



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR JUSTICE, FREEDOM AND SECURITY
Directorate D: Fundamental Rights and Citizenship
The Acting Director

Brussels, 08/06/2009
JLS/D/4/EB/jd/D(2009)6002

Dear Sir/Madam,

Subject: Open invitation to tender **JLS/2009/D4/006**

1. The European Commission is planning to award a service contract for ***the evaluation of the impact of the EU instruments affecting children's rights with a view to assessing the level of protection and promotion of children's rights in the EU.***

For reasons of methodology and in order to ensure fair and consistent treatment of all the topics covered by the study, bids must be made for the whole study, not just part of it.

This invitation to tender follows the publication of:

- a prior information notice in OJ 2008/S 63-084363 of 1 April 2008, and
- a contract notice in OJ 2009/S 107-153956 of 06/06/2009.

2. If you are interested in this contract, you should submit a tender in quadruplicate (one original and three copies) in one of the official languages of the European Union.

Tenders may be:

- (a) either sent by registered post or by courier service not later than **22/07/2009** (the postmark or the receipt issued by the courier service serving as proof of the date of dispatch) to the following address:

European Commission
Directorate-General for Justice, Freedom and Security
Unit JLS/D/4 Financial support – Fundamental rights and citizenship
MO 59 01/068
B-1049 Brussels
Belgium

- (b) or delivered by hand to the **European Commission's central mail department** at the following address:

European Commission
Directorate-General for Justice, Freedom and Security
Unit JLS/D/4 Financial support for Fundamental rights and citizenship
MO 59 01/068
(Commission's central mail department)
Avenue du Bourget, 1
B-1140 Brussels (Evere)
Belgium

not later than **22/07/2009** at 16.00. *In this case, a **receipt** must be obtained as proof of submission, signed and dated by the official in the Commission's central mail department who took delivery.* The department is open from 08.00 to 17.00 Monday to Thursday, and from 08.00 to 16.00 on Fridays. It is closed on Saturdays, Sundays and Commission holidays.

3. Tenders must be placed inside **two sealed envelopes**. The **inner envelope** should be marked as follows:

Invitation to tender JLS/2009/D4/006 Tender submitted by (name of tenderer) <u>Not to be opened by the internal mail department</u>
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If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across this tape.

4. Tenders will be opened in public on **30/07/2009** at 10.30 at 46 Rue du Luxembourg, 1040 Brussels. Only one representative of each tenderer may attend the opening of the bids. The name and position of the person attending must be sent in writing, preferably by e-mail: **JLS-D4-CFT@ec.europa.eu**, or by fax: (+32.2.297.95.85), no later than the closing date for submission of tenders.
5. The specification, listing all the documents that must be produced in order to tender, and the tender forms and draft contract are attached.
6. Tenders must be signed by the tenderer or his duly authorised representative, be perfectly legible so that there can be no doubt as to words and figures, and be drawn up using the model reply forms in the specification.
7. Period of validity of the tender: six months as from the final date for submission of tenders mentioned under point 2 above.
8. Submission of a tender implies acceptance of the terms and conditions set out in this invitation to tender, in the specification and in the draft contract and, where appropriate, waiver of the tenderer's own general or specific terms and conditions. The bid submitted is binding on the tenderer to whom the contract is awarded for the duration of the contract.
9. Contacts between the contracting authority and tenderers are prohibited throughout the procedure save in exceptional circumstances and under the following conditions only:

Before the final date for submission of tenders:

- *At the request of the tenderer*, the contracting authority may provide additional information solely for the purpose of clarifying the nature of the contract.

Requests for additional information must be sent **in writing** not later than five working days before the closing date for submission of tenders to the following address:

Mr Renatas Mazeika
European Commission
MO 59 01/068
B-1049 Brussels
Belgium
Fax (+ 32 2) 297.95.85
E-mail: **JLS-D4-CFT@ec.europa.eu**

- The Commission may, *on its own initiative*, inform interested parties of any error, inaccuracy, omission or other clerical error in the text of the specification for the invitation to tender.

Any additional information including that referred to above will be sent simultaneously to all tenderers who have requested the specification in writing. Tenderers who have downloaded the documents from the Directorate-General for Justice, Freedom and Security (DG JLS) website at **http://ec.europa.eu/justice_home/funding/tenders/funding_calls_en.htm** are invited to consult the site regularly for any information and/or changes introduced after the initial documents were placed on the site.

After the opening of tenders:

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

10. This invitation to tender is in no way binding on the Commission. The Commission's contractual obligation commences only upon signature of the contract with the successful tenderer.
Up to the point of signature, the Commission may either abandon the procurement or cancel the award procedure without the tenderers being entitled to claim any compensation. Any such decision will be substantiated and brought to the attention of tenderers.
11. Tenderers will be informed whether or not their tenders have been accepted.
12. If your offer includes subcontracting, it is recommended that contractual arrangements with subcontractors include mediation as a method of dispute resolution.
13. Processing your reply to the invitation to tender will involve the recording and processing of personal data (such as your name, address and CV). Such data will be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Unless indicated otherwise, your replies to questions and any personal data requested are required to evaluate your tender in accordance with the specifications of the invitation to tender and will be processed solely for that purpose by the entity acting as data controller within DG JLS. You are entitled to obtain access to your personal data on request and to rectify any such data that is inaccurate or incomplete. If you have any queries concerning the processing of your personal data, you may address them to the entity acting as data controller within DG JLS. You have the right of recourse at any time to the European Data Protection Supervisor for matters relating to the processing of your personal data.
14. You are informed that for the purposes of safeguarding the financial interest of the Communities, your personal data may be transferred to the Internal Audit Service, to the European Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF).
Data of economic operators which are in one of the situations referred to in Articles 93, 94, 96(1)(b) and 96(2)(a) of the Financial Regulation¹ may be included in a central database and communicated to the designated persons of the Commission, other institutions, agencies, authorities and bodies mentioned in Article 95(1) and (2) of the Financial Regulation. This also refers to the persons with powers of representation, decision-making or control over the said economic operators. Any party entered into the database has the right to be informed of the data concerning him, upon request to the Accounting Officer of the Commission.

Yours faithfully,

Ernesto Bianchi

[signed]

¹ http://ec.europa.eu/budget/documents/financial_regulation_en.htm

SPECIFICATION FOR INVITATION TO TENDER JLS/2009/D4/006

Evaluation of the impact of the EU instruments affecting children's rights with a view to assessing the level of protection and promotion of children's rights in the EU.

