

A LIST

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EUROPEAN COMMISSION

Internal Market and Services DG

RESOURCES AND COMMUNICATION
Financial Resources and Internal Control

Ref. Ares(2011)924579 - 31/08/2011



Brussels, 31/08/2011
MARKT/A2/FM/PS (2011)1013503

LETTER OF INVITATION TO TENDER

Dear Sir/Madam,

Subject: Open call for tenders n° **MARKT/2011/128/D**

Contract Notice in the Official Journal of the European Union 2011/S 166-273411 of 31/08/2011.

STUDY ON TRADE SECRETS AND CONFIDENTIAL BUSINESS INFORMATION IN THE INTERNAL MARKET

Please find enclosed the call for tenders relating to the above-mentioned contract.

If you are interested in the possibility of providing services with regard to the present invitation, you are hereby invited to submit a tender in triplicate in one of the official languages of the European Union, following the indications and procedures laid down in this Invitation to Tender, with the Specifications and with all the related annexes, including the Terms of Reference.

Tenders must be:

- either sent by registered post or by private courier service, not later than **18/10/2011**, the postmark, the date of dispatch or the date of the receipt being taken as a proof, to the following address:
European Commission
DG Internal Market and Services - Budget
Office: SPA2 – 01/51
B - 1049 Brussels
- or delivered by hand (by the tenderer in person or by an authorised representative) to the following address:
European Commission
DG Internal Market and Services - Budget
Office: SPA2 – 01/51
1, Av. Du Bourget
B - 1140 Brussels (Evere)

not later than 17.00 on **18/10/2011**. In this case, a receipt must be obtained as proof of submission, signed and dated by the official in the Commission's central mail

department who took delivery. The department is open from 08.00 to 17.00 Monday to Thursday, and from 8.00 to 16.00 on Fridays. It is closed on Saturdays, Sundays and Commission holidays.

Tenders must be placed inside two sealed envelopes. Both the inner and outer envelope, addressed to the department indicated in the invitation to tender, should be marked as follows: **"Call for tender no. MARKT/2011/128/D - Not to be opened by the Mail Department"**. If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across this tape.

The inner envelope must also contain two sealed envelopes, one containing the technical specifications and the other the financial bid. Each of these envelopes must clearly indicate the content ("Technical" and "Financial").

The specifications and the draft contract are attached. The specifications list all the documents that must be produced in order to tender, including supporting evidence of economic, financial, technical and professional capacity.

Tenders must be:

- signed by the tenderer or his duly authorised representative;
- Perfectly legible so that there can be no doubt as to words and figures;
- drawn up using the model reply forms in the specifications (Annexes III and IV).

Period of validity of the tender, during which the tenderer may not modify the terms of his tender in any respect: 9 months after the deadline for submission of tenders.

Submission of a tender implies acceptance of all the terms and conditions set out in this invitation to tender, in the specification and in the draft contract and, where appropriate, waiver of the tenderer's own general or specific terms and conditions. It is binding on the tenderer to whom the contract is awarded for the duration of the contract.

Tenders will be opened in public session at **26/10/2011 at 10:00** - Meeting room 01/A30 – Rue de Spa, n°2 – B-1000 BRUXELLES. One person representing the tenderer may be present at the opening session.

Contacts between the contracting department and tenderers are prohibited throughout the procedure save in exceptional circumstances and under the following conditions only:

- Before the final date for submission of tenders:
- * At the request of the tenderer, the contracting department may provide additional information solely for the purpose of clarifying the nature of the contract.

Any requests for additional information must be made in writing only to e-mail address ec-intmarket-contracts@ec.europa.eu.

Such requests for clarification, together with the responses, will be published by the Commission under the heading corresponding to this call for tenders, at: http://ec.europa.eu/dgs/internal_market/calls_en.htm

Requests for additional information received less than five working days before the closing date for submission of tenders will not be processed (*for practical reasons*).

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

This information will be published by the Commission under the heading corresponding to this call for tenders, at: http://ec.europa.eu/dgs/internal_market/calls_en.htm

- After the opening of tenders

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

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

Up to the point of signature, the 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 candidates or tenderers notified.

You will be informed whether or not your tender has been accepted.

If processing your reply to the invitation to tender involves the recording and processing of personal data (such as your name, address and CV), such data will be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Unless indicated otherwise, your replies to the questions and any personal data requested are required to evaluate your tender in accordance with the specifications of the invitation to tender and will be processed solely for that purpose by the European Commission. Details concerning the processing of your personal data are available on the privacy statement at: http://ec.europa.eu/dataprotectionofficer/privacystatement_publicprocurement_en.pdf.

Your personal data (name, given name if natural person, address, legal form, registration number and name and given name of the persons with powers of representation, decision-making or control, if legal person) may be registered in the Early Warning System (EWS) only or both in the EWS and Central Exclusion

Database (CED) by the Accounting Officer of the Commission, should you be in one of the situations mentioned in:

- the Commission Decision 2008/969 of 16.12.2008 on the Early Warning System (for more information see the Privacy Statement on http://ec.europa.eu/budget/info_contract/legal_entities_en.htm), or

- the Commission Regulation 2008/1302 of 17.12.2008 on the Central Exclusion Database (for more information see the Privacy Statement on http://ec.europa.eu/budget/library/sound_fin_mgt/privacy_statement_ced_en.pdf)

I look forward to receiving your tender in response to these tender documents.

Yours sincerely,

Acting Director A

Enclosure: Specifications and annexes

***TRADE SECRETS AND CONFIDENTIAL BUSINESS INFORMATION IN
THE INTERNAL MARKET***

**INVITATION TO TENDER
MARKT/2011/128/D**

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TECHNICAL SPECIFICATIONS

Invitation to tender n° MARKT/2011/128/D

TRADE SECRETS AND CONFIDENTIAL BUSINESS INFORMATION IN THE INTERNAL MARKET

1. OBJECT OF THE MARKET

The study to be contracted is aimed at allowing the Commission to make an informed assessment of the role of trade secrets and confidential business information as possible drivers for innovation, competitiveness and economic growth in the EU.

This study will provide information as to whether the current national based and non-harmonised legal framework on the protection of trade secrets and confidential business information is impairing the smooth functioning of the Internal Market.

2. ELIGIBILITY

This invitation to tender is open to tenderers from the Member States of the European Union and the European Economic Area, as well as States covered by the Government Procurement Agreement concluded within the World Trade Organisation, in accordance with the principle of reciprocity.

3. COSTS

Tenderers themselves will bear the costs of drawing up their tenders and the Commission will not be liable to pay any compensation if a tender is rejected or if it decides not to select any tender.

4. LOTS

- Not applicable to the present invitation to tender.

5. SUB-CONTRACTING

- Sub-contracting is permitted.
- All subcontracting must be approved by the Contracting Authority, either by accepting the Contractor's offer, or, if proposed by the Contractor after contract signature, by prior written approval, being requested and granted.
- The tenderer must indicate clearly in their methodology, which parts of the work will be sub-contracted, and the identity of all subcontractors. Full details of such subcontractors must also be provided in Annex III.

6. DOCUMENTATION AVAILABLE TO TENDERERS

No specific documentation is made available, for information consult notably:

http://ec.europa.eu/internal_market/iprenforcement/documents_en.htm

7. VARIANTS

Tenderers may not submit tenders for only part of the services required. Variants are not allowed.

8. VOLUME OF THE MARKET

The estimated maximum amount is EUR 400,000, for the total completion of the work, including all travel and subsistence expenses. No contract offer above this amount will be considered.

9. PRICE

The price must be expressed in Euros. For information purposes, tenderers will provide a breakdown of costs following the table enclosed in Annex IV of the enclosed letter of submission of tender:

1) Overall price:

Tenders will specify a fixed price for the various components of the cost of the study. That price should be the final price and will include all costs, [i.e. fees, meetings, administrative expenses, overheads. No additional refund request in respect of the above mentioned costs will be accepted.

Different price options will not be accepted and will entail the refusal of the offer.

2) VAT

As the Commission is exempt from all taxes and dues pursuant to the Protocol on the privileges and immunities of the European Union annexed to the Treaty, signed in Brussels on 8 April 1965, establishing a Single Council and a Single Commission of the European Union, value added tax (VAT) should not be included in the price tendered. The amount of VAT should be shown separately. Potential tenderers are informed that the Commission will take no account of VAT in examining the prices indicated in the various tenders.

10. PAYMENT MODALITIES

Payments will be made following the provisions of the draft contract.

11. CONTRACTUAL CONDITIONS AND GUARANTEES

All the conditions applicable as well as the possible guarantees requested are specified in the draft contract.

12. SELECTION OF CONTRACTOR AND AWARD OF A CONTRACT

12.1. CASES FOR EXCLUSION

In the case of consortia, the declaration and the request for evidence concerning the cases for exclusion will be applicable to all the members of the consortium.

- (1) Tenderers shall be excluded from participation in a procurement procedure if:
 - (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
 - (b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata;
 - (c) they have been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;
 - (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the Contracting Authority or those of the country where the contract is to be performed;
 - (e) they have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
 - (f) following another procurement procedure or grant award procedure financed by the Union budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.
- (2) Contracts may not be awarded to candidates or tenderers who, during the procurement procedure:
 - (a) are subject to a conflict of interest;
 - (b) are guilty of misrepresentation in supplying the information required by the Contracting Authority as a condition of participation in the tender procedure or fail to supply this information.
- (3) By completing and signing the form in Annex III, tenderers certify that they are not in one of the situations listed above.
- (4) Administrative or financial penalties may be imposed by the Contracting Authority on tenderers who are in one of the cases of exclusion provided for above, in accordance with Articles 93, 94 and 96 of the Financial Regulation

(Council Regulation 1605/2002 of 25/6/02) and Article 133 of the Implementing Regulation (Commission Regulation 2342/2002 of 23/12/02)

12.2. SELECTION CRITERIA

The evaluation will be made in two stages: selection and award. Only the offers which fulfil the criteria detailed below will be selected for the award stage.

