



European Medicines Agency

London, 29 August 2006
Doc. Ref: EMEA/3419/04/5736

Technical Specifications For Open Invitation to Tender
No. EMEA/2006/35/ACC
Banking Services for European Medicines Agency (EMA)

1. Title of the Invitation to Tender
2. Objectives and Context of the Invitation to Tender
3. Subject of the Tender
4. Participation in the Tender
5. Additional documentation available to tenderers
6. Information visit (if applicable)
7. Variants (if applicable)
8. Estimated contract value
9. Price
- 9.1 Currency of tender
- 9.2 All-inclusive prices and/or reimbursement of expenses
- 9.3 Price revision
- 9.4 Costs involved in preparing and submitting a tender
- 9.5 Period of validity of the tender
- 9.6 Protocol on the Privileges and Immunities of the European Communities
10. Payment arrangements
11. Contractual details
11. Exclusion criteria
13. Selection criteria: Financial and Economic Capacity & Technical and Professional Capacity
14. Award criteria
15. Tender to be submitted

- Annex I Exclusion criteria statement and detail of supporting documentation required
Annex II Summary Checklist of Documents which Tenderers must submit
Annex III Draft Contract
Annex IV Technical and financial proposal forms

Technical Specifications For Open Invitation to Tender
No. EMEA/2006/35/ACC
Banking Services for European Medicines Agency (EMEA)

1. Title of the Invitation to tender

This document contains the Technical Specifications for the Open Invitation to Tender no. EMEA/2006/35/ACC for banking services for EMEA.

The contract notice for this open tender has been published in the Official Journal of the European Union no. S163 of 29 August 2006.

2. Objectives and Context of the Invitation to Tender

EMEA is an EU organisation based in Canary Wharf in the Docklands area of London (E14).

EMEA was established in 1995 and operates under Council Regulation No 726/2004 to provide a system for the authorisation of medicinal products. EMEA is an Agency of the European Union and has its own legal personality. EMEA's operations are subject to audits by the European Court of Auditors.

The work of EMEA is to co-ordinate the existing scientific resources of the EU Member States in order to evaluate and supervise medicinal products for both human and veterinary use throughout the European Union. The Agency also gives scientific advice to research-based companies in the development stage of new medicinal products and also in the form of guidelines on quality, safety and efficacy testing requirements. The Agency maintains and improves measures to facilitate innovation, research and increasing access to medicines. It has a dedicated office for micro, small and medium sized enterprises and implements the orphan medicinal policy for rare conditions. It monitors the effectiveness and marketing authorisation procedures and works to legal deadlines. It seeks to provide high quality and timely information on medicines in all EU languages to patients.

EMEA requires banking facilities for its financial operations and is required by the Implementing Rules of its Financial Regulation to organise a tender for the provision of its banking services every five years¹.

3. Subject of the Tender

EMEA is seeking a bank to which it can entrust its domestic and foreign operations and which can meet all the requirements set out in Annex IV (technical and financial proposal).

EMEA employs a staff of approximately 425. Within the framework of its activities, EMEA is responsible for an annual budget, which for the year 2006 is 120 million Euros.

In addition EMEA requires a facility to invest its surplus funds at a competitive market rate on a short-term basis – overnight to 6 months. A foreign currency conversion facility, mainly converting Euros balances into GBP, and a hedging facility is also required.

Investment of EMEA's surplus funds and currency conversion requirements is subject to a best bid from money market traders and expressly excluded from this tender.

¹ Article 55(3) of the Regulation of the European Medicines Agency laying down detailed rules for the Implementation of certain provisions of the Financial Regulations for the Agency.

4. **Participation in the tender**

Participation in this tendering procedure shall be open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons in a third country which has a special agreement with the European Communities in the field of public procurement under the conditions laid down in that agreement.

Where the Plurilateral Agreement on Public Procurement concluded within the World Trade Organisation applies, the tendering procedure shall also be open to nationals of the countries which have ratified this agreement, under the conditions laid down in that Agreement. In that connection, it should be noted that the services under Annex II-B to Directive DIR/2004/18/EC and the R&D services listed in category 8 of Annex II-A to that Directive are not covered by the Agreement.

Sub-contracting is not permitted for this tender.

5. **Additional documentation available to tenderers**

Further information about the EMEA operations can be obtained on its website: <http://www.emea.eu.int>.