TABLE OF CONTENTS

I	TECHNICAL SPECIFICATIONS
I.1	BACKGROUND
I.1.1	INTRODUCTION
I.1.2	EU ACTIONS IN THE FIELD OF PROTECTION AND PROMOTION OF THE RIGHTS OF THE CHILD
I.2	SUBJECT OF THE CONTRACT
I.2.1	PURPOSE OF THE EVALUATION
I.2.2	SCOPE AND LEVEL OF THE EVALUATION
I.2.3	DESCRIPTION OF TASKS
I.2.4	SOURCES OF INFORMATION
I.2.5	METHODOLOGY
I.3	MONITORING, REPORTS, TIMING
I.3.1	MONITORING OF THE EVALUATION
I.3.2	DOCUMENTATION TO BE PRODUCED AND TIMETABLE
I.3.3	MEETINGS WITH THE COMMISSION
I.3.4	INCEPTION REPORT
I.3.5	INTERIM REPORT
I.3.6	DRAFT FINAL REPORT
I.3.7	FINAL REPORT
I.4	DURATION OF PERFORMANCE
I.5	PLACE OF PERFORMANCE
I.6	ESTIMATE OF THE VOLUME OF THE CONTRACT
II	EXTRACT FROM THE TERMS OF THE CONTRACT
II.1	TERMS OF PAYMENT
II.2	PRE-FINANCING GUARANTEE
II.3	SUBCONTRACTING
II.4	LEGAL FORM TO BE TAKEN BY THE GROUPING OF SUPPLIERS, CONTRACTORS OR SERVICE PROVIDERS TO WHOM THE CONTRACT IS AWARDED (IF APPLICABLE)
III	FORM AND CONTENT OF THE TENDER
III.1	GENERAL
III.2	STRUCTURE OF THE TENDER
III.2.1	SECTION ONE: ADMINISTRATIVE INFORMATION AND DATA CONCERNING THE EXCLUSION AND SELECTION CRITERIA
III.2.2	SECTION TWO: TECHNICAL TENDER
III.2.3	SECTION THREE: FINANCIAL TENDER
IV	ASSESSMENT AND AWARD OF THE CONTRACT
IV.1	EXCLUSION CRITERIA
IV.1.1	EXCLUSION OF TENDERERS
IV.1.2	OTHER GROUNDS FOR EXCLUSION
IV.3.1	EVIDENCE TO BE PROVIDED BY THE TENDERERS
IV.2	ADMINISTRATIVE AND FINANCIAL PENALTIES
IV.3	SELECTION CRITERIA
IV.3.1	ECONOMIC AND FINANCIAL CAPACITY – MEANS OF PROOF REQUIRED
IV.3.2	TECHNICAL AND PROFESSIONAL CAPACITY – MEANS OF PROOF REQUIRED
IV.4	AWARD CRITERIA
IV.4.1	QUALITATIVE CRITERIA
IV.4.2	FINANCIAL CRITERIA
IV.5	INFORMATION FOR TENDERERS
V	ANNEXES
V.1	TENDERER IDENTIFICATION FORM
V.2	EXCLUSION CRITERIA FORM
V.3	SELECTION CRITERIA FORM
V.4	AWARD CRITERIA FORM
V.5	DRAFT CONTRACT

I. TECHNICAL SPECIFICATIONS

I.1 BACKGROUND

I.1.1 Introduction

Children, according to the definition of the 1989 UN Convention on the Rights of the Child (UNCRC), are all human beings below the age of 18 years, unless under the law applicable to the child majority is not attained earlier. They are vested with full range of rights, deriving primarily from their specific needs and evolving capacities. International protection of children's rights is rooted in the values and principles of the UNCRC, ratified by all EU Member States.

Children's rights form part of the human rights that the EU and the Member States are bound to respect under international and European treaties, in particular the above-mentioned UNCRC and its Optional Protocols², including also the Millennium Development Goals³ and the European Convention on Human Rights⁴ (ECHR). The UNCRC is therefore considered as an inseparable basis for the realisation of the objectives of the EU and its own values. Furthermore, the EU explicitly recognised children's rights in the European Charter of Fundamental Rights⁵, specifically in Article 24. When promoting and protecting children's rights the EU also has to take into account other key international and European legal human rights instruments, norms and standards as well as political commitments relevant to the promotion and protection of the rights of the child.

I.1.2 EU actions in the field of protection and promotion of the rights of the child

The Commission identified children's rights as one of its main priorities in its Communication on Strategic Objectives 2005-2009: *"A particular priority must be effective protection of the rights of children, both against economic exploitation and all forms of abuse, with the Union acting as a beacon to the rest of the world"*⁶. In this context, the Group of Commissioners on Fundamental Rights, Non-discrimination and Equal Opportunities decided in April 2005 to launch a specific initiative to advance the promotion, protection and fulfilment of children's rights in the internal and external policies of the EU. In March 2006, the European Council requested the Member States *"to take necessary measures to rapidly and significantly reduce child poverty, giving all children equal opportunities, regardless of their social background"*. On 4 July 2006, the European Commission adopted a cross-cutting Communication "Towards an EU Strategy on the Rights of the Child"⁷ in order to give effect to these decisions.

I.2 SUBJECT OF THE CONTRACT

I.2.1 Purpose of the evaluation

The evaluation should:

- Assess the impact of EU actions on children's rights;
- Assess the extent to which the Communication COM (2006)367 is contributing to promote the Rights of the Child within and outside the EU;
- Analyse national policies of the 27 Member States on children's rights.

² UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; UN Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

³ UN General Assembly, United Nations Millennium Declaration, Fifty-fifth session, 18 September 2000

⁴ Full text available at: <http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf>.

⁵ Charter of Fundamental Rights of the European Union, OJ C 364, 18.12.2000.

⁶ Strategic objectives 2005-2009. Europe 2010: A Partnership for European Renewal, Prosperity, Solidarity and Security - COM(2005) 12 final.

⁷ COM(2006) 367 final.

Next to the retrospective analysis of the results achieved, the contractor should also formulate first orientations for possible future initiatives in this field.

I.2.2 Scope and level of the evaluation

The evaluation should take overall stock of the different actions of the EU at international and European levels in the area of the Rights of the Child until June 2008. The evaluation should cover

- EU actions i.e. legislative actions, non-legislative actions (e.g. communication, green paper, reports, etc.), funding and significant case law of the European Court of Justice affecting children rights;
- Member States national policies on Children rights.

I.2.3 Description of tasks

Task 1

- **Identification of EU actions affecting children's rights**

The evaluation will address:

- EU actions affecting children's rights⁸;
- The case law of the European Court of Justice having a significant impact on children's rights;
- The EU funding available and spent for actions on children's rights.

Task 2

- **Assessment of the impact of the EU actions affecting children's rights**

The evaluation shall provide an overall assessment of the EU actions affecting children and indicate their positive or negative impact on children's rights. The contractor will also outline whether EU actions are relevant to the needs of children (inside and outside EU) and the extent to which EU actions are appropriately targeting violations of children's rights. The contractor will particularly take into account the extent to which the principle of the best interests of the child is applied.

Task 3

- **Assessment of the level of coherence between different EU actions affecting children's rights**

The evaluation shall identify coherences and synergies between EU actions and outline the incoherencies and/or possible duplications.

Task 4

- **Analysis of the links between EU actions and standards of other international organisations dealing with children's rights**

The contractor shall analyse the links and coherence between EU actions and standards of international instruments related to children's rights as well as activities of other international organisations active in the field of the rights of the child. Identification and analysis of the case law of the European Court of Human Rights having a significant impact on children's rights will also be provided.

