

TENDER SPECIFICATIONS

“Technical assessment of the expansion of the survey universe in the Second European Survey of Enterprises on New and Emerging Risks (ESENER-2)”

- SERVICE CONTRACT -

OPEN TENDER PROCEDURE
No. EUOSHA/2016/OP/D/SE/0019

(OJ No. S 236 of 07/12/2016, Tender No. 429411-2016)

TENDER DOCUMENTS ARE AVAILABLE FOR DOWNLOAD AT:

<https://osha.europa.eu/en/about-eu-osha/procurement>

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ENGLISH LANGUAGE ORIGINAL

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1. PURPOSE AND CONTEXT OF THE CONTRACT

1.1. *The European Agency for Safety and Health at Work*

Structure and function

The European Agency for Safety and Health at Work (EU-OSHA) is an agency of the European Union (EU) and one of the decentralised community bodies. Its role is to contribute to the improvement of working life in the EU by developing, analysing and disseminating information on occupational safety and health (OSH).

In its role as a reference point for OSH information, EU-OSHA commissions, collects, analyses, and publishes research and statistics on OSH risks. As a tripartite organisation, the Agency works closely with governments, employers' and workers' representatives in order to share good practice and reach workers and workplaces across Europe. EU-OSHA runs awareness-raising campaigns, such as the Healthy Workplaces Campaign, and also provides information on its [website](#), via its electronic newsletter [OSHmail](#), and in a range of printed publications.

EU-OSHA's vision is to be the European centre of excellence for OSH information, promoting a preventive culture to support the goal of making Europe's current and future workplaces safe, healthy and productive.

Aims and objectives

EU-OSHA has six priority areas in its 2014-2020 strategy:

- Priority Area 1: Anticipating change and new and emerging risks to occupational safety and health
- Priority Area 2: Facts and Figures
- Priority Area 3: Tools for OSH management
- Priority Area 4: Raising Awareness
- Priority Area 5: Networking knowledge
- Priority Area 6: Networking and communication

And in working towards these priorities, EU-OSHA aims to be:

- Pan-European: creating a common approach to OSH
- Relevant and responsive to user needs
- Reliable and transparent, providing accurate and unbiased information
- Tripartite: working with employers, employees and government, and
- Partnership- and network-based.

1.2. *Background specific to this contract*

In 2014 EU-OSHA ran the Second European Survey of Enterprises on New and Emerging Risks (ESENER-2)¹ with the aim of providing nationally comparable information on how workplaces across Europe manage health and safety. ESENER-2 is built upon the first wave of the survey, carried out in 2009, and, following recommendations from EU-OSHA's stakeholders, it has improved its quality by (a) expanding the coverage of topics and countries as well as increasing the national sample sizes by at least 50% with respect to that of ESENER-1, and by (b) having a greater coverage of establishment sizes and sectors. Similarly, and in order to increase response rates it was decided (c) to move from

¹ Information about ESENER, including publications and technical documentation, can be found at <http://esener.eu>

two respondents in ESENER-1 (manager and health and safety representatives) to just one in ESENER-2, “*the person who knows best about health and safety at the establishment*”.

This follow-up study focuses precisely on the decision to expand the coverage of establishment sizes and sectors and how it has impacted the overall quality of the survey. More specifically, the two changes on the survey universe implemented in ESENER-2 were the inclusion of:

- (1) **micro** establishments employing at least **five people** – in ESENER-1 the smallest establishments employed at least ten people -, and
- (2) establishments in **Agriculture, forestry and fishing** (NACE Rev. 2 Section A), meaning that establishments from almost all activity sectors (NACE Rev. 2 sections A to S) were covered by ESENER-2.

As described in the technical reports of ESENER-2², the decision to expand the survey universe posed a series of challenges, which were substantial given the survey’s coverage of 36 European countries – the European Member States (EU28) plus Albania, Iceland, the Former Yugoslav Republic of Macedonia (FYROM), Montenegro, Norway, Serbia, Switzerland and Turkey - and the fact that both the statistical unit and the unit of enquiry for the survey are establishments/local units rather than companies/enterprises.

One of the more challenging issues was the quality of the sampling registers. Even though in each country the best available address register for the purpose of ESENER-2 was selected, questions remain as to the comparable quality of such registers, particularly though not exclusively, when covering micro establishments and those in agriculture, forestry and fishing, as well as the public sector. Further to this, in many countries there are very limited or no official statistics on the size of the universe of establishments with five or more employees and, consequently, the figures had to be estimated for the sampling (definition of targets for each of the 28 cells of the sampling matrix) and the weighting of the results. Also, the cooperation rates fluctuated notably across business size classes and activity sectors, even though there were some country differences too.

Bearing these factors in mind, the work to be carried out under this contract should provide EU-OSHA with sound information to properly capture the extent of the issues that may have arisen with the expansion of the survey universe and help make a decision for future waves of the survey on the coverage of business size classes and/or activity sectors.

2. SUBJECT OF THE CONTRACT

2.1 *General purpose*

This call for tender invites bids for a technical assessment of the expansion of the survey universe of the ESENER-2 survey. Whereas the available technical reports already present an initial description of the main challenges faced during the planning and implementation of the survey, this contract aims to go beyond that and provide solid grounds for a final decision on the universe for future waves of the survey.

² ‘Technical report’ and ‘Quality report’, as well as further methodological details on ESENER-2 available at: https://oshwiki.eu/wiki/ESENER-2_Methodology

In carrying out the assessment, the contractor will principally draw on the methodological approach of ESENER-2, but will also look at ESENER-1, as well as other scientific sources, such as national surveys and Eurofound's³ European company surveys (<http://www.eurofound.europa.eu/surveys/european-company-surveys>).

As pointed out above, one of the principal challenges for cross-national establishment surveys is the lack of harmonized, high quality sampling frames for all countries. Though some private address providers⁴ offer sampling frames for most countries in Europe, often these are only available at the company rather than the establishment level. There are also issues with the coverage of certain types of establishments and while privately owned medium and large-sized enterprises are usually well covered, that is not necessarily the case when it comes to the public and social services sector and the smallest enterprises.

These issues, along with the availability of up-to-date statistics, the actual survey topic, the respondent definition and the survey mode, among others, led to the achieved response rates across countries, size classes and activity sectors, and should all be considered together in order to carry out an in-depth assessment that will:

- Help measure the impact of the expansion of the survey universe and assess how it may have affected the overall survey quality;
- Provide grounds for a sound decision on the universe for future waves of ESENER, bearing in mind stakeholder expectations and budget constraints;
- Propose mitigating actions that could be implemented towards reducing any negative impact on quality.
- Suggest more general methodological alternatives – beyond the survey universe - for future waves of ESENER.

Key aspects to be explored include, as suggested above:

- **Sampling:** the varying quality of business registers across countries; the main weaknesses when covering the smallest establishments and those in agriculture, forestry and fishing, as well as in the public sector; the complementing of official registers with commercial address suppliers (and how that worked for micro establishments and workplaces in agriculture, forestry and fishing, as well as in the public sector); the screening procedure for countries without registers at the establishment level.
- **Statistics:** the availability of accurate statistics across countries on the size of the universe of establishments with five or more employees and in agriculture, forestry and fishing, as well as in the public sector; national data on key ESENER-2 indicators that could be used as a benchmark.
- **Cooperation rates:** the variation of the cooperation and response rates across different size classes and sectors; the non-response and the impact on the robustness of the findings; the survey mode and the appropriateness of a CATI survey on this topic for the smallest establishments and those in agriculture, forestry and fishing.

Tenderers are invited to suggest additional topics, including proposals for future research on how to assess non-response and non-response bias.

In their offer, contractors will explain the main challenges of international business surveys and how they will suggest overcoming them in order to guarantee the reliability and robustness of the results.

³ The European Foundation for the Improvement of Living and Working Conditions (www.eurofound.europa.eu)

⁴ Such as Dun & Bradstreet or Bureau van Dijk

Findings should be relevant for all EU Member States and the EEA countries, and should have in mind, particularly, the example of the three countries that increased the national sample sizes (Slovenia, Spain and the United Kingdom). The report will assist EU-OSHA in its preparatory work for the next wave of ESENER helping ensure that the survey continues providing essential information to support policy makers at European and national level and a strong basis for debate on the key issues.

2.2 Description of the tasks to be performed

Task 1 – Project design

Objective

The contractor will draft a framework for analysis explaining the methodological approach to the technical assessment. In the initial phase of the project the analytical framework will contribute to the definition, together with EU-OSHA, of the core issues to be covered. In the final phase of the study, it will support the formulation of conclusions and decisions on the survey universe of future waves of ESENER.

The framework will cover the analysis of available information, the methodology to apply and the write-up and presentation of findings (charts and tables) etc. It will also include an introductory chapter that sets the scene, explaining the main issues regarding quality of business surveys, bearing in mind the specificities of ESENER, such as the topic, the target respondent, the unit of analysis and, most importantly, as explained above, the expansion of the survey universe in ESENER-2 to cover micro establishments employing at least five people and establishments in agriculture, forestry and fishing. Even though included in ESENER-1 already, public administration should be considered too.

The contractor may, in addition to statistical analyses and a revision of existing literature, use other research methods to complement the relevant information, such as interviews with relevant informants (face-to-face, by phone, post, email, online), focus groups with experts or workshops, among others. If included in their bid, contractors will make detailed proposals of these complementary approaches in their offer.

The analytical framework needs to be developed in a participatory fashion and it will be discussed, in particular the definition of the core issues to be covered in the technical assessment, with EU-OSHA during the kick-off phase of the project

Content

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|--|
| <ol style="list-style-type: none">1. Draw up a framework for analysis.2. Specify allocation of resources to the task giving details of staff seniority and number of work-days. |
|--|

Note

In their offer tenderers will suggest specific issues/topics to consider in the technical assessment and include them in their project design, such as the dimensions of survey quality and what they consider to be the characteristics of a high quality multi-country establishment survey like ESENER. .

Task 2 – Technical assessment

Objective

Following the methodology agreed as part of the project design under Task 1, the contractor will use researchers experienced in survey methodology to carry out the technical assessment of the main issues concerning the expansion of the survey universe in ESENER-2.

As pointed out in Task 1, the contractor will explain in detail the methodological approach to the assessment, describe the proposed techniques to be used, justifying their choice versus others, and give careful consideration to issues such as sampling, the quality of registers used, available statistics, response rates, overall survey quality, etc.

Content

1. Perform the relevant assessment bearing in mind the overall project objectives as described in section 2.1 above.
2. Specify allocation of resources to the task giving details of staff seniority and number of work-days.