In the case of consortia, the selection criteria will be applicable to all the members of the consortium. The same principle will also be applied in the case that there are sub-contractors, in respect of the part of the work that they will perform.

The tenderer's capacity will be assessed on the basis of the following:

12.2.1. Economic and financial capacity

Tenderers will provide sufficient information to satisfy the Commission of their financial standing and more particularly but without prejudice to the generality of the foregoing that they and any subcontractors do have the necessary resources and financial means to carry out the work that is subject of the tender.

The Commission shall have sole discretion to judge the adequacy of tenderers financial standing and where it considers this insufficient the right to reject any offer, to accept an offer subject to any advance or stage payments being deferred until the work has been completed or to ask the tenderers to provide a guarantee or performance guarantee as referred to elsewhere. Submission of a tender implies acceptance that the Commission's decision will be final and that it will not enter into negotiations with tenderers on this subject.

12.2.2. Technical capacity

Tenderers will provide sufficient information to satisfy the Commission that they have the technical capacity, resources and experience to perform the work that is the subject of this invitation to tender.

The team proposed by the tenderer shall possess the following combination of qualifications :

- Understanding and experience of EU public policy in general, and more specifically the area of the Internal Market;
- Strong knowledge of intellectual property law (in particular in the field of patents), unfair competition law, the legal protection of trade secrets, confidential business information as well as of the theory and practice of know-how licensing and technology transfer agreements, both within Europe and in an international dimension;
- Strong record of independent and high-quality research in the fields of intellectual property law and unfair competition law, as demonstrated by publications, previous research or other activities carried out;
- Strong knowledge of the economics of intellectual property;

- Expertise and capacity to collect and process statistical information, including expertise in planning and conducting interviews or surveys;
- Management ability to carry out projects of this scale and scope, proven by previous projects of similar nature carried out on related topics;
- Capacity to include all 27 EU Member States in its analysis taking into account the different language regimes existing in all these countries if applicable;
- Excellent written drafting skills in English.

The capacity of tenderers and any subcontractors or correspondents will be assessed on the basis of the evidence detailed in Section 13.

12.3. AWARD CRITERIA

The contract will be awarded in favour of the economically most advantageous offer on the basis of the following award criteria:

- Quality, relevance, completeness and viability of the proposed methodology to address the tasks and ensure the quality of the study (maximum 50 points);
- Adequacy of the human, financial and technical resources allocated for each project phase to provide high quality and reliable data (maximum 35 points);
- Assessment of the means by which the tenderer intends to ensure full and consistent coverage of the 27 Member States (maximum 15 points);
- The price

The evaluation committee will consider further only those tenders that have obtained at least a technical quality score of 70 points.

The evaluation committee will then proceed with the financial comparison of the tenders retained for further consideration according to the following procedure.

The retained tender with the lowest total price receives a financial score equal to the maximum score received for the technical quality award criteria. The other retained tenders are awarded points by means of the following formula:

Financial score = (lowest total price/total price of the tender being considered) x (maximum score received for the technical quality award criteria).

The most economically advantageous tender is established by means of the computation of a final score according to the following formula:

Final score = (Technical quality score) + (Financial Score).

13. CONTENTS OF TENDERS

13.1. GENERAL REMARKS

- Tenders may be drafted in any official language of the European Union.
- Tenderers must complete correctly Annexes III and IV to the Specifications, indicating all the information requested. In addition, tenders must include at least all the documents detailed in this Section 13.
- Tenders submitted by consortia will:
 - show clearly the role, qualifications and experience of each of the members of the proposed consortium;
 - will include a letter signed by the authorised representatives of each of the other parties designating the company and/or the person who will represent the consortium for the signature of the contract and for all contacts with the Commission during the execution of the tasks.
- Other information to be included in the tender:
 - supporting evidence which is normally acceptable under their own law to demonstrate their registration at their business address; supporting evidence is not necessary for sub-Contractors;
 - where the tenderer is a natural person: a copy of the identity card, passport, driving license or any other document which can be used for officially for identification purposes;

13.2. INFORMATION TO BE PROVIDED BY TENDERER IN RELATION TO TENDERERS ACCESS TO THE MARKET

Tenders will include the following documents

- Declaration of absence of conflict of interests duly signed by an authorised representative;
- proof that the tenderer is authorised to perform the contract under national law, as evidenced by inclusion in a trade or professional register, or a sworn declaration or certificate, membership of a specific organisation or express authorisation;
- entry in the VAT register (i.e. VAT registration number) or official proof of exemption;

13.3. INFORMATION TO BE PROVIDED BY TENDERER IN RELATION TO THE EXCLUSION CRITERIA

	Documents to be provided
Evidence to demonstrate that tenderer is not in any of the situations detailed in points (a), (b), and (e), of paragraph	A recent extract from the judicial record is required or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those

(1) of Section 12.1.	requirements are satisfied. Where the tenderer is a legal person and the national legislation of the country in which the Tenderer is established does not allow the provision of such documents for legal persons, the documents should be provided for natural persons, such as the company directors or any person with powers of representation, decision-making or control in relation to the tenderer.
Evidence to demonstrate that tenderer is not in any of the situations detailed in point (d) of paragraph (1) of Section 12.1.	Recent certificates or letters issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the tenderer is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions.
	Where any document described above is not issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

13.4. INFORMATION TO BE PROVIDED BY TENDERER IN RELATION TO THE SELECTION CRITERIA

	Documents to be provided
Economic and financial capacity (Section 12.2.1.)	<p>Proof of economic and financial capacity may be furnished by one or more of the following documents:</p> <p>1) In the case of legal persons, and in respect of each of them when more than one:</p> <ul style="list-style-type: none"> ➤ appropriate statements from banks or evidence of professional risk indemnity insurance; ➤ the presentation of balance sheets or extracts from balance sheets for at least 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 economic operator is established; ➤ 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. <p>2) In the case of natural persons: Appropriate statements from banks or evidence of professional risk indemnity insurance.</p>
Technical capacity (Section	All the following evidence will be furnished:

12.2.2.)	<ol style="list-style-type: none"> 1) A detailed list of references focused on the tenderer's expertise and experience relevant to the subject matter of the present invitation to tender undertaken within the last 3 years. It must indicate dates, place of work and recipients (sector, nature, etc.) of the work (in particular those services implemented on behalf of the tenderer). 2) Detailed curriculum vitae for the each of the team members of <u>up to two</u> A4 pages and covering relevant qualifications and relevant recent experience. The CVs must specify: <ol style="list-style-type: none"> i The different diplomas obtained (copies of which may be requested by the Commission where appropriate). ii Languages spoken. iii Expertise and experience relevant to the subject matter of the present invitation to tender gathered within the last 5 years. iv His or her role in the team. v For the project leader, proof of experience in project management gathered within the last 5 years. 3) A summary table indicating the members of the team and describing their roles and involvement in each project phase. It should also include breakdown of costs per team member and number of hours / days each team member will spend on each project phase. 4) a description of the measures employed to ensure the quality of services
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13.5. INFORMATION TO BE PROVIDED BY TENDERER IN RELATION TO THE AWARD CRITERIA

For the appraisal of tenders on the basis of the Award Criteria set out in Section 12.3., the technical specification of an offer including a detailed methodology and a detailed workplan will be assessed.

Tenderers will also have to indicate how they envisage exercising the control over subcontractor(s), if any.

14. AWARD OF A CONTRACT

- The Commission will award the contract to the tenderer submitting the most advantageous offer, on the basis of the requirements set out in Specifications.

- The Contracting Authority shall not be liable for any compensation with respect to tenderers whose tenders have not been accepted. Nor shall it be so liable if it decides not to award the Contract.
- The corresponding contract will be based on the draft contract annexed to the present invitation to tender, completed on the basis of the data detailed in the selected tender.
- The Commission reserves the right not to select a contractor if the price of the offers proposed is in excess of the budget allocated to this project or if the tenders received are considered inappropriate and/or unacceptable by the Evaluation Committee.

15. DURATION

The contract to be awarded will be established on the basis of the enclosed draft. The duration of the tasks shall not exceed **12 months** from the date of signature of the contract by the last contracting party. Work will follow the timetable detailed in the terms of Reference.

16. PLACE OF WORK

The tasks are to be performed at the premises designated by the Contractor. A maximum of 8 co-ordination meetings with the Commission will be held in Brussels.

17. ANNEXES

The following documents are annexed to these Technical Specifications and form an integral part of them:

Annex I: Objectives and monitoring

Annex II: Draft contract (for information)

Annex III: Letter of submission of tender (to be filled in and signed by the tenderer)

Annex IV: Financial offer (to be filled in and signed by the tenderer)

Annex I

OBJECTIVES AND MONITORING

Invitation to tender n° MARKT/2011/128/D

TRADE SECRETS AND CONFIDENTIAL BUSINESS INFORMATION IN THE INTERNAL MARKET

1. AWARDING AUTHORITY

European Commission
Directorate General for Internal Market and Services
B - 1049 BRUSSELS
BELGIUM
Tel. (+32)-2.296.02.35;
E-mail: ec-intmarket-contracts@ec.europa.eu

2. Background and purpose of the contract

A clear regime for IP rights and an equivalent level of protection throughout the European Union are essential conditions for the functioning of the Internal Market and for making the "fifth freedom", the free movement of knowledge, a reality¹.

On 3 March 2010 the Commission adopted a strategy for smart, sustainable and inclusive growth (Europe 2020). Smart growth means strengthening knowledge and innovation as drivers of the Union's future economic growth. This requires, among others, strengthening research performance, promoting innovation and knowledge transfer throughout the Union.

Under the flagship initiative "Innovation Union" the Commission undertook to improve the framework conditions for business to innovate, through, *inter alia*, the optimisation of Intellectual Property Protection (IPR).