⁸ For example: The Council Directive on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (89/552/EEC) (OJ L 298, 17.10.1989, p. 23) affects the children rights by introducing rules to protect the physical, mental and moral development of minors in programmes and in television advertising;

Task 5

- **Assessment of the level of achievement of objectives set in the Communication COM(2006) 367**

The evaluation shall provide information on the level of achievement of all the objectives set out in the Communication. The contractor shall particularly indicate the extent to which the Communication contributed to: the development of comparable data related to children's rights, better involvement of stakeholders in the development and implementation of EU actions and design of a communication strategy.

Task 6

- **Assessment of the Communication's contribution to the building of the EU Strategy on the Rights of the Child**

The evaluation shall assess the preliminary effects of the Communication COM (2006)367 at EU, international and Member States' level, outlining in particular which EU activities have been induced by the Communication. The contractor should also assess the EU added value of the actions affecting children's rights.

Task 7

- **Overall analysis of Member States' policies related to children's rights**

The evaluation should broadly analyse and present the main characteristics of national policies on children's rights in the 27 Member States (e.g. main priorities, institutions in charge, their power, legal and non legal instruments, funding programmes, development of significant case law, relationships with stakeholders). It will also provide indications on trends and developments in the recent years.

I.2.4 Sources of information

The contractor must consult and analyse the following sources of information (the list of documents is only indicative and not exhaustive)⁹ and all the other pertinent sources, including basic documents on funding instruments in order to ensure the highest quality of the evaluation.

Commission documents:

- Commission communication of 4 July 2006 - Towards an EU strategy on the rights of the child COM(2006) 367
- Commission staff working document accompanying the Communication from the Commission Towards an EU Strategy on the Rights of the Child – Preliminary inventory of EU actions affecting children's rights SEC(2006) 889
- Commission staff working document accompanying the Communication from the Commission Towards an EU Strategy on the Rights of the Child – Impact assessment SEC(2006) 888
- Communication from the Commission of 5.2.2008 - A Special Place for Children in EU External Action COM(2008) 55
- Commission staff working document of 5.2.2008 - The European Union's Action Plan on Children's Rights in External Action SEC(2008) 136
- Council Conclusions on the promotion and protection of the rights of the child in the European Union's external action - the development and humanitarian dimensions, 2870th EXTERNAL RELATIONS Council meeting Brussels, 26 and 27 May 2008

Documents from other Community institutions:

- Charter of Fundamental Rights of the European Union (2000/C 364/01)
- European Parliament resolution of 16 January 2008: Towards an EU strategy on the rights of the child (2007/2093(INI))

⁹ For source of EC and EU documents see EUR-lex database www.eur-lex.europa.eu and www.europa.eu

- Opinion Of The European Economic and Social Committee on the Communication from the Commission — Towards an EU Strategy on the Rights of the Child COM(2006) 367 final (2006/C 325/16)

Other documents:

- United Nations Convention on the Rights of the Child, 1989
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000
- The Universal Declaration of Human Rights, 1948
- Convention for the Protection of Human Rights and Fundamental Freedoms, 1950
- ILO Worst Forms of Child Labour Convention, 1999 (No. 182)
- United Nations Millennium Declaration, 2000
- United Nations Millennium Development Goals, 2001
- Concluding observations of the United Nations Committee on the Rights of the Child
- General Comments of the United Nations Committee on the Rights of the Child

I.2.5 Methodology

It is expected that the contractor will use its knowledge and experience to propose adequate methodology to carry out the evaluation. The proposed methodology will then be refined in the initial meeting between the selected contractor and the Commission. Tenderers should justify their choice of evaluation techniques and point out relative advantages and disadvantages.

A good balance of the evaluation tools should be proposed (basic data and information gathering, structured surveys, in-depth interviews with stakeholders, desk research, field research etc.). If the impact of different EU actions directly related to children's rights has been previously assessed by other evaluation, the contractor might use these secondary data if these data are convenient for the assessment of the particular task.

The tender should include a detailed presentation of the combination of tools which will be adopted in relation to each task including data requirements, and a precise timeframe for carrying out the evaluation.

I.3 MONITORING, REPORTS, TIMING

I.3.1 Monitoring of the evaluation

Responsibility and management of the evaluation are with the European Commission (Directorate General Justice, Freedom and Security). A Steering Group will be set up to monitor and follow the evaluation. The Steering Group will follow the complete evaluation process, assess and decide on acceptance/rejection of the different deliverables that the selected contractor will have to provide.

The Steering Group will also assess the quality of the work conducted by the evaluator and the overall quality of the report in accordance with the criteria set out by the evaluation quality assessment framework of the Commission¹⁰.

¹⁰ For further information on the quality assessment framework, see: http://ec.europa.eu/budget/documents/evaluation_en.htm#table-8_2

I.3.2 Documentation to be produced and timetable

Work will begin on the date on which the contract enters into force (i.e. the date of the signature by the last contracting party).

The evaluation carried out by the contractor in performance of this contract must be set out in the reports described below. All reports must be submitted in English.

The contractor should send six signed paper copies of the reports to the Commission at the address indicated in the contract. Each report must also be sent in electronic format (Microsoft Word for Windows) to the following e-mail address: JLS-CHILDREN-RIGHTS@EC.EUROPA.EU

At the meetings, the Steering Group will either inform the contractor that it accepts the draft reports or it will inform the contractor about its comments or requests for modifications.

Within the time limits specified below, the contractor must submit the inception, interim, draft final and final reports in a definitive form, taking full account of comments or requests for additions made by the Steering Group, either by following them precisely, or by explaining clearly why they were not introduced. However, the Steering Group can invite the contractor to further amend the reports until the Steering Group is satisfied.

The reports will be considered as accepted by the Commission if, within **2 weeks** after receipt of the reports, the Commission has not explicitly made its observations to the contractor.

I.3.3 Meetings with the Commission

The contractor is requested to attend the following meetings with the Steering Group at the Commission's premises in Brussels:

- a kick-off meeting – within 1 week following the signature of the contract;
- a meeting for the finalisation of the draft inception report - Within 2 weeks following receipt of the draft inception report;
- a meeting for the finalisation of the draft interim report - Within 2 weeks following receipt of the interim report; and
- a meeting for the finalisation of the draft final report - Within 3 weeks following receipt of the draft final report.

I.3.4 Inception Report

At the latest 3 weeks following the kick-off meeting, the draft inception report shall be submitted to the Commission with a detailed description of the methods which will be used during the evaluation as well as details concerning additional information necessary for all the tasks will be delivered.

It should detail how the methodology proposed by the contractor is going to be implemented in the light of an examination of the quality and appropriateness of existing data, and in particular how will the methodology address each evaluation task and provide a judgment.

Within 2 weeks after receiving the draft inception report, the contractor will be invited to the inception meeting with the Steering Group to present the draft inception report. At the meeting, the Steering Group will either inform the contractor that it accepts the draft inception report or inform him about its comments or requests for additions.

The contractor must submit the final inception report within 2 weeks following the inception meeting taking into account the comments or requests for additions made by the Steering Group.