Note

In their offer, tenderers will describe the specific issues/topics suggested for the technical assessment as well as, more generally, some of the challenges of the data processing and their ideas for overcoming them.

Task 3 – Reporting: conclusions and recommendations for future ESENER waves

Objective

There will be a general overview report presenting the main findings and conclusions of the project. This report will analyse and **discuss the implications** of the findings with reference to the objectives as described under section 2.1, above, identifying the aspects that should be considered for future waves of the survey in order to increase the overall quality of ESENER.

It will include an executive summary. The overview and the executive summary reports will have to accurately reflect the analyses performed on which the interpretation and main conclusions are based.

Content

1. General overview report.
2. Executive summary report.
3. Specify allocation of resources to the task giving details of staff seniority and number of work-days.

Note

In their offer, and bearing in mind the project objectives and EU-OSHA stakeholders, tenderers must make specific proposals concerning the visual presentation of the main findings and recommendations, such as infographics, PPTs or others.

2.3 Deliverables and timetable

The following reports will be required within the contract:

Month 1: Inception report

The inception report will describe in detail how the methodology proposed by the contractor will be implemented. This report will particularly take into account the discussions held during the kick-off meeting and provide a detail work plan and timetable for the study.

Month 4: Interim report

The interim report will present work progress, intermediary findings and indicative conclusions (if possible). It shall include:

- The tentative structure of the final report.
- A description of the overall approach of the assessment.
- Interim findings and indicative conclusions.
- Information on problems encountered, solutions found or proposed, and impact on further work.

The contractor will have to take into account relevant comments and suggestions and address them, liaising with EU-OSHA's project managers.

Month 8: Draft final report

A draft final report should be produced, covering all of the objectives and key questions described above. It will include:

- Executive summary with key findings, conclusions and recommendations for the universe of future waves of ESENER (approx. 6 pages).
- A comprehensive report presenting the approaches and main conclusions of the technical assessment (approx. 60 pages).
- Possibly, an annex with additional information (e.g. methodological details).
- A presentation of the main findings and recommendations.

The contractor will have to take into account relevant comments and suggestions and address them, liaising with EU-OSHA's project managers.

Month 10: Final report

The final output should be a technical assessment on the expansion of the survey universe in ESENER-2, meeting all of the objectives and key questions as outlined above. The contractor will have to take into account and address EU-OSHA comments and suggestions on the final report.

Assuming that the contract is signed in month X, the overall timetable is as follows:

	Deliverable
X + 10 days	Kick-off meeting
X + 1 month	Inception report
X + 4 months	Interim report
X + 8 months	Draft final report
X + 10 months	Final report

2.4 Budget

The maximum budget for this contract is €90,000. This includes all expenses.

2.5 *Project management*

In order to ensure efficient completion of the project and to be able to properly monitor, assess, and supervise the contractor's progress in execution of the tasks with respect to the tender specifications, EU-OSHA will designate a project manager. This person will be responsible for overall management of the contract, including resolution of high-level issues, monitoring of the coordination and project management, day-to-day administration of the contract, ensuring fulfilment of tasks and other contractual obligations, checking quality and approval of deliverables prior to authorising payment.

It is important that the project is properly managed and coordinated. Project coordination refers to the planning, monitoring and control of all aspects of a project and the motivation of all those involved in it, to achieve the project objectives on time and to the specified quality and performance. In order to do so, all parties involved in the contract will set up a management structure and specify a project manager whose main task is to manage the project effectively. The management structure is to ensure that effective methods for planning, communicating, and decision making are in place; that the project's progress is monitored and the work is performed on schedule; that deliverables and reports are delivered on time; and that the project objectives and outcomes are achieved. Among their tasks, the project manager should manage communication within the project and maintain contact with EU-OSHA concerning the project as a whole.

In their offer, tenderers must specify the allocation of project responsibilities that will allow effective management and efficient coordination of the services. This should include the allocation of resources to the different tasks, details of staff seniority and number of work-days as well as an organigram which details functions and the relationship between them. Furthermore, the offer must provide a Gantt chart giving details of the timetables for carrying out the services, submitting the deliverables etc.

Quality control

In addition to the specific requirements under the task description and deliverables section above, tenderers must include a quality control plan as part of their offer. The plan must describe measures and actions they will adopt to ensure a high level of quality with respect to:

- **Technical content** – information must be comprehensive, up to date, comparable, accurate, relevant to the specified topic, and at a level suitable for the specified target audience.
- **Language and presentation** – all deliverables must be in high quality English in a style suitable for the specified target audience and have a clear, logical and easy to follow structure.
- **Timeliness** – any problem that is likely to result in a departure from the agreed project schedule must be notified to EU-OSHA as soon as possible.
- **Contingency/back-up** – provisions must be in place to ensure that any unforeseen absence of key staff does not put the project objectives at risk or result in an unreasonable delay
- **Financial management** – invoices must be accurate and sent on time following, or coinciding with, submission of the necessary supporting documents (as specified in the service contract).

Persons responsible for the different quality control measures and actions should be identified in the plan.

All quality control requirements apply not only to the main contractor, but also to joint tenderers and subcontractors.

The proposed quality control plan will be revised at kick-off and a final version will be agreed with EU-OSHA. The document will be updated regularly by the contractor during the life of the project and in particular before project meetings. At the end of the project the contractor will deliver a quality control report clearly documenting how the plan was implemented.

Controls may be carried out by EU-OSHA staff or its representatives, including by external auditors, which may cover the main stages of data collection and also reporting. The contractor must keep all relevant documents for five years after project end.

Meetings

Project meetings

A kick-off meeting will be held with the contractor at premises of their choosing within one month following signature of the contract. In their offer tenderers should give details of any further meetings that are planned. During the course of the project, additional progress meetings may be held at the request of EU-OSHA or at the request of the contractor (subject to the approval of EU-OSHA) at premises of the contractor's choosing. Before calling a meeting, the contractor shall first explore the possibility of using tele- or video- conferencing as an alternative to face-to-face meetings.

In submitting prices, the tenderer must take account of costs for meetings and any other overheads relating to routine execution of the tasks (including kick-off and progress meetings). These costs cannot be charged as an additional item.

EU-OSHA will cover the costs associated with participation in meetings of its own staff or representatives.

Audits

In accordance with Article II.24 of the draft service contract, an audit of the contractor's compliance with its contractual obligations may be carried out by EU-OSHA at the end of the service contract.

Place of performance

The tasks are to be carried out at premises designated by the contractor and agreed by EU-OSHA.

3. TENDERING PROCESS

Submission of a tender implies acceptance by the tenderer of all the terms and conditions set out in this invitation to tender and annexes, including the specifications, draft contract and general terms and conditions. It also implies waiver of the tenderer's own general or specific terms and conditions. EU-OSHA's terms and conditions are binding on the tenderer to whom the contract is awarded, for the duration of the contract.

The tender must be presented clearly, legibly, and in a detailed and complete form, containing all the essential requirements laid down in the documents relating to the procurement procedure so that it can be properly assessed.

3.1 Participation in the tendering procedure

Participation in tendering procedures is open on equal terms to all natural and legal persons falling within the scope of the Treaties (this includes all economic operators registered in the EU and all EU citizens). Participation is also open to all natural and legal persons in any non-EU country which has an agreement with the European Union in the field of public procurement on the conditions laid down in that agreement. EU-OSHA's Financial Regulation⁵, guarantees participation for all tenderers on equal terms.

⁵ Available at: <https://osha.europa.eu/en/about-eu-osha/what-we-do/how-we-work/finance/>

This invitation to tender is in no way binding on EU-OSHA. EU-OSHA's contractual obligation commences only upon signature of the contract with the successful tenderer. Up to the point of signature, the contracting department may either withdraw from the contract or cancel the procurement procedure, without the candidates or tenderers being entitled to claim any compensation. This decision must be substantiated and the tenderers notified.

Confidentiality

All documents submitted by the tenderer become property of EU-OSHA and are deemed confidential. If processing your reply to the invitation to tender involves the recording and processing of personal data (such as your name, address and CV), such data will be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Unless indicated otherwise, your replies to the questions and any personal data requested are required to evaluate your tender in accordance with the specifications of the invitation to tender and will be processed solely for that purpose by EU-OSHA. Details concerning the processing of your personal data are available on the privacy statement (see Annex I - Privacy Statement on the protection of personal data in relation to procurement procedures⁶).

Your personal data may be registered in the Early Detection and Exclusion System (EDES) by the Accounting Officer of the Agency, should you be in one of the situations mentioned in the financial regulation 2015/1929 of 28 October 2015⁷.

Consortia

Joint tenders from consortia of service providers are permitted provided that conditions for adequate competition are observed. A consortium can be a permanent legally established grouping or a grouping which has been constituted for this tender procedure.

Using the form provided in Annex I, consortia must indicate which legal form they intend to assume and specify the role, qualifications and experience of each member of the group, as well as who has been appointed by the others as the lead partner. The lead partner shall be the contracting party with EU-OSHA and shall be responsible for the overall performance of the contract and management of the other members of the consortium.

Notwithstanding the above, all members of the consortium (i.e., the leader and all partners), are jointly and severally liable to EU-OSHA.

Subcontracting

Subcontracting is permitted subject to approval by EU-OSHA, but the contractor will retain full liability towards the EU-OSHA for performance of the contract as a whole. EU-OSHA may give approval either by accepting the tenderer's offer, or by prior written approval, if proposed by the tenderer after contract signature.

The tenderer must indicate clearly in their methodology which parts of the work will be sub-contracted and the identity of all subcontractors whose share of budget is above 10%. Full details of such subcontractors must also be provided in the form provided in Annex I. During contract execution, the change of any subcontractor identified in the tender will be subject to prior written approval of the Contracting Authority.

⁶ Available at : <https://osha.europa.eu/en/about-eu-osha/procurement>

⁷ See http://ec.europa.eu/budget/explained/management/protecting/protect_en.cfm

3.2 Communication

Any contact between the contracting department and the tenderer during the procedure is forbidden, save in exceptional circumstances and under the following conditions only:

- Before the closing date for submission of the tender, in respect of the documents relating to the call for tender, EU-OSHA may:
 - At the request of the tenderer: provide additional information solely for the purpose of clarifying the nature of the contract.
 - On its own initiative: if it discovers any error, inaccuracy, omission or any other clerical error in the text of the call for tenders, inform interested parties.
- After the tenders have been opened, if some clarification is required in connection with a tender, or if obvious clerical errors in the tender must be corrected, EU-OSHA may contact the tenderer, provided the terms of the tender are not modified as a result.

