Bank. Around 100 projects are intended to be looked at and data from the mature (running) projects to be included into the database.

However, this may not be sufficient to constitute a representative sample for the database. Therefore, the tenderer should propose additional sources for project data, which will be validated by Commission services; these could include existing data at national level, such as energy efficiency loans by public banks (e.g. KfW, Caisse des Dépôts, Kredex...), databases of projects (e.g. Effinergie, AFTER project). The tenderer should also demonstrate his ability to obtain access to data.

Tenderers are invited to propose the methodology for additional data collection and data sources. **The database needs to be populated with at least 200 projects** (as a starting point) with at least 1 year history after implementation of the investments (preference is for longer history due to data solidity), covering a balanced set of market segments and types of investments (see below). The database has to **be programmed with a professional database software, enabling easy data handling and expansion in the future to up to 10,000 projects**. The interface has to be user friendly, accessible through internet / extranet, and allow for segmentation and modularity according to the types of

data recorded. Tenderers should explain the details as regards data handling and technical structure of the database.

Tenderers should ensure that sufficient resources are allocated for this task, which can involve visiting selected projects for better understanding and data gathering. It is expected that the tenderers develop an effective and efficient communication approach to motivate further data providers to actively participate in this project. The Commission will support the tenderers with the letter to project promoters explaining the scope of the work and a need for their active participation.

The database will be built on **anonymized historical data** structured along major project characteristics, such as (the following are examples of indicators which will need to be discussed and improved during the project):

**General data:**

- geographical location of project
- project sector (buildings, corporate)
- market segment (Commercial Buildings, Publicly Owned Buildings, Private Residential Buildings, Industrial sector or size/type of the corporate, etc.). The market segmentation should be proposed and justified by the tenderer, taking also into account the segmentation used in the EEFIG Report
- type of project promoter (e.g. household, homeowner association, ESCO, public sector entity, utility, corporate etc.)
- asset type or user profile (e.g. residential multifamily building, production facility, service provider etc.)

**Technical data:**

- energy saving measures included in the investment (e.g. insulation, boiler etc.),
- methodologies and tools used (calculation tools, standards, etc.) to establish the baseline and calculate savings
- Operation and maintenance (O&M) arrangements before and after (e.g. existence of a heating management contract with shared savings).

**Energy data:**

- annual energy consumption before the investment in kWh/year or kWh/year/m<sup>2</sup> for buildings
- energy costs before the investment (current prices) in EUR/year
- energy consumption after the investment (expected) in kWh/year or kWh/year/m<sup>2</sup> for buildings
- energy consumption after the investment (real, measured) in kWh/year or kWh/year/m<sup>2</sup> for buildings

**Call for tender ENER/C3/2014-563**

- energy costs savings after the investment (expected, current prices) in EUR/year
- energy costs savings (real, current prices) in EUR/year
- expected energy prices until project maturity in EUR/kWh
- total expected energy cost savings until project maturity compared to the baseline in EUR
- operation and maintenance costs before and after investment in EUR/year
- saved CO2 (in view of possible influence of EU ETS on revenues)

**Financial data:**

- upfront capital expenditure in EUR
- volume of investment in EUR for energy and non-energy related measures in EUR
- assumed weighted lifetime of the components in Years/Months
- type, source and amounts of financing used (e.g. own sources, external sources, equity, debt, subsidy, guaranteed savings third party - financed etc.)
- collateral or security required by external financiers (guarantee, insurance, asset-backed etc.) and its value relative to the investment (in % or EUR)
- energy payback (years), net present value, IRR, ROE, cost of external capital employed (interest rate etc.)
- market value of the underlying asset (building, machine, production process etc.) before and after the investment in EUR
- expectations for the market value of the underlying asset at project maturity in EUR
- methodology employed for verification, monitoring and reporting of project performance and results (e.g. IPMVP, ex-post energy audit, regular meter reading etc.)
- if available, provision of these data for the project duration do date (project performance history)
- default probability (based on the project performance) e.g. in %
- transaction costs in EUR
- risk rating (if available, provided by the financial institution as well as the associated default probability)

The tenderers are invited to propose their own methodology for data structure, while respecting the major elements of the database: anonymized datasets, segmentation and basic project characteristics/data as described above.

The major objective of this database is to enable proper data structuring, comparison and interpretation, aiming to answer the key question: "Do energy efficiency investments have an impact on the financial performance/soundness of a project or venture? To which extent can it be confirmed with evidence, that energy efficiency projects result in energy (cost) savings?"

Tenderers are also invited to present the methodology for active research, cross-checking and inclusion of results/approaches of similar projects or initiatives, to ensure integration of applicable frameworks and cross-mutualisation of gained knowledge. As a minimum, following projects need to be actively connected with the work under this tender:

- Investor Confidence Project Europe, <http://europe.eeperformance.org/>
- SEI Metrics, [http://cordis.europa.eu/project/rcn/194638\\_en.html](http://cordis.europa.eu/project/rcn/194638_en.html)
- Industrial energy efficiency index: <http://www.ier.uni-stuttgart.de/index.en.html>
- Buildings Performance Institute Europe, [www.bpie.eu](http://www.bpie.eu)
- European Buildings Performance Observatory (Commission, DG ENER)

Other sources and projects, such as those outlined in chapter 3.1.3 should also be researched and a methodology proposed for inclusion of applicable results, as appropriate.

Following the cross-checking and feedback from other similar initiatives and projects, the database entries and structure will need to be updated and/or revised, as appropriate.

The tenderers are informed that the database and its structure will be developed with the assistance of the "EEFIG Sounding Board" described under Work Package 3.

The tenderers will **develop the legal and security arrangements for the database**, including data confidentiality agreements and definition of the level of data which will be disclosed. This will be discussed with and validated by the Commission services.

### **Work package 2: Interpretation of gathered data and development of the performance evaluation methodology.**

Under this work package the tenderers are required to **develop a methodology for sound interpretation of the database entries developed under WP 1**. The methodology should **enable proper "reading" of the energy efficiency investments realities** as captured in the database, from financiers' and investor's point of view. A transparent project rating methodology/system could be proposed to allow for interpretation of project/investment fundamentals and available evidence, allowing for assessment, comparison, and benchmarking of the technical and financial risks of projects and their contracting structure.

Further, tenderers are requested to **develop and test an approach for "pooling" of data/projects gathered under WP1** according to e.g. the market segment, type of investment, underlying asset type or type of financing. This should allow more high-

level, portfolio "reading" of underlying evidence. The core objective of this exercise is to allow for consolidated and transparent interpretation of key investment fundamentals.

The EEFIG Sounding Board, described under WP 3 below, will provide useful expert inputs and feedback to this work.

This Work package should **deliver a report** including a set of available data on actual performance of projects included in the database, with a public and a confidential part. The report should also include the description of the performance evaluation methodology developed under this Work package and agreed with the Commission services and EEFIG Sounding board.

The report has to be produced in English, in an electronic format, allowing for public dissemination (of the public part of the data used).

### **Work package 3: EEFIG Sounding Board**

EEFIG (Energy Efficiency Financial Institutions Group) was established in 2013, as a specialist expert group, and tasked to determine how to overcome the well documented challenges to up scaling of financing of energy efficiency investments. The Group produced its Report<sup>29</sup> to the Commission in February 2015, documenting in depth the major drivers for financing supply and demand and putting forward main recommendations both for policy makers and market participants. The Report recommendations have been systematically followed by the Commission services in the framework of current and forthcoming energy efficiency policy development, including the Energy Union and its energy efficiency related initiatives.

The EEFIG is currently composed of more than 120 experts representing financial institutions, investors, industry, policy makers and experts in the area of energy efficiency investment and financing. As such, the group proved to become an essential source of knowledge and expertise, with a strong added value for the Commission and market players alike.

In this context, the **EEFIG will be given a new mandate under this Tender, effectively becoming a "Sounding Board" for all work-packages** included herein. As EEFIG recommendations strongly correlate with the substance of this Tender, it can be expected that the EEFIG members will be motivated and willing to actively participate and provide inputs to the required work.