I.3.5 Interim Report

A draft interim report shall be submitted to the Commission, at the latest 5 months after the date of signature of the contract. The contractor should provide the preliminary judgment on the tasks 1, 3, 5 and 7. The contractor may be in the position to provide preliminary assessment to the rest of the evaluation tasks.

Within 2 weeks after receiving the draft interim report, the contractor will be invited to the interim meeting with the Steering Group. At the meeting, the Steering Group will either inform the contractor that it accepts the draft interim report or make comments or requests for additions.

The contractor must submit the final interim report at the latest 2 weeks after the interim meeting taking into account the comments or requests for additions made by the Steering Group.

I.3.6 Draft final report

A draft final report, including a draft executive summary, shall be submitted, at the latest 10 months after the date of signature of the contract.

The draft final report must provide the judgments of the contractor in respect of the tasks of the terms of reference and must be clearly based on evidence generated through the evaluation. The contractor's assessments must be followed by clear and explicit conclusions. Where appropriate the results must be outlined, with a section of text explaining the situation and a section of systematic and summary tables. Summary tables covering all the EU actions must also be drawn up.

The draft final report should also contain recommendations for future actions developed on the basis of the conclusions reached by the contractor.

The structure of the draft final report should reflect its different uses and follow a broad classification into three parts:

Part 1 - Executive summary

This must provide in between five to ten pages, a synthesis of the main conclusions of the evaluation, the key items of evidence that underpin them, and the resulting recommendations for future actions.

Part 2 - Main report

The main report must present in full the results of the analyses, conclusions and orientations arising from the evaluation. It must also contain a description of the evaluated activities, the context of the evaluation, and the methodology used (with an analysis of the latter's strengths and weaknesses).

Part 3 - Technical annexes

These should collate the technical details of the evaluation, and must include at least the terms of reference, questionnaire templates, interview guides, any additional tables or graphics, the list of all the EU actions affecting children's rights and references and sources.

The draft final report will be subjected to a preliminary quality assessment that will verify the extent to which the draft final report respects the relevant criteria contained in the contracting authority's Evaluation standards (see: http://ec.europa.eu/budget/documents/evaluation_en.htm#table-8_2).

Within 3 weeks after receiving the draft final report, the contractor will be invited to the final meeting with the Steering Group to present the draft final report. At the meeting, the Steering Group will inform the contractor about its comments or requests for additions.

I.3.7 Final report

The final report and executive summary must be submitted at the latest 3 weeks after the final meeting with the Steering Group. The final report must be written in English. The executive summary must be written in English and French.

The final report will be considered as accepted by the Commission if, within 2 weeks after receipt thereof, the Commission has not explicitly made its observations to the contractor.

I.4 DURATION OF PERFORMANCE

The duration of the tasks shall not exceed **10 months** from signature of the contract.

I.5 PLACE OF PERFORMANCE

The tasks will be performed at the contractor's premises. However, meetings between the contractor and the Commission will be held on Commission premises in Brussels.

I.6 ESTIMATE OF THE VOLUME OF THE CONTRACT

The estimated budget is EUR 400,000. The estimated budget is indicated in line with the principles of sound financial management, and in particular of economy and value for money.

This is to enable tenderers to submit targeted bids that correspond more closely to the funds available and the needs of the contracting department.

The aim is to clarify the extent of the Commission's requirements and to contribute to transparency and free competition by making known and widely disseminating this information.

II. EXTRACT FROM THE TERMS OF THE CONTRACT

Tenders must be drawn up in accordance with the terms of the draft contract in Annex V.5.

Any limitation, amendment or refusal of the general terms of the contract in the terms of the bid will lead to automatic exclusion from the procurement procedure.

Up to the point of signature, the Commission may either abandon the procurement or cancel the award procedure without the tenderers being entitled to claim any compensation.

II.1 Terms of payment

Payments will be made in accordance with the arrangements laid down in the draft contract (Annex V.5).

II.2 Pre-financing guarantee

For any pre-financing higher than EUR 150,000, a financial guarantee equivalent to the amount of the pre-financing will be required.

Depending on the financial situation of the tenderer, the Commission may ask for a financial guarantee for amounts lower than EUR 150,000.

II.3 Subcontracting

If the tenderer intends to subcontract part of the work, he must indicate which part will be subcontracted and estimate the percentage of the total value of the contract accounted for by that part.

All subcontracting must be approved by the contracting authority, either by accepting the contractor's offer, or, if proposed by the contractor after signature of the contract, by an addendum to the contract. Such an addendum will only be agreed in exceptional circumstances, where subcontracting is judged by the contracting authority to be necessary to complete the project and does not lead to distortion of competition.

Tenderers must indicate clearly in their methodology which parts of the work will be subcontracted, and the identity of all subcontractors.

Tenderers must inform the subcontractors that Article II.17 of the standard service contract (Annex V.5) will apply to them. Once the contract has been signed, Article II.13 of the contract will govern the subcontracting.

II.4 Legal form to be taken by the grouping of suppliers, contractors or service providers to whom the contract is awarded (if applicable)

Groupings, irrespective of their legal form, may submit bids, provided the competition rules are observed. If such groupings (or consortia) do not have legal personality, they must specify which company or person is heading the project and must also submit a copy of the document authorising this company or person to submit a bid. If awarded, the contract will be signed by the company or the person heading the project, who will be, vis-à-vis the Commission, the only contracting party responsible for the performance of the contract.

Tenders from a consortium of firms or group of service providers must specify the role of each member of the consortium or group. Each member must provide all the documents necessary for assessing the bid as a whole with regard to the exclusion criteria, (all) the selection criteria and the award criteria.

III. FORM AND CONTENT OF THE TENDER

III.1 General

Tenders must be drafted in **one of the official languages** of the European Union.

Tenders must be clear and concise, with continuous page numbering, and assembled in a coherent fashion (e.g. bound or stapled, etc.). Since tenderers will be judged on the content of their bids, the latter must make it clear that they are able to meet the requirements of the specification.

III.2 Structure of the tender

All tenders must include **three sections**:

- Administrative information and data concerning the exclusion and selection criteria,
- A technical tender, and
- A financial tender.

III.2.1 Section One: Administrative information and data concerning the exclusion and selection criteria

(a) Administrative information

This section must provide the following information, using the standard forms attached (**Annex V.1**) or available via the **two internet links** given below.

- **Identification of the tenderer** (*Annex V.1*)

The tender must also include:

- proof of entry, as prescribed in the tenderer's country of establishment, in one of the **professional or trade registers** or a declaration or certificate;
- if the tenderer is a natural person, a copy of his identity card, passport or driving licence and proof that he is covered by a social security scheme as a self-employed person.

All tenderers (including subcontractors and the various members of a consortium or grouping) must complete and sign the identification form in Annex V.1 and also provide the above-mentioned documents.

However, subcontractors are not required to complete the form or provide the documents where the subcontracted services represent less than 30% of the contract.