Requests for further information, made in accordance with the conditions described above, must be sent in writing by letter, fax or e-mail bearing the reference “Call for tender EUOSHA/2016/OP/D/SE/0019” to:

Prevention and Research Unit
European Agency for Safety and Health at Work
12 Santiago de Compostela
(Edificio Miribilla), 5th Floor
E-48003 Bilbao – Spain
Fax: (+34) 944 358 401
E-mail: procurement-PRU@osha.europa.eu

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

Any additional information, including that referred to above, will be made publicly available as part of a list of questions and answers that will be compiled and regularly updated on EU-OSHA’s website at: <https://osha.europa.eu/en/about-eu-osha/procurement>

The tenderer shall be informed of the decision taken with regard to the award of the tender.

3.3 Price

Financial proposals must not exceed the maximum budget indicated in these specifications (see 2.4).

The price quoted must be fixed and not subject to revision. The price tendered must be all-inclusive and expressed in euros⁸. Costs incurred in preparing and submitting tenders, or associated with attendance at tender opening sessions, are borne by the tenderers and cannot be reimbursed.

Costs incurred for any trips additional to those described in these specifications and made at the express request of EU-OSHA will be reimbursed in accordance with the arrangements laid down in Article I.4.3 of the draft contract (Annex II). Such expenses should not be included in the bid. All other costs involved

⁸ Tenderers in countries which are not in the euro zone may not revise the price quoted in line with exchange rate movements.

in the performance of the contract, such as those associated with planned meetings with EU-OSHA, shall be incorporated as part of the process given in the financial offer.

Tenders shall not include the application of any taxes or levies since EU-OSHA is, in general, exempt from all taxes and levies, including Value Added Tax (VAT), in accordance with Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

Bids will remain valid for six months from the deadline for receipt of tenders (see 3.7 below).

3.4 Payment terms

An interim payment of 40% and a final payment of 60% of the total value of the contract shall be made in accordance with Article I.5 of the draft service contract, Annex II.

The contractor will specify the number of the bank account into which payment will be made, in accordance with the terms of payment set out in the draft contract.

Invoices must show VAT separately.

3.5 Contractual framework

The contract concluded between EU-OSHA and the successful tenderer will be valid for a period of twelve months and will include all services described in Section 2. The tasks are required to be completed in accordance to point 2.3 of the tender specifications.

A draft contract is attached to these technical specifications (Annex II). In drawing up their bid, tenderers should bear in mind its provisions.

The bid will form an integral part of the contract, as will these tender specifications.

3.6 Documentation for tenderers

The necessary documents are available for download at <https://osha.europa.eu/en/about-eu-osha/procurement> or in paper form on request by writing to the address given in Section 3.2.

Written requests for tender documentation should reach EU-OSHA before **17.00 hours on 30 January 2017**.

In case of doubt over interpretation of tender documents, the original English language version prevails.

3.7 Submission of tenders

Tenders may be submitted by post or by courier not later than **6 February 2017**, in which case the evidence of the date of dispatch shall be constituted by the postmark or the date of the deposit slip. If a slow delivery method is chosen, such as normal or registered post, or 5+ days' courier delivery, tenderers are requested to inform EU-OSHA by e-mail or fax that the offer has been dispatched. The address to be used for submission is as specified in section 3.2 above.

Alternatively, tenders may be delivered by hand to EU-OSHA premises not later than 16.00 hours on **6 February 2017**. In this case, a receipt must be obtained as proof of submission, signed and dated by the department who takes delivery. Opening times are from 09.00 to 17.00 Monday to Friday. EU-OSHA is closed on Saturdays, Sundays and EU-OSHA holidays (26 December 2016 to 2 January 2017, both included, and 6 January 2017).

Tenders must be presented in a sealed envelope⁹ marked “*Open call for tender EUOSHA/2016/OP/D/SE/0019 – not to be opened by the internal mail department*”. The envelope must contain:

- Two signed copies of the financial offer in a sealed envelope marked “*Finacial*”.
- Two signed copies of the technical offer in a sealed envelope marked “*Technical*”.
- One copy of the administrative information and annexes in a sealed envelope marked “*Administrative*”.

Bids must be drawn up in one of the official languages of the EU¹⁰, but English is preferred.

3.8 Structure of tenders

Tenders must be presented with four clearly distinguished sections:

- Section I: Administrative information
- Section II: Technical offer
- Section III: Financial offer
- Section IV: Annexes

All the documents submitted in the bid must be numbered and included on a list to be submitted as part of the tender.

Section I: Administrative information

In this section of the tender, tenderers must specify the following:

- 1) **Person/s authorised to act on behalf of the entity** (individually or collectively) and who may sign documents validly on its behalf [first name, family name and position]
- 2) **Contact person for this tender** [first name, family name, position, telephone and fax numbers, e-mail and address].

Section II: Technical offer

Tenderers should note that this section is one of the key elements in the assessment of the tender and in the final award of the contract. The technical proposal must be consistent with the specifications and contain all information requested in Sections 2 and 3, including any specific documentation required. In preparing the technical proposal, tenderers should bear in mind the award criteria against which it will be evaluated (Section 4.4).

Tenderers should submit a Gantt chart planning schedule indicating: the principal milestones, proposed dates for meetings, dates for delivery of interim and draft reports and observing the final date for completion of tasks given in these specifications. As part of the technical offer, the tenderers will also provide a breakdown of the staff team involved in the project in terms of seniority and number of working days, as indicated in section 4.4 below.

⁹ Where self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across that tape.

¹⁰ If other languages are used in the supporting documents provided in connection with the exclusion or selection criteria, these documents must be accompanied by a courtesy translation into one of the official languages of the European Union. Such translations should be attached to the original, numbered and included in a list stating the nature of each document.

Section III: Financial offer

The detailed financial proposal must meet the requirements regarding price, set out in Sections 3.3 and 3.4 above, and **must be signed** by the person/s authorised to act on behalf of the entity (Section 4.4).

Section IV: Annexes

This section must include all the documents expressly requested or deemed relevant in line with the conditions laid down in this document, respecting where possible the order specified above as regards the three sections (administrative, technical and financial documents).

In addition, the tender must be accompanied by the following documents.

For the tenderer and for all parties in the case of a joint tender:

- Copy of the **incorporation of the company and the articles of association**, including any amendments made to these documents pursuant to the legislation of the Member State in which the tenderer is established.
- Copy of the **powers delegated to the person or persons authorised to act on behalf of the entity** and who can therefore sign documents on behalf of it.
- **Consortium form** (Annex I), where appropriate.

For the tenderer or for the single point of contact in case of joint tender:

- **Legal Entity form** and supporting evidence if necessary¹¹ available in all official EU languages at:
http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm

Tenderers must provide the following information if it has not been included with the Legal Entity Form:

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

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

- **Financial Identification Form** and supporting documents (only one form per offer should be submitted, no form is needed for subcontractors and other joint tenderers), available in all official EU languages at:

http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm

For all subcontractors whose share of budget is above 10% of the total in the case of subcontracting:

- **Subcontractors form** (Annex I) if their share of budget is above 10% of the total

Supporting documentation must be complete to ensure that the technical and financial proposals are evaluated. These comprise eligibility documents, which demonstrate that the tenderer is eligible to

¹¹ Tenderers that are already registered in the accounting system used by the Commission, an Institution, a Committee, an Agency or a body created by the Union (i.e. they have already been direct contractors) must provide the form but are not obliged to provide the supporting evidence.

tender for this contract (Section 4.2) and selection criteria documents (Section 4.3), which provide evidence of their capacity to perform the contract.

4. ASSESSMENT OF THE TENDER

4.1 Procedure

The procedure for assessing the tenderer and evaluating their offer consists of four distinct phases:

1. Exclusion of the tenderer
2. Selection of the tenderer
 - a. Economic and financial standing
 - b. Technical and professional capacity
3. Evaluation of the offer – award criteria
 - a. Technical evaluation
 - b. Financial evaluation
4. Awarding of the contract

Evaluation shall be based on the information and documents supplied by the tenderer in the offer submitted in response to the invitation to tender, in accordance with the criteria laid down in these terms and conditions. Only if the tender meets the requirements of one phase of the tender procedure shall it be admitted to the next phase.

In the case of a consortium or a joint tender, all the operators must provide the documents related to the assessment and selection of the tenderer (exclusion criteria declaration, evidence in support of economic and financial standing and of technical and professional capacity), as well as a completed consortium form (Annex I). This requirement also applies to subcontractors whose share of budget is above 10%.

Tenderers, or their representatives, may attend the opening of the tenders at the premises of EU-OSHA on **20 February 2017, at 10:00**. In this procedure, the Opening Board will only judge whether the tenders are in order, based on whether they are submitted before the deadline and are contained in a sealed envelope. Under no circumstances does the Opening Board consider the quality of the tenders.

4.2 Exclusion criteria

The sole purpose of these criteria is to determine whether an operator is authorised to participate in the tendering procedure and to be awarded the contract.

Using the form provided in Annex I – Declaration on honour, tenderer shall provide a declaration on its honour, duly signed and dated, stating that it is not in any of the situations below:

- a) it is bankrupt, subject to insolvency or winding up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors, its business activities are suspended or it is in any analogous situation arising from a similar procedure provided for under national legislation or regulations;
- b) it has been established by a final judgement or a final administrative decision that the person is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the law of the country in which it is established, with those of the country in

- which the contracting authority is located or those of the country of the performance of the contract;
- c) it has been established by a final judgement or a final administrative decision that the person is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence;
 - d) it has been established by a final judgement that the person is guilty of any of the following:
 - i) fraud, within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995;
 - ii) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of EU Member States, drawn up by the Council Act of 26 May 1997, and in Article 2(1) of Council Framework Decision 2003/568/JHA, as well as corruption as defined in the legal provisions of the country where the contracting authority is located, the country in which the person is established or the country of the performance of the contract;
 - iii) participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA;
 - iv) money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council;
 - v) terrorist-related offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA, respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision;
 - vi) child labour or other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council;
 - e) the person has shown significant deficiencies in complying with the main obligations in the performance of a contract financed by the Union's budget, which has led to its early termination or to the application of liquidated damages or other contractual penalties, or which has been discovered following checks, audits or investigations by an Authorising Officer, OLAF or the Court of Auditors;
 - f) it has been established by a final judgment or final administrative decision that the person has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95;
 - g) for the situations of grave professional misconduct, fraud, corruption, other criminal offences, significant deficiencies in the performance of the contract or irregularity, the applicant is subject to:
 - i) facts established in the context of audits or investigations carried out by the Court of Auditors, OLAF or internal audit, or any other check, audit or control performed under the responsibility of an authorising officer of an EU institution, of a European office or of an EU agency or body;
 - ii) non-final administrative decisions which may include disciplinary measures taken by the competent supervisory body responsible for the verification of the application of standards of professional ethics;
 - iii) decisions of the ECB, the EIB, the European Investment Fund or international organisations;
 - iv) decisions of the Commission relating to the infringement of the Union's competition rules or of a national competent authority relating to the infringement of Union or national competition law; or

- v) decisions of exclusion by an authorising officer of an EU institution, of a European office or of an EU agency or body;
- h) it has distorted competition by being previously involved in the preparation of procurement documents for this procurement procedure

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

- i) Are subject to a conflict of interest.
- ii) Are guilty of misrepresentation in supplying the information required by the awarding authority or have failed to provide all the information requested.