In this context, on 24/05/2011, the Commission adopted a comprehensive strategy to revamp the legal framework in which IPR operate². The objective is to deliver a smooth functioning Internal Market for intellectual property. The strategy also looks at rights complementing IPR, such as geographical indications of non-agricultural products and trade secrets and announces that the Commission will examine these issues more in detail.

¹ COM(2008)465 of 16.7.2008

² A Single Market for Intellectual Property Rights -Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe, COM(2011) 287.

Innovation relies on the capacity to acquire, retain, and efficiently exploit strategic information. Information and knowledge – know-how - are key assets for any business. Intelligence held by a business, and its contribution to the business innovation strategy and process, is of greatest competitive value when it can be held in confidence vis à vis competitors. Leverage in information and know-how translates into a competitive advantage, allowing a company to out-perform rivals by offering and refining/developing innovative products and/or services. Acquiring and gathering know-how requires resources and effort. In order to maintain the resulting competitive advantage, and to be able to obtain the legitimate returns on such investment, companies strive to keep their strategic information confidential. Trade secrets refer to this economically valuable information and/or know-how, which may also be referred to as "confidential business information".

A trade secret may be defined as a piece of valuable and not generally known information held by a business that treats it as confidential. The subject matter of trade secrets may be of a very diverse nature. The information can be of a technical (an invention or a manufacturing process) or commercial nature (a customer or client list); it can be strategic for decades (a recipe, a chemical compound) or more or less ephemeral (the results of a marketing study, the name, price and date of launching of a new product, the price offered in a bidding procedure, etc).

In technology intensive sectors, trade secrets are particularly useful to protect a patentable invention during the research stage and during the patent application process. Trade secrets also cover information, the disclosure of which is not essential to successfully apply for a patent, but which complements the information disclosed in obtaining a patent. Finally, trade secrets also cover technical information that is not patentable, as well as inventions that cannot be traced through reverse engineering. In the service area and in relatively new sectors, such as those related to the development and application of "green" technologies and those of modern logistics including contract logistics sectors, trade secrets will de facto be playing a very important role

Companies holding a competitive advantage in terms of know-how are often victims of unauthorised disclosure of their confidential information and trade secrets. This mostly takes place through employees and ex-employees, but also through business partners (with whom the sharing of trade secrets had been contractually agreed), procurers, supervision authorities and regulators. There are also acts of espionage from competitors, etc. Such acts which can cause substantial losses to companies do not conform with fair competitors standards and are generally considered to be illicit and can be subject to criminal sanctions.

There is an obvious public interest in securing fair competition standards and, at the same time, providing a business environment that encourages and rewards investment in research and innovation. Protected from such unfair competitive practices, businesses can focus and invest in improving their products and services, in finding ways to be more efficient and sustainable, responding to the demands of a global, and information based, economy and to thus meet to expectations of their consumers and clients. Thus, the ability to protect certain strategic information as a trade secret is essential to foster investment in innovation. Additionally, a comprehensive and sound legal protection of trade secrets, with an adequate enforcement framework and fair remedies, also provides a more secure environment for knowledge transfer and licensing, thus facilitating the sharing of valuable information.

At international level, the protection against such dishonest commercial practices undermining the confidentiality and thus economic value of trade secrets is foreseen in TRIPS. According to Article 39(1) of TRIPS: "In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention (1967), Members shall protect undisclosed information". Paragraph (2) of the above mentioned provision of TRIPS establishes the following: "Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices so long as such information:

- (a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- (b) has commercial value because it is secret; and
- (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret."

At present, there is no harmonised system for the protection of trade secrets within the EU, and the Member States' legal regimes of trade secret protection differ considerably. There are Member States that do not have any legal provisions specifically designed to deal with trade secrets, and that provide such protection by other means, such as a general clause on the protection against unfair competition, or simply by applying general principles of tort law, contractual law, or through a combination of both. Others regulate trade secrets in a specific manner alongside with other industrial property rights, and some govern trade secrets in specific legislative acts dealing with competition at large or unfair competition.

To the extent that trade secrets are applied in cross-border trade, this diversity could suggest the need for harmonisation in order to accomplish a smooth function Internal Market for an information-based economy providing sustainable growth and employment opportunities.

However, there is a lack of data on the economic significance of trade secrets for companies operating within the European Union. In particular, their importance for SMEs has not been assessed. Macroeconomic estimates on the strategic relevance of such intangible assets to the competitiveness of the European economy are also not available. Furthermore, there is a lack of information on the impact of the legal fragmentation which European companies face when seeking to protect of such secrets within the Internal Market. The picture is all the more divergent as regards enforcement, namely on the remedies put at the disposal of European companies to react against dishonest practices directed against their know-how. As an example, in some jurisdictions, legal action to enforce rights on trade secrets requires further disclosure of the business information protected by them, whereas in others appropriate measures can be taken to avoid such effect.

Despite the lack of data, there are indications suggesting that certain sectors are particularly affected by trade secret intrusion, through the imposition, by more powerful counterparts, of contractual clauses requiring detailed disclosure of information that would otherwise not be voluntarily shared, and which is subsequently used by the stronger party to the detriment of the weakest one. Examples include the food supply chain, where distribution agreements may require manufacturers to disclose trade secrets about their new products or retailers

may be obliged to reveal their customer listings to prevent parallel trading. Another example would be procurement markets where bidders often have to disclose trade secrets about their goods, services and processes, which are subsequently leaked to competitors. A systematic survey of this scope and modalities is required.

In order to provide the Union with optimal conditions to strength research performance, promote innovation and knowledge transfer throughout its territory, and protect the competitive gains supplied by Europe's intangible assets, there is a need for a thorough analysis on the role and importance of trade secrets and the available means for their efficient protection. Such a reflection must be anchored on a solid factual basis. The purpose of the current contract is to collect the data and make a first analysis of this issue.

3. Contract specifications

• OBJECTIVES

The purpose of this contract is to provide the Commission with an in-depth assessment of the economic significance of trade secrets and their efficient protection to companies operating within the European Union. The study should clarify the role of trade secrets in Europe's innovation performance and in the creation of sustainable jobs. Particular consideration in this context should be given to the economic performance of SMEs. The study should first provide the Commission with data and analyses that will help to identify:

- i. Whether there are economic justifications for granting legal protection to trade secrets and confidential business information, and in particular whether a sound legal protection of trade secrets may contribute to fostering innovation;
- ii. Whether and how trade secrets and confidential business information are used to complement and/or substitute IP rights such as, in particular, patents in the protection of intangible assets;
- iii. Whether trade secrets and confidential business information are applied in all business activities and whether there are sectors where trade secrets are of particular importance;
- iv. The extent to which trade secrets and confidential business information are important assets for SMEs;
- v. What are the implications of the protection of trade secrets and confidential business information in the context of developing cross-border business within the Internal Market, including as regards the costs involved, and the easiness and effectiveness of their enforcement
- vi. Whether the current legal fragmentation of the protection of trade secrets and confidential business information across the Internal Market results in sub-optimal reliance on them in certain Member States and by businesses operating across several EU markets;
- vii. Whether this fragmentation is negatively impacting:
 - a. On the EU's innovation performance, including vis-à-vis the US.

- b. On the sharing of valuable information, including in particular know-how and technology transfer agreements, across borders of the Member States
- viii. How improvements in the legal framework of trade secret protection could facilitate the sharing and transfer of technology and know-how throughout the European Union

• **TASKS TO BE CARRIED OUT AND EXPRECTED RESULTS**

In order to achieve the general purpose of this study, it will be necessary to perform the following interrelated tasks:

- 1) Review all relevant EU and non EU literature, studies, surveys and other reference material on the issue of trade secrets, their use, their economic significance, and their importance for innovation and their legal protection. The literature review should cover all relevant literature irrespective of language of publication or discipline.

The first task will require desk research by a multi-skilled and multi-language team. This will consist of IP lawyers, industrial economists, statisticians/econometricians and market research analysts. The literature to be reviewed (both theoretical and applied work) is likely to span legal, economic, IP and business economics. The report of this first task should provide a summary of the main findings and have a detailed and exhaustive list of references. It should be presented in English and should be checked by a native English speaker. The literature review should cover all relevant literature irrespective of language of publication. The summary should consist of at least the following stand alone sections:

- A clear overview of the different legal instrument available in the 27 MS, in the USA and in Japan;
- The theory regarding the economic benefits and costs of trade secrets. This should explain economic theoretical/models that have been proposed to explain how the use of trade secrets can :
 - i. Stimulate investment in innovation;
 - ii. Determine the economic relationship if any between trade secrets and the different forms of IP rights (copyright, patents, trademarks);
 - iii. Evaluate the trade between trade secret application and anti-competitive behaviour;
 - iv. The economic efficiency of the differing legal frameworks in terms of their costs and benefits (remedies) in seeking protection against theft of recognised trade secrets.
- The existing applied economic models (macro, cross or intra-sectoral) that have sought to evaluate :

- i. The economic value of trade secrets and their impact on the innovative performance of a sector or economy;
- ii. The extent to which SMEs rely on trade secrets to develop their competitive advantage;
- iii. The use of litigation to seek remedies against trade secret theft by different sectors and sizes of firms and;
- iv. The efficiency of different national regulatory frameworks protecting trade secrets in terms of innovation performance of the relevant markets and/or economies.