6. **Information Visit – not required**

7. **Variants – not applicable**

8. **Estimated contract volume**

Present and projected figures for Incoming remittances and outgoing payments are set out below:

Year	Receipts	Payments UK	Payments EU+International
2005	3250	8750	4900
2006	3750	9500	5200
2007	4000	11000	6000

9. **Price**

9.1 **Currency of Tender**

Prices should be submitted in Pounds Sterling (GBP) or Euro (EUR) as indicated. The costing sheet attached to these specifications must be used to submit a tender.

9.2 **All-inclusive prices**

Prices submitted in response to this tender must be inclusive of all costs involved in the performance of the contract (e.g. to include delivery, supply and installation, maintenance, travel, subsistence etc). No expenses incurred in the performance of the services will be reimbursed separately by EMEA.

9.3 **Price Revision**

The tenderer may revise charges and fees payable upward or downward during the term of the contract. The basis of such changes need to be stipulated by the tenderer, such as charges linked to inflation or volume trade discounts.

9.4 **Costs involved in preparing and submitting a tender**

EMEA will not reimburse any costs incurred in the preparation and submission of a tender. The tenderer must pay any such costs.

9.5 **Period of validity of the tender**

Tenderers must enclose a confirmation that the prices given are valid for twelve months from the date of submission of the tender.

9.6 **Protocol on the Privileges and Immunities of the European Communities.**

EMEA is, as a rule, exempt from all taxes and duties, and in certain circumstances is entitled to a refund for indirect tax incurred such as value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities. Tenderers must therefore give prices which are exclusive of any taxes and duties and must indicate the amount of VAT separately.

10. **Payment arrangements**

All fees and charges payable under the contract terms may be collected by direct debit method.

11. **Contractual details**

A draft contract is attached to these Technical Specifications as Annex III.

EMEA wishes to conclude a service contract for five years.

12. **Exclusion criteria**

Tenders shall be excluded from participation in this procurement procedure if:

- they are insolvent (or the subject of bankruptcy proceedings if an individual) 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;
- they have been convicted of an offence (if an individual) or judgment has been made against them concerning their professional conduct by a judgment which has the force of res judicata;
- they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- 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;
- 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 Community's financial interests;

- following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.
- Contracts may not be awarded to candidates or tenderers who, during the procurement procedure:
- are subject to a conflict of interest;
- are guilty, either knowingly or negligently, of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information.

Tenderers must complete the declaration in Annex I in relation to Exclusion Criteria and provide all the supporting documentation indicated in this Annex.

13. **Selection Criteria: Financial and Economic Capacity & Technical and Professional Capacity**

Tenderers are requested to provide the following documentation to enable an assessment of their technical and professional capacity:

- Declaration that the bank is fully able to manage and perform deposit account transactions within a short time span. The bank must be financially sound. Evidence of this capacity must be provided by recent financial statements (i.e. as of 31.12.05 or more recent), audited by a recognised independent audit firm.
- Compliance with the operating rules laid down by the regulatory body in the European Union Member State in which the current account will be held and possession of all the official authorisations needed to provide the services required. Evidence of this capacity must be provided by documentation from the competent Regulatory Authority governing the Financial Institutions in the country concerned.
- The bank must have a branch located in London in which all accounts of EMEA can be held.
- The bank must ensure that the services to be provided including any automation software are proven to be reliable and that it has the necessary control for automated transactions. Evidence of this capacity must be provided by a signed statement to this effect.
- The bank must demonstrate that necessary security features are available at both the domains of the users and the tenderer and a log of activities is available for audit purposes. Evidence of this capacity must be provided by a statement describing the security features in place.
- The bank will be required to provide a “Help Desk” and contact details for any queries. Evidence of this capacity must be provided by a statement describing the available Help Desk services.
- Since other essential features such as linking of a transaction to its related cost, cross-referencing, e-commerce characteristics and group debit of series of payment instructions will be necessary, evidence of such capacities must be provided by a statement describing the features the bank is able to provide.

14. Award Criteria

The award criteria which will apply to this tender are as follows.