Before being awarded the contract, the tenderer, as well as any joint tenderers or subcontractors whose share of a work is above 10% of the total, will be required to provide proof in support of the above declaration.

4.3 Selection criteria

The sole purpose of these criteria is to determine whether an operator has the necessary financial, economic, technical and professional capacity to carry out the work (in case of joint tender, the combined capacity of all members of the consortium and identified subcontractors).

Economic and financial capacity:

The tenderer must provide proof of their financial and economic standing by means of one or more of the following documents:

- a) Appropriate statements from banks or evidence of professional risk indemnity insurance.
- b) Balance sheets or extracts from balance sheets for the last two 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 tenderer is established.
- c) A statement of overall turnover and turnover concerning the services covered by the contract during a period which may be no more than the last three financial years. The average annual turnover must be at least €50,000.

If exceptionally EU-OSHA considers that there are reasons to justify the failure by the tenderer to produce the documents requested, their economic and financial standing may be proven by any other document that EU-OSHA deems suitable.

Technical and professional capacity:

The tenderer must prove that it has the technical and professional capacity to carry out the tasks described in these specifications. This shall be evaluated with regard in particular to know-how, efficiency, experience and reliability, and may be proven by means of the following documents:

- a. Criteria relating to tenderers

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

- The tenderer must prove experience in survey methodology, particularly international business surveys.
- The tenderer must prove experience of working in English along with the capacity to provide final reports and other project deliverables at professional English native speaker or C2 level of the Common European Framework of reference for Languages (CEF or CEFR).

- The tenderer must prove experience in the evaluation of survey data, comparative analysis and drafting reports and policy-relevant recommendations.
- b. Criteria relating to the team delivering the service:

The team delivering the service should include, as a minimum, the following profiles:

Project Manager: At least 10 years' experience in project management, including overseeing project delivery, quality control of delivered service, client orientation.

Expert in occupational health and safety: Relevant higher education degree and minimum 5 years' professional experience in the field of research on occupational health and safety.

Expert in survey methodology: Relevant higher education degree and minimum 10 years' professional experience in the application of survey methodology and international business surveys in the area of social sciences, epidemiology, public health or occupational health and safety.

- c. Evidence:

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

- List of relevant services provided in the past three years, with sums, dates and recipients, public or private. The most important services shall be accompanied by written evidence of satisfactory execution, specifying that they have been carried out in a professional manner and have been fully completed;
- The educational and professional qualifications of the persons who will provide the service for this tender (CVs) including the management staff. Each CV provided should indicate the intended function in the delivery of the service.

4.4 Award criteria

The sole purpose of these criteria is to choose between the tenders which have been submitted by tenderers not subject to exclusion and which meet the selection criteria.

A quality mark will be given to the tender, based on a technical evaluation of the offer as described below. In particular, the tenderer's attention is drawn to the description of all the requirements for each of the services/tasks to be covered.

The financial evaluation will be based on the prices submitted by the tenderer in the financial proposal.

Technical evaluation of offers

Technical evaluation shall take into account the following criteria, weighted as in the following table:

CRITERION	POINTS
<p>CRITERION 1: PROJECT DESIGN</p> <ul style="list-style-type: none"> • Quality and relevance of the methodologies proposed including: <ul style="list-style-type: none"> ○ Quality of the proposed framework for analysis. ○ Scope, quality and rigour of the proposed research methods. • Organisation of the work: <ul style="list-style-type: none"> ○ Composition of the team allocated to the task ○ Allocation of time and resources to the task 	(Max. 200)
<p>CRITERION 2: TECHNICAL ASSESSMENT</p> <ul style="list-style-type: none"> • Quality and relevance of the methodologies proposed including: <ul style="list-style-type: none"> ○ Quality and relevance of the approach to the technical assessment and the techniques to apply. ○ Scope and quality of the specific issues and topics suggested for the assessment. • Organisation of the work: <ul style="list-style-type: none"> ○ Composition of the team allocated to the task ○ Allocation of time and resources to the task 	(Max. 300)
<p>CRITERION 3: REPORTING: CONCLUSIONS AND RECOMMENDATIONS FOR FUTURE ESENER WAVES</p> <ul style="list-style-type: none"> • Quality and relevance of the methodologies proposed including: <ul style="list-style-type: none"> ○ Quality of the proposal for the reporting. ○ Quality and relevance of the proposed interpretation of the findings, including measures proposed to develop robust conclusions and recommendations. • Organisation of the work: <ul style="list-style-type: none"> ○ Composition of the team allocated to the task ○ Allocation of time and resources to the task 	(Max.140)
<p>CRITERION 4: EFFICIENCY AND QUALITY OF THE PROJECT MANAGEMENT</p> <p>This criterion will assess the quality control system applied to the service foreseen in this tender specification concerning the quality of the deliverables, the language quality check, and continuity of the service in case of absence of the member of the team. The quality system should be detailed in the tender and specific to the tasks at hand; a generic quality system will result in a low score.</p> <ul style="list-style-type: none"> ○ Quality and relevance of the proposed approach to project management. ○ Quality and relevance of the proposed approach to quality control. ○ Composition of the team allocated to project management and quality control. ○ Allocation of time and resources to project management and quality control. 	(Max. 60)
TOTAL	700

The offer must obtain at least 50% of the maximum points available for each of the three criteria listed, and a minimum of 60% of the total number of possible points.

In order to assess the criterion 'organisation of work' under each task, tenderers will fill in the table below (and include it in the technical offer) indicating the number of staff days per task, clearly identified for each member of the project team and specifying their seniority.

Breakdown of staff days per task

TASK	Staff			
	No1 Name Seniority: Project Director/Manager	No.2 Name Seniority: Senior/Junior Researcher	No.3 Name Seniority: Administrative support	No... Name Seniority

Financial evaluation:

Tenders satisfying the conditions of the technical evaluation will be evaluated unless the price proposed exceeds the maximum budget indicated, in which case the bid will be rejected.

300 points will be awarded to the lowest priced tender; other tenders will receive points calculated according to the following equation:

$$\text{Points} = (\text{lowest price} \div \text{price of tender in question}) \times 300$$

Financial proposal must be signed by the tenderer or their duly authorised representative.

4.5 Awarding of the contract

Subject to:

1. The achievement of a minimum and acceptable number of points in the technical evaluation (TE)
2. A financial evaluation (FE) according to the criterion mentioned above

The contract will be awarded to the tenderer offering the best value for money, where a 70% weighting is given to the quality of the offer and 30% to the price, so that:

$$\text{Final score (max 1000)} = \text{TE points (max 700)} + \text{FE points (max 300)}$$

ANNEX I – FORMS

Privacy Statement on the protection of personal data in relation to procurement procedures

Legal entity form

http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm

Financial identification form

http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm

Declaration on honour on exclusion criteria and selection criteria

Consortium form

Subcontractors form

Tender submission checklist

Privacy Statement on the protection of personal data in relation to procurement procedures¹

Organizational part of the Agency entrusted with the processing of personal data

- Head of the Resource and Service Centre

Purpose of processing

- Upon reception of tenders or requests to participate in public procurements, personal data of applicants are collected and further processed for the purpose of the management and administration of public procurement procedures at EU-OSHA.

Type of data processed

The controller will be collecting and processing personal data of the actors who take part in procurement procedures at EU-OSHA, both natural and legal persons, being contractors and subcontractors.

- For individuals: last name, first name, official address, VAT no., ID and passport no, date/place and country of birth, contact details (telephone, email, fax), other personal data included in CVs (such as technical skills, academic background, professional experience and records), a declaration of honour that he/she is not in one of the exclusion situations referred in Articles 106 and 107 of the General Financial Regulation (for the company director or any person with powers of representation, decision making or control in relation to the tenderer), extracts from judicial records for high-value contracts before the award of the contract
- For private companies: type of company, name(s), abbreviation, address and head office, VAT no, place of registration, date of registration, national registration no, proof of having fulfilled all obligations to pay social security contributions and taxes, certificate of clear criminal record or extract of judicial records, extract from the register of bankruptcy, balance sheets or extracts for the previous years, statement of overall turnover and turnover concerning the service covered by the contract, documents attesting professional standing, contact details (telephone, e-mail, fax, name) and signature of authorized representative.
- For public entities: type of organization, names(s), abbreviation, address and head office, VAT no, place of registration, date of registration, contact details (telephone, e-mail, fax, name) and signature of authorized representative.
- For the Financial identification form: last name, first name, address, telephone, e-mail and signature of the concerned account holder, as well as bank's name, address and stamp, account and IBAN no (refer to Privacy Statement for Legal Entity and Bank Account Validation).

Legal basis

- Council Regulation (EC) No. 2062/94 of 18/07/1994 establishing the European Agency for Safety and Health at Work and subsequent amendments;
- Article 85 of the Agency Financial Regulation, as adopted by the Governing Board on 15 January 2014. Pursuant to this Article, the relevant provisions of Council Regulation No 966/2012 (on the financial rules applicable to the general budget of the Union as amended by

¹ Information provided on the basis of Articles 11 – 12 of Regulation (EC) No. 45/2001 of the European Parliament and Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies on the free movement of such data.

regulation 2015/1929 and Commission delegated Regulation (EU) no 1268/2012 of 29/10/2012 (on the rules of application) as amended by regulation 2015/2462, shall apply to EU-OSHA's procurement procedures.

Lawfulness of processing

- The lawfulness of the processing is based on Article 5(a) of Regulation (EC) No. 45/2001 of the European Parliament and the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (hereinafter, Regulation (EC) No. 45/2001).