The list of current EEFIG members is provided in the EEFIG Report. However, the EEFIG Sounding Board composition will need to reflect the specific tasks under this Tender. Therefore, the EEFIG Sounding Board will need to include following experts/representatives with a strong relevance for energy efficiency investing, as a minimum:

- Investors, in particular long-term and institutional investors

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<sup>29</sup> Energy Efficiency Financial Institutions Group Report: "Energy Efficiency – the first fuel for the EU Economy. How to drive new finance for energy efficiency investments", February 2015, [www.eefig.eu](http://www.eefig.eu)

### Call for tender ENER/C3/2014-563

- Investment and Property Fund managers
- Financial Institutions, among others and in particular experts in (bank) risk modelling, representatives of (banks') credit departments and credit risk managers
- Insurers
- Industry experts (Buildings, Industry, Services) with expertise in financing energy efficiency investments
- Representatives of financing demand side (energy efficiency financial instruments operators (e.g. those established with the support from the EU Structural Funds), retail banks, project promoters and their experts (e.g. energy agencies) or project developers (e.g. in the residential or social housing sectors).
- Representatives of other similar projects (e.g. Investor Confidence Project, SEI Metrics Project etc.)
- Risk valuers and new financing products developers

The Commission services will assist the contractor with the composition of the EEFIG Sounding Board members; however Tenderers are requested to propose a methodology for acquisition of further expertise and to provide the proposed contact list as part of the Tender.

**At least six EEFIG Sounding board meetings** will be organized during the first fifteen months of the contract duration in Brussels. The tenderers are asked to **propose a modus operandi** for these meetings along the following lines, and ensuring the focus of the work to specific elements to be developed as defined in this terms of reference:

- Proposed scope of the EEFIG Sounding Board meetings and proposed expert coverage reflecting the scope ensuring the best available expertise for the topics in question;
- Foreseen working methods including preparation, tasks division, research and analytical inputs, secretariat tasks, communication with members, time planning and regular exchange with the Commission Services;
- Professional moderation (including the proposal for a moderator) of discussions, drafting of meeting minutes;
- Acquisition of additional expertise if required;
- Problem solving (consensus approach) and risk mitigation strategy (e.g. the group may incorporate opposite opinions);
- Continuous feedback within the group and Vis a Vis the Commission services and assistance toward common "trust" building;
- Dissemination strategy, ensuring the buy-in of the interest of the market participants, including the use of social media and targeted info mailing service to a) EEFIG Sounding Board members and b) external environment.

In general, it is expected that the EEFIG Sounding Board's ultimate task will be to ensure the "reality check" of the work undertaken under this tender and provide expert inputs to the work packages, e.g. feedback on data composition required by financial institutions for better "readability" of the investment case (WP1 and WP2), or expert inputs on the definition of appropriate elements of the modelling tool (WP4) and common investment and financing procedures and processes (WP5). The EEFIG sounding board members will also play a crucial role in the development and launch of the Voluntary Agreement (WP 6)

The existing similar initiatives and projects and related available expertise need to be included into the EEFIG Sounding Board deliberations.

The Commission services will ensure the meeting venues (rooms, refreshments, sandwich lunch).

Tender costs must include the other associated costs including travel and accommodation costs for the EEFIG Sounding Board members, for at least 6 meetings during the tender duration, costs associated with invitations and logistics of the meetings. It could be expected that there will be around 30-40 participants per meeting, subject to the methodology proposed. The meetings should last 1 day maximum. Meetings will be held in English, no interpretation is foreseen.

Tenderers will be responsible for production of high quality meeting minutes in English, which will be confirmed with the EEFIG sounding board members before finalising.

#### **Work-package 4: Open source Energy efficiency investments risk/performance modelling**

Under this Work-package the tenderers will:

- Develop, with the assistance of the EEFIG Sounding Board, a **transparent, open source, web-based modelling tool** allowing automatizing the processing of energy efficiency investments performance data and their interpretation on the basis of commonly agreed principles and considerations, building on the results of Work Packages 1 and 2.
- **Provide the finance community with the key parameters** that are used in the open-source model so that they can be used by financiers in their own models. This implies the development of an interactive guide for the modelling tool users, building on the publicly available values worked out as part of the Work Package 2.
- Allow the finance community to use, if appropriate and requested, this modelling tool for their own "model runs".

The modelling tool should **start with the project level data and evolve into a portfolio level assessment mechanism**, reflecting the market fundamentals and differences among different market segments following the logic of the structure of the database developed in WP1 (buildings and their segments and corporates and their segments). However, tenderers may propose a different methodology, if appropriate, and should in any case



provide in-depth analysis of similar activities developed or under development on the market and ways this WP will build on them (e.g. industry led initiatives such as the IPD and RICS 'IPD Eco-PAS' tool, developed in the UK).

It can be expected that the methodology will be further fine-tuned during the EEFIG Sounding Board deliberations.

The modelling tool should, as the main outcome, **provide informed, evidence-based and "readable" feedback for the finance community decision makers as regards the impacts of various investment criteria (e.g. different financing terms) applied on a pool of energy efficiency investments.** This should lead to clearer understanding of risks related to energy efficiency investments and their potential impact on pricing of financing products for energy efficiency taking into account the related benefits (e.g. increased property value or additional free liquidity, if confirmed).

The modelling tool should allow for variable "model runs" for variable pools of energy efficiency investments. It should be web-based, and open, so that it could be tested on a larger scale once developed and tested in the framework of this Tender. Also, the tenderers should ensure that the modelling tool will be based on a plug-in technology allowing for joining it with another web-based portals or tools. Financial institutions, and in particular their financial product developers, should be able to make their own "model runs", free of charge, with the support of the tenderer.

The **modelling tool** has to be developed in English. However, its **user interface** and **user guide** has to be developed in English and translated into French, German, Polish, Italian and Spanish.

Tenderers are invited to propose the methodology, technology and interface architecture meeting the required characteristics.

Also, tenderers should ensure that the project results are documented and finalised in a way that any potential successor can easily take over the work for further development if needed.

**Work-package 5. Definition and development of common, accepted, tested and standardised underwriting and investment approaches and procedures for energy efficiency.**

The EEFIG Report puts as one of the major recommendations the following:

*"Standards should be developed for each element in the energy efficiency investment process: When a market is immature, high margins and competitive advantage may be available from tailored, one-off transactions. As markets develop, the commoditisation of the low value-added documentation and processing part of the transaction increases customer confidence and adds volume to the market – allowing customers and solution providers to focus exclusively on the core elements of value: In this case, energy savings, green value and the other multiple benefits of building renovations. The standardisation and adoption of best practice, standard national models for: Legal contracts, underwriting processes, procurement procedures, adjudication, measurement, verification, reporting, energy performance (contracts and certificates) and insurance; will add volume to the energy efficiency investment market and lower its costs of finance*

*and transaction costs. The use of standardised MRV and legal documentation is particularly important to facilitate the bundling of investments for recycling to the bond market – creating a route to significant volumes of capital market finance..."*

*"...Launch of an EU-wide initiative to develop a common set of procedures and standards for energy efficiency and building renovation underwriting for both debt and equity investments..."*

This Work package will thus lead to a **development of commonly agreed, tested and accepted "standard" rules and practices (framework) related to investment and underwriting procedures for debt and equity financing** products for energy efficiency investments.

The work will build on the previous work packages and involve the EEFIG Sounding Board, in its role of a "living lab", enabling first-hand feedback, expertise and consensus among market practitioners. Tenderers are invited to propose a coherent strategy and methodology for development and delivery of such framework, also building on the experience and work undertaken under similar projects such as Investor Confidence Project Europe<sup>30</sup>.

The work under this work package aims at laying the ground for acceptance of the developed principles by broader finance and investor community, building on transparency, soundness of approach and evidence, confirmed through the EEFIG Sounding Board. Inclusion of EU standardisation bodies into this work should also be considered, if appropriate and justified. **The agreed framework has to be documented e.g. as a Guidebook (or standard, as appropriate)** and translated into English, French, German, Italian, Spanish and Polish language. The tenderer is required to present the document quality check methodology.

Such framework should significantly contribute to the evolution of a secondary market for energy efficiency investments, allowing for easier portfolio building, capital market re-financing and market growth.

Tenderers are also required to propose the strategy for documenting and dissemination of the developed framework and its approaches and procedures.

#### **Work-package 6: Development and launch of the Voluntary Agreement with Financial Institutions, Investors and Market actors.**

Unless the wider financing and investor community trusts and adopts the "standard" framework for risk assessment and investment underwriting, the energy efficiency investments market will not grow to a critical scale, allowing for wider private capital participation.