2) On the basis of the aforementioned literature review, the contractor shall:

- Rank sectors in terms of their trade secret intensity; that is, the ranking of key manufacturing and service sectors in terms of dependency on trade secrets for their innovative and competitive performance.
- Identify, for each of the Member States, and for the European Union at large, a representative sample of trade associations and companies, in particular SMEs, who could be surveyed on the issue of trade secret use and protection. A market research team should acquire and or process appropriate business directory and statistical data bases for each Member State in order to draw up a list of companies to be surveyed in each of the identified key sectors. This list will ensure that all size types of companies are represented. The consultant shall also identify who within the relevant companies should be surveyed (e.g. legal compliance officer, business strategy department, CEO, engineering department, marketing director, IP management, etc;) given the nature/size of the company and the probable type of trade secrets it can be expected to rely on (that the results of Task 1 should allow for informed choices);
- Design a survey questionnaire and methodology that will yield the data and views necessary to meet the objectives of the study. The questionnaire should be drafted with view to the objectives of the study and provide precise indications on: which national market(s) of the EU the company trades in; which IP instruments it uses; whether it relies on trade secrets and its view as to their respective strategic value in terms of innovative growth performance and return on investment; the importance of trade secrets relative to intangible assets in general; how it seeks to protect its trade secrets (contractually or not) with employees, trading partners etc and in particular how this may vary across the different EU markets it trades in; whether it has been prevented from keeping its trade secrets due to imposition of disclosure requirements by trading partners/clients in certain Member States; whether it has suffered trade secret theft in any market; which if any legal actions/remedies actions it was able to secure against such theft in the relevant markets and its perception on the differing national regulatory frameworks in particular as regards the available remedies and the effectiveness of enforcement tools against trade secret theft. The resulting survey questionnaires will be presented for approval to the Commission services before starting the next task.

- On the basis of an experienced team in marketing research the consultants will propose a methodology to execute the survey with the objective of achieving the highest rate of response. This should include an initial set of case studies that will be used to test the appropriateness of the survey questionnaires and allow for them to be adjusted. This methodology will be presented for approved to the Commission's services.

A first interim study will be provided in English (checked by a native speaker). The study will combine the output of tasks 1) and 2) and prepare task 3).

- 3) The third task will consist of presenting, together with the Commission's services, the findings of tasks 1) and 2) above to a representative set of stakeholders. The conference will take place in Brussels during the fifth month following the signing of the contract, after the acceptance of the first interim study by the services of the Commission and before the submission of the second interim study. The Commission will provide the venue for the conference, as well as any catering. The consultant should ensure media coverage of the event and use it to publicise the forthcoming survey (see task 6). The consultant will be responsible for:
 - a. Preparing the power point presentation which will be used at the conference;
 - b. determining the invitation list, this should include a representative sample of stakeholders from the relevant businesses and legal communities and give due regard to the need to consult SMEs;
 - c. fixing the agenda of the conference,
 - d. delivering the presentation at the conference and moderating the event;
 - e. take note of the comments, suggestions and general feedback on tasks 1) and 2);
 - f. prepare a short summary report and press release of the results of the conference. These should be provided in all languages of the Union.
- 4) The consultants will prepare a detailed summary of the conference in English (checked by a native speaker). The summary should focus on the comments and questions made by participants as well as on the clarifications provided in response. It shall also include a section on the media coverage of the event.
- 5) The consultant will adjust the outputs of Tasks 1) and 2) according to the comments made and in accordance with the Commission's services. A second modified version of the first interim study should then be submitted to the Commission's services. This second version shall also include at least the following additional annexes (1) the summary report of the conference on the first interim study and (2) a concise description of the main changes undertaken in the first interim study as a consequence of the feedback received at the conference.

- 6) The consultant shall carry out the survey in the 27 Member States and propose a summary report of the findings. The execution of the survey should be broken down into two phases.
 - a. A first pilot survey including face to face interviews/case studies should be undertaken with a limited number of companies. The consultant should then present the results to the Commission services together with suggested adjustments in a report. There would then be a meeting between the Commission services and the contractor at which final adjustments would be agreed.
 - b. The second stage would be the full execution of the survey. This would end with a summary report stating the main findings in view of the objectives of the study and notably demonstrating differences across sectors and Member States in terms of usage of trade secrets and in terms of appreciation of existing national legal remedies against theft of such assets.
- 7) On the basis of the previous steps the consultants will prepare a final study covering the objectives of the contract and which shall :
 - Provide a macro-economic assessment of the economic significance and contribution to innovation performance of trade secrets in the EU economy;
 - Identify, through a Member State comparative analysis, how differing trade secret enforcement regimes affect the level of their use across Member States and across relevant sectors.
 - Assess whether, and if so, to what degree, cross-border investment and growth particularly for innovative SMEs are adversely affected by the current fragmentation within the EU of trade secret protection rules.
 - Formulate any recommendations on the protection of trade secrets and confidential business information, that may :
 - Contribute positively, in terms of costs and legal security, to cross border transactions, including the sharing of trade secrets and confidential business information;
 - Ensure that the European Union is equipped with efficient civil law enforcement mechanisms in response to acts of theft of trade secrets and confidential business information.

The study will be verified by a native English speaker. It will have an executive summary that can be published as a stand alone document. The executive summary should be translated into French and German. The consultants will also provide a PowerPoint presentation that will summarise the main findings of the study as well as an easy to use database of the survey results.

4. Indicative methodology

It is for the tenderer to decide on the optimal combination of methodologies to achieve the objectives specified above. The methodological approach should be described in detail in the tender, taking into account the specifications made above. A reasoned explanation should be provided of how the proposed methodology meets the required criteria. The final methodology may be fine-tuned as the study progresses, in consultation with the Commission. Tenderers may further revise and propose additional or more specific questions that the study should address in order to lay a basis for evaluating the main questions presented above, in consultation with the Commission.

5. Deliverables

- Each deliverable will be submitted in five copies, in paper version. Unless specified otherwise each deliverable should be presented in English in electronic format compatible with Word or, where so indicated in Power Point, and will be accompanied by an executive summary not exceeding 5 pages, in the same language and format.
- The contractor will have all deliverables verified by a person with a perfect knowledge of the English language.
- Where information that is not publicly available is provided by other institutions, associations or firms, the accuracy of this information, as expressed in the deliverable, will have to be approved by those who have provided it to the Contractor.

5.1. FIRST INTERIM STUDY

The first interim study shall give an account of the execution of tasks 1 and 2. It shall be submitted within **3 months** after the date of signature of the contract by the last of the contracting parties. The document shall include at least the following:

A. Executive Summary

B. Report of the literature review.

It should provide a summary of the main findings and have a detailed and exhaustive list of references. The summary should consist of at least the following stand alone sections:

A.1. Introduction

A.2. Relevant national legal framework and jurisprudence.

A.3 The economic theory of Trade Secret protection

A.4. Applied Economic Models to Trade Secret

A.5. List of references

C. Survey planning

The second part of the first interim study should contain

- Manufacturing and service sector rankings;
- The list of companies and other stakeholders (such as trade associations) to be surveyed in each of the identified key sectors and Member States.
- The questionnaire for the survey
- The proposed methodology to execute the survey

D. Conference planning

- Agenda, speakers, media coverage and other useful information
- Invitation list for the workshop/conference on the interim report
- Power Point presentation covering all the topics addressed in the first interim study

The Commission will comment on the document submitted within 30 days after the date of its reception. If the Commission has not reacted within this period, the report shall be deemed to have been approved.

5.2. SECOND INTERIM STUDY

The second interim study shall be submitted within **5 months** after the date of signature of the contract by the last of the contracting parties. It shall give an account of the execution of tasks 3, 4 and 5 and it should include at least the following:

- A detailed summary of the conference held during the fifth month following the signing of the contract on trade secrets and confidential business information
- A revised version of the first interim study incorporating the changes that are appropriate in view of the feedback received at the conference;
- A concise description of the main changes undertaken in the first interim study

The Commission will comment on the document submitted within 45 days after the date of its reception. If the Commission has not reacted within this period, the report shall be deemed to have been approved.

5.3. PILOT SURVEY REPORT

The report on the pilot survey report shall be submitted within **7 months** after the date of signature of the contract by the last of the contracting parties. It shall comprise at least the following:

- The questionnaire
- The list of companies surveyed
- The replies to the questionnaire obtained from the survey
- The assessment of the results
- A proposal for adjustment of the questionnaire, of the methodology to be applied in the execution of the survey

The Commission will comment on the document submitted within 30 days after the date of its reception. If the Commission has not reacted within this period, the report shall be deemed to have been approved.

5.4. FINAL STUDY

The draft final study shall be submitted within **10 months** after the date of signature of the contract by the last of the contracting parties. The document shall include the following:

A. Executive Summary

B. Introduction (a short description of the purpose, context and objectives of the study and an explanation of the methods used)

C. Literature review.

D. Consultation

D1 The conference on trade secrets and confidential business information

This section should consist of a summary report on the conference held on the first interim study

D2 The Survey on trade secrets and confidential business information

This section should consist of a summary report on the survey and its main results. The survey should be attached as an annex to the study and it should be possible to publish it separately.

E. Findings:

The economics of trade secrets and confidential business information.
Significance of trade secrets and confidential business information in the EU economy and their contribution to innovation performance. The case of SMEs

Relation between trade secrets and other forms of protection of intangibles (in particular patents)

Legal protection of trade secrets and business information

- Comparative analysis on the enforcement regimes in place in the Member States, and of the levels of their use
- Protection of trade secrets and confidential business information in the United States of America and Japan
- Conclusions on how the different enforcement regimes affect reliance on trade secrets and confidential business information in the EU

The possible impact of the current legal framework on protection and enforcement of trade secrets and confidential business information on

- cross-border investment and growth. The case of SMEs.
- On the sharing of valuable information, including in particular know-how and technology transfer agreements, across borders of the Member States
- On the EU's innovation performance, including vis-à-vis the US

F. Recommendations

Formulate any recommendations on the protection of trade secrets and confidential business information, that may :

- Contribute positively, in terms of costs and legal security, to cross border transactions, including the sharing of trade secrets and confidential business information;
- Ensure that the European Union is equipped with efficient civil law enforcement mechanisms in response to acts of theft of trade secrets and confidential business information.

G. Annexes:

- French and German translations of the Executive Summary
- The Survey
- A PowerPoint presentation summarising the study and its main findings

The study will be verified by a native English speaker. It will have an executive summary that can be published as a stand alone document. The executive summary should be translated into French and German. The consultants will also provide a PowerPoint presentation that will summarise the main findings of the study as well as an easy to use database of the survey results.