Recipients of the data processed

- EU-OSHA staff in charge of the procurement procedure;
- EU-OSHA staff acting as members of opening and evaluation committees and external evaluators, if applicable;
- Members of the public, in case of being awarded a contract with EU-OSHA, in accordance to EU-OSHA's obligation to publish information on the outcome of the procurement procedure (Article EU-OSHA Financial Regulation and Article 103 of the General Financial Regulation), limited to the name and the legal address of the awarded company;
- Court of Auditors (ECA), Internal Audit Service (IAS), Financial Irregularity Panel, Investigation and Disciplinary Office of the Commission (IDOC), the European Anti-fraud Office (OLAF), where applicable;
- Authorized staff of the European Commission and EU agencies in the context of the implementation of Article 108 of the General Financial Regulation, related to the Early Detection and Exclusion System (EDES);
- Legal Service, the Data Protection Officer (DPO), the European Ombudsman, and the European Data Protection Supervisor (EDPS), where applicable.

The data subject's rights

- Data subjects have the right to access, rectify, delete and block their personal data in the cases foreseen in Articles 13, 14, 15 and 16 of Regulation (EC) No. 45/2001 and to object about their processing in the cases foreseen in Article 18;
- In particular, they can exercise their rights by submitting a request to the data controller whose contact information is mentioned in the tender specification;
- The right of rectification only applies to factual data processed within the concerned procurement procedure. This right can be only exercised up to the closing date for submission of tenders. Inaccurate identification data may be rectified at any time during and after the procurement procedure;
- Special attention is drawn to the consequences of a request for deletion, as this may lead to an alteration of the terms of the tender and as a result to exclusion as stated in Article 160 of the Rules of Application of the General Financial Regulation.

Information on the conservation period of personal data

- Files relating to procurement procedures, including personal data, are to be retained by the service in charge of the procedure until it is finalized, and in the archives for a period of 10 years following the signature of the contract;

- Files relating to unsuccessful tenderers have to be kept only for 5 years following the signature of the contract;
- The above limits can be extended until the end of a possible audit, if once started before the end of the above period or if an appeal is underway.

Request for information

For any further information regarding the handling of their personal data, data subjects can address their request to EU-OSHA Data Protection Officer at: dpo@osha.europa.eu.

Appeals

Data subjects are entitled to lodge an appeal at any time with the European Data Protection Supervisor: <http://www.edps.europa.eu>, should they consider that the processing operations do not comply with Regulation (EC) No. 45/2001.

Date when processing starts

Date of the launch of the procurement procedure.

Declaration on honour on exclusion criteria and selection criteria

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

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

I - SITUATION OF EXCLUSION CONCERNING THE PERSON

(1) declares whether the above-mentioned person is in one of the following situations:	YES	NO
(a) it is bankrupt, subject to insolvency or winding up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors, its business activities are suspended or it is in any analogous situation arising from a similar procedure provided for under national legislation or regulations;	<input type="checkbox"/>	<input type="checkbox"/>
(b) it has been established by a final judgement or a final administrative decision that the person is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the law of the country in which it is established, with those of the country in which the contracting authority is located or those of the country of the performance of the contract;	<input type="checkbox"/>	<input type="checkbox"/>
(c) it has been established by a final judgement or a final administrative decision that the person is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:		
(i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;	<input type="checkbox"/>	<input type="checkbox"/>
(ii) entering into agreement with other persons with the aim of distorting competition;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) violating intellectual property rights;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) attempting to influence the decision-making process of the contracting authority during the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>

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

II - SITUATIONS OF EXCLUSION CONCERNING NATURAL PERSONS WITH POWER OF REPRESENTATION, DECISION-MAKING OR CONTROL OVER THE LEGAL PERSON

Not applicable to natural persons, Member States and local authorities

(2) declares that a person who is a member of the administrative, management or supervisory body of the above-mentioned legal person, or who has powers of representation, decision or control with regard to the above-mentioned legal person (this covers the company directors, members of the management or supervisory bodies, and cases where one natural person holds a majority of shares) is in one of the following situations:	YES	NO	N/A
Situation (c) above (grave professional misconduct)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (d) above (fraud, corruption or other criminal offence)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (e) above (significant deficiencies in performance of a contract)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (f) above (irregularity)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

III - SITUATIONS OF EXCLUSION CONCERNING NATURAL OR LEGAL PERSONS ASSUMING UNLIMITED LIABILITY FOR THE DEBTS OF THE LEGAL PERSON

(3) declares whether a natural or legal person that assumes unlimited liability for the debts of the above-mentioned legal person is in one of the following situations:	YES	NO	N/A
Situation (a) above (bankruptcy)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (b) above (breach in payment of taxes or social security contributions)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

IV - GROUNDS FOR REJECTION FROM THIS PROCEDURE

(4) declares that the above-mentioned person:	YES	NO
(h) has distorted competition by being previously involved in the preparation of procurement documents for this procurement procedure;	<input type="checkbox"/>	<input type="checkbox"/>

V - REMEDIAL MEASURES

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

VI - EVIDENCE UPON REQUEST

Upon request and within the time limit set by the contracting authority the person must provide information on the persons that are members of the administrative, management or supervisory body.

It must also provide the following evidence concerning the person itself and concerning the natural or legal persons which assume unlimited liability for the debt of the person:

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

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

The person is not required to submit the evidence if it has already been submitted for another procurement procedure. The documents must have been issued no more than one year before the date of their request by the contracting authority and must still be valid at that date.

The signatory declares that the person has already provided the documentary evidence for a previous procedure and confirms that there has been no change in its situation:

Document	Full reference to previous procedure
<i>Insert as many lines as necessary.</i>	

VII - SELECTION CRITERIA

(5) declares that the above-mentioned person complies with the selection criteria applicable to it individually as provided in the tender specifications:	YES	NO	N/A
(a) It fulfills the applicable economic and financial criteria indicated in section 4.3 of the tender specifications;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) It fulfills the applicable technical and professional criteria indicated in section 4.3 of the tender specifications.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(6) if the above-mentioned person is the sole tenderer or the leader in case of joint tender, declares that:	YES	NO	N/A
(c) the tenderer, including all members of the group in case of joint tender and including subcontractors if applicable, complies with all the selection criteria for which a consolidated assessment will be made as provided in the tender specifications.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

VIII – EVIDENCE FOR SELECTION

The signatory declares that the above-mentioned person is able to provide the necessary supporting documents listed in the relevant sections of the tender specifications and which are not available electronically upon request and without delay.

The person is not required to submit the evidence if it has already been submitted for another procurement procedure. The documents must have been issued no more than one year before the date of their request by the contracting authority and must still be valid at that date.

The signatory declares that the person has already provided the documentary evidence for a previous procedure and confirms that there has been no change in its situation:



Document	Full reference to previous procedure
<i>Insert as many lines as necessary.</i>	

The above-mentioned person may be subject to rejection from this procedure and to administrative sanctions (exclusion or financial penalty) if any of the declarations or information provided as a condition for participating in this procedure prove to be false.

Full name

Date

Signature

Consortium form

(One form to be used for each partner)

Name of tenderer:

Form of the Consortium: (Please 'X' the relevant box)

Permanent: Legally established: Grouping for this tender:

	Name	Address
Leader of the Consortium (person authorised to conclude contract)		
Partner		

Declaration

We confirm, as a partner in the consortium, that all partners are jointly and severally liable by law for the performance of the contract; that the leader is authorised to bind and receive instructions for and on behalf of each partner; that the performance of the contract, including payments, is the responsibility of the leader; and that all partners are bound to remain in the consortium for the entire duration of the contract.

Signature: <i>Leader</i>	
Signature: <i>Partner</i>	

Please attach:

- **a completed declaration on honour on exclusion criteria and selection criteria**
- **a completed legal entity form** (tenderers that are already registered in the accounting system used by the Commission, an Institution, a Committee, an Agency or a body created by the Union (i.e. they have already been direct contractors) must provide the form but are not obliged to provide the supporting evidence)

Subcontractors form

(One form to be used for each subcontractor whose share of budget is above 10% of the total)

	Name(s)	Address
Tenderer <i>(person authorised to conclude the contract)</i>		
Subcontractor		

Declaration

As subcontractors for this tender, we confirm that we are willing to perform the tasks assigned above and as specified in the tender.

Signature: <i>Tenderer</i>	
Signature: <i>Subcontractor</i>	

Please attach a completed declaration on honour on exclusion criteria and selection criteria.

Tender submission checklist

Two copies of each of the following documents must be placed inside an 'inner envelope' marked "*Open call for tender EUOSHA/2016/OP/D/SE/0019 – not to be opened by the internal mail department*"

- Details of person/s authorised to act on behalf of the entity
- Details of the contact person for this tender
- Copy of the incorporation of the company and the articles of association
- Copy of the powers delegated to the person or persons authorised to act on behalf of the entity
- Consortium form(s) (if applicable)
- Subcontractors' form(s) (if applicable)
- Financial identification form
- Legal entity form
- Technical offer, including: Gantt chart, table of allocation and composition of resources, and quality control plan (placed inside its own envelope)
- Detailed financial proposal (signed by authorised representative and placed inside its own envelope)
- Declaration on honour on exclusion criteria and selection criteria*
- Evidence of financial standing*
- Evidence of technical and professional capacity*

The above-mentioned documents must be placed in an 'outer envelope' and delivered to EU-OSHA according to the deadline set in section 3.7.

* Items marked with an asterisk must be provided by all members of a grouping when presenting an offer as a consortium and by subcontractors when they are responsible for performing a substantial part of the contract (more than 10%).

ANNEX II – DRAFT SERVICE CONTRACT

Contract number: [complete]



SERVICE CONTRACT

NUMBER – [complete]

1. The European Agency for Safety and Health at Work represented for the purposes of signing this contract by [forename, surname, function, department of authorising officer],

on the one part, and

2. [Full official name]

[Official legal form]

[Statutory registration number or ID or passport number]

[Full official address]

[VAT registration number]

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

[For joint tenders, repeat these data as many times as there are contractors and continue numbering]

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

on the other part,

Contract number: [complete]



HAVE AGREED

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

Annex I – Tender specifications (reference No EUOSHA/2016/OP/D/SE/0019 of 07/12/2016)

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

[Insert other annexes]

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

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

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

DRAFT



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I. SPECIAL CONDITIONS

I.1. ORDER OF PRIORITY OF PROVISIONS

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

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

I.2. SUBJECT MATTER

The subject matter of the contract is the provision of services consisting in a technical assessment of the expansion of the universe of ESENER-2 that will provide solid grounds for a decision on the universe of ESENER for future waves of the survey.

I.3. ENTRY INTO FORCE AND DURATION

I.3.1 The contract enters into force on the date on which the last party signs it¹³.

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

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

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

I.3.4 Not applicable.

I.3.5 Not applicable.