The work packages 1-5 are focusing on the development and acceptance of the "common language" among market participants, making the energy efficiency investing case readable and understandable, on the basis of data and evidence.

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<sup>30</sup> <http://europe.eepformance.org/>

This work package aims at **mainstreaming of this "common language", tools, methods, principles and procedures developed under this tender, towards a wider community of Financial Institutions, Investors and Market participants.** In other words, this Work Package aims at ensuring that the market participants trust and adhere to the "common language" and apply the results of this Tender in their business practise.

To enable such mainstreaming, a **Voluntary Agreement**, providing its signatories with a "seal of excellence" will be developed and marketed. It is foreseen that this Voluntary Agreement would be "signed" publicly between the European Commission and market participants willing to adhere to the developed and tested (and confirmed through EEFIG Sounding Board) set of principles, procedures and tools described in the previous work packages, by the end of 2016/early 2017.

The basis of the Voluntary Agreement should be a text declaration, referring to the deliverables of this Tender, that will be publicly available and actively promoted by the Tenderer. The **"signature" ceremony** should take place in the framework of an appropriate EU high-level event, such as EU Sustainable Energy Week or autumn "State of Energy Union" package, subject to further confirmation by the Commission services. The event needs to ensure a strong participation of high-level representatives of the Financial and Investor community and energy efficiency Industry and the Commission leadership. It could be organized in the European Parliament or another appropriate venue, with strong media and social networks attention.

The Voluntary agreement could be developed either as a single document or as two distinct agreements, applicable to energy efficiency investment in buildings and corporates, respectively, subject to the work evolution. In any case, the buildings-related part will be **marketed as "Smart Finance for Smart Buildings Initiative"**, as put forward in the Energy Union Communication. The text of the Voluntary agreement has to be translated into all EU languages.

Tenderers are invited to propose a solid strategy for this work package, including the draft text of the Agreement, and its dissemination/marketing methodology. The strategy for organising the launch "signature" event has to be also included, covering all related aspects such as foreseen speakers, moderation, media strategy, logistics, invitations, and outreach.

The costs of the launch event must be included in the tender, except for the venue, which will be covered by the Commission.

It is expected that the event may target around 400 participants and may last up to 4 hours. Travel and accomodation costs for participants will not be covered.

### **3.3. Reports and documents to produce – timetable to observe**

Execution of the tasks begins on the date on which the Contract enters into force.

In principle, the deadlines set out below cannot be extended. The Contractor is deemed solely responsible for delays occasioned by subcontractors or other third parties (except for rare cases of force majeure). Adequate resources and appropriate organisation of the

work including management of potential delays should be put in place in order to observe the timetable below.

### **Meetings**

A **kick-off meeting** will take place in Brussels, at the latest **10 working days** following the signature of the contract, in order to settle all the details of the study, report, etc., to be undertaken.

A **final meeting** will take place in Brussels, at the latest 2 weeks after delivery of the draft final report in order to discuss the Commission's observations on the draft final report.

### **Reports and other deliverables**

The Contractor will draft the minutes of all meetings performed within this contract. Draft minutes shall be sent to the Commission at the latest 5 days after the meeting.

The Contractor will submit the **inception report** at the latest **1 month** following the kick-off meeting including the detailed methodology for each work package and work plan including detailed description of task management and timing of **deliverables**. The inception report will include in particular:

#### **For work package 1:**

D1.1: Detailed description of a methodology for data collection and processing (including the database format/platform), data matrix template including the indicators, and analysis of proposed relevant data sources and projects to be considered.

D1.2: Methodology to ensure data transparency and security has to be also included.

#### **For work package 2:**

D.1.3: Foreseen methodology for WP1 database consolidation and (project) performance evaluation including considerations on the public and confidential part of the Report.

#### **For work package 3:**

D.1.4: Detailed methodology for the EEFIG sounding board modus operandi including the detailed list of proposed experts.

#### **For work package 4:**

D.1.5: Detailed description of foreseen platform/methodology for the modelling tool and considerations regarding its functionalities, open access, credibility and robustness.

#### **For work package 5:**

D.1.6: Detailed methodology for the development and contents of the Guidebook/standard.

#### **For work package 6:**

D.1.7: proposed initial wording of the Voluntary agreement and detailed methodology for all related communication and marketing activities.

The invoice for the inception report (first interim payment) shall be admissible if accompanied by the inception report (1 month after the date on which the contract enters into force). The payment will be made in accordance with Article 1.4.1 of the contract, given that the inception report has been approved by the Commission.

The Contractor will submit the **first interim report** at the latest **6 months** following the kick-off meeting including the following **deliverables**:

**For work package 1:**

D.2.1: The finalised database matrix, print-outs of its major modules including the processed data.

D.2.2: Consolidated database in electronic format. It is expected that at the time of the first interim report the database functionalities will be operational and it will be populated with the major part of the data (e.g. 200 projects).

**For work package 2:**

D.2.3: Evaluation methodology processed in a form of draft report

**For work package 3:**

D.2.4: Minutes of the EEFIG sounding board meetings.

**For other work packages:**

D.2.5: Detailed methodology, progress and work plans in relation to work packages 4, 5 and 6, including the strategy and templates for the communication and dissemination tools.

Therefore, at the time of submitting the first interim report the Contractor will ensure that the database is up and running, following an earlier test phases. Contractor will also produce a set of power-point slides presenting the results, in English.

The Contractor will submit the **second interim report** at the latest **12 months** following the kick-off meeting including:

**For work package 1:**

D.3.1: Fully populated database (200 + projects) in electronic format and finalised data matrix.

**For work package 2:**

D.3.2: Evaluation methodology report in English including the data from the database.

**For work package 3:**

D.3.3: Detailed minutes of the EEFIG sounding board meetings.

**For work package 4:**

D.3.4: Developed and tested modelling tool in electronic format in English with its user interface and user guide translated into other 5 languages as required under these tender specifications.

**For work package 5:**

D.3.5: Developed (to date) and tested set of "standard rules, practices or procedures" as agreed with the EEFIG Sounding board, documented in a Guidebook/standard(s) as appropriate, in English.

**For work package 6:**

D.3.6: Agreed text of the Voluntary Agreement (in English), list of signatories to date.

D.3.7: Detailed description of the marketing and outreach strategy for the Voluntary Agreement and an evidence/documentation related to the signing ceremony.

Contractor will also produce a set of power-point slides presenting the results, in English and other 5 languages (DE, FR, IT, ES, PL), as required in these terms of reference.

The invoice for the second interim payment shall be admissible if accompanied by the second interim report (12 months after the date on which the contract enters into force). The payment will be made in accordance with Article 1.4.2 of the contract, given that the second interim report has been approved by the Commission.

The Contractor will submit a **draft final report and accompanying documents** to the Commission at the latest **22 months** after the signature of the contract. The draft final report and accompanying documents shall address all tasks and their deliverables.

The draft final report shall contain specifically:

**For work package 1:**

D.4.1: Fully populated database, going well beyond 200+ projects, and a report on its usage, in English.

**For work package 2:**

D.4.2: Finalised evaluation methodology report in English based on the data from the database.

**For work package 3:**

D.4.3: Detailed minutes of the EEFIG sounding board meetings, if additional meetings are organised in months 13-22.

**For the tender in general:**

D.4.4: Up to 50 pages presenting in details the methodology and deliverables of the tender, providing the main results at EU level (in electronic or printed format as appropriate, in all required languages), interpreting these results and suggesting way forward to improve the investibility of the energy efficiency market. This report shall include up to 10 pages executive summary, list of EEFIG sounding board members, references to any relevant initiatives, projects or sources used in the work and bibliography;

D.4.2: Annexes to the report presenting the main results and deliverables per individual work packages in required format and language(s) and describing explanation factors (legislative/non-legislative context) to the results observed;

D.4.3: Set of power-point slides presenting the results, in English and other 5 languages (DE, FR, IT, ES, PL), as required in these terms of reference.

A **final meeting** will take place in Brussels, at the latest 2 weeks after delivery of the draft final report in order to discuss the Commission's observations on the document.

The Contractor will update the draft final report taking into account the Commission's observations and submit the **final report and accompanying documents** at the latest **24 months** after the signature of the contract.

The final report shall also contain:

D.5.1: A 10-15 slides presentation with detailed comments/notes, to further communicate this study and its results.