The Commission will comment on the draft final study submitted within 45, days after the date of its reception. If the Commission has not reacted within this period, the draft final study shall be deemed to have been approved.

Within **12 months** from the date of signature of the contract by the last of the contracting parties, the Contractor will submit the final study in the definitive form, taking full account of these observations, either by following them precisely, or by explaining clearly why not.

The Commission will accept the final study in the definitive form or comment on it within 45 days of its reception. If the Commission has not reacted within this period, the final study shall be deemed to have been approved.

Should the Commission still not consider the final study acceptable, the Contractor will be invited to amend it until the Commission is satisfied. In this case, the corresponding liquidated damages will be applicable, following the provisions of Article II.16 of the Contract.

6. Specific timetable

Actions/Deliverables	Timetable
Last signature of the contract	Reference date
Kick-off meeting	Reference date + 5 days
First progress meeting	Ref. date + 1 month
Second progress meeting	Ref. date + 2 months
First interim study	Month A [ref. date + 3 months]
Third progress meeting	Month A + 15 days
Commission's acceptance	Month A + 30 days
Second interim study	Month B [ref. date + 5 months]
Fourth progress meeting	Month B + 30 days
Commission's acceptance	Month B + 45 days
Pilot Survey Report	Month C [ref. date + 7 months]
Meeting	Month C + 10 days
Commission's acceptance	Month C + 30 days

Fifth progress meeting	Month C + 45 days
Draft final study	Month D [ref. date + 10 months]
Meeting	Month D + 20 days
Commission's comments	Month D + 45 days
Definitive version of the study	Reference date +12 months
Commission's acceptance	Reference date +12 months + 45 days

DRAFT CONTRACT

SERVICE CONTRACT

CONTRACT NUMBER – [complete]

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. Authorising Officer by sub-delegation, Directorate-General for Internal Market and Services,

of the one part,

and

[official name in full]

[official legal form]

[statutory registration number]

[official address in full]

[VAT registration number]

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

of the other part,

HAVE AGREED

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

Annex I – Tender Specifications (Invitation to Tender No MARKT/2011/128/D of [complete]) and Monitoring

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

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 a study on the trade secrets, their role as a possible driver for innovation, competitiveness and economic growth and the suitability of the current legal framework throughout the European Union to protect trade secrets in the Internal Market.
- 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 **12 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.

The Commission is not obliged to react to any request for extension of the duration of the tasks received less than 1 month before expiry of the period of execution.

ARTICLE I.3 – CONTRACT PRICE

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

ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES

Payments under the Contract shall be made in accordance with Article II.4. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on

which the invoice is submitted. Payment requests may not be made if payments for previous periods have not been executed as a result of default or negligence on the part of the Contractor.

Invoices and/or payment requests will be addressed to:

European Commission
Directorate General for Internal Market and Services
Budget – SPA2 01/46
B-1049 Brussels

I.4.1. Pre-financing: Not applicable

I.4.2 Interim payment:

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

- the second interim study in accordance with the instructions laid down in Annex I
- the relevant invoices

[provided the second interim study has been approved by the Commission.]

The Commission shall have forty-five (45) days from receipt to approve or reject the interim study, and the Contractor shall have thirty days in which to submit additional information or a new report.

After the interim study is approved and within thirty days from the date of receipt by the Commission of the relevant invoices, an interim payment corresponding to [EUR complete amount in figures and in words] equal to 40 % of the total amount referred to in Article I.3.1 shall be made.

I.4.3. Payment of the balance:

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

- the final study in accordance with the instructions laid down in Annex I
- the relevant invoices

provided the final study has been approved by the Commission.

The Commission shall have forty-five (45) days from receipt to approve or reject the final study and the Contractor shall have thirty days in which to submit additional information or a new final study.

After the final study is approved and within thirty days from the date of receipt by the Commission of the relevant invoices, payment of the balance corresponding to [EUR complete amount in figures and in words] equal to 60 % of the total amount referred to in Article I.3.1 shall be made.

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

[For Contractors established in Italy, the provisions of the Contract constitute a request for VAT exemption, provided the Contractor includes the following statement in his invoice(s): "Operazione non imponibile ai sensi dell'articolo 72, comma 3) paragrafo 3 del D.P.R. n. 633 del 26/10/1972 come modificato da ultimo dal D.L. n. 323 del 20/06/1996 convertito in Legge n. 425 dell'8/8/1996".]

ARTICLE I.5 – BANK ACCOUNT

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

Name of bank: [complete]
Address of branch in full: [complete]
Exact designation of account holder: [complete]
Full account number including codes: [complete]
[IBAN code: [complete]]

ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS

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

Commission:

European Commission
Directorate-General [complete]
[Directorate [complete]]
[Unit [complete]]
[Postcode and city]

Contractor:

Mr/Mrs/Ms [complete]
[Function]
[Company name]
[Official address in full]

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. Such data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by DG MARKT, Unit A2, Financial Resources and Internal Control without prejudice to possible transmission to the bodies charged with monitoring or inspection task in application of Union law.

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 30 days 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.

ARTICLE I.10 – OTHER SPECIAL CONDITIONS

Wherever the Special Conditions refer to deliverables as being 'interim study' or 'final study', the terms 'interim technical report' and 'final technical report' in the General Conditions should be read as respectively 'interim study' and 'final study'.

II – GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

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

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

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

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

- II.1.8.** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the Commission. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.
- II.1.9.** Should the Contractor fail to perform his obligations under the Contract in accordance with the provisions laid down therein, the Commission may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the Commission may impose penalties or liquidated damages provided for in Article II.16.

ARTICLE II.2 – LIABILITY

- II.2.1.** The Commission shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Commission.
- II.2.2.** The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subcontracting under Article II.13. The Commission shall not be liable for any act or default on the part of the Contractor in performance of the Contract.
- II.2.3.** The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Commission by a third party as a result of damage caused by the Contractor in performance of the Contract.
- II.2.4.** In the event of any action brought by a third party against the Commission in connection with performance of the Contract, the Contractor shall assist the Commission. Expenditure incurred by the Contractor to this end may be borne by the Commission.
- II.2.5.** The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Commission should it so request.

ARTICLE II.3 - CONFLICT OF INTERESTS

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

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

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

II.3.3. The Contractor declares:

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

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

ARTICLE II.4 – PAYMENTS

II.4.1. Pre-financing:

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

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

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

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

II.4.2. Interim payment:

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

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

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

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

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

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

II.4.3. Payment of the balance:

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

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

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

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

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

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

ARTICLE II.5 – GENERAL PROVISIONS CONCERNING PAYMENTS

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

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

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

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

ARTICLE II.6 – RECOVERY

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

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 I 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 Union, the European Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the European 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 European Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance.
- II.17.3.** In addition, the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance.

ARTICLE II.18 – AMENDMENTS

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

ARTICLE II.19 – SUSPENSION OF THE CONTRACT

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

ARTICLE II.20 – DATA PROTECTION

II.20.1 The Contractor shall have the right of access to his/her personal data and the right to rectify any such data. Should the Contractor have any queries concerning the processing of his/her personal data, s/he shall address them to the entity acting as data controller provided for in Article I.8.

II.20.2 The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

II.20.3 Where the Contract requires the processing of personal data by the Contractor, the Contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.

II.20.4 The Contractor shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Contract.

II.20.5 The Contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

- a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:
 - aa) unauthorised reading, copying, alteration or removal of storage media;
 - ab) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - ac) unauthorised using 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 institution or body;
- 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.

SIGNATURES

For the Contractor,
[Company name/forename/surname/function]

For the Commission,
Authorising Officer by Sub-delegation

signature[s]: _____

signature[s]: _____

Done at [Brussels], [date]

Done at [Brussels], [date]

In duplicate in English.

Annex III

LETTER OF SUBMISSION OF TENDER

Dear Sirs,

You will find enclosed the tender of [name of tenderer] in response to invitation to tender MARKT/2011/128/D for *Study on trade secrets and confidential business information in the Internal Market*.

SECTION 1. - IDENTIFICATION

1.1. - Tenderer's identification³

Tenderers will fill in the Legal Entity form that can be attained from the following internet addresses: http://ec.europa.eu/comm/budget/execution/legal_entities_fr.htm or http://ec.europa.eu/comm/dgs/internal_market/calls.htm. (link)

1.2. - Personal details⁴

1.2.1.- Person authorized to sign the contract on behalf of the tenderer	
TITLE	Mr/Ms/Dr/other.....(delete or complete as appropriate)
NAME	Surname (in capital letters):..... Forename:.....
FUNCTION	
ADDRESS	
CONTACT DETAILS	Direct telephone:..... Direct facsimile:..... E-mail address:.....
1.2.2. - Contact person (if different from 1.)	
TITLE	Mr/Ms/Dr/other.....(delete or complete as appropriate)
NAME	Surname (in capital letters):..... Forename:.....
FUNCTION	
MAILING ADDRESS	

³ In the case of consortia this Section must be completed for each member of the consortium.

⁴ In the case of consortia, only one person will be authorized to sign.

CONTACT DETAILS	Direct telephone:..... Direct facsimile:..... E-mail address:.....