I.4. PRICE

I.4.1. Price of the contract and maximum amount

The price payable under this contract excluding renewals, reimbursement of expenses and price revision is EUR [amount in figures and in words].

I.4.2. Price revision index

Price revision is not applicable to this contract.

I.4.3. Reimbursement of expenses

Reimbursement of expenses is not applicable to this contract.

¹³ As a rule the contracting authority signs last. In this case, the contractor should be duly informed of the date on which the contract enters into force (date of signature by the contracting authority).



I.5. PAYMENT ARRANGEMENTS

I.5.1. Pre-financing

Pre-financing is not applicable to this contract.

I.5.2. Interim payment[s]

1. The contractor (or leader in the case of a joint tender) may claim an interim payment equal to 40 % of the price referred to in Article I.4.1 in accordance with Article II.21.6.

The contractor must send an invoice in paper format for the interim payment as provided for in the tender specifications, accompanied by the following:

- (a) a list of all *pre-existing rights* to the *results* or parts of the *results* or a declaration stating that there are no such *pre-existing rights*, as provided for in Article II.13.4;
- (b) an interim report, as mentioned in the tender specifications (section 2.3, Annex I);
- (c) Not applicable.

2. The contracting authority must approve any submitted documents or deliverables and pay within 30 days from receipt of the invoice.

3. If the contracting authority has observations to make, it must send them to the contractor (or leader in the case of a joint tender) and suspend the time limit for payment in accordance with Article II.21.7. The contractor (or leader in case of a joint tender) has 20 days to submit additional information or corrections or a new version of the documents if the contracting authority requires it.

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

I.5.3. Payment of the balance

1. The contractor (or leader in the case of a joint tender) may claim the payment of the balance in accordance with Article II.21.6.

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

- (a) a list of all *pre-existing rights* to the *results* or parts of the *results* or a declaration stating that there are no such *pre-existing rights*, as provided for in Article II.13.4;
- (b) a final report including executive summary, comprehensive report and possible annexes, as mentioned in the tender specifications (section 2.3, Annex I);
- (c) Not applicable.

2. The contracting authority must approve the submitted documents or deliverables and pay within 30 days from receipt of the invoice.

3. If the contracting authority has observations to make, it must send them to the contractor (or leader in the case of a joint tender) and suspend the time limit for payment in accordance with Article II.21.7.

The contractor (or leader in the case of a joint tender) has 20 days to submit additional information or corrections or a new version of the documents if the contracting authority requires it.

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



I.6. GUARANTEES

Guarantees are not applicable to this contract.

I.6.1. Performance guarantee

Performance guarantee is not applicable to this contract.

I.6.2. Retention money guarantee

Retention money guarantee is not applicable to this contract.

I.7. BANK ACCOUNT

Payments must be made to the contractor's (or leader's in the case of a joint tender) bank account denominated in [euro] [*insert local currency where the receiving country does not allow transactions in EUR*], identified as follows:

Name of bank:

Full address of branch:

Exact denomination of account holder:

Full account number including bank codes:

[IBAN code:]

I.8. COMMUNICATION DETAILS

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

Contracting authority:

European Agency for Safety and Health at Work
Prevention and Research Unit
Santiago de Compostela, 12 – 5th floor
E-48003 Bilbao
SPAIN
E-mail: information@osha.europa.eu

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

[Full name]Function]

[Company name]

[Full official address]

E-mail: [complete]

I.9. DATA CONTROLLER

For the purpose of Article II.9, the data controller is the Head of Resource and Service Centre at the European Agency for Safety and Health at Work.



I.10. EXPLOITATION OF THE RESULTS OF THE CONTRACT

I.10.1. Detailed list of modes of exploitation of the results

In accordance with Article II.13.1 whereby the Union acquires ownership of the *results* as defined in this contract, including the tender specifications, these *results* may be used for any of the following modes of exploitation:

- (a) use for its own purposes:
- making available to the staff of the contracting authority;
 - making available to the persons and entities working for the contracting authority or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions;
 - installing, uploading, processing;
 - arranging, compiling, combining, retrieving;
 - copying, reproducing in whole or in part and in unlimited number of copies.
- (b) distribution to the public in hard copies, in electronic or digital format, on the internet including social networks as a downloadable or non-downloadable file;
- (c) communication through press information services;
- (d) inclusion in widely accessible databases or indexes, such as via 'open access' or 'open data' portals, or similar repositories, whether freely accessible or accessible only upon subscription;
- (e) modifications by the contracting authority or by a third party in the name of the contracting authority, including:
- shortening;
 - summarising;
 - modifying the content, the dimensions;
 - making technical changes to the content (necessary correction of technical errors), adding new parts or functionalities, changing functionalities, providing third parties with additional information concerning the result (e.g. source code) with a view to making modifications;
 - addition of new elements, paragraphs, titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound;
 - addition of metadata, for text and data-mining purposes; addition of right-management information; addition of technological protection measures;
 - preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation;
 - extracting a part or dividing into parts;
 - translating, inserting subtitles, dubbing in different language versions: languages used within EU; languages of candidate countries.
- (f) rights to authorise, license, or sub-license in case of licensed *pre-existing rights*, the modes of exploitation set out in any of the points (a) to (e) to third parties.
- (g) other adaptations which the parties may later agree; in such case, the following rules apply: the contracting authority must consult the contractor. If necessary, the contractor must in turn seek the agreement of any *creator* or other right holder and must reply to the contracting authority within one month by providing its agreement, including any suggestions of modifications, free of charge. The contractor may refuse the intended modification only if a *creator* can demonstrate that the intended modification may harm his/her honour or reputation, thereby violating his/her moral rights.

Contract number: [complete]



I.10.2. Licence or transfer of pre-existing rights

All *pre-existing rights* incorporated in the *results*, if any, are licensed to the Union as set out in Article II.13.2.

I.10.3. Provision of list of pre-existing rights and documentary evidence

The contractor must provide the contracting authority with a list of *pre-existing rights* as set out in Article II.13.4 together with the invoice for payment of the balance at the latest.

I.11. TERMINATION BY EITHER PARTY

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

If the contract is terminated:

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

The second, third and fourth paragraphs of Article II.18.4 apply.

I.12. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.12.1. The contract is governed by Union law, complemented, where necessary, by the law of Spain.

I.12.2. The courts of Bilbao have exclusive jurisdiction over any dispute regarding the interpretation, application or validity of the contract.

I.13. OTHER SPECIAL CONDITIONS

All references to “Back Office”, “EDI message”, “e-PRIOR” and “supplier portal” have been removed from the Special Conditions given that the European Agency for Safety and Health at Work does not yet have a similar system in place and therefore, they are not applicable.

Articles II.5.3, Submission of e-documents via e-PRIOR, II.5.4 Validity and date of e-documents, II.5.5 Authorised persons in e-PRIOR and II.9.2 E-invoicing of the General Conditions are not applicable to the European Agency for Safety and Health at Work.

SIGNATURES

For the contractor,

[Company name/forename/surname/position]

For the contracting authority,

[forename/surname/position]

Signature: _____

Done at [place], [date]

Signature: _____

Done at [place], [date]

In duplicate in English.



II. GENERAL CONDITIONS FOR THE SERVICE CONTRACT

II.1. DEFINITIONS

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

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

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

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

'Creator': means any natural person who contributes to the production of the *result*;

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

'e-PRIOR': the service-oriented communication platform that provides a series of web services and allows the exchange of standardised electronic messages and documents between the parties. This is done either through web services, with a machine-to-machine connection between the parties' *back office* systems (*EDI messages*), or through a web application (the *supplier portal*). The Platform may be used to exchange electronic documents (e-documents) such as electronic requests for services, electronic specific contracts, and electronic acceptance of services or electronic invoices between the parties. Technical specifications (i.e. the *interface control document*), details on access and user manuals are available at the following website:

http://ec.europa.eu/dgs/informatics/supplier_portal/documentation/documentation_en.htm

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

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

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

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

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



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

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

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

‘Pre-existing material’: any material, document, technology or know-how which exists prior to the contractor using it for the production of a *result* in the *performance of the contract*;

‘Pre-existing right’: any industrial and intellectual property right on *pre-existing material*; it may consist in a right of ownership, a licence right and/or right of use belonging to the contractor, the *creator*, the contracting authority as well as to any other third parties;

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

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

‘Result’: any intended outcome of *the performance of the contract*, whatever its form or nature, which is delivered and finally or partially approved by the contracting authority. A *result* may be further defined in this contract as a deliverable. A *result* may, in addition to materials produced by the contractor or at its request, also include *pre-existing materials*;

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

‘Supplier portal’: the *e-PRIOR* portal, which allows the contractor to exchange electronic business documents, such as invoices, through a graphical user interface; its main features can be found in the supplier portal overview document available on:

http://ec.europa.eu/dgs/informatics/supplier_portal/doc/um_supplier_portal_overview.pdf

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

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

II.3. SEVERABILITY

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



II.4. PERFORMANCE OF THE CONTRACT

- II.4.1** The contractor must provide services of high quality standards, in accordance with the state of the art in the industry and the provisions of this contract, in particular the tender specifications and the terms of its tender.
- II.4.2** The contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU¹⁴.
- II.4.3** The contractor must obtain any permit or licence required in the State where the services are to be provided.
- II.4.4** All periods specified in the contract are calculated in calendar days, unless otherwise specified.
- II.4.5** The contractor must not present itself as a representative of the contracting authority and must inform third parties that it is not part of the European public service.
- II.4.6** The contractor is responsible for the *personnel* who carry out the services and exercises its authority over its *personnel* without interference by the contracting authority. The contractor must inform its *personnel* that:
- (a) they may not accept any direct instructions from the contracting authority; and
 - (b) their participation in providing the services does not result in any employment or contractual relationship with the contracting authority.
- II.4.7** The contractor must ensure that the *personnel* performing the contract and any future replacement *personnel* possess the professional qualifications and experience required to provide the services, as the case may be on the basis of the selection criteria set out in the tender specifications.
- II.4.8** At the contracting authority's reasoned request, the contractor must replace any member of *personnel* who:
- (a) does not have the expertise required to provide the services; or
 - (b) has caused disruption at the premises of the contracting authority.
- The contractor bears the cost of replacing its *personnel* and is responsible for any delay in providing the services resulting from the replacement of *personnel*.
- II.4.9** The contractor must record and report to the contracting authority any problem that affects its ability to provide the services. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

II.5. COMMUNICATION BETWEEN THE PARTIES

II.5.1 Form and means of communication

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

¹⁴ OJ L 94 of 28.03.2014, p. 65



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

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

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

II.5.2 Date of communications by mail and email

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

E-mail is deemed to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in Article I.8. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

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

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

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

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

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

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

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

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

When a change in the *interface control document* requires adaptations, the contractor (or leader in the case of a joint tender) has up to six months from receipt of the *notification* to implement this change.



