



**EUROPEAN COMMISSION**  
ENTERPRISE AND INDUSTRY DIRECTORATE-GENERAL

Chemicals, metals, mechanical, electrical and construction industries; Raw materials  
**Construction, Pressure Equipment, Metrology**

## **SERVICE CONTRACT**

CONTRACT NUMBER 30-CE-0464094/00-38

The European Union (hereinafter referred to as "the Union"), represented by the European Commission (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this contract by Mr Heinz Zourek, Director General for DG Enterprise and Industry,

of the one part,

and

Centre d'Etudes d'Assurances (CEA) SA  
11, rue de Rochechouart  
F-75009 Paris  
VAT registration no.: FR 54 414 694 414

(hereinafter referred to as "the Contractor"), which is represented for the purposes of the signature of this contract by Mr. Jean Roussel, President,

of the other part,

**HAVE AGREED**

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

**Annex I** – Tender Specifications (Invitation to Tender of 26<sup>th</sup> July 2011 – Open procedure, 2011/S 141-233384 – OJ/S141 of 26/07/2011.

**Annex II** –

- Contractor's Tender of 15<sup>th</sup> September 2011
- Response to the request for clarifications of 20<sup>th</sup> October 2011

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

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

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

## **I – SPECIAL CONDITIONS**

### **ARTICLE I.1 - SUBJECT**

- I.1.1.** The subject of the Contract is the pilot project “Facilitating access to insurance by self-employed builders & small building firms so as to stimulate innovation and the promotion of eco-technologies in the European Union”.
- I.1.2.** The Contractor shall execute the tasks assigned to him in accordance with the Tender Specifications annexed to the Contract (Annex I).

### **ARTICLE I.2 - DURATION**

- I.2.1.** The Contract shall enter into force on the date on which it is signed by the last contracting party.
- I.2.2.** Execution of the tasks may under no circumstances begin before the date on which the Contract enters into force.
- I.2.3.** The duration of the tasks shall not exceed **36 months**. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from date of entry into force of the Contract. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

### **ARTICLE I.3 – CONTRACT PRICE**

- I.3.1.** The maximum total amount to be paid by the Commission under the Contract shall be 1.428.690,00 EUR [one million, four hundred and twenty-eight thousand, six hundred and ninety Euros] covering all tasks executed.
- I.3.2.** The total amount referred to in the above paragraph shall be fixed and not subject to revision.

### **ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES**

Payments under the Contract shall be made in accordance with Article II.4. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted. Payment requests may not be made if

payments for previous periods have not been executed as a result of default or negligence on the part of the Contractor.

#### **I.4.1. Pre-financing:**

Following signature of the Contract by the last contracting party, within 30 days of the receipt by the Commission of a relevant invoice a pre-financing payment of 142.869 EUR [one hundred and forty-two thousand, eight hundred and sixty-nine Euros] equal to 10 % of the total amount referred to in Article I.3.1. shall be made.

#### **I.4.1. Interim payments:**

Five interim payments are planned, every six months after the signature of the contract.

Request for interim payment by the Contractor shall be admissible if accompanied by:

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

provided the report has been approved by the Commission.

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

Within thirty days of the date on which the report and the corresponding timesheets are approved by the Commission :

- the first interim payment corresponding to 285.738,00 EUR [two hundred and eighty-five thousand, seven hundred and thirty-eight Euros] equal to 20% of the total amount referred to in Article I.3.1 shall be made.
- 4 interim payments corresponding for each payment to 142.869,00 EUR [one hundred and forty-two thousand, eight hundred and sixty-nine Euros] equal to 10% of the total amount referred to in Article I.3.1 shall be made.

#### **I.4.2. Payment of the balance:**

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

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

provided the report has been approved by the Commission.

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

Within thirty days of the date on which the report and the corresponding timesheets are approved by the Commission, payment of the balance corresponding to 428.607,00 EUR [four hundred and twenty-eight thousand, six hundred and seven Euros] equal to 30% of the total amount referred to in Article I.3.1 shall be made.

#### **ARTICLE I.5 – BANK ACCOUNT**

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

Name of bank: HSBC  
Address of branch in full: 3 rue des Mathurins, FR-75009 Paris  
Exact designation of account holder: Centre d'Etudes d'Assurances SA  
Full account number including codes: 0750 022 1051  
IBAN code: FR76 3005 6007 5007 5002 2105 134.