The Commission shall have 60 days from receipt to approve or reject the final report and to pay the balance in accordance with Article 1.4.3 of the contract. The Contractor shall have 20 days in which to submit additional information or a new final report.

### **3.4. Report format and publication**

3 copies of the reports shall be supplied in paper form and one copy in electronic form in MS Office format (Word, Excel and PowerPoint).

The Commission may publish the results presented in the report. For this purpose, the tenderer must ensure that the report is not subject to any restrictions deriving from intellectual property rights of third parties. Should the Contractor intend to use data in the report, which cannot be published, this must be explicitly mentioned in the offer.

Reports and annexes have to be drafted in English (and other languages as required in these terms of reference) in a properly literate manner and must be fully comprehensive in terms of grammatical structure (complete sentences, punctuation, explanation of abbreviations the first time they are used, etc.) using clear language.

### **3.5. Duration of the tasks**

The duration of the tasks shall not exceed **24 months**. This period is calculated in calendar days.

### **3.6. Organisation of Work**

#### **Place of performance**

The tasks will be performed on the Contractor's premises. However, meetings between the Contractor and the Commission may be held on Commission premises in Brussels. EEFIG Sounding Board meetings will be organized in Brussels. The Voluntary Agreement launch ceremony will be organized in Brussels.

#### **Availability of information**

As mentioned above, the Contractor will be responsible for the data collection, including on the ground data collection among energy efficiency projects and initiatives related to this Tender.

#### **Language**

The communication language between the Commission and the awarded Contractor shall be in English. The deliverables as such will have to be submitted in English, except for the Modelling tool under Work package 4 (its interface should be available in 6 languages), the set of investment procedures and principles under Work package 5 (to be developed in 6 languages) and a Voluntary Agreement text under Work package 6 (to be

translated in all EU official languages. The Contractor is required to ensure the effective document quality control mechanism.

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

All studies produced for the European Commission and Executive Agencies shall conform to the corporate visual identity of the European Commission by applying the graphic rules set out in the European Commission's Visual Identity Manual, including its logo<sup>31</sup>.

The Commission is committed to making online information as accessible as possible to the largest possible number of users including those with visual, auditory, cognitive or physical disabilities, and those not having the latest technologies. The Commission supports the Web Content Accessibility Guidelines 2.0 of the W3C.

For full details on Commission policy on accessibility for information providers, see: [http://ec.europa.eu/ipg/standards/accessibility/index\\_en.htm](http://ec.europa.eu/ipg/standards/accessibility/index_en.htm)

#### **5. ANNEXES**

1. Tenderer 's Identification Form
2. Declaration related to the exclusion criteria and absence of conflict of interest
3. Power of Attorney (mandate in case of joint tender)
4. Draft Contract

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<sup>31</sup> The Visual Identity Manual of the European Commission is available upon request. Requests should be made to the following e-mail address: [comm-visual-identity@ec.europa.eu](mailto:comm-visual-identity@ec.europa.eu)



## 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 tender ENER/C3/2014-543

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>32</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:	

<sup>32</sup> For natural persons

Call for tender ENER/C3/2014-563

Fax number:	
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>33</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>33</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 absence of conflict of interest

*(Complete or delete the parts in grey italics in parentheses)*  
[Choose options for parts in grey between square brackets]

The undersigned (*insert name of the signatory of this form*):

in [his][her] own name (*for a natural person*)

or

representing the following legal person: (*only if the economic operator is a legal person*)

full official name:

official legal form:

full official address:

VAT registration number:

➤ declares that [the above-mentioned legal person][he][she] is not in one of the following situations:

- a) is bankrupt or being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) has been convicted of an offence concerning professional conduct by a judgment of a competent authority of a Member State which has the force of *res judicata*;
- c) has been guilty of grave professional misconduct proven by any means which the contracting authorities can justify including by decisions of the European Investment Bank and international organisations;
- d) is not in compliance with all its obligations relating to the payment of social security contributions and the payment of taxes in accordance with the legal provisions of the country in which it is established, with those of the country of the contracting authority and those of the country where the contract is to be performed;
- e) has been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such activity is detrimental to the Union's financial interests;
- f) is a subject of an administrative penalty for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in a procurement procedure or failing to supply this information, or having been declared to be in serious breach of its obligations under contracts covered by the Union's budget.

➤ (*Only for legal persons other than Member States and local authorities, otherwise delete*) declares that the natural persons with power of representation, decision-

making or control<sup>34</sup> over the above-mentioned legal entity are not in the situations referred to in b) and e) above;

- declares that [the above-mentioned legal person][he][she]:
- g) has no conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinity, family, emotional life or any other shared interest;
  - h) will inform the contracting authority, without delay, of any situation considered a conflict of interest or which could give rise to a conflict of interest;
  - i) has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to award of the contract;
  - j) provided accurate, sincere and complete information to the contracting authority within the context of this procurement procedure ;
- acknowledges that [the above-mentioned legal person][he][she] may be subject to administrative and financial penalties<sup>35</sup> if any of the declarations or information provided prove to be false.

In case of award of contract, the following evidence shall be provided upon request and within the time limit set by the contracting authority:

For situations described in (a), (b) and (e), production of a recent extract from the judicial record is required or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. Where the tenderer is a legal person and the national legislation of the country in which the tenderer is established does not allow the provision of such documents for legal persons, the documents should be provided for natural persons, such as the company directors or any person with powers of representation, decision making or control in relation to the tenderer.

For the situation described in point (d) above, recent certificates or letters issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the tenderer is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions.

For any of the situations (a), (b), (d) or (e), where any document described in two paragraphs above is not issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

If the tenderer is a legal person, information on the natural persons with power of representation, decision making or control over the legal person shall be provided only upon request by the contracting authority.

Full name	Date	Signature
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<sup>34</sup> This covers the company directors, members of the management or supervisory bodies, and cases where one natural person holds a majority of shares.

<sup>35</sup> As provided for in Article 109 of the Financial Regulation (EU, Euratom) 966/2012 and Article 145 of the Rules of Application of the Financial Regulation

ANNEX 3

POWER OF ATTORNEY

Mandating one of the partners in a joint tender as lead partner and lead contractor

36

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, and 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>36</sup> To be filled in and signed by each of the partners in a joint tender, except the lead partner;

Call for tender ENER/C3/2014-563

ANNEX 4

**DRAFT CONTRACT**

HAVE AGREED

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

**Annex I** – Tender specifications (reference No ENER/C3/2014-563 of [*insert date*])

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

[*Other annexes*]

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

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

## **I – SPECIAL CONDITIONS**

### **ARTICLE I.1 – SUBJECT MATTER**

- I.1.1** The subject matter of the contract is delivering informed investment decisions for energy efficiency investments through accessible data, standardized procedures and benchmarking of performance also supporting the Smart Finance for Smart Buildings Initiative.
- I.1.2** The contractor shall execute the tasks assigned to it in accordance with the tender specifications annexed to the contract (Annex I).

### **ARTICLE I.2 – ENTRY INTO FORCE AND DURATION**

- I.2.1** The contract shall enter into force on the date on which it is signed by the last party (the Contractor).
- I.2.2** Under no circumstances may performance commence before the date on which the contract enters into force.
- I.2.3** The duration of the execution of the tasks shall not exceed 24 months. Unless otherwise specified, all periods specified in the contract are calculated in calendar days. Execution of the tasks shall start from the date of entry into force of the contract.

The period of execution of the task may be extended only in exceptional and duly justified cases and with express written agreement of the parties. If the request for extension is made by the contractor, he must send it to the contracting authority in good time before it is due to take effect except in cases duly substantiated by the contractor and accepted by the contracting authority.

### **ARTICLE I.3 – PRICE**

- I.3.1** The maximum total amount to be paid by the contracting authority under the contract shall be EUR [*amount in figures and in words*] covering all tasks executed.

### **ARTICLE I.4 – PAYMENT ARRANGEMENTS**

#### **I.4.1 First Interim payment**

The contractor shall submit an invoice for a first interim payment of EUR [*amount in figures and in words*] equal to 20 % of the total amount referred to in Article I.3.1.

Invoices for the first interim payment shall be accompanied by the inception report in accordance with the tender specifications. The contracting authority shall make the payment within 60 days from receipt of the invoice. The contractor shall have 20 days in which to submit additional information or corrections or a new inception report or additional documents if required by the contracting authority.