This period can be shortened by mutual agreement of the parties. This period does not apply to urgent measures required by the security policy of the contracting authority to ensure integrity, confidentiality and non-repudiation of information and the availability of *e-PRIOR*, which must be applied immediately.

II.5.4 Validity and date of e-documents

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

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

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

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

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

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

II.5.5 Authorised persons in e-PRIOR

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

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

II.6. LIABILITY

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

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



- II.6.3** The contractor is liable for any loss or damage caused to the contracting authority during or as a consequence of *performance of the contract*, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its *personnel* or subcontractors, the contractor is liable for the whole amount of the damage or loss.
- II.6.4** If a third party brings any action against the contracting authority in connection with the *performance of the contract*, including any action for alleged breach of intellectual property rights, the contractor must assist the contracting authority in the legal proceedings, including by intervening in support of the contracting authority upon request. If the contracting authority's liability towards the third party is established and that such liability is caused by the contractor during or as a consequence of the *performance of the contract*, Article II.6.3 applies.
- II.6.5** If the contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they are all jointly and severally liable to the contracting authority for the *performance of the contract*.
- II.6.6** The contracting authority is not liable for any loss or damage caused to the contractor during or as a consequence of *performance of the contract*, unless the loss or damage was caused by wilful misconduct or gross negligence of the contracting authority.

II.7. CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS

- II.7.1** The contractor must take all the necessary measures to prevent any situation of *conflict of interest* or *professional conflicting interest*.
- II.7.2** The contractor must *notify* the contracting authority in writing as soon as possible of any situation that could constitute a *conflict of interest* or a *professional conflicting interest* during the *performance of the contract*. The contractor must immediately take action to rectify the situation.

The contracting authority may do any of the following:

- (a) verify that the contractor's action is appropriate;
 - (b) require the contractor to take further action within a specified deadline;
- II.7.3** The contractor must pass on all the relevant obligations in writing to:
- (a) its *personnel*;
 - (b) any natural person with the power to represent it or take decisions on its behalf;
 - (c) third parties involved in the *performance of the contract*, including subcontractors.

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

II.8. CONFIDENTIALITY

- II.8.1** The contracting authority and the contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally relating to the *performance of the contract* and identified in writing as confidential.
- II.8.2** Each party must:



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

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

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

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

II.9. PROCESSING OF PERSONAL DATA

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

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

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

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

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

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

- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
 - (i) unauthorised reading, copying, alteration or removal of storage media;



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

II.10. SUBCONTRACTING

- II.10.1 The contractor must not subcontract and have the contract performed by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the contracting authority.
- II.10.2 Even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the *performance of this contract*.
- II.10.3 The contractor must ensure that the subcontract does not affect the rights of the contracting authority under this contract, particularly those under Articles II.8, II.13 and II.24.
- II.10.4 The contracting authority may request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.18.1.

II.11. AMENDMENTS

- II.11.1 Any amendment to the contract must be made in writing before all contractual obligations have been fulfilled.
- II.11.2 Any amendment must not make changes to the contract that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers.

II.12. ASSIGNMENT

- II.12.1 The contractor must not assign the rights and obligations arising from the contract, including claims for payments or factoring, without prior written authorisation from the contracting authority. In such cases, the contractor must provide the contracting authority with the identity of the intended assignee.
- II.12.2 Any right or obligation assigned by the contractor without authorisation is not enforceable against the contracting authority.

II.13. INTELLECTUAL PROPERTY RIGHTS

II.13.1. Ownership of the rights in the results

The Union acquires irrevocably worldwide ownership of the *results* and of all intellectual property rights under the contract. The intellectual property rights so acquired include any rights, such as copyright and



other intellectual or industrial property rights, to any of the *results* and to all technological solutions and information created or produced by the contractor or by its subcontractor in *performance of the contract*. The contracting authority may exploit and use the acquired rights as stipulated in this contract. The Union acquires all the rights from the moment the contracting authority approves the *results* delivered by the contractor. Such delivery and approval are deemed to constitute an effective assignment of rights from the contractor to the Union.

The payment of the price includes any fees payable to the contractor about the acquisition of ownership of rights by the Union including for all forms of exploitation and of use of the *results*.

II.13.2. Licensing rights on pre-existing materials

Unless provided otherwise in the special conditions, the Union does not acquire ownership of *pre-existing rights* under this contract.

The contractor licenses the *pre-existing rights* on a royalty-free, non-exclusive and irrevocable basis to the Union, which may use the *pre-existing materials* for all the modes of exploitation set out in this contract. All *pre-existing rights* are licensed to the Union from the moment the *results* are delivered and approved by the contracting authority.

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

The payment of the price as set out in the contract is deemed to also include any fees payable to the contractor in relation to the licensing of *pre-existing rights* to the Union, including for all forms of exploitation and of use of the *results*.

Where *performance of the contract* requires that the contractor uses *pre-existing materials* belonging to the contracting authority, the contracting authority may request that the contractor signs an adequate licence agreement. Such use by the contractor will not entail any transfer of rights to the contractor and is limited to the needs of this contract.

II.13.3. Exclusive rights

The Union acquires the following exclusive rights:

- (a) reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the *results* by any means (mechanical, digital or other) and in any form, in whole or in part;
- (b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the *results* in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes the communication and broadcasting by cable or by satellite;
- (c) distribution: the exclusive right to authorise or prohibit any form of distribution of *results* or copies of the *results* to the public, by sale or otherwise;
- (d) rental: the exclusive right to authorise or prohibit rental or lending of the *results* or of copies of the *results*;
- (e) adaptation: the exclusive right to authorise or prohibit any modification of the *results*;
- (f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the *results*, and any other alteration of the *results*, subject to the respect of moral rights of authors, where applicable;
- (g) where the *results* are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilization of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;



- (h) where the *results* are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
- (i) where the *results* are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
- (j) where the *results* are or include know-how: the right to use such know-how as is necessary to make use of the *results* to the full extent provided for by this contract, and the right to make it available to contractors or subcontractors acting on behalf of the contracting authority, subject to their signing of adequate confidentiality undertakings where necessary;
- (k) where the *results* are documents:
 - (i) the right to authorise the reuse of the documents in conformity with the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, 'reuse' and 'document' have the meaning given to it by this Decision;
 - (ii) the right to store and archive the *results* in line with the document management rules applicable to the contracting authority, including digitisation or converting the format for preservation or new use purposes;
- (l) where the *results* are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:
 - (i) end-user rights, for all uses by the Union or by subcontractors which result from this contract and from the intention of the parties;
 - (ii) the rights to decompile or disassemble the software;
- (m) to the extent that the contractor may invoke moral rights, the right for the contracting authority, except where otherwise provided in this contract, to publish the *results* with or without mentioning the *creator(s)*' name(s), and the right to decide when and whether the *results* may be disclosed and published.

The contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the Union on all parts of the *results*, be they created by the contractor or consisting of *pre-existing materials*.

Where *pre-existing materials* are inserted in the *results*, the contracting authority may accept reasonable restrictions impacting on the above list, provided that the said materials are easily identifiable and separable from the rest, that they do not correspond to substantial elements of the *results*, and that, should the need arise, satisfactory replacement solutions exist, at no additional costs to the contracting authority. In such case, the contractor will have to clearly inform the contracting authority before making such choice and the contracting authority has the right to refuse it.

II.13.4. Identification of pre-existing rights

When delivering the *results*, the contractor must warrant that, for any use that the contracting authority may envisage within the limits set in this contract, the *results* and the *pre-existing material* incorporated in the *results* are free of claims from *creators* or from any third parties and all the necessary *pre-existing rights* have been obtained or licensed.

To that effect, the contractor must establish a list of all *pre-existing rights* to the *results* of this contract or parts thereof, including identification of the rights' owners. If there are no *pre-existing rights* to the *results*, the contractor must provide a declaration to that effect. The contractor must provide this list or declaration to the contracting authority together with the invoice for payment of the balance at the latest.



II.13.5. Evidence of granting of pre-existing rights

Upon request by the contracting authority, the contractor must provide evidence that it has the ownership or the right to use all the listed *pre-existing rights*, except for the rights owned or licensed by the Union. The contracting authority may request this evidence even after the end of this contract.

This evidence may refer, for example, to rights to: parts of other documents, images, graphs, fonts, tables, data, software, technical inventions, know-how, IT development tools, routines, subroutines or other programs ('background technology'), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

This evidence must include, as appropriate:

- (a) the name and version number of a software product;
- (b) the full identification of the work and its author, developer, *creator*, translator, data entry person, graphic designer, publisher, editor, photographer, producer;
- (c) a copy of the licence to use the product or of the agreement granting the relevant rights to the contractor or a reference to this licence;
- (d) a copy of the agreement or extract from the employment contract granting the relevant rights to the contractor where parts of the *results* were created by its *personnel*;
- (e) the text of the disclaimer notice if any.

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

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

II.13.6. Quotation of works in the result

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

II.13.7. Moral rights of creators

By delivering the *results*, the contractor warrants that the *creators* will not object to the following on the basis of their moral rights under copyright:

- (a) that their names be mentioned or not mentioned when the *results* are presented to the public;
- (b) that the *results* be divulged or not after they have been delivered in their final version to the contracting authority;
- (c) that the *results* be adapted, provided that this is done in a manner which is not prejudicial to the *creator's* honour or reputation.

If moral rights on parts of the *results* protected by copyright may exist, the contractor must obtain the consent of *creators* regarding the granting or waiver of the relevant moral rights in accordance with the applicable legal provisions and be ready to provide documentary evidence upon request.

II.13.8. Image rights and sound recordings

If natural persons appear in a *result* or their voice or any other private element is recorded in a recognisable manner, the contractor must obtain a statement by these persons (or, in the case of minors, by the persons exercising parental authority) giving their permission for the described use of their image, voice or private element and, on request, submit a copy of the permission to the contracting authority.



The contractor must take the necessary measures to obtain such consent in accordance with the applicable legal provisions.

II.13.9. Copyright notice for pre-existing rights

When the contractor retains *pre-existing rights* on parts of the *results*, reference must be inserted to that effect when the *result* is used as set out in Article I.10.1, with the following disclaimer: '© — year — European Union. All rights reserved. Certain parts are licensed under conditions to the EU', or with any other equivalent disclaimer as the contracting authority may consider best appropriate, or as the parties may agree on a case-by-case basis. This does not apply where inserting such reference would be impossible, notably for practical reasons.