1.3. - Sub-contractor's details⁵
--

NAME	
ADDRESS	
CONTACT DETAILS	Telephone:..... Facsimile:..... E-mail address:.....
LEGAL FORM	
COMMERCIAL REGISTER , ETC. – REGISTRATION DETAILS	Denomination of register:..... Date of registration:..... Country of registration:..... Registration number:.....
FOR NATURAL PERSONS	Identity Card [No + expiry date]..... Or Passport or other [No + expiry date].....
VAT	Registration number:..... or Statement of exemption issued by the national VAT authority dated.....enclosed under reference..... Issued by.....
SHORT DESCRIPTION OF THE PART OF WORK SUB-CONTRACTED	

SECTION 2. - QUESTIONS RELATING TO EXCLUSION

By signing this form, I certify that the tenderer does not find himself in any of the following situations:

Is bankrupt or 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

⁵ This section must be completed for each sub-contractor if any or if more than one

similar procedure provided for in national legislation or regulations
Has been convicted of an offence concerning his professional conduct by a judgment which has the force of <i>res judicata</i>
Has been guilty of grave professional misconduct proven by any means which the contracting authority can justify.
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 of the contracting authority or those of the country where the contract is to be performed.
Has been the subject of a judgment which has the force of <i>res judicata</i> for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests.
Following another procurement procedure or grant award procedure financed by the Union budget, has been declared to be in serious breach of contract for failure to comply with his contractual obligations

SECTION 3. - QUESTIONS RELATING TO THE SELECTION OF TENDERER

3.1. - Financial capacity

	<i>Annex/Page No</i>
Material provided to prove economic and financial capacity: 1) 2)	

3.2. - Technical capacity

CRITERIA	FULFILLED BY (NAME OF TEAM MEMBER)
Criterion 1 (Description)	
Criterion 2 (Description)	
	<i>Annex/Page No</i>
Other material provided to prove technical capacity: 1) 2)	

SECTION 4. - BANK IDENTIFICATION

Tenderers will fill in the Bank Account form that can be attained from the following internet addresses: [http://ec.europa.eu/comm/budget/execution/ftiers fr.htm](http://ec.europa.eu/comm/budget/execution/ftiers_fr.htm) or [http://ec.europa.eu/comm/dgs/internal market/calls.htm](http://ec.europa.eu/comm/dgs/internal_market/calls.htm). (link)

.....
(Signature of authorised representative⁶)

Forename:.....

Name:.....

Position.....

Date:.....

⁶ All the pages need also to be initialled by the authorised representative

Annex IV

PRICE AND BREAKDOWN OF COSTS

	<i>PARTIAL AMOUNTS</i>	<i>TOTALS</i>
TOTAL PRICE OFFERED	
<i>Broken down as follows:</i>		
Man/day fees	
Total fees	
Travel and subsistence [including 8 meetings with the Commission services in Brussels]	
Administrative expenses	
Overheads	

.....
(Signature of authorised representative⁷)

Forename:.....

Name:.....

Position.....

Date:.....

⁷ All the pages need also to be initialled by the authorised representative



2



2

Ref. Ares(2011)1075293 - 10/10/2011

Dear Ms Gaudino,

Please find attached our reply to your questions. Please also note that the document will be published on our website as well.

Kind regards,

Financial Officer
European Commission
Directorate General Internal Market and Services
Financial resources and internal control
1049 Brussels, Belgium

Find us on the web: http://ec.europa.eu/internal_market
For information on EU rights: <http://ec.europa.eu/youreurope>

From: Gaudino, Francesca [mailto:Francesca.Gaudino@bakermckenzie.com]
Sent: Tuesday, October 04, 2011 1:43 PM
To: EC INTMARKET CONTRACTS
Subject: Invitation to tender n. MARKT/2011/128/D - Study on trade secrets and confidential business information in the internal market

To whom it may concern,

In relation to the invitation to tender n. MARKT/2011/128/D - Study on trade secrets and confidential business information in the internal market we would be very interested in presenting a tender and would have the following requests of clarifications.

1. Is there a specific format of the tender that we should use? Or can we draft the tender only on the basis of the content as specified under Section 13 of the Technical Specifications for this tender?
2. Does the survey have to cover all 27 member states or can we select the most representative ones?

Thanks in advance for your kind attention.

Sincerely,

Francesca Gaudino

Francesca Gaudino
Counsel

Studio Professionale Associato a
Baker & McKenzie
3, Piazza Filippo Meda
20121 Milan, Italy
Tel: +39 02.76.231.1
Fax: + 39 02.76.231.501

P Do you really need to print this e-mail?
Think twice and protect the environment, now.

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message. Please visit www.bakermckenzie.com/disclaimer_italy for other important information concerning this message.

Questo messaggio può contenere informazioni confidenziali tutelate da segreto professionale. Se avete ricevuto questo messaggio per errore, vogliate per cortesia informare il mittente immediatamente rispondendo a questo messaggio e provvedendo quindi a cancellarlo dal vostro computer. Visitate www.bakermckenzie.com/disclaimer_italy per ulteriori importanti informazioni riguardanti questo messaggio.

2a

Ref. Ares(2011)1075293 - 10/10/2011

Clarification

MARKT/2011/128/D

Study on trade secrets and confidential business information in the Internal Market

10/10/2011

Question

1. Is there a specific format of the tender that we should use? Or can we draft the tender only on the basis of the content as specified under Section 13 of the Technical Specifications for this tender?
2. Does the survey have to cover all 27 member states or can we select the most representative ones?

Answer

1. There is no specific format of the tender. The compulsory elements of it are indeed specified under Section 13 of the Technical Specifications.
2. The tasks to be carried out by the contractor include the identification, for each of the Member States, and for the European Union at large, a representative sample of trade associations and companies, in particular SMEs, who could be surveyed on the issue of trade secret use and protection. Therefore, the survey cannot cover a selection of the most representative Member States only. The Commission expects all 27 Member States to be covered by the survey, and the contractor must be prepared to conduct the survey in such terms.



3



3

CONFIDENTIAL

Tender for the

STUDY ON TRADE SECRETS AND CONFIDENTIAL BUSINESS INFORMATION IN THE INTERNAL MARKET

Tenderer	Tender	Country
Studio Professionale Associato a Baker & McKenzie Piazza Filippo Meda, 3 20121 Milan - Italy	Invitation to tender n. MARKT/2011/128/D: Study on trade secrets and confidential business information in the Internal Market	Italy

Contact details of the Study coordinator of the Tenderer	
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1 Introduction

1.1 Structure of the Tender

This document represents the tender ("Tender") to the invitation to tender n. MARKT/2011/128/D ("Invitation to tender") for the Study on trade secrets and confidential business information in the Internal Market ("Study") presented by Studio Professionale Associato a Baker & McKenzie – Milan, Italy ("Tenderer"). This Tender contains a narrative description of the work intended to be performed to fulfil the objectives and expected results of the Invitation to tender followed by a detailed methodology and a specific work plan as requested under Section 13 of the Technical specifications for the Invitation to the tender as well as the other information requested to take part to the Invitation to tender. The letter of submission to the Invitation to tender is attached as Annex I to the Tender.

2 Relevance of this Tender to the Invitation to Tender

The following table lists the objectives of the Invitation to tender on the left column and on the right column associates to each objective the specific activities intended to be performed by the Tenderer to achieve the expected results, also providing a brief highlight of the approach and rationale that will be followed by the Tenderer in performance of the various work tasks.

Table 1 - Objectives of the Invitation to tender towards the activities that will be performed by the Tenderer

N°	Invitation to tender MARKT/2011/128/D - Objectives	The Tenderer Contributions
1	Assessment of whether there are economic justifications for granting legal protection to trade secrets and confidential business information, and in particular whether a sound legal protection of trade secrets may contribute to fostering innovation.	The Tenderer will identify costs and benefits of granting legal protection to trade secrets and confidential information, focussing in particular on their impact on i) innovative activity; ii) knowledge sharing; and iii) efficient business organization. The analysis will also address the issues of whether investing in protective measures laying down a regulatory framework to protect said secrets and information and the relevant legal harmonization are desirable, and for what reasons. This analysis will also address the question whether protection of trade secrets may serve the purpose of fostering market innovation and creation of sustainable jobs.
2	Assessment of whether and how trade secrets and confidential business information are used to complement and/or substitute IP rights such as, in particular, patents in the protection of intangible assets.	A detailed assessment will be performed to understand the role served by trade secrets and confidential information <i>vis-à-vis</i> other tools for the protection of intangible assets. In particular, the analysis will focus on the relationship between trade secrets protection and patents (as alternative or complementary tools for the protection of intangible assets), trade secrets protection and labor law (duties of employees and former employees), trade secrets protection and contract law (non-disclosure agreements and the like). The analysis will address the question whether trade secrets and confidential information may be regarded as a sound alternative or just as a supporting integration to other IP rights.
3	Assessment of whether trade secrets and confidential business information are applied in all business activities and whether there are sectors where trade secrets are of particular importance.	Different business sectors of the Member States will be scrutinized in order to map the use of trade secrets and confidential information in the different business areas and to underline sectors where said secrets and information are of specific relevance. The analysis will also investigate the positive drawbacks of tight trade secrets protection (e.g. reduction of knowledge spill-overs).
4	Assessment of the extent to which trade secrets and confidential business information are important assets for SMEs.	An in-depth economic analysis will be carried out on companies active within the European Union to clarify the economic efficiency and role of trade secrets and confidential information for SMEs.
5	Assessment of the implications of the	The Tenderer will investigate the relevance of trade

	protection of trade secrets and confidential business information in the context of developing cross-border business within the Internal Market, including as regards the costs involved, and the easiness and effectiveness of their enforcement.	secret protection in the development of cross-border business and in the management of the business, whether lack of protection provides an obstacle to trade and/or localization in specific countries. The analysis will also consider the transaction/organization costs that lack of enforcement imposes on parties. The opportunity of granting specific protection to trade secrets and confidential information will be evaluated from multiple perspectives: notably as a competitive driver and as an economic factor enhancing efficiency; the analysis will also cover an impact assessment evaluating factors such as implementation cost, performance outputs, and possibility of efficient enforcement.
3	Assessment of whether the current legal fragmentation of the protection of trade secrets and confidential business information across the Internal Market results in sub-optimal reliance on them in certain Member States and by businesses operating across several EU markets.	The legal framework applicable to trade secrets and confidential information will be evaluated and assessed on a comparative basis in order to underline their economic significance; the relevant reliance in different business sectors; discrepancies and lack of harmonization.
7	Assessment of whether this fragmentation is negatively impacting: a. on the EU's innovation performance, including vis-à-vis the US; b. on the sharing of valuable information, including in particular know-how and technology transfer agreements, across borders of the Member States.	The different legal requirements applying in the various Member States will be taken into consideration in order to highlight the negative impacts of diversified and fragmented regulatory scenarios, with specific attention to possible loss in terms of competitiveness and innovative trends when compared to non-European business scenarios, and in terms of internal free movement and sharing of information.
9	Assessment of how improvements in the legal framework of trade secret protection could facilitate the sharing and transfer of technology and know-how throughout the European Union.	The assessment aimed at drawing the current legal framework applying to trade secrets and confidential information among Member States will also cover a comparative analysis based on both economic and legal factors to identify the possible impacts of changes in relevant legislation to the transfer of information and know-how across companies within the Internal Market.