#### **I.4.2 Second Interim payment**

The contractor shall submit an invoice for a second interim payment of EUR [*amount in figures and in words*] equal to 50 % of the total amount referred to in Article I.3.1.

Invoices for the second interim payment shall be accompanied by the second interim report in accordance with the tender specifications. The contracting authority shall make the payment within 60 days from receipt of the invoice. The contractor shall have 20 days in which to submit additional information or corrections or a new second interim report or additional documents if required by the contracting authority.

#### **I.4.3 Payment of the balance**

The contractor shall submit an invoice for payment of the balance. The invoice shall be accompanied by the study and accompanying deliverables in accordance with the tender specifications.

The invoice shall be accompanied by the final progress report in accordance with the tender specifications. The contracting authority shall make the payment within 60 days from receipt of the invoice. The contractor shall have 20 days in which to submit additional information or corrections, a new final progress report or other documents if it is required by the contracting authority.

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[Where 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.]

[Where VAT is due in Luxembourg, the contractor shall 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."]

#### **ARTICLE I.5 – BANK ACCOUNT**

Payments shall be made to the contractor's bank account denominated in [euro][*insert local currency where the receiving country does not allow transactions in EUR*], identified as follows:

Name of bank:

Full address of branch:

Exact designation of account holder:

Full account number including [bank] codes:

## **ARTICLE I.6 – COMMUNICATION DETAILS AND DATA CONTROLLER**

For the purpose of Article II.6, the data controller shall be the Director of the Shared Resources Directorate.

Communications shall be sent to the following addresses:

Contracting authority:

European Commission  
Directorate-General for Energy  
Directorate C  
Roman Doubrava  
Unit C3 – Energy efficiency  
DM 24 4/008, B-1049 Brussels  
Email: [roman.doubrava@ec.europa.eu](mailto:roman.doubrava@ec.europa.eu)

Contractor:

[*Ms/Mr/Mrs*]  
[*Function*]  
[*Company name*]  
[*Full official address*]  
Email: [*complete*]

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

- I.7.1.** The contract shall be governed by Union law, complemented, where necessary, by the law of Belgium.
- I.7.2.** Any dispute between the parties in relation to the interpretation, application or validity of the contract which cannot be settled amicably shall be brought before the courts of Brussels.

## **ARTICLE I.8 - EXPLOITATION OF THE RESULTS OF THE CONTRACT<sup>3</sup>**

### **I.8.1 Modes of exploitation**

In accordance with Article II.10.2 whereby the Union acquires ownership of the results as defined in the tender specifications (Annex I), these results may be used for any of the following purposes:

- [(a) use for its own purposes:
- (i) making available to the staff of the contracting authority

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<sup>3</sup> This clause must be filled in and adapted with care. You will find information in the Explanatory note on Intellectual Property Rights on:  
<http://www.cc.cec/budg/imp/procurement/doc/pdf/ipr-note-en.pdf>  
Please also consult SRD.1./legal sector for advice. As an absolute minimum, delete all irrelevant elements including especially those in italics and add missing parts if need be.

- (ii) making available to the persons and entities working for the contracting authority or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions
  - (iii) installing, uploading, processing
  - (iv) arranging, compiling, combining, retrieving
  - (v) copying, reproducing in whole or in part and in unlimited number of copies
- (b) distribution to the public:
- (i) publishing in hard copies
  - (ii) publishing in electronic or digital format
  - (iii) publishing on the internet as a downloadable/non-downloadable file
  - (iv) broadcasting by any kind of technique of transmission
  - (v) public presentation or display
  - (vi) communication through press information services
  - (vii) inclusion in widely accessible databases or indexes
  - (viii) otherwise in any form and by any method
- (c) modifications by the contracting authority or by a third party in the name of the contracting authority:
- (i) shortening
  - (ii) summarizing
  - (iii) modifying of the content
  - (iv) making technical changes to the content:
    - necessary correction of technical errors
    - adding new parts or functionalities
    - changing functionalities
    - providing third parties with additional information concerning the result (e.g. source code) with a view of making modifications
  - (v) addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.
  - (vi) preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.
  - (vii) extracting a part or dividing into parts
  - (viii) use of a concept or preparation of a derivate work
  - (ix) digitisation or converting the format for storage or usage purposes
  - (x) modifying dimensions
  - (xi) translating, inserting subtitles, dubbing in different language versions:
    - English, French, German
    - all official languages of EU
    - languages used within EU
    - languages of candidate countries

- languages of candidate countries

(d) the modes of exploitation listed in article II.10.4

(e) rights to authorise, license, or sub-license in case of licensed pre-existing rights, the modes of exploitation set out in any of the points (a) to (c) to third parties.

Where the contracting authority becomes aware that the scope of modifications exceeds that envisaged in the contract the contracting authority shall consult the contractor. Where necessary, the contractor shall in turn seek the agreement of any creator or other right holder. The contractor shall reply to the contracting authority within one month and shall provide its agreement, including any suggestions of modifications, free of charge. The creator may refuse the intended modification only when it may harm his honour, reputation or distort integrity of the work.

**I.8.2 Pre-existing rights and transmission of rights**

All pre-existing rights shall be licensed to the Union in accordance with Article II.10.3

The contractor shall provide to the contracting authority a list of pre-existing rights and third parties' rights including its personnel, creators or other right holders as provided for in Article II.10.5.

**ARTICLE I.9 – TERMINATION BY EITHER PARTY**

Either party may, unilaterally and without being required to pay compensation, terminate the contract by formally notifying the other party by giving one month's notice. Should the contracting authority terminate the contract, the contractor shall only be entitled to payment corresponding to part-performance of the contract before the termination date. The first paragraph of Article II.14.3 shall apply.

**SIGNATURES**

For the contractor,

For the contracting authority,

[Company name/forename/surname/function]

Marie Donnelly, Director

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

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

Done at \_\_\_\_\_, [date]

Done at [Brussels], [date]

In duplicate in English.

## **II – GENERAL CONDITIONS FOR SERVICE CONTRACTS**

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

- II.1.1** The contractor shall perform the contract to the highest professional standards.
- II.1.2** The contractor shall be solely responsible for taking the necessary steps to obtain any permit or licence required for performance of the contract under the laws and regulations in force at the place where the tasks assigned to it are to be executed.
- II.1.3** Without prejudice to Article II.4 any reference made to the contractor's personnel in the contract shall relate exclusively to individuals involved in the performance of the contract.
- II.1.4** The contractor must ensure that the personnel performing the contract possesses the professional qualifications and experience required for the execution of the tasks assigned to it.
- II.1.5** The contractor shall neither represent the contracting authority nor behave in any way that would give such an impression. The contractor shall inform third parties that it does not belong to the European public service.
- II.1.6** The contractor shall be solely responsible for the personnel who executes the tasks assigned to the contractor.

The contractor shall stipulate the following employment or service relationships with its personnel:

- (a) personnel executing the tasks assigned to the contractor may not be given orders directly by the contracting authority;
- (b) the contracting authority may not under any circumstances be considered to be the employer of the personnel referred to in point (a) and the personnel shall undertake not to invoke against the contracting authority any right arising from the contractual relationship between the contracting authority and the contractor.
- II.1.7** In the event of disruption resulting from the action of one of the contractor's personnel working on the contracting authority's premises or in the event that the expertise of a member of the contractor's personnel fails to correspond to the profile required by the contract, the contractor shall replace him without delay. The contracting authority shall have the right to make a reasoned request for the replacement of any such personnel. The replacement personnel must have the necessary qualifications and be capable of performing the contract under the same contractual conditions. The contractor shall be responsible for any delay in the execution of the tasks assigned to it resulting from the replacement of personnel.
- II.1.8** Should the execution of the tasks be directly or indirectly hampered, either partially or totally, by any unforeseen event, action or omission, the contractor shall immediately and on its own initiative record it and report it to the contracting authority. The report shall include a description of the problem and an indication of

the date on which it started and of the remedial action taken by the contractor to ensure full compliance with its obligations under this contract. In such an event the contractor shall give priority to solving the problem rather than determining liability.

- II.1.9** Should the contractor fail to perform its obligations under the contract, the contracting authority may - without prejudice to its right to terminate the contract - reduce or recover payments in proportion to the scale of the unperformed obligations. In addition, the contracting authority may claim compensation or impose liquidated damages in accordance with Article II.12.