#### **ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS**

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

**Commission:**

Mr Vicente Leoz Argüelles, Head of Unit  
European Commission  
Enterprise and Industry Directorate-General  
Directorate G – Unit G5  
Office B100 02/007  
B – 1049 Brussels

**Contractor:**

Mr. Jean Roussel  
Centre d'Etudes d'Assurances  
CEA  
11, rue de Rochechouart  
FR – 75009 Paris  
c/o Mr. Pierre Colpaert  
E-mail : [pierrecolpaert@cea-assurances.be](mailto:pierrecolpaert@cea-assurances.be)

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

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

## **ARTICLE I.8 – DATA PROTECTION**

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. It shall be processed solely for the purposes of the performance, management and follow-up of the Contract by Unit G5 - ‘Construction, Pressure Equipment, Metrology’ of Directorate-General for Enterprise and Industry of the European Commission without prejudice to possible transmission to internal audit services, to the Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the Union. The Contractor shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to Unit G5 - ‘Construction, Pressure Equipment, Metrology’ of Directorate-General for Enterprise and Industry of the European Commission. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

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

Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving 2 months formal prior notice. Should the Commission terminate the Contract, the Contractor shall only be entitled to payment corresponding to part-performance of the Contract. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

**ARTICLE I.9a – CONTRACT CONCLUDED DURING STANDSTILL PERIOD**

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

## **II – GENERAL CONDITIONS**

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

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

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

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Commission;
  - the Commission may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Commission any right arising from the contractual relationship between the Commission and the Contractor.
- II.1.7.** In the event of disruption resulting from the action of a member of the Contractor's staff working on Commission premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Commission shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract



under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff in accordance with this Article.

**II.1.8.** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the Commission. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.

**II.1.9.** Should the Contractor fail to perform his obligations under the Contract in accordance with the provisions laid down therein, the Commission may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the Commission may impose penalties or liquidated damages provided for in Article II.16.

## **ARTICLE II.2 – LIABILITY**

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

**II.2.2.** The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subcontracting under Article II.13. The Commission shall not be liable for any act or default on the part of the Contractor in performance of the Contract.

**II.2.3.** The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Commission by a third party as a result of damage caused by the Contractor in performance of the Contract.

**II.2.4.** In the event of any action brought by a third party against the Commission in connection with performance of the Contract, the Contractor shall assist the Commission. Expenditure incurred by the Contractor to this end may be borne by the Commission.

**II.2.5.** The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Commission should it so request.

## **ARTICLE II.3 - CONFLICT OF INTERESTS**

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

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

**II.3.2.** The Contractor shall abstain from any contact likely to compromise his independence.

**II.3.3.** The Contractor declares:

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

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

## **ARTICLE II.4 – PAYMENTS**

**II.4.1.** Pre-financing:

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

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

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

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

#### **II.4.2. Interim payment:**

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

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

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

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

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

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

#### **II.4.3. Payment of the balance:**

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

- a final technical report in accordance with the instructions laid down in Annex I;

- the relevant invoices indicating the reference number of the Contract to which they refer;
- statements of reimbursable expenses in accordance with Article II.7.

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

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

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

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

## **ARTICLE II.5 – GENERAL PROVISIONS CONCERNING PAYMENTS**

**II.5.1.** Payments shall be deemed to have been made on the date on which the Commission's account is debited.

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

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

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

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

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

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

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

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

#### **ARTICLE II.9 – CONFIDENTIALITY**

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

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

calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by the Commission may not be deemed to constitute late payment.

## **ARTICLE II.6 – RECOVERY**

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

## **ARTICLE II.7 - REIMBURSEMENTS**

- II.7.1.** Where provided by the Special Conditions or by Annex I, the Commission shall reimburse the expenses which are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets.
- II.7.2.** Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.
- II.7.3.** Travel expenses shall be reimbursed as follows:
- a)** travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
  - b)** travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;
  - c)** travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey and on the same day;
  - d)** travel outside Union territory shall be reimbursed under the general conditions stated above provided the Commission has given its prior written agreement.