- **Financial identification form**

A **bank identification form** filled in and signed by an authorised representative of the tenderer and his banker must be included with the bid. In the case of a grouping, the form must be provided by the company/person heading the project. A specific form for each Member State is available at the following Internet address:

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

- **Legal entities**

Tenderers must also attach the "legal entities" form, which must be filled in and signed by an authorised representative of the tenderer and accompanied by the documents referred to in the form. In the case of a grouping, the form must be provided by the company/person heading the project. A specific form for each Member State and for each legal form is available at the following Internet address:

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

Please note that we can accept only either original documents or certified copies, which must be less than 6 months old.

The Commission reserves the right to request, for evaluation or verification purposes and within a time-limit stipulated in its request, any other supporting document in relation to the bid submitted.

(b) Data concerning the exclusion and selection criteria

Tenderers should also attach the evidence referred to in IV.1.3 below as regards the exclusion criteria and the data referred to in IV.3.1 and IV.3.2 below as regards the assessment of the selection criteria.

III.2.2 Section Two: Technical tender

The technical tender is of essential importance in relation to the assessment of the bids, the award of the contract and the future performance of any resulting contract.

The attention of tenderers is drawn to the award criteria laid down in IV.4 below, which define those parts of the technical tender to which they should pay particular attention.

The technical tender should address all the points made in the specification and should include technical solutions to the problems raised in the technical specifications set out in section I of the specification. **The level of detail of the tender will be extremely important for the evaluation of the tender.**

The Commission will be in a position to make a proper assessment of the tenders on the basis of the above qualitative criteria only if they contain full particulars relating to all the aspects of this specification. Lack of detail and vague and perfunctory information will be penalised.

Simply repeating the guidelines given in the specifications of this invitation to tender without going into detail or expanding on them will result in a very poor mark. Furthermore, if any essential parts of the specifications are not expressly covered by the tender, the Commission may decide to give a zero mark for the relevant qualitative criteria.

III.2.3 Section Three: Financial tender

All tenders must contain a financial bid. Tenderers' attention is drawn to the following points:

- Prices must be quoted in **euro**, including for countries which are not part of the euro area. In the latter case, the price quoted may not be revised in line with exchange-rate movements. It is for the tenderer to select an exchange rate and assume the risks or the benefits deriving from any variation.
- The price quoted must be **fixed, not subject to revision and must include all expenses**, including any travel and subsistence expenses.
- **Prices should be quoted free of all duties, taxes and other charges, i.e. also free of VAT**, as the Communities are exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 (OJ L 152, 13.7.1967). Exemption is granted to the Commission by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption. For those countries where national legislation provides an exemption by means of a reimbursement, the amount of VAT must be shown separately. If tenderers have doubts about the applicable VAT system, it is their responsibility to contact the national authorities in order to obtain clarification on the European Community's exemption from VAT.

IV. ASSESSMENT AND AWARD OF THE CONTRACT

The assessment will be based on each tenderer's bid.

All the information will be assessed in the light of the criteria set out in this specification. The procedure for the award of the contract, which will concern only admissible bids, will be carried out in three successive stages.

The respective purpose of each stage is:

- (1) to check, on the basis of the exclusion criteria, whether tenderers can take part in the tendering procedure;
- (2) to check, on the basis of the selection criteria, the technical and professional capacity and economic and financial capacity of each tenderer;
- (3) to assess, on the basis of the award criteria, each bid which has passed the exclusion and selection stages.

IV.1 Exclusion criteria

IV.1.1 *Exclusion of tenderers*

Tenderers are excluded from participation in a procurement procedure if:

- (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata;
- (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- (e) they have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (f) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

IV.1.2 *Other grounds for exclusion*

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

- (1) Are subject to a conflict of interests.

Tenderers must declare:

- that they do not have any conflict of interests in connection with the contract; a conflict of interests could arise in particular as a result of economic interests, political or national affinities, family or emotional ties, or any other relevant connection or shared interest;

- that they will inform the contracting authority, without delay, of any situation constituting a conflict of interests or which could give rise to a conflict of interests;
- that they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;
- that they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to the award of the contract.

The Commission reserves the right to check the above information.

- (2) Are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information.

IV.1.3 Evidence to be provided by the tenderers

When submitting their bids, each tenderer (including subcontractors responsible for performing more than 30% of the contract and all members of a consortium or grouping) must provide a declaration on their honour (**Annex V.2**), duly signed and dated, stating that they are not in one of the situations mentioned at IV.1.1 and IV.1.2 above.

The tenderer to whom the contract is to be awarded (including subcontractors responsible for performing more than 30% of the contract and all members of a consortium or grouping) must provide, within 14 calendar days of notification of the results of the procurement procedure and before the signature of the contract, the following evidence, confirming the declaration referred to above. The Commission accepts, as satisfactory evidence:

1. that the tenderer is not in one of the situations described at IV.1.1 (a), (b) or (e), production of a recent extract from the judicial record or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied;
2. that the tenderer is not in the situation described at IV.1.1 (d), a recent certificate issued by the competent authority of the Member State concerned.

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

The documents referred to above will relate to legal and natural persons including, if applicable, company directors or any person with powers of representation, decision-making or control in relation to the tenderer.

However, the Commission reserves the right to request, within a time-limit stipulated in its request, any other supporting document in relation to the bid submitted for evaluation or verification purposes.

Remark:

Tenderers will be exempted from the requirement to submit the documentary evidence mentioned above if such evidence has already been submitted for the purposes of another procurement procedure launched by the Directorate-General for Justice, Freedom and Security provided that the documents are not more than one year old starting from their issuing date and that they are still valid. In this case, tenderers should specify in their bid the reference of the invitation to tender for which the documents were provided.

IV.2 Administrative and financial penalties

Without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have been guilty of making false declarations or have been found to have seriously failed to

meet their contractual obligations in an earlier procedure may be excluded from all contracts and grants financed by the Community budget and may also be subject to administrative or financial penalties in accordance with Article 134b of Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007 amending Regulation (EC, Euratom) No 2342/2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities¹¹.

IV.3 Selection criteria (*Annex V.3*)

The selection criteria are designed primarily to evaluate the tenderers' ability to perform the work, and in particular their know-how, efficiency, experience and reliability.

In other words, besides the **economic and financial capacity** to deal with the financial flows resulting from the performance of the work under the contract and to continue to perform the work during the entire contract period, **tenderers must demonstrate their technical and professional capacity**.

Tenderers who do not on their own fulfil the minimum requirements for participating in the procedure for awarding a contract may *refer to the capacities of third parties whom they intend to call upon if they are awarded the contract*. If, in order to demonstrate its financial, economic and technical capacity with a view to being allowed to participate in a tender procedure, a company refers to the capacity of organisations or businesses to which it is directly or indirectly linked, regardless of the legal nature of the links, *it must show that it does effectively have at its disposal the resources of these organisations or businesses that do not actually belong to it and that are essential to the performance of the contract*.

It is in this part of the bid that tenderers must include details of experience, expertise, professional references, human, technical or other resources necessary to perform the contract and the CVs of the person or persons directly involved in the contract, etc., so as to avoid confusion between the selection criteria and award criteria.