## **ARTICLE II.2 – MEANS OF COMMUNICATION**

- II.2.1** Any communication relating to the contract or to its performance shall be made in writing and shall bear the contract number. Any communication is deemed to have been made when it is received by the receiving party unless otherwise provided for in this contract.

- II.2.2** Electronic communication shall be deemed to have been received by the parties on the day of dispatch of that communication provided it is sent to the addressees listed in Article I.6. Without prejudice to the preceding, if the sending party receives a message of non-delivery to or of absence of the addressee, it shall make every effort to ensure the actual receipt of such communication by the other party.

Electronic communication shall be confirmed by an original signed paper version of that communication if requested by any of the parties provided that this request is submitted without unjustified delay. The sender shall send the original signed paper version without unjustified delay.

- II.2.3** Mail sent using the postal services is deemed to have been received by the contracting authority on the date on which it is registered by the department responsible referred to in Article I.6.

Any formal notification shall be made by registered mail with return receipt or equivalent, or by equivalent electronic means.

## **ARTICLE II.3 – LIABILITY**

- II.3.1** The contractor shall be solely responsible for complying with any legal obligations incumbent on it.

- II.3.2** The contracting authority shall not be held liable for any damage caused or sustained by the contractor, including any damage caused by the contractor to third parties during or as a consequence of performance of the contract, except in the event of wilful misconduct or gross negligence on the part of the contracting authority.

- II.3.3** The contractor shall be held liable for any loss or damage sustained by the contracting authority in performance of the contract, including in the event of subcontracting, and for any claim by a third party, but only to an amount not exceeding three times the total amount of the contract. Nevertheless, 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 shall have unlimited liability for the amount of the damage or loss.

- II.3.4** The contractor shall indemnify and hold the Union harmless for all damages and costs incurred due to any claim. The contractor shall provide compensation in the event of any action, claim or proceeding brought against the contracting authority by a third party as a result of damage caused by the contractor during the performance of the contract. In the event of any action brought by a third party against the contracting authority in connection with the performance of the contract, including any alleged breach of intellectual property rights, the contractor shall assist the contracting authority. Such expenditure incurred by the contractor may be borne by the contracting authority.
- II.3.5** The contractor shall take out an insurance policy against risks and damage relating to the performance of the contract, if required by the relevant applicable legislation. It shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the contracting authority should it so request.

#### **ARTICLE II.4 - CONFLICT OF INTEREST**

- II.4.1** The contractor shall take all the necessary measures to prevent any situation of conflict of interest. Such situation arises where the impartial and objective performance of the contract is compromised for reasons involving economic interest, political or national affinity, family or emotional ties, or any other shared interest.
- II.4.2** Any situation constituting or likely to lead to a conflict of interest during the performance of the contract shall be notified to the contracting authority in writing without delay. The contractor shall immediately take all the necessary steps to rectify the situation. The contracting authority reserves the right to verify that the steps taken are appropriate and may require that additional steps be taken within a specified deadline.
- II.4.3** The contractor declares that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, when such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in so far as it serves as an incentive or reward relating to the performance of the contract.
- II.4.4** The contractor shall pass on all the relevant obligations in writing to its personnel and to any natural person with the power to represent it or take decisions on its behalf and ensure that it is not placed in a situation which could give rise to conflicts of interest. The contractor shall also pass on all the relevant obligations in writing to third parties involved in the performance of the contract including subcontractors.

#### **ARTICLE II.5 – CONFIDENTIALITY**

- II.5.1** The contracting authority and the contractor shall treat with confidentiality any information and documents, in any form, disclosed in writing or orally in relation to the performance of the contract and identified in writing as confidential.

The contractor shall:

- (a) not use confidential information and documents for any purpose other than fulfilling its obligations under the contract without prior written agreement of the contracting authority;
- (b) ensure the protection of such confidential information and documents with the same level of protection it uses to protect its own confidential information, but in no case any less than reasonable care;
- (c) not disclose directly or indirectly confidential information and documents to third parties without prior written agreement of the contracting authority.

**II.5.2** The confidentiality obligation set out in Article II.5.1 shall be binding on the contracting authority and the contractor during the performance of the contract and for five years starting from the date of the payment of the balance unless:

- (a) the disclosing party agrees to release the other party from the confidentiality obligation earlier;
- (b) the confidential information becomes public through other means than in breach of the confidentiality obligation, through disclosure by the party bound by that obligation;
- (c) the disclosure of the confidential information is required by law.

**II.5.3** The contractor shall 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, an undertaking that they will comply with the confidentiality obligation set out in Article II.5.1.

## **ARTICLE II.6 – PROCESSING OF PERSONAL DATA**

**II.6.1** Any personal data included in the contract shall be processed pursuant to Regulation (EC) 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 shall be processed by the data controller solely for the purposes of the performance, management and monitoring of the contract without prejudice to its possible transmission to the bodies charged with monitoring or inspection tasks in application of Union law.

**II.6.2** The contractor shall have 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.6.3** The contractor shall have right of recourse at any time to the European Data Protection Supervisor.

**II.6.4** Where the contract requires the processing of personal data by the contractor, 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 which may be processed, the recipients of the data and the means by which the data subject may exercise his rights.

**II.6.5** The contractor shall grant its personnel access to the data to the extent strictly necessary for the performance, management and monitoring of the contract.



**II.6.6** The contractor undertakes to adopt appropriate technical and organisational security measures having 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 input, 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.

## **ARTICLE II.7 – SUBCONTRACTING**

**II.7.1** The contractor shall not subcontract without prior written authorisation from the contracting authority nor cause the contract to be de facto performed by third parties.

**II.7.2** Even where the contracting authority authorises the contractor to subcontract to third parties, it shall nevertheless remain bound by its contractual obligations and shall be solely responsible for the proper performance of this contract.

**II.7.3** The contractor shall make sure that the subcontract does not affect rights and guarantees granted to the contracting authority by virtue of this contract, notably by Article II.18.

## **ARTICLE II.8 – AMENDMENTS**

**II.8.1** Any amendment to the contract shall be made in writing before fulfilment of any new contractual obligations and in any case before the date of payment of the balance.

**II.8.2** The amendment may not have the purpose or the effect of making changes to the contract which might call into question the decision awarding the contract or result in unequal treatment of tenderers.

## **ARTICLE II.9 – ASSIGNMENT**

**II.9.1** The contractor shall not assign the rights, including claims for payments, and obligations arising from the contract, in whole or in part, without prior written authorisation from the contracting authority.

**II.9.2** In the absence of such authorisation, or in the event of failure to observe the terms thereof, the assignment of rights or obligations by the contractor shall not be enforceable against the contracting authority and shall have no effect on it.

## **ARTICLE II.10 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS**

### **II.10.1 Definitions**

In this contract the following definitions apply:

(1) 'results' means any intended outcome of the performance of the contract which is delivered and finally accepted by the contracting authority.

(2) 'creator' means any natural person who contributed to the production of the result and includes personnel of the contracting authority or a third party.

(3) 'pre-existing rights' means any industrial and intellectual property rights, including background technology, which exist prior to the contracting authority or the contractor ordering them for the purpose of the contract execution and include rights of ownership and use by the contractor, the creator, the contracting authority and any third parties.

### **II.10.2 Ownership of the results**

The ownership of the results shall be fully and irrevocably acquired by the Union under this contract including any rights in any of the results listed in this contract, including copyright and other intellectual or industrial property rights, and all technological solutions and information contained therein, produced in performance of the contract. The contracting authority may exploit them as stipulated in this contract. All the rights shall be acquired by the Union from the moment the results are delivered by the contractor and accepted by the contracting authority. Such delivery and acceptance are deemed to constitute an effective assignment of rights from the contractor to the Union.

The payment of the price as set out in the order forms or specific contracts is deemed to include any fees payable to the contractor in relation to the acquisition of ownership of rights by the Union including all forms of use of the results.

The acquisition of ownership of rights by the Union under this contract covers all territories worldwide.

Any intermediary sub-result, raw data, intermediary analysis made available by the contractor cannot be used by the contracting authority without the written consent of the contractor, unless the contract explicitly provides for it to be treated as a self-contained result.

### **II.10.3 Licensing of pre-existing rights**

The Union shall not acquire ownership of the pre-existing rights.