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

- II.10.1.** The Contractor shall authorise the Commission to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports. Where personal data is concerned, Article I.8 shall apply.
- II.10.2.** Unless otherwise provided by the Special Conditions, the Commission shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Commission.
- II.10.3.** Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Commission and shall mention the amount paid by the Union. It shall state that the opinions expressed are those of the Contractor only and do not represent the Commission's official position.
- II.10.4.** The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Commission has specifically given prior written authorisation to the contrary.

## **ARTICLE II. 11 – TAXATION**

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

## **ARTICLE II.12 – FORCE MAJEURE**

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

## **ARTICLE II.13 – SUBCONTRACTING**

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

## **ARTICLE II.14 – ASSIGNMENT**

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



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

### **ARTICLE II.15 – TERMINATION BY THE COMMISSION**

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

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

(k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

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

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

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

**II.15.4.** Consequences of termination:

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

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

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

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

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

## **ARTICLE II.16 – LIQUIDATED DAMAGES**

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

## **ARTICLE II.17 – CHECKS AND AUDITS**

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

## **ARTICLE II.18 – AMENDMENTS**

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

**ARTICLE II.19 – SUSPENSION OF THE CONTRACT**

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

**SIGNATURES**

For the Contractor,  
Mr Jean Roussel  
Centre d'Etudes d'Assurances

*P.O. Pierre Colpaert*

signature: 

Done at *18<sup>th</sup>*, date  
*December 2011.*

In duplicate in English.

For the Commission,  
Mr Heinz Zourek, Director-General  
DG Enterprise and Industry

signature: 

Done at Brussels, date *20/12/2011*

Gwenole COZIGOU  
Director ENTR/G.

*G. JA*

# ANNEX I

## Tender Specifications and Monitoring

## 1. TECHNICAL SPECIFICATIONS

### 1.1. BACKGROUND

Within the context of the “Lead Market Initiative”<sup>1</sup> and in association with the European Parliament, the European Commission financed a first pilot project on the above-mentioned subject in 2008. Considering the exploratory nature of the pilot project, the Commission proposed, as an initial step, to carry out a feasibility study, which was aimed at:

- identifying the conditions in which insurance schemes could support the uptake of innovative and sustainable solutions in construction projects;
- clarifying the overall benefits/effects of insurance on consumer protection, the competitiveness of the actors in the supply chain and the economics of the insurance market;
- assessing whether and how the EU could play a role in promoting best practice in this area and/or the formation of pilot schemes.

The findings and recommendations of the feasibility study called ELIOS (“European Liability Insurance Organisation Schemes”) are accessible at the <http://www.elios-ec.eu/report.html> . In particular, the final report of the feasibility study outlines the following issues:

- a) Construction projects generally involve large investments and the financial implications of technical failures are often significant. Moreover, the risk of insolvency is generally high in the construction sector. For these reasons, the client of a construction project is often exposed to high risks and the cover of these risks only by a contractual warranty could be insufficient in many cases.
- b) Traditionally, the contract governing a construction project focuses on the delivery of a physical asset that responds to a number of technical and functional characteristics. The market will require more and more guarantees on building performances, in particular for energy efficiency and the production of energy from renewable energy sources.
- c) Today, these performances are often not covered by insurance. As (re) insurers do not have enough feedback experience on some materials, construction processes and eco-technologies, they tend to adopt a prudential attitude in the evaluation of the risks. The growing number of quality/conformity marks for construction products/services and eco-technologies does not necessarily provide clear and reliable indicators and information for the risk assessment and furthermore

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<sup>1</sup> COM (2007) 860 (<http://ec.europa.eu/enterprise/leadmarket/leadmarket.htm>) and thematic report on sustainable construction ([http://ec.europa.eu/enterprise/leadmarket/sustainable\\_construction.htm](http://ec.europa.eu/enterprise/leadmarket/sustainable_construction.htm))

could raise issues regarding their compatibility with the objectives of the Internal Market

- d) The diversity of existing national liability and insurance regimes could raise difficulties of interpretation of the market conditions in case of cross border services, in particular for small enterprises. The “points of single contact” for businesses, which have been put in place within the context of the Services’ Directive, should provide at some point targeted and impartial information on a wide range of domains, including on construction insurance.
- e) The creation of an insurance guarantee fund, as originally planned by the European Parliament, requires beforehand a greater convergence of the national liability and insurance regimes and of the risk assessment methods. This convergence process would require a more solid technical basis for risk appraisal and better policy learning between Member States.