It is important to distinguish between the selection and the award criteria. Technical capacity will be assessed in the selection phase. In the award phase, only the composition and organisational arrangements of the team specifically proposed to perform the contract, together with the involvement of senior and junior staff in it, will be assessed.

For this evaluation, technical and professional capacity will be assessed on the basis of the following criteria:

Each individual team member responsible for carrying out work other than clerical or managerial tasks must have:

- a) a university degree (*at least Master level*) or equivalent, in economics, law, statistics, sociology or similar;
- b) at least ten years of professional experience in the field covered by the study for "senior staff";
- c) at least three years of professional experience in the field covered by the study for "junior staff".

The selection criteria to be satisfied **jointly** by the members of the team are as follows:

- a) Experience in studying and analysing programmes and policies related to fundamental and children's rights.
- b) Experience of evaluation methods, including the theoretical and empirical aspects.
- b) Managerial and technical ability and qualifications of staff. This includes the ability to work in all of the languages required for the evaluation.
- d) Proven knowledge of the main subjects covered by the study.
- e) The measures they will have in place to ensure the quality of the work.

¹¹ http://ec.europa.eu/budget/documents/financial_regulation_en.htm

If several service providers/subcontractors are involved in the bid, they must **jointly** have the professional and technical capacity to perform the tasks assigned to them.

IV.3.1 *Economic and financial capacity – means of proof required*

Tenderers must provide proof of their financial capacity by means of the documents listed below, which should be attached to the bid (Annex V.3).

This rule applies to all service providers once they have chosen to be tenderers, regardless of the percentage of tasks they intend to execute. However, if the tender includes subcontractors whose work represents less than 30% of the contract, those subcontractors are not obliged to provide evidence of their economic and financial capacity.

1. Overall turnover for the last three financial years.
2. Specific turnover for the last three financial years in the area that is the subject of this contract.
3. Balance sheets or extracts from balance sheets for at least the last two financial years for which accounts have been closed, where publication of the balance sheet is required under the company law of the country in which the economic operator is established.

If there is a valid reason for the tenderer's being unable to provide one or other of the above-mentioned documents, he may demonstrate his capacity by any other documents the Commission considers appropriate.

IV.3.2 *Technical and professional capacity – means of proof required*

Tenderers must provide proof of their technical and professional capacity by means of the documents listed below, which should be attached to the bid (Annex V.3).

1. The educational and professional qualifications of those who would be directly involved in performing the contract (including any subcontractors).
Tenderers should provide with their offer a detailed curriculum vitae for each person responsible for carrying out the work, including his educational background, degrees and diplomas, professional experience, research work, publications and language skills.
The CVs should preferably be set out in accordance with the Commission Recommendation on a common European format for curricula vitae, published in OJ L 79 of 22 March 2002, p. 66.
2. A list of the principal services of the same type provided in the past five years, with the sums, dates and recipients, whether public or private, of the services provided, together with certificates issued or countersigned by public authorities or by private clients or, failing this, simply declared by the service provider to have been effected.
3. A description of the measures taken by the service provider to ensure the quality and continuity of the services provided.

If there is a valid reason for the tenderer's being unable to provide one or other of the above-mentioned documents, he may demonstrate his capacity by any other documents the Commission considers appropriate.

IV.4 *Award criteria (Annex V.4)*

The contract will be awarded to the tenderer who submits the tender providing the best value for money, as assessed on the basis of the following criteria.

IV.4.1 *Qualitative criteria*

The qualitative criteria will be weighted as set out below. Tenders that **do not receive at least 70 points in total**, or the minimum number of points required for each of the criteria and sub-criteria listed below, will be eliminated in each case and will not be analysed subsequently on the basis of the financial criteria.

The quality of the tender will be awarded a score out of 100. The qualitative criteria will be weighted as follows:

- understanding of the objectives of the contract and the work to be carried out (*at least 15 points out of 25*);
- quality of the proposed methodology for carrying out the analysis (*at least 24 points out of 35*);
- organisational aspects of the team, in relation to the tasks to be carried out Here you should give details, *using the form in Annex V.4*, of the composition of the proposed team (total number of people directly involved in working on the study, number of days for each task, each person/grade/level of experience), including the level of direct participation by experienced (*senior*) staff within the company, but only for the purpose of the requested service (*at least 12 points out of 20*);
- match between the work program and timetable for the tasks to carry out (*at least 14 points out of 20*).

Tenderers' attention is drawn to the fact that the Commission will be in a position to make a proper assessment of the tenders on the basis of the above qualitative criteria only if they contain full particulars relating to all aspects of this specification. Lack of detail and vague and perfunctory information will be penalised.

As the tenders will be evaluated on the basis of the quality of the services proposed, they should fully explore all the points included in this specification so as to obtain the best possible mark.

Simply repeating the guidelines given in the specification of this invitation to tender without going into detail or expanding on them will result in a very poor mark.

Furthermore, if any essential points of this specification are not expressly covered by the tender, the Commission may decide to give a zero mark for the relevant quality award criteria.

IV.4.2 Financial criteria

The contract will be awarded to the tender which offers the **best value for money**.

The evaluation will be made by awarding each tender a number of points calculated as follows:

$$\frac{\text{Number of "quality" points} * 100}{\text{Price of the tender}}$$

The tender receiving the highest ratio at the end of the evaluation will be considered the best value for money.

IV.5 Information for tenderers

The Commission will inform tenderers of decisions reached concerning the award of the contract, including the grounds for any decision not to award a contract or to recommence the procedure.

If so requested in writing, the Commission will inform all rejected tenderers of the reasons for their rejection, and all tenderers submitting an admissible tender of the characteristics and relative advantages of the selected tender and the name of the successful tenderer.

However, certain information may be withheld where its release would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

V. ANNEXES

- V.1 TENDERER IDENTIFICATION FORM
- V.2 EXCLUSION CRITERIA FORM
- V.3 SELECTION CRITERIA FORM
- V.4 AWARD CRITERIA FORM
- V.5 DRAFT CONTRACT

TENDERER IDENTIFICATION FORM**Invitation to tender JLS/2009/D4/006**

(to be completed by the tenderer and, where appropriate, by the members of any consortium/grouping and any subcontractors responsible for performing at least 30% of the contract)

Company name (legal name in full) Short name (where appropriate): Legal form:	ADDRESS OF HEAD OFFICE Street: No: Post code: City: Country:
Name and position of representative authorised to act on behalf of the company:	Telephone
	Fax
	E-mail
Name and position of contact person for this invitation to tender:	Telephone
	Fax
	E-mail
Date: Name and position of the legal representative:	Signature (of the legal representative):

The following must be attached to this form:

- proof of entry, as prescribed in the tenderer's country of establishment, in one of the **professional or trade registers** or a declaration or certificate;
- if the tenderer is a natural person, a copy of his identity card, passport or driving licence and proof that he is covered by a social security scheme as a self-employed person.