Most economically advantageous tender in terms of:

- Quality of the services: 70%
- Costs and interest rates: 30%

The above award criteria will be evaluated as indicated in the following table:

Services 70%

Section D

point I part c)	Automation of electronic systems including interfaces with accounting package & E-Banking. A back-up facility in case of disaster is also important.	40
point II (table A, column c)	Control of value dates of debit transactions	10
point III)	Control of value dates for credit transaction	10
Point IV	Helpdesk relationship manager	10
		70

Costs 30%

Section D

point II (table A column e)	Control of expenses and commissions on debit transactions	10
point I part a)	Cost for the use of electronic systems	10
point IV	Control of remuneration on current accounts	10
		30

The sum of all criteria gives a total of 100 points. The respective weighting between the different award criteria depends on the nature of the services required and is consequently closely related to the requirements of EMEA as described in this document. The award criteria are thus quantified parameters with which the tender should comply.

In order to assess the award criteria, tenderers are requested to provide:

- Completed tables given in Annex IV.
- Written presentation of the bank and its network of branches and offices.
- Any elements of the terms of reference on which the bank feels that remarks, comments or suggestions are necessary.
- The award criteria will initially be used to establish the provisional award of points and to establish a short list of the three highest-ranking tenderers. The shortlisted tenderers will be invited to give a presentation to the Evaluation Committee at the EMEA's premises. The presentation is a mandatory requirement of this tender and any tenderer declining to participate will be eliminated. The results of the presentation will be used to finalise the points for the award criteria and establish a final ranking of tenderers.

15. Tender to be submitted

In order to assess each tenderer according to the above-mentioned criteria, the following information must be submitted by the tenderer:

- A letter enclosing the tender on the official letter headed paper of the tenderer and signed by an authorised representative of the tenderer.
- An information sheet on the tenderer indicating:
 - the name and registered business address including telephone and fax numbers, e-mail address and website address;
 - any other different current or previous trading name;
 - the name and contact details of the person whom may be contacted with any queries regarding this tender;
 - the legal status of the tenderer;
 - if the tenderer is a partnership the full details of the partners;
 - if the tenderer is a company the company registration number, VAT registration number and date of incorporation;
 - if the tenderer is a member of a group of companies and if so the relationship between the tenderer and the ultimate holding company, the name and address of the holding company and its registration number, whether the ultimate holding company would be prepared to guarantee the liabilities in connection with this contract;
 - details of organisational structure including organisation chart;
 - number and locations of premises;
 - number of employees;
 - name of the person authorised to sign contracts on behalf of the tenderer.
- Completed and signed questionnaire and declarations in Annex I relating to Exclusion Criteria AND supporting documentation.
- Documentation requested to enable assessment of Selection Criteria (see point 13) above.
- Documentation requested to enable assessment of Award Criteria (see point 14 above and Annex IV).
- Statement by the tenderer to explain the basis for any revision in charges and fees payable during the contract term.
- A statement to confirm that information provided in response to this tender is accurate and complete as at the date of submission and acknowledgement that the provision of false information, either knowingly or negligently, in response to this tender could result in the tenderer being excluded from future tenders for contracts with EMEA.
- An undertaking to inform EMEA promptly following any matter which would alter or add to any of the information given in response to this tender.
- Tenders submitted by consortia or by groups of service providers must indicate the role, title and experience of each member or of the group.
- Tenderers are requested to make use of the checklist given in Annex II to ensure that no enclosure has been omitted in their tender.

**ANNEX I - EXCLUSION CRITERIA STATEMENT
AND DETAIL OF SUPPORTING DOCUMENTATION REQUIRED**

Tenderers must:

- Answer the following questions by indicating yes or no in each case. Any Tenderer answering yes to any of these questions shall be excluded from participation in this tender.
- Provide the supporting documents listed below in support of these answers.
- Provide the signed declaration regarding conflict of interest detailed on the next page.

Question no.	Question	Answer Yes/No	Proof required (see below)
1.1	Is the Tenderer insolvent (or the subject of bankruptcy proceedings if an individual) or being wound up?	Yes/No	Proof A or C required.
1.2	Is the Tenderer having its affairs administered by the courts?	Yes/No	Proof A or C required.
1.3	Has the Tenderer entered into an arrangement with creditors?	Yes/No	Proof A or C required.
1.4	Has the Tenderer suspended business activities?	Yes/No	Proof A or C required.
1.5	Is the Tenderer the subject of proceedings concerning any such matters referred to in 1.1, 1.2, 1.3 or 1.4 above or in any analogous situation arising from a similar procedure provided for in national legislation or regulations?	Yes/No	Proof A or C required.
1.6	Has the Tenderer been