The pilot project subject of this call for tender should go deeper into some aspects and recommendations of the previous pilot project financed under the budget of 2008.

## **1.2. DESCRIPTION OF TASKS**

### ***1.2.1. Objectives***

The pilot project subject of this call for tender should further elaborate on some aspects and recommendations of the previous pilot project ELIOS<sup>2</sup> financed under the budget of 2008.

The objectives of the new pilot project are:

- a) To provide objective and reliable information on the opportunities and threats of quality/conformity marks and building pathology that could support risk appraisal by (re) insurance.
- b) To identify possibilities for a greater convergence or mutual recognition of construction insurance regimes in the EU-27 with the view of the Internal Market and the cover of building sustainability performances

The new pilot project will analyse how a reference system on quality marks and a better knowledge of the building pathology could support (re) insurers in the risk appraisal in a way compatible with Internal Market objectives. In addition, the new pilot project will analyse the conditions and modalities for a greater convergence or mutual recognition of various national construction insurance regimes with a view of the Internal Market and the cover of building sustainability performances. This new pilot

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<sup>2</sup> See <http://www.elios-ec.eu/report.html>

project would be carried out under the aegis of a forum, which would be composed by all the parties concerned and animated by the representatives of the Commission.

### **1.2.2. Subject of the services**

The Commission invites tenders to carrying out a pilot project:

- a) to analyse the impact of quality/conformity marks on construction markets and the (re)insurance sector and develop an EU directory on quality marks;
- b) to develop an EU-wide knowledge base on quality indicators in construction and building pathology that could support (re)insurance in risk appraisal;
- c) to propose concrete actions to the deployment of insurance schemes that could support cross border services and the cover of building sustainability performances;
- d) to assist the Commission in the setting up and the functioning of a forum composed by representatives from the construction and the (re)insurance sectors, Member States and the Commission for the implementation of the pilot project.

### **1.2.3. Work programme**

The new pilot project will analyse the added value, the credibility and the mutual recognition of quality/conformity marks used in the construction business such as labels, certificates and technical assessments in view of creating and promoting a European directory. This analysis will in particular examine the role that quality/conformity marks play in the functioning of construction markets, their relation to the CE marking and how (re) insurers take them into account in risk appraisal.

Moreover, the new pilot project will also develop indicators and a mechanism to monitor the evolution of quality/conformity in construction and the pathology related to construction design and techniques and the integration of eco-technologies. A database with exhaustive information on these matters should be developed as a deliverable of the pilot project.

Finally, the new project will analyse the conditions for a greater convergence or mutual recognition of the construction insurance regimes and identify the criteria and the modalities for the development of insurance schemes that could support cross border services and the cover of building sustainability performances.

The pilot project would be carried out under the aegis of a forum, which would be composed by all the parties concerned and animated by the representatives of the Commission.



value of the various source, their complementary aspects and their potential for use in risk appraisal;

- An analysis of the needs and of the criteria to develop an EU-wide database on quality and pathology indicators, in particular the potential value of this information for the construction and the (re) insurance sectors, the conditions and the modalities to gather, exploit and disseminate relevant data and information to all parties concerned; the maintenance and the exploitation of the database after the termination of the pilot project, etc.;
- A validation of the format of the information that the EU-wide database should provide, e.g. by type of construction products, process, building, by category of defects, by regions, etc. and of relevant media support, e.g. webzine, publications, alert on major defects, etc.

Based on the analysis and validation described above, the contractor will define the informatics requirements of the database. A pilot version of the database should be developed, tested and validated during the course of the pilot project. The contractor should ensure a regular updating of the data sources and maintenance of the informatics environment during the course of the pilot project.