Exclusion criteria form (Invitation to tender JLS/2009/D4/006)
Declaration to be signed by the tenderer and, where appropriate, by the members of any consortium/grouping and/or any subcontractors

**Declaration of honour
with respect to
the Exclusion Criteria and absence of conflict of interest**

The undersigned [*name of the signatory of this form, to be completed*]:

- ☐ in his/her own name (*if the economic operator is a natural person or in case of own declaration of a director or person with powers of representation, decision making or control over the economic operator¹*)
- or
- ☐ representing (*if the economic operator is a legal person*)

official name in full (*only for legal person*):

official legal form (*only for legal person*):

official address in full:

VAT registration number:

declares that the company or organisation that he/she represents / he/she:

- a) is not bankrupt or being wound up, is not having its affairs administered by the courts, has not entered into an arrangement with creditors, has not suspended business activities, is not the subject of proceedings concerning those matters, and is not in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) has not been convicted of an offence concerning professional conduct by a judgment which has the force of *res judicata*;
- c) has not been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
- d) has fulfilled all its obligations relating to the payment of social security contributions and the payment of taxes in accordance with the legal provisions of the country in which it is established, with those of the country of the contracting authority and those of the country where the contract is to be carried out;
- e) has not been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;

¹ To be used depending on the national legislation of the country in which the candidate or tenderer is established and where considered necessary by the contracting authority (see art. 134(4) of the Implementing Rules).

- f) is not a subject of the administrative penalty for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or failing to supply an information, or being declared to be in serious breach of his obligation under contract covered by the budget.

In addition, the undersigned declares on their honour:

- g) they have no conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties or any other relevant connection or shared interest;
- h) they will inform the contracting authority, without delay, of any situation considered a conflict of interest or which could give rise to a conflict of interest;
- i) they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;
- j) they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to award of the contract.
- k) that the information provided to the Commission within the context of this invitation to tender is accurate, sincere and complete.
- l) that in case of award of contract, they shall provide the evidence that they are not in any of the situations described in points a, b, d, e above².

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

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

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

By signing this form, the undersigned acknowledges that they have been acquainted with the administrative and financial penalties described under art 133 and 134 b of the Implementing Rules (Commission Regulation 2342/2002 of 23/12/02), which may be applied if any of the declarations or information provided prove to be false.

Full name Date Signature

² Mandatory for contracts of value above €133 000 only (see art. 134(2) of the Implementing Rules). The contracting authority can nevertheless request such evidence for contracts with a lower value.

SELECTION CRITERIA FORM
Invitation to tender JLS/2009/D4/006

	YEAR N (euro)	YEAR N -1 (euro)	YEAR N -2 (euro)
OVERALL TURNOVER			
SPECIFIC TURNOVER IN THE AREA THAT IS THE SUBJECT OF THE STUDY			

All the documents required under IV.3.1 and IV.3.2 must be attached to this form. They are:

- Balance sheets or extracts from balance sheets for at least the last two financial years for which accounts have been closed, where publication of the balance sheet is required under the company law of the country in which the economic operator is established.
If there is a valid reason for the tenderer's being unable to provide these documents, he may demonstrate his capacity by any other documents the Commission considers appropriate.
- The educational and professional qualifications of those who would be directly involved in performing the contract (including any subcontractors).
Tenderers should provide with their offer a detailed curriculum vitae for each person responsible for carrying out the work, including his educational background, degrees and diplomas, professional experience, research work, publications and language skills.
The CVs should preferably be set out in accordance with the Commission Recommendation on a common European format for curricula vitae, published in OJ L 79 of 22 March 2002, p. 66.
- A list of the principal services of the same type provided in the past five years, with the sums, dates and recipients, whether public or private, of the services provided, together with certificates issued or countersigned by public authorities or by private clients or, failing this, simply declared by the service provider to have been effected.
- A description of the measures taken by the service provider to ensure the quality and continuity of the services provided.

These documents should enable the Commission to assess the technical and professional capacity of tenderers in the light of the requirements set out at IV.3 with respect to the study covered by this tendering procedure.

(N.B.: **Tenderers who do not on their own fulfil the minimum requirements** for participating in the procedure for awarding a contract may refer to the capacities of third parties whom they intend to call upon if they are awarded the contract. If, in order to demonstrate its financial, economic and technical capacity with a view to being allowed to participate in a tender procedure, a company refers to the capacity of organisations or businesses to which it is directly or indirectly linked, regardless of the legal nature of the links, it must show that it does effectively have at its disposal the resources of these organisations or businesses that do not actually belong to it and that are essential to the performance of the contract.

AWARD CRITERIA FORM
Invitation to tender JLS/2009/D4/006

RESOURCES	Service providers Name of tenderer and, where applicable, names of partners or subcontractors which will perform this task	Level of expertise Senior or junior	Task: e.g. project management	Task : (complete)	Task : (complete)	Task : (complete)	Task : (complete)	Task : (complete)	Add as many columns as necessary for your methodology	TOTAL	
			Number of days	Number of days	Number of days	Number of days	Number of days	Number of days	Number of days	Number of days	Number of days
1											EUR
2											EUR
3, etc.											EUR
TOTAL SENIOR STAFF (persons/days)											EUR
1											EUR
2											EUR
3, etc.											EUR
TOTAL JUNIOR STAFF (persons/days)											EUR
A. OVERALL STAFF TOTAL (PERSONS/DAYS)											EUR
B. TRAVEL AND SUBSISTENCE											EUR
C. OTHER COSTS											EUR

Financial bid: FIXED PRICE, NOT SUBJECT TO REVISION AND INCLUSIVE OF ALL EXPENSES: EUR

DRAFT SERVICE CONTRACT

CONTRACT NO JLS/2009/D4/006 – **N° ABAC**

The European Community (hereinafter referred to as "the Community"), represented by the Commission of the European Communities (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this contract by **Mr Ernesto Bianchi**, Acting Director for Fundamental Rights and Citizenship in the Directorate-General for Justice, Freedom and Security (JLS),

of the one part,

and

[official name in full]

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

[*statutory registration number*] (Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.)

[official address in full]

[*VAT registration number*]

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

of the other part,

HAVE AGREED

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

Annex I – Tender Specification (Invitation to tender JLS/2009/D4/006 of ...)

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

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

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

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

I - SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

- I.1.1.** The subject of the contract is an evaluation of the impact of the EU instruments affecting children's rights with a view to assessing the level of protection and promotion of children's rights in the EU.
- I.1.2.** The Contractor shall execute the tasks assigned to him in accordance with the Tender Specification (Annex I).

ARTICLE I.2 - DURATION

- I.2.1.** The Contract shall enter into force on the date on which it is signed by the last contracting party.
- I.2.2.** Execution of the tasks may under no circumstances begin before the date on which the Contract enters into force.
- I.2.3.** The duration of the tasks shall not exceed **9 months**. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from the date of entry into force of the Contract. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

ARTICLE I.3 – CONTRACT PRICE

The total fixed and non-revisable amount to be paid by the Commission under the Contract shall be **EUR ...** covering all tasks executed.

ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES

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

I.4.1. Pre-financing:

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

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

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

I.4.2. Interim payment:

Requests for interim payment shall be admissible if accompanied by:

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

provided that the report has been approved by the Commission.

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

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

I.4.3. Payment of the balance:

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

- the final report in accordance with the instructions laid down in Annex I;
- the relevant invoice;

provided that the report has been approved by the Commission.