The contractor shall license the pre-existing rights on a royalty-free, non-exclusive and irrevocable basis to the Union which may use the pre-existing right as foreseen in Article I.8.1 or in order forms or specific contracts. All the pre-existing rights shall be licensed to the Union from the moment the results were delivered and accepted by the contracting authority.

The licensing of pre-existing rights to the Union under this contract covers all territories worldwide and is valid for the whole duration of intellectual property rights protection.

#### **II.10.4 Modes of exploitation**

The Union shall acquire ownership of each of the results produced as an outcome of this contract which may be used for any of the following purposes:

- (a) giving access upon individual requests without the right to reproduce or exploit, as provided for by Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents;
- (b) storage of the original and copies made in accordance with this contract;
- (c) archiving in line with the document management rules applicable to the contracting authority.

#### **II.10.5 Identification and evidence of granting of pre-existing rights and rights of third parties**

When delivering the results, the contractor shall warrant that they are free of rights or claims from creators and third parties including in relation to pre-existing rights, for any use envisaged by the contracting authority. This does not concern the moral rights of natural persons.

The contractor shall establish to that effect a list of all pre-existing rights and rights of creators and third parties on the results of this contract or parts thereof. This list shall be provided no later than the date of delivery of the final results.

In the result the contractor shall clearly point out all quotations of existing textual works. The complete reference should include as appropriate: name of the author, title of the work, date and place of publication, date of creation, address of publication on internet, number, volume and other information which allows the origin to be easily identified.

Upon request by the contracting authority, the contractor shall provide evidence of ownership or rights to use all the listed pre-existing rights and rights of third parties except for the rights owned by the Union.

This evidence may refer, inter alia, to rights to: parts of other documents, images, graphs, tables, data, software, technical inventions, know-how etc. (delivered in paper, electronic or other form), IT development tools, routines, subroutines and/or other programs ("background technology"), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

The evidence shall include, as appropriate:

- (a) the name and version number of a software product;
- (b) the full identification of the work and its author, developer, creator, translator, data entry person, graphic designer, publisher, editor, photographer, producer;

- (c) a copy of the licence to use the product or of the agreement granting the relevant rights to the contractor or a reference to this licence;
- (d) a copy of the agreement or extract from the employment contract granting the relevant rights to the contractor where parts of the results were created by its personnel;
- (e) the text of the disclaimer notice if any.

Provision of evidence does not release the contractor from its responsibilities in case it is found that it does not hold the necessary rights, regardless of when and by whom this fact was revealed.

The contractor also warrants that it possesses the relevant rights or powers to execute the transfer and that it has paid or has verified payment of all due fees including fees due to collecting societies, related to the final results.

#### **II.10.6 Creators**

By delivering the results the contractor warrants that the creators undertake not to oppose that their names be recalled when the results are presented to the public and confirms that the results can be divulged. Names of authors shall be recalled on request in the manner communicated by the contractor to the contracting authority.

The contractor shall obtain the consent of creators regarding the granting of the relevant rights and be ready to provide documentary evidence upon request.

#### **II.10.7 Persons appearing in photographs or films**

If natural, recognisable persons appear in a result or their voice is recorded the contractor shall submit a statement of these persons (or of the persons exercising parental authority in case of minors) where they give their permission for the described use of their image or voice on request by the contracting authority. This does not apply to persons whose permission is not required in line with the law of the country where photographs were taken, films shot or audio records made.

#### **II.10.8 Copyright for pre-existing rights**

When the contractor retains pre-existing rights on parts of the results, reference shall be inserted to that effect when the result is used as set out in Article I.8.1 with the following disclaimer: © - year - European Union. All rights reserved. Certain parts are licensed under conditions to the EU.

#### **II.10.9 Visibility of Union funding and disclaimer**

When making use of the results, the contractor shall declare that they have been produced within a contract with the Union and that the opinions expressed are those of the contractor only and do not represent the contracting authority's official position. The contracting authority may waive this obligation in writing.

### **ARTICLE II.11 – FORCE MAJEURE**

**II.11.1** 'Force majeure' means any unforeseeable and exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations under the contract, which was not attributable to error or negligence on their part or on the part of subcontractors and which proves to be inevitable in spite of exercising due diligence. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a

relevant case of force majeure, as well as labour disputes, strikes or financial difficulties, cannot be invoked as force majeure.

**II.11.2** A party faced with force majeure shall formally notify the other party without delay, stating the nature, likely duration and foreseeable effects.

**II.11.3** The party faced with force majeure shall not be held in breach of its contractual obligations if it has been prevented from fulfilling them by force majeure. Where the contractor is unable to fulfil its contractual obligations owing to force majeure, it shall have the right to remuneration only for the tasks actually executed.

**II.11.4** The parties shall take all the necessary measures to limit any damage due to force majeure.

## **ARTICLE II.12 – LIQUIDATED DAMAGES**

The contracting authority may impose liquidated damages should the contractor fail to complete its contractual obligations, also with regard to the required quality level, according to the tender specifications.

Should the contractor fail to perform its contractual obligations within the time-limits set by the contract, then, without prejudice to the contractor's actual or potential liability or to the contracting authority's right to terminate the contract, the contracting authority may impose liquidated damages for each and every calendar day of delay according to the following formula:

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

$V$  is the amount specified in Article I.3.1;

$d$  is the duration specified in Article I.2.3 expressed in calendar days.

The contractor may submit arguments against this decision within 30 days of receipt of the formal notification. In the absence of a reaction on its part or of written withdrawal by the contracting authority within 30 days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable.

The parties expressly acknowledge and agree that any sums payable under this article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses incurred due to failure to fulfil obligations which may be reasonably anticipated.

## **ARTICLE II.13 – SUSPENSION OF THE PERFORMANCE OF THE CONTRACT**

### **II.13.1 Suspension by the contractor**

The contractor may suspend the performance of the contract or any part thereof if a case of force majeure makes such performance impossible or excessively difficult. The contractor shall inform the contracting authority about the suspension without delay, giving all the necessary reasons and details and the envisaged date for resuming the performance of the contract.

Once the circumstances allow resuming performance, the contractor shall inform the contracting authority immediately, unless the contracting authority has already terminated the contract.

### **II.13.2 Suspension by the contracting authority**

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

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

Suspension shall take effect on the day the contractor receives formal notification, or at a later date provided in the notification. The contracting authority shall give notice as soon as possible to the contractor to resume the service suspended or inform the contractor that it is proceeding with the termination of the contract. The contractor shall not be entitled to claim compensation on account of suspension of the contract or of part thereof.

## **ARTICLE II.14 – TERMINATION OF THE CONTRACT**

### **II.14.1 Grounds for termination**

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

- (a) if a change to the contractor's legal, financial, technical or organisational or ownership situation is likely to affect the performance of the contract substantially or calls into question the decision to award the contract;
- (b) if execution of the tasks has not actually commenced within three months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the contracting authority, taking into account Article II.8.2;
- (c) if the contractor does not perform the contract as established in the tender specifications or fails to fulfil another substantial contractual obligation;
- (d) in the event of force majeure notified in accordance with Article II.11 or if the performance of the contract has been suspended by the contractor as a result of force majeure, notified in accordance with Article II.13, where either resuming performance is impossible or the modifications to the contract might call into question the decision awarding the contract or result in unequal treatment of tenderers;
- (e) if the contractor is declared bankrupt, is being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (f) if the contractor or any natural person with the power to represent it or take decisions on its behalf has been found guilty of professional misconduct proven by any means;
- (g) if the contractor is not in compliance with its obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established or with those of the country of

the applicable law of this contract or those of the country where the contract is to be performed;

- (h) if the contracting authority has evidence that the contractor or natural persons with the power to represent it or take decisions on its behalf have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity detrimental to the Union's financial interests;
- (i) if the contracting authority has evidence that the contractor or natural persons with the power to represent it or take decisions on its behalf have committed substantial errors, irregularities or fraud in the award procedure or the performance of the contract, including in the event of submission of false information;
- (j) if the contractor is unable, through its own fault, to obtain any permit or licence required for performance of the contract.

#### **II.14.2 Procedure for termination**

When the contracting authority intends to terminate the contract it shall formally notify the contractor of its intention specifying the grounds thereof. The contracting authority shall invite the contractor to make any observations and, in the case of point (c) of Article II.14.1, to inform the contracting authority about the measures taken to continue the fulfilment of its contractual obligations, within 30 days from receipt of the notification.