The work programme will include at least the following elements:

**a) *Development of an EU directory on quality/conformity marks (labels, certificates, technical assessment, etc.) for construction products, processes, works, technical equipment and professional qualifications***

This will include among others:

- An inventory of quality/conformity marks in all EU-27 countries used in construction markets for products, processes, works, technical equipment and professional qualifications together with an appraisal of the level of impartiality of the procedures that are used to deliver the quality marks;
- A critical analysis of the rationale and of the relevance of the information provided by the quality marks to the operators of the construction value chain and to investors, including the compatibility and complementary issues with the CE marking;
- An appraisal of the conditions and of modalities to be followed by construction operators in order to access to the quality/conformity marks, including those related to the mutual recognition of the marks by Member States;
- An assessment of the possible impact of the quality/conformity marks on the competitiveness of construction businesses and the functioning of the Internal Market;
- Evidence and assessment of the extent to which the quality/conformity marks are used in practice by the insurance sector, including in the context of cross-border services. The assessment will consider possible constraints on the Internal Market resulting from common practice in insurance.

The contractor will develop an EU directory on quality/conformity marks covering the above-mentioned aspects (i.e. their scope by product, process, works, etc., their relationship with the EC marking, their modalities, etc.) and accessible on Internet. The main recipients of this directory are professional services providing expertise and advice to construction operators, investors and (re)insurance.

**b) *Development of indicators and monitoring of the evolution of quality in construction and of the pathology related to construction design and techniques and the integration of eco-technologies.***

This will include among others:

- A review of existing research work and data sources on quality in construction and building pathology, including an assessment of the

meetings during the third year. These meetings will take place in the Commission's premises.

#### 1.2.4. Methodology

For the work to be undertaken, the contractor will apply the methodological tools and format that he proposes and develops in his bid. For further details, see 1.1.3.

It will be important to identify and involve key stakeholders during the pilot project, amongst others, national administrations in charge of insurance legislation, business federations representing the construction and the (re) insurance sectors and other interested parties such as consumer organisations. Contacts with other Commission services and the European Parliament, if applicable, should be managed through the contracting authority, i.e. DG ENTR G5. The tender must outline how the contractor envisages involving relevant stakeholders into the work.

Due to the pilot nature of the project and its duration, the Commission expects the contractor to maintain a close working relationship with the responsible service of the Commission, i.e. DG ENTR G5, throughout the pilot project and to have the flexibility to adapt to changing circumstances within the boundaries of the contract. The tender must outline how the contractor will ensure this.

The tender must indicate the potential risks to the project being able to deliver results, including ways in which the contractor intends to mitigate these.

The tender must also contain a bar chart (or other graphical representation) illustrating the proposed work programme and indicative timetable for all stages of work, meetings and reports, as well as a detailed resource plan for each task of the work programme.

### 1.3. REPORTS AND DOCUMENTS

The Contractor is to provide the required reports and documents in electronic form (by e-mail or on CD-ROM, in MS Word or pdf format) in accordance with the conditions of the standard service contract appended in Annex **Error! Reference source not found.**

Time-line	Meetings	Reports/document	Approval of reports	Payments
Contract signature				10%
1 month	Bilateral with EC services (Brussels)	Review of literature/information sources on quality/conformity marks and building	15 days	

***c) Analysis of the conditions for a greater convergence or mutual recognition of the construction insurance regimes and identification of the criteria and the modalities for the development of insurance schemes that could support cross border services and the cover of building sustainability performances***

This will include among others:

- Policy formulation about the role, the regulatory framework and the financing of construction insurance within the context of national strategies for energy and climate change and national plans for energy efficiency in buildings;
- An analysis of the position of construction insurance in comparison with other mechanisms for the protection of investors' interests;
- Identification of information needs about construction insurance within the framework of article 21 of the Services Directive 2006/123/EC<sup>3</sup>, together with concrete proposals for on-line information tools for construction enterprises and ad hoc advice to "Points of single contact";
- Assessing good practice and the criteria/modalities for new schemes that could support cross border services and the cover of building sustainability performances, including the proposal of concrete schemes;
- Updating the mapping of insurance regimes in the EU-27 based on the information gathered during the ELIOS pilot project.

***d) Assistance for the setting up and functioning of a forum composed by representatives from the construction and the (re) insurance sector, Member States and Commission services for the implementation of the pilot project***

The function of this forum will be to ensure guidance of the pilot project and a dialogue between the construction sector, the (re) insurance sector, Member States and the Commission to facilitate the implementation of tasks a) to c) of the work programme. The forum will be animated by the Commission services. The members of the forum will not represent any official position of the organisation to which they are affiliated.