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

Within 30 days of the date on which the report is approved by the Commission, payment of the balance corresponding to **EUR ...** and equal to 40% of the total amount referred to in Article I.3.1 shall be made.

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

ARTICLE I.5 - BANK ACCOUNT

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

Name of bank: **[complete]**

Address of branch in full: **[complete]**

Exact designation of account holder: **[complete]**

Full account number including codes: **[complete]**

IBAN code: **[complete]**

ARTICLE I.6 - GENERAL ADMINISTRATIVE PROVISIONS

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

For the Commission:

For technical questions:

European Commission
Directorate-General for Justice, Freedom and Security
Directorate D: Fundamental Rights and Citizenship
Unit JLS/D/1 Fundamental rights and protection of children
LX46 01/131
1040 Brussels, Belgium

For contractual or financial questions:

European Commission
Directorate-General for Justice, Freedom and Security (JLS)
Unit JLS/D/4 Financial support for Fundamental rights and citizenship
LX 46 08/053
B-1049 Brussels

For the Contractor:

Mr/ Ms [complete]

Position:

[Company name]

[Official address in full]

ARTICLE I.7- APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- I.7.1.** The Contract shall be governed by Community law complemented, where necessary, by the national substantive law of Belgium.
- I.7.2.** Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Brussels.

ARTICLE I.8 – DATA PROTECTION

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. It shall be processed solely for the purposes of the performance, management and follow-up of the Contract by entity acting as data controller within Directorate-General Justice, Freedom and Security (DG JLS) without prejudice to possible transmission to internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the Community. The Contractor shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to entity acting as data controller within DG JLS. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

ARTICLE I.9 – TERMINATION BY EITHER CONTRACTING PARTY

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

ARTICLE I.10 – CONTRACT CONCLUDED DURING STANDSTILL PERIOD

In case this Contract was signed by both the Commission and the Contractor before the expiry of 14 calendar days from the day after simultaneous dispatch of information about the award decisions and decisions to reject, this Contract shall be null and void.

II - GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

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

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

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Commission;
 - the Commission may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Commission any right arising from the contractual relationship between the Commission and the Contractor.
- II.1.7.** In the event of disruption resulting from the action of a member of the Contractor's staff working on Commission premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Commission shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff in accordance with this Article.
- II.1.8.** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the Commission. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.
- II.1.9.** Should the Contractor fail to perform his obligations under the Contract in accordance with the provisions laid down therein, the Commission may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the Commission may impose penalties or liquidated damages provided for in Article II.16.

ARTICLE II.2 – LIABILITY

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

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

ARTICLE II.3 - CONFLICT OF INTERESTS

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

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

- II.3.2.** The Contractor shall abstain from any contact likely to compromise his independence.
- II.3.3.** The Contractor declares:
- that he has not made and will not make any offer of any type whatsoever from which an advantage can be derived under the Contract,
 - that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the Contract.
- II.3.4.** The Contractor shall pass on all the relevant obligations in writing to his staff, board, and directors as well as to third parties involved in performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to the Commission should it so request.

ARTICLE II.4 – PAYMENTS

- II.4.1.** Pre-financing:

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

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

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

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

II.4.2. Interim payment:

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

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

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

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

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

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

II.4.3. Payment of the balance:

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

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

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

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

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

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

ARTICLE II.5 – GENERAL PROVISIONS CONCERNING PAYMENTS

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

The Commission shall notify the Contractor accordingly and set out the reasons for the suspension by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.4 shall begin to run again once the suspension has been lifted.

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

ARTICLE II.6 – RECOVERY

- II.6.1.** If total payments made exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by the Commission.
- II.6.2.** In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article II.5.3. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.
- II.6.3.** The Commission may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Communities that is certain, of a fixed amount and due. The Commission may also claim against the guarantee, where provided for.

ARTICLE II.7 - REIMBURSEMENTS

- II.7.1.** Where provided by the Special Conditions or by Annex I, the Commission shall reimburse the expenses which are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets.
- II.7.2.** Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.
- II.7.3.** Travel expenses shall be reimbursed as follows:

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

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

- a) for journeys of less than 200 km (return trip) no subsistence allowance shall be payable;
- b) daily subsistence allowance shall be payable only on receipt of a supporting document proving that the person concerned was present at the place of destination;
- c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including accommodation, meals, local transport, insurance and sundries;
- d) daily subsistence allowance, where applicable, shall be reimbursed at the rate specified in Article I.3.3.

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

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

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

ARTICLE II.9 – CONFIDENTIALITY

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

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

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

II.10.1. The Contractor shall authorise the Commission to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports. Where personal data is concerned, Article I.8 shall apply.

II.10.2. Unless otherwise provided by the Special Conditions, the Commission shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it

decides not to publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Commission.

- II.10.3.** Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Commission and shall mention the amount paid by the Community. It shall state that the opinions expressed are those of the Contractor only and do not represent the Commission's official position.
- II.10.4.** The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Commission has specifically given prior written authorisation to the contrary.

ARTICLE II. 11 – TAXATION

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

ARTICLE II.12 – FORCE MAJEURE

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

ARTICLE II.13 – SUBCONTRACTING

- II.13.1.** The Contractor shall not subcontract without prior written authorisation from the Commission nor cause the Contract to be performed in fact by third parties.
- II.13.2.** Even where the Commission authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Commission under the Contract and shall bear exclusive liability for proper performance of the Contract.

II.13.3. The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the Commission is entitled by virtue of the Contract, notably Article II.17.

ARTICLE II.14 – ASSIGNMENT

II.14.1. The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Commission.

II.14.2. In the absence of the authorisation referred to in 1 above, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Commission.

ARTICLE II.15 – TERMINATION BY THE COMMISSION

II.15.1. The Commission may terminate the Contract in the following circumstances:

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (c) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;
- (d) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (e) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
- (f) where the Contractor is in breach of his obligations under Article II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks has not actually commenced within three months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Commission;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

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

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

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

II.15.4. Consequences of termination:

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

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

On termination the Commission may engage any other contractor to complete the services. The Commission shall be entitled to claim from the Contractor all extra costs incurred in making good and completing the services, without prejudice to any other rights or guarantees it has under the Contract.

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

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

ARTICLE II.16 – LIQUIDATED DAMAGES

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

ARTICLE II.17 – CHECKS AND AUDITS

II.17.1. Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the European Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the

European Communities from signature of the Contract up to five years after payment of the balance.

II.17.2. The Commission or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance.

II.17.3. In addition, the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance.

ARTICLE II.18 – AMENDMENTS

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

ARTICLE II.19 – SUSPENSION OF THE CONTRACT

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

SIGNATURES

For the Contractor,
[company name/forename/surname/position]

For the Commission,

Ernesto Bianchi

*Acting Director for, Fundamental Rights and
Citizenship in the Directorate-General for
Justice, Freedom and Security*

signature[s]: _____

signature[s]: _____

Done at Brussels, [date]

Done at Brussels, [date]

In duplicate in English.