II.13.10. Visibility of Union funding and disclaimer

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

II.14. FORCE MAJEURE

II.14.1 If a party is affected by *force majeure*, it must immediately *notify* the other party, stating the nature of the circumstances, their likely duration and foreseeable effects.

II.14.2 A party is not liable for any delay or failure to perform its obligations under the contract if that delay or failure is a *result of force majeure*. If the contractor is unable to fulfil its contractual obligations owing to *force majeure*, it has the right to remuneration only for the services actually provided.

II.14.3 The parties must take all necessary measures to limit any damage due to *force majeure*.

II.15. LIQUIDATED DAMAGES

II.15.1. Delay in delivery

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

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

where

V is the price of the relevant purchase or deliverable or *result* or, failing that, the price specified in Article I.4.1;

d is the duration specified for delivery of the relevant purchase or deliverable or *result* or, failing that, the duration of *performance of the contract* specified in Article I.3.3 expressed in days.

Liquidated damages may be imposed together with a reduction in price under the conditions laid down in Article II.16.

II.15.2. Procedure

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

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



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

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

II.15.3. Nature of liquidated damages

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

II.15.4. Claims and liability

Any claim for liquidated damages does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.18.

II.16. REDUCTION IN PRICE

II.16.1. Quality standards

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

A reduction in price may be imposed together with liquidated damages under the conditions of Article II.15.

II.16.2. Procedure

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

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

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

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

II.16.3. Claims and liability

Any reduction in price does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.18.

II.17. SUSPENSION OF THE PERFORMANCE OF THE CONTRACT

II.17.1. Suspension by the contractor

If the contractor is affected by *force majeure*, it may suspend the *performance of the contract*. The contractor must immediately *notify* the contracting authority of the suspension. The *notification* must



include a description of the *force majeure* and state when the contractor expects to resume the *performance of the contract*.

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

II.17.2. Suspension by the contracting authority

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

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

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

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

- (a) it is lifting the suspension; or
- (b) it intends to terminate the contract under Article II.18.1(f) or (j).

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

II.18. TERMINATION OF THE CONTRACT

II.18.1. Grounds for termination by the contracting authority

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

- (a) if provision of the services under the contract has not actually started within 15 days of the scheduled date and the contracting authority considers the new date proposed, if any, unacceptable, taking into account Article II.11.2;
- (b) if the contractor is unable, through its own fault, to obtain any permit or licence required for *performance of the contract*;
- (c) if the contractor does not perform the contract in accordance with the tender specifications or is in breach of another substantial contractual obligation.
- (d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 106(1) of the Financial Regulation¹⁵;
- (e) if the contractor or any *related person* is subject to any of the situations provided for in points (c) to (f) of Article 106(1) or to Article 106(2) of the Financial Regulation.
- (f) if the procedure for awarding the contract or the *performance of the contract* prove to have been subject to *substantial errors, irregularities or fraud*;
- (g) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- (h) if the contractor is in a situation that could constitute a *conflict of interest* or a *professional conflicting interest* as referred to in Article II.7;
- (i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the *performance of the contract* or substantially modify the conditions under which the contract was initially awarded;

¹⁵ Regulation (EU, EURATOM) No 966/2012 on the financial rules applicable to the general budget of the Union, as amended <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012R0966>



- (j) in the event of *force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;

II.18.2. Grounds for termination by the contractor

The contractor may terminate the contract if:

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

II.18.3. Procedure for termination

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

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

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

In the cases referred to in points (a) to (d) and (g) to (i) of Article II.18.1 and in Article II.18.2, the date on which the termination takes effect must be specified in the *formal notification*.

In the cases referred to in points (e), (f) and (j) of Article II.18.1, the termination takes effect on the day following the date on which the contractor receives *notification* of termination.

In addition, at the request of the contracting authority and regardless of the grounds for termination, the contractor must provide all necessary assistance, including information, documents and files, to allow the contracting authority to complete, continue or transfer the services to a new contractor or internally, without interruption or adverse effect on the quality or continuity of the services. The parties may agree to draw up a transition plan detailing the contractor's assistance unless such plan is already detailed in other contractual documents or in the tender specifications. The contractor must provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

II.18.4. Effects of termination

The contractor is liable for damage incurred by the contracting authority as a result of the termination of the contract including the cost of appointing another contractor to provide or complete the services, unless the damage was caused by the situation specified in Article II.18.1 (j) or in Article II.18.2. The contracting authority may claim compensation for such damage.

The contractor is not entitled to compensation for any loss resulting from the termination of the contract, including loss of anticipated profits, unless the loss was caused by the situation specified in Article II.18.2.

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



Within 60 days of the date of termination, the contractor must submit any report, deliverable or *result* and any invoice required for services that were provided before the date of termination.

In the case of joint tenders, the contracting authority may terminate the contract with each member of the group separately on the basis of points (d), (e) or (g) of Article II.18.1, under the conditions set out in Article II.11.2.

II.19. INVOICES, VALUE ADDED TAX AND E-INVOICING

II.19.1. Invoices and value added tax

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

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

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

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

II.19.2. E-invoicing

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

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

II.20. PRICE REVISION

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

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

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

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

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

The price revision is calculated using the following formula:

$$Pr = Po \times \left(\frac{I_r}{I_o} \right)$$

where: Pr = revised price;



Po = price in the tender;

Io = index for the month in which the contract enters into force;

Ir = index for the month in which the request to revise prices is received.

II.21. PAYMENTS AND GUARANTEES

II.21.1. Date of payment

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

II.21.2. Currency

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

II.21.3. Conversion

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

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

http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm

II.21.4. Costs of transfer

The costs of the transfer are borne as follows:

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

II.21.5. Pre-financing, performance and money retention guarantees

If, as provided for in Articles I.5 or I.6, a financial guarantee is required for the payment of pre-financing, as performance guarantee or as retention money guarantee, it must fulfil the following conditions:

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

The contractor bears the cost of providing such guarantee.

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

Performance guarantees cover compliance with substantial contractual obligations until the contracting authority has given its final approval for the service. The performance guarantee must not exceed 10 %



of the total price of the contract. The contracting authority must release the guarantee fully after final approval of the service, as provided for in the contract.

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

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

II.21.6. Interim payments and payment of the balance

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

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

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

Payment of the balance may take the form of recovery.

II.21.7. Suspension of the time allowed for payment

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

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

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

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

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of this Article and the new document produced is also rejected, the contracting authority reserves the right to terminate the contract in accordance with Article II.18.1(c).

II.21.8. Interest on late payment

On expiry of the payment periods specified in Article I.5, the contractor (or leader in the case of a joint tender) is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros (the reference rate) plus eight points. The reference rate is the rate in force, as published in the C series of the *Official Journal of the European Union*, on the first day of the month in which the payment period ends.



Suspension of the payment period as provided for in Article II.21.7 is not considered as giving rise to late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of payment as defined in Article II.21.1.

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

II.22. REIMBURSEMENTS

II.22.1 If provided for in the special conditions or in the tender specifications, the contracting authority must reimburse expenses directly connected with the provision of the services either when the contractor provides it with supporting documents or on the basis of flat rates.

II.22.2 The contracting authority reimburses travel and subsistence expenses on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.

II.22.3 The contracting authority reimburses travel expenses as follows:

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

In addition, the contracting authority reimburses travel outside Union territory if it has given its prior written approval for the expenses.

II.22.4 The contracting authority reimburses subsistence expenses on the basis of a daily subsistence allowance as follows:

- (a) for journeys of less than 200 km for a return trip, no subsistence allowance is payable;
- (b) the daily subsistence allowance is payable only on receipt of supporting documents proving that the person concerned was present at the destination;
- (c) the daily subsistence allowance takes the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport including transport to and from the airport or station, insurance and sundries;
- (d) the daily subsistence allowance is reimbursed at the flat rates specified in Article I.4.3;
- (e) accommodation is reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Article I.4.3.

II.22.5 The contracting authority reimburses the cost of shipment of equipment or unaccompanied luggage if it has given prior written approval for the expense.

II.23. RECOVERY

II.23.1 If an amount is to be recovered under the terms of the contract, the contractor must repay the contracting authority the amount in question.

II.23.2. Recovery procedure

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

If no observations have been submitted or if, despite the observations submitted, the contracting authority decides to pursue the recovery procedure, it must confirm recovery by *formally notifying* a debit



note to the contractor, specifying the date of payment. The contractor must pay in accordance with the provisions specified in the debit note.

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

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

II.23.3. Interest on late payment

If the contractor does not honour the obligation to pay the amount due by the date set by the contracting authority in the debit note, the amount due bears interest at the rate indicated in Article II.21.8. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the contracting authority receives the full amount owed.

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

II.23.4. Recovery rules in the case of joint tender

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

If the leader does not pay by the due date and if the amount cannot be offset in accordance with Article II.23.2 (a), the contracting authority may claim the full amount to any other member of the group by *notifying* the debit note already sent to the leader under Article II.23.2.

II.24. CHECKS AND AUDITS

II.24.1 The contracting authority and the European Anti-Fraud Office may check or require an audit on the *performance of the contract*. This may be carried out either by OLAF's own staff or by any outside body authorised to do so on its behalf.

Such checks and audits may be initiated at any moment during the *performance of the contract* and up to five years starting from the payment of the balance.

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

II.24.2 The contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of five years starting from the payment of the balance.

II.24.3 The contractor must grant the contracting authority's staff and outside *personnel* authorised by the contracting authority the appropriate right of access to sites and premises where the contract is performed and to all the information, including information in electronic format, needed to conduct such checks and audits. The contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format.

II.24.4 On the basis of the findings made during the audit, a provisional report is drawn up. The contracting authority or its authorised representative must send it to the contractor, who has 30



days following the date of receipt to submit observations. The contractor must receive the final report within 60 days following the expiry of that deadline to submit observations.

On the basis of the final audit findings, the contracting authority may recover all or part of the payments made in accordance with Article II.23 and may take any other measure which it considers necessary.

- II.24.5** In accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against *fraud* and other *irregularities* and Regulation (EU, Euratom) No 883/2013 of the European Parliament and the Council of 11 September 2013 concerning investigation conducted by the European Anti-Fraud Office , the European Anti-Fraud Office may carry out investigations, including on-the-spot checks and inspections, to establish whether there has been *fraud*, corruption or any other illegal activity under the contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

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

- II.24.6** The Court of Auditors has the same rights as the contracting authority, particularly right of access, for the purpose of checks and audits.