The contractor will assist the Commission services in defining the mandate of the forum, identifying members representing various interests from the construction and insurance sectors and from Member States, ensuring the secretariat of the forum, e.g. the preparation of invitations and working documents for the meetings, the drafting of minutes, responding to members requests, etc. It is planned to hold 2 meetings of the forum during the first year of the pilot project, 2 meetings during the second year and 3

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<sup>3</sup> OJEU L 376, 27.12.2006

### ***1.3.1 The progress reports***

Progress reports showing progress of the work shall be submitted to the Commission at the latest at the end of each 6 months period after the signature of the contract.

The Commission shall have 45 days from the receipt to approve or reject the report. Within the 15 days of receiving the Commission's observations, the Contractor will submit additional information or an updated version of the report.

The progress reports shall:

- present the general framework for the pilot project;
- specify how the work was undertaken (with reference to the agreed work programme including details on measures taken to ensure quality of the work and on consultations made);
- adequately present the results of the work undertaken and the progress made with regard to elements undertaken during the past six months period (in line with provided indications on the work programme in section 1.1.3);
- describe problems/scope for improvement as identified during implementation and suggest measures to overcome the difficulties.

### ***1.3.2 The final report***

The contractor shall submit a draft final report to the Commission at the latest 34 months after the signature of the contract.

Within 45 days after the submission of this draft final report, the Commission will provide the Contractor with its comments on the draft final report, previous consultation of the forum. The Contractor shall have 15 days to submit additional information or an updated version of the final report.

The final report shall provide the Commission with the results of the pilot project and information for internal evaluation purposes, a part or all of which the Commission may want to disseminate. The contractor must address the following points:

- Background to the pilot project, terms of reference and understanding of the work to be performed;
- The methodology used, including details on the references and information that have been utilised and the sources of these, on measures taken to ensure quality of the work, and on consultation made;
- How the work was undertaken in respect of the work programme;

		pathology + Draft mandate of the forum + proposal for the composition of the forum		
3 months	Forum (Brussels)	Minutes	15 days	
6 months		Progress report	45 days	20%
7 months	Forum (Brussels)	Minutes	15 days	
12 months		Progress report	45 days	10%
13 months	Forum (Brussels)	Minutes	15 days	
18 months		Progress report	45 days	10%
19 months	Forum (Brussels)	Minutes	15 days	
24 months		Progress report	45 days	10%
25 months	Forum (Brussels)	Minutes	15 days	
30 months		Progress report	45 days	10 %
31 months	Forum (Brussels)	Minutes	15 days	
34 months		Draft final report	45 days	
35 months	Forum (Brussels)	Minutes	15 days	
36 months		Final report		30%

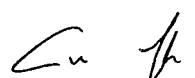
Reports and any other documents must be submitted in English. The progress and final reports must include a summary in English, French and German.

The length of the progress reports shall not exceed 60 pages A4 size, and that of the final report 150 pages A4 size, including illustrative material; the main supporting documents are to be attached as annexes.

The contractor shall provide five copies of the final report and its annexes and of the three language versions of the executive summary, together with all materials necessary, ready for reproduction.

The contractor shall draw up detailed minutes of each meeting and send it to the EC services within 10 days after the meeting.

- The characteristics of the work undertaken (ideas; innovative elements; technical feasibility and likelihood of findings resulting in successful further work, positive and negative aspects experienced);
- The collaboration established during the course of the work (for example, involvement of Commission services and national administrations, public and private bodies in the sphere of construction; industry and insurance associations and authorities at local, regional and national level; experts and special knowledge bodies; etc.);
- The comprehensive results of the work undertaken with regard to all elements of the work programme set out under point 1.1.3;
- An assessment of the functioning of the EU directory on quality marks and of the EU-wide database on construction quality and pathology and of the options to be envisaged for their maintenance and exploitation after the contract assignment.



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## **ANNEX II**

**Contractor's offer of 15<sup>th</sup> September 2011  
Clarifications of 20<sup>th</sup> October 2011**

*C. M. Th*