If the contracting authority does not confirm acceptance of these observations by giving written approval within 30 days of receipt, the termination procedure shall proceed. In any case of termination the contracting authority shall formally notify the contractor about its decision to terminate the contract. In the cases referred to in points (a), (b), (c), (e), (g) and (j) of Article II.14.1 the formal notification shall specify the date on which the termination takes effect. In the cases referred to in points (d), (f), (h), and (i) of Article II.14.1 the termination shall take effect on the day following the date on which notification of termination is received by the contractor.

#### **II.14.3 Effects of termination**

In the event of termination, the contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the notification of termination, the contractor shall take all the appropriate measures to minimise costs, prevent damages, and cancel or reduce its commitments. The contractor shall have 60 days from the date of termination to draw up the documents required by the special conditions for the tasks already executed on the date of termination and produce an invoice if necessary. The contracting authority may recover any amounts paid under the contract.

The contracting authority may claim compensation for any damage suffered in the event of termination.

On termination the contracting authority may engage any other contractor to execute or complete the services. The contracting authority shall be entitled to claim from the contractor all extra costs incurred in this regard, without prejudice to any other rights or guarantees it may have under the contract.

## **ARTICLE II.15 – REPORTING AND PAYMENTS**

### **II.15.1 Date of payment**

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

### **II.15.2 Currency**

The contract shall be in euros.

Payments shall be executed in euros or in the local currency as provided for in Article I.5.

Conversion between the euro and another currency shall be made according to the daily euro exchange rate published in the *Official Journal of the European Union* or, failing that, at the monthly accounting exchange rate established by the European Commission and published on its website, applicable on the day on which the payment order is issued by the contracting authority.

### **II.15.3 Costs of transfer**

The costs of the transfer shall be borne in the following way:

- (a) costs of dispatch charged by the bank of the contracting authority shall be borne by the contracting authority,
- (b) cost of receipt charged by the bank of the contractor shall be borne by the contractor,
- (c) costs for repeated transfer caused by one of the parties shall be borne by the party causing repetition of the transfer.

### **II.15.4 Invoices and Value Added Tax**

Invoices shall contain the contractor's identification, the amount, the currency and the date, as well as the contract reference.

Invoices shall indicate the place of taxation of the contractor for value added tax (VAT) purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

The contracting authority is, as a rule, exempt from all taxes and duties, including VAT, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

The contractor shall accordingly 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 exemption.

### **II.15.5 Pre-financing and performance guarantees**

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

Performance guarantees shall cover performance of the service in accordance with the terms set out in the tender specifications until its final acceptance by the contracting authority. The amount of a performance guarantee shall not exceed the total price of the



contract. The guarantee shall provide that it remains in force until final acceptance. The contracting authority shall release the guarantee within a month following the date of final acceptance.

Where, in accordance with Article I.4, a financial guarantee is required for the payment of pre-financing, or as performance guarantee, it shall fulfill the following conditions:

- (a) the financial guarantee is provided by a bank or an approved financial institution or, at the request of the contractor and agreement by 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 cost of providing such guarantee shall be borne by the contractor.

### **II.15.6 Interim payments and payment of the balance**

The contractor shall submit an invoice for interim payment upon delivery of intermediary results, accompanied by a progress report or any other documents, as provided for in Article I.4 or in the tender specifications.

The contractor shall submit an invoice for payment of the balance within 60 days following the end of the period referred to in Article I.2.3, accompanied by a final progress report or any other documents provided for in Article I.4 or in the tender specifications.

Upon receipt, the contracting authority shall pay the amount due as interim or final payment within the periods specified in Article I.4, provided the invoice and documents have been approved and without prejudice to Article II.15.7. Approval of the invoice and documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

### **II.15.7 Suspension of the time allowed for payment**

The contracting authority may suspend the payment periods specified in Article I.4 at any time by notifying the contractor that its invoice cannot be processed, either because it does not comply with the provisions of the contract, or because the appropriate documents have not been produced.

The contracting authority shall inform the contractor in writing as soon as possible of any such suspension, giving the reasons for it.

Suspension shall take effect on the date the notification is sent by the contracting authority. The remaining payment period shall start to run again 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 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 and the new document produced is also rejected, the contracting authority reserves the right to terminate the contract in accordance with Article II.14.1(c).

**II.15.8. Interest on late payment**

On expiry of the payment periods specified in Article I.4, and without prejudice to Article II.15.7, the contractor 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 shall be the rate in force on the first day of the month in which the payment period ends, as published in the C series of the *Official Journal of the European Union*.

The suspension of the payment periods in accordance with Article II.15.7 may not be considered as a late payment.

Interest on late payment shall cover 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.15.1.

However, when the calculated interest is lower than or equal to EUR 200, it shall be paid to the contractor only upon request submitted within two months of receiving late payment.

**ARTICLE II.16 - REIMBURSEMENTS**

**II.16.1** Where provided by the special conditions or by the tender specifications, the contracting authority shall reimburse the expenses which are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets, or failing that, on production of copies or scanned originals, or on the basis of flat rates.

**II.16.2** Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.

**II.16.3** Travel expenses shall be reimbursed as follows:

- (a) travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
- (b) travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;
- (c) travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey and on the same day;

In addition, travel outside Union territory shall be reimbursed provided the contracting authority has given its prior written consent.

**II.16.4** Subsistence expenses shall be reimbursed on the basis of a daily subsistence allowance as follows:

- (a) for journeys of less than 200 km for a return trip, no subsistence allowance shall be payable;
- (b) daily subsistence allowance shall be payable only on receipt of supporting documents proving that the person concerned was present at the destination;

- (c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport which includes transport to and from the airport or station, insurance and sundries;
- (d) daily subsistence allowance shall be reimbursed at the flat rates specified in Article I.3;
- e) accommodation shall be reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Article I.3.

**II.16.5** The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the contracting authority has given prior written authorisation.

**II.16.6** Conversion between the euro and another currency shall be made as specified in Article II.15.2.

### **ARTICLE II.17 – RECOVERY**

**II.17.1** If an amount is to be recovered under the terms of the contract, the contractor shall repay the contracting authority the amount in question according to the terms and by the date specified in the debit note.

**II.17.2** If the obligation to pay the amount due is not honoured by the date set by the contracting authority in the debit note, the amount due shall bear interest at the rate indicated in Article II.15.8. Interest on late payments shall cover the period from the day following the due date for payment, up to and including the date when the contracting authority receives full payment of the amount owed.

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

**II.17.3** If payment has not been made by the due date, the contracting authority may, after informing the contractor in writing, recover the amounts due by offsetting them against any amounts owed to the contractor by the Union or by the European Atomic Energy Community or by calling in the financial guarantee, where provided for in Article I.4.

### **ARTICLE II.18 – CHECKS AND AUDITS**

**II.18.1** The contracting authority and the European Anti-Fraud Office may check or have an audit on the performance of the contract. It may be carried out either directly by its own staff or by any other outside body authorised to do so on its behalf.

Such checks and audits may be initiated during the performance of the contract and during a period of five years which starts running from the date of the payment of the balance.

The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the contracting authority. Audits shall be carried out on a confidential basis.

**II.18.2** The contractor shall keep all original documents stored on any appropriate medium, including digitised originals when they are authorised by national law and

under the conditions laid down therein, for a period of five years which starts running from the date of payment of the balance.

**II.18.3** The contractor shall allow 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 in order to conduct such checks and audits. The contractor shall ensure that the information is readily available at the moment of the check or audit and, if so requested, that information be handed over in an appropriate form.

**II.18.4** On the basis of the findings made during the audit, a provisional report shall be drawn up. It shall be sent to the contractor, which shall have 30 days following the date of receipt to submit observations. The final report shall be sent to the contractor within 60 days following the expiry of that deadline.

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

**II.18.5** By virtue of 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 1073/1999 of the European Parliament and the Council of 25 May 1999 concerning investigation conducted by the European Anti-Fraud Office (OLAF), the OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against fraud and other irregularities. Where appropriate, the findings may lead to recovery by the contracting authority.

**II.18.6** The Court of Auditors shall have the same rights as the contracting authority, notably right of access, for the purpose of checks and audits.