3 Workplan, methodology and expected results

This section describes the workplan set up and the methodology intended to be deployed by the Tenderer as well as the expected results defined to achieve the objectives of the Invitation to tender.

3.1 Task 1 – Scenario Recognition

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Pages 6 (partially) to 13 : removed



4 Technical capacity, resources and experience of the Tenderer

4.1 Capacity of the Tenderer against the Invitation to tender



REDACTED

The foregoing peculiarities of the Tenderer's international network, work organization and work force



Pages 14(partially) to 29 : removed



5 Management structure and procedures

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REDACTED



Pages 30 (partially) to 33 : removed



6 Deliverables and Timetable

Taking into consideration the specifications contained in the Invitation to tender, the Tenderer commits to provide the following Deliverables according to the below specified timeline.

6.1 Deliverables

1. First Interim Study, containing

- (i) Executive Summary;
- (ii) Report of the literature review;
- (iii) Survey Planning; and
- (iv) Conference Planning

2. Second Interim Study, containing

- (i) Detailed conference summary;
- (ii) Revised version of the First Interim Study;
- (iii) Concise description of the changes made to the First Interim Study

3. Pilot Survey report, containing

- (i) The survey questionnaire;
- (ii) The list of companies surveyed;
- (iii) The replies to the survey questionnaire;
- (iv) The result assessment;
- (v) A proposal for possible adjustments of the survey questionnaire and methodology

4. Final Study, containing

- (i) An Executive Summary;
- (ii) An Introduction on the study performed;
- (iii) The Literature Review;
- (iv) The Consultation: Summary Reports of the conference, the survey and the survey results;
- (v) The Findings: The economics of trade secrets and confidential information; the relation between said secrets and information and other form of protection of intangible assets; the legal framework for protection of trade secrets and confidential information; the possible impact of said protective legal framework on protection and enforcement of said secrets and information;
- (vi) The Recommendations: suggestions on protection of trade secrets and confidential information to foster cross-border transactions and sharing of said secrets and information as well as deployment of an efficient protection mechanism for trade secrets and confidential information;
- (vii) The Annexes: French and German Translations of the Executive Summary; the Survey; A Power Point Presentation Summarizing the Study Performed and its Main Findings.

6.2 Timetable

The following table specifies the actions, deliverables and relevant timetable according to the Invitation to tender.

Actions/Deliverables	Timetable
Last signature of the contract	Reference Date - RD
Kick-off meeting	RD + 5 days
First progress meeting	RD + 1 month
Second progress meeting	RD + 2 months
First interim study	Month A [RD + 3 months]
Third progress meeting	Month A + 15 days
Commission's acceptance	Month A + 30 days
Second interim study	Month B [RD + 5 months]
Fourth progress meeting	Month B + 30 days
Commission's acceptance	Month B + 45 days
Pilot Survey Report	Month C [RD + 7 months]
Meeting	Month C + 10 days
Commission's acceptance	Month C + 30 days
Fifth progress meeting	Month C + 45 days
Draft final study	Month D [RD + 10 months]
Meeting	Month D + 20 days
Commission's comments	Month D + 45 days
Definitive version of the study	RD +12 months
Commission's acceptance	RD +12 months + 45 days

Table 3: Actions, deliverables and relevant timetable

7 Price and breakdown of costs

7.1 Price and breakdown of costs of the Tender

The following table contains the price of the Tender together with the breakdown of costs as requested in the Invitation to tender and as also reported in Enclosure 3 to the Letter of submission of tender under Annex I of the Tender.

The total price offered by the Tenderer to carry out and complete the Study as described in this Tender is of € 400.000. The Tenderer usually works on hourly rates that are higher than these applied to this Tender. Indeed, given the interest that the Tenderer has in taking part to the Invitation to tender, it has been decided to apply flat rates to the hourly rates of all the work team members. The total price of the Tender is the maximum amount indicated in the Invitation to tender since the Tenderer deems that this amount is necessary in order to provide the high level and first rate services as described in this Tender.

The amount of VAT (21% of € 400.000) is: € 84.000

	PARTIAL AMOUNTS	TOTALS
TOTAL PRICE OFFERED	-----	€ 400.000
<i>Broken down as follows:</i>		
Man/day fees [reported the 4 different man/day fees according to the 4 different specific categories of professionals involved in the Study]	€ € € €	-----
Total fees	€	-----
Travel and subsistence [including 8 meetings with the Commission services in Brussels]	€	-----
Administrative expenses [including the conference to be held in Brussels]	€	-----
Overheads [overheads are already included in the Man/day and Total fees above reported]	-----	-----

Table 4: Price and breakdown of costs

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8 Annexes

According to the Invitation to tender, this Tender encloses the following Annexes:

1. Annex I: Letter of submission of the Tender
2. Annex II: CVs of the work team members
3. Annex III: Solemn statement of the authorized representative of the Tenderer
4. Annex IV: Copy of the summary page of the statements of income of the Tenderer during the last three years
5. Annex V: Copy of certification of tax compliance of the Tenderer
6. Annex VI: Copy of entry of the Tenderer in the Italian VAT register
7. Annex VII: Copy of amendment of entry of the Tenderer in the Italian VAT register
8. Annex VIII: Copy of the certification of registration of the Tenderer with the Milan Bar Association

Milano, October 14 2011

**Studio Professionale Associato
a Baker & McKenzie**

Lorenzo del Portici

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ANNEX I TO THE TENDER

Letter of submission of Tender

Dear Sirs,

You will find enclosed the tender of Studio Professionale Associato a Baker & McKenzie in response to invitation to tender MARKT/2011/128/D for Study on trade secrets and confidential business information in the Internal Market.

SECTION 1. – IDENTIFICATION

1.1. - Tenderer's identification

Please see enclosed under Enclosure 1 to this Letter of submission of Tender the Legal Entity form attained from the following internet addresses:

http://ec.europa.eu/comm/budget/execution/legal_entities_fr.htm

or

http://ec.europa.eu/comm/dgs/internal_market/calls.htm.

1.2. - Personal details	
1.2.1. - Person authorized to sign the contract on behalf of the tenderer	
TITLE	Mr
NAME	DE MARTINIS LORENZO
FUNCTION	Principal – Study Coordinator
ADDRESS	Piazza Filippo Meda, 3 20121 Milan Italy
CONTACT DETAILS	Direct telephone: +39.02.76.231.334 Direct facsimile: +39.02.76.231.501 E-mail address: lorenzo.de.martinis@bakermckenzie.com
1.2.2. - Contact person (if different from 1.)	
TITLE	Ms
NAME	GAUDINO FRANCESCA
FUNCTION	Study Manager
MAILING ADDRESS	Piazza Filippo Meda, 3 20121 Milan
CONTACT DETAILS	Direct telephone: +39.02.76.231.452 Direct facsimile: +39.02.76.231.501 E-mail address: francesca.gaudino@bakermckenzie.com

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SECTION 2. - QUESTIONS RELATING TO EXCLUSION

By signing this form, I certify that the Tenderer - Studio Professionale Associato a Baker & McKenzie - does not find himself in any of the following situations:

- Is bankrupt or 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;
- Has been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;
- Has been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- 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 of the contracting authority or those of the country where the contract is to be performed.
- Has been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- Following another procurement procedure or grant award procedure financed by the Union budget, has been declared to be in serious breach of contract for failure to comply with his contractual obligations

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SECTION 3. - QUESTIONS RELATING TO THE SELECTION OF TENDERER

3.1. - Financial capacity

Material provided to prove economic and financial capacity	Annex/Page No
1) Solemn statement of the authorized representative of the Tenderer - Studio Professionale Associato a Baker & McKenzie - of overall turnover and turnover concerning the services covered by the Tender during the last three financial years	Annex III to the Tender
2) Copy of the summary page of the statement of income presented by the Tenderer - Studio Professionale Associato a Baker & McKenzie - to the Italian tax authorities during the last three years	Annex IV to the Tender
3) Copy of certification of tax compliance	Annex V to the Tender
4) Copy of entry of the Tenderer in the Italian VAT register, also as supporting evidence of location of the registered office of the Tenderer	Annex VI to the Tender
5) Copy of amendment of entry in the Italian VAT register, also as supporting evidence of location of the registered office of the Tenderer	Annex VII to the Tender
6) Copy of the certification of registration with the Milan Bar Association	Annex VIII to the Tender

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3.2. - Technical capacity

<u>CRITERIA</u>	Fulfilled by - name of work team member
<u>Criterion 1</u> Description and evidence of strong knowledge, experience and understanding of the Tenderer in the following areas: <ul style="list-style-type: none"> a. the economics of intellectual property; b. intellectual property law (particularly patents); c. unfair competition law; d. legal framework for protection of trade secrets; e. confidential business information; f. theory and practice of know-how licensing and technology transfer agreements from a European and international perspective g. EU public policy and the Internal Market 	All work team members, according to their experience and practice
<u>Criterion 2</u> Description and evidence of strong record of independent and high-quality research in the fields of intellectual property law and unfair competition law as well as expertise, resources and capacity to collect and process statistical information, including expertise in planning and conducting interviews or surveys on a multi-jurisdictional basis	All work team members, according to their experience and practice
<u>Criterion 3</u> Description and evidence of management capacity to perform projects of the scale and scope of the Tender	Lorenzo de Martinis - Study coordinator; Francesca Gaudino - Study manager
<u>Criterion 4</u> Description and evidence of capacity to include all 27 Member States in the Tenderer's analysis, also addressing language matters and to provide deliverables and other written material in excellent English language	All work team members, according to their experience and practice
<u>Criterion 5</u> Description and evidence of the Tenderer's capacity to satisfy the objectives of the Invitation to tender	All work team members, according to their experience and practice

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Other material provided to prove technical capacity:	Annex/Page No
1) Detailed list of references focused on the Tenderer's expertise and experience relevant to the Invitation to tender	Section 4.2 - page 18 - of the Tender
2) Detailed curriculum vitae for the each of the work team members covering relevant qualifications and relevant recent experience	Annex II to the Tender
3) A summary table indicating the members of the work team and describing their roles and involvement in each phase of the Study, also including breakdown of costs per work team member and number of hours that each work team member will spend on each Study phase	Section 4.4 - page 23 - of the Tender
4) Description of the measures employed to ensure the quality of services	Section 4.1 - page 14 - of the Tender
5) Description and evidence of the Tenderer's capacity in terms of knowledge, experience, organization, methodology, resources, access to source of information, tight interaction with the business and research sectors to meet the objectives of the Invitation to tender	Section 4.1 - page 14 - of the Tender

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SECTION 4. - BANK IDENTIFICATION

Tenderer has filled in and enclosed herein the Bank Account form attained from the following internet addresses:

http://ec.europa.eu/comm/budget/execution/ftiers_fr.htm

or

http://ec.europa.eu/comm/dgs/internal_market/calls.htm

Enclosures:

1. Legal Entity form of the Tenderer
2. Bank Account form of the Tenderer
2. Price and breakdown of costs of the Tender

Studio Professionale Associato
a Baker & McKenzie



(Signature of authorised representative)

Forename: De Martinis

Name: Lorenzo

Position: Principal

Date: October 17, 2011

Enclosure 1 to the Letter of submission of tender

Legal Entity form of the Tenderer



LEGAL ENTITY

PRIVACY STATEMENT

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

PRIVATE COMPANY

COMPANY TYPE	PROFESSIONAL ASSOCIATION		
NGO	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>	(Non-Governmental Organisation)
NAME(S)	STUDIO PROFESSIONALE ASSOCIATO A BAKER & MCKENZIE		
ABBREVIATION	B&M		
ADDRESS OF HEAD OFFICE / FISCAL ADDRESS	PIAZZA FILIPPO MEDA, 3		
POSTCODE	20121	P.O. BOX	-----
TOWN/CITY	MILAN		
COUNTRY	ITALY		
VAT (1)	05094740965		
PLACE OF REGISTRATION	MILAN		
DATE OF REGISTRATION	REDACTED D D M M Y Y Y Y		
REGISTRATION No (2)			
PHONE	+39 02 76231 334	FAX	+39 02 76231 501
E-MAIL	LORENZO.DE.MARTINIS@BAKERMCKENZIE.COM		

THIS "LEGAL ENTITY" FORM SHOULD BE COMPLETED AND RETURNED TOGETHER WITH:

1. A COPY OF THE VAT REGISTRATION DOCUMENT IF APPLICABLE AND IF THE VAT NUMBER DOES NOT APPEAR ON THE OFFICIAL DOCUMENT REFERRED TO AT 2 BELOW.
2. A COPY OF SOME OFFICIAL DOCUMENT (OFFICIAL GAZETTE, COMPANY REGISTER ETC.) SHOWING THE NAME OF THE LEGAL ENTITY, THE ADDRESS OF THE HEAD OFFICE AND THE REGISTRATION NUMBER GIVEN TO IT BY THE NATIONAL AUTHORITIES.

DATE AND SIGNATURE OF AUTHORISED REPRESENTATIVE

October 14, 2011

Lorenzo de Martinis

Studio Professionale Associato
a Baker & McKenzie

Enclosure 2 to the Letter of submission of tender

Bank Account form of the Tenderer



FINANCIAL IDENTIFICATION

PRIVACY STATEMENT

http://ec.europa.eu/budget/library/execution/privacy_statement_en.pdf

ACCOUNT NAME (3)	
ACCOUNT NAME (1)	Studio Professionale Associato a Baker & McKenzie
ADDRESS	Piazza Filippo Meda, 3
TOWN/CITY	Milan
POSTCODE	20121
COUNTRY	Italy

(1) The name or title under which the account has been opened and not the name of the authorized agent

CONTACT	Lorenzo de Martinis		
TELEPHONE	+39.02.76231.534	FAX	+39.02.76231.501
E - MAIL	lorenzo.de.martinis@bakermckenzie.com		

BANK			
BANK NAME	[REDACTED]		
BRANCH ADDRESS	[REDACTED]		
TOWN/CITY		POSTCODE	
COUNTRY			
ACCOUNT NUMBER	[REDACTED]		
IBAN (2)	[REDACTED]		

(2) If the IBAN Code (International Bank account number) is applied in the country where your bank is situated

REMARKS :

BANK STAMP + SIGNATURE (Both obligatory)(3)
[REDACTED]

DATE + SIGNATURE OF ACCOUNT HOLDER : (Obligatory)
October 17, 2011 Lorenzo de Martinis

(3) It is preferable to attach a copy of recent bank statement. Please note that the bank statement has to provide all the information listed above under 'ACCOUNT NAME' and 'BANK'. In this case, the stamp of the bank and the signature of the bank's representative are not required. The signature of the account-holder is obligatory in all cases.

Studio Professionale Associato
a Baker & McKenzie

Lorenzo de Martinis

Enclosure 3 to the Letter of submission of tender

Price and breakdown of costs of the Tender

Enclosure 3 to the Letter of submission of tender

Price and breakdown of costs of the Tender

The following table contains the price of the Tender together with the breakdown of costs as requested in the Invitation to tender and as also reported in Section 7.1 - Price and Breakdown of Costs of the Tender.

The total price offered by the Tenderer to carry out and complete the Study as described in this Tender is of € 400.000. The Tenderer usually works on hourly rates that are higher than these applied to this Tender. Indeed, given the interest that the Tenderer has in taking part to the Invitation to tender, it has been decided to apply flat rates to the hourly rates of all the work team members. The total price of the Tender is the maximum amount indicated in the Invitation to tender since the Tenderer deems that this amount is necessary in order to provide the high level and first rate services as described in this Tender.

The amount of VAT (21% of € 4000.000) is: € 84.000

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Total fees	€	-----
Travel and subsistence [including 8 meetings with the Commission services in Brussels]	€	-----
Administrative expenses [including the conference to be held in Brussels]	€	-----
Overheads [overheads are already included in the Man/day and Total fees above reported]	-----	-----

Studio Professionale Associato
a Baker & McKenzie

Lorenzo de Martinis

(Signature of authorised representative)

Forename: De Martinis

Name: Lorenzo

Position: Principal

Date: October 17, 2011

ANNEX II TO THE TENDER

CVs of the work team members



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ANNEX IV TO THE TENDER

Copy of the summary page of the statements of income of the Tenderer during the last three years



Annexes to page 64 : removed

ANNEX V TO THE TENDER

Copy of certification of tax compliance of the Tenderer



Annex to page 65 : removed



ANNEX VI TO THE TENDER

Copy of entry of the Tenderer in the Italian VAT register



Annexes to page 66 : removed



ANNEX VII TO THE TENDER

Copy of amendment of entry of the Tenderer in the Italian VAT register

Annexes to page 67 : removed

ANNEX VIII TO THE TENDER

Copy of the certification of registration of the Tenderer with the Milan Bar Association

Annex to page 68 : removed

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Ref. Ares(2011)1336374 - 09/12/2011

From: EC INTMARKET CONTRACTS
Sent: vendredi 9 décembre 2011 18:10
To: 'Lorenzo.de.martinis@bakermckenzie.com'
Subject: Evaluation result MARKT/2011/128/D

Attachments: signed note.pdf
Dear Mr de Martinis,

After examination of the tenders received in response to the call of tender MARKT/2011/128/D, please find enclosed the result and the Evaluation Form concerning your proposal.



signed note.pdf
(466 KB)

Please note that you will receive the same documents by private mail.

Best regards,

Financial assistant
DG MARKT



EUROPEAN COMMISSION
Directorate General Internal Market and Services

RESOURCES AND COMMUNICATION



Brussels, 09 DEC. 2011
MARKT/A2/PS/fm (2011)1445169

**Studio Professionale associato a
Backer & Mckenzie**
Mr. Lorenzo de Martinis
Piazza Filippo Meda, 3
20121 Milan
Italy

Dear Mr de Martinis,

Subject: Call for tender MARKT/2011/128/D

I am pleased to inform you that, after examination of the tenders received in response to the above-mentioned call for tenders relating to "**STUDY ON TRADE SECRETS AND CONFIDENTIAL BUSINESS INFORMATION IN THE INTERNAL MARKET**", your bid has been selected for the award of the procurement contract.

This letter informing you of the award of the contract to **Studio Professionale associato a Backer & Mckenzie** for a total amount of **EUR 400.000,-**, does not constitute a commitment on the part of the Commission. As the contracting authority, we may, until such time as the contract is signed, either abandon or cancel the procurement procedure without this entitling you to any compensation.

The contract will be sent to you for signature in due time.

Yours sincerely,

Authorising Officer

Contact: ... Office: SPA2 01/ ... Telephone: (32-2) 296
Fax: (32-2) 299 ... -mail: EC-INTMARKET-CONTRACTS@ec.europa.eu

Annex: Individual evaluation form

Document 4b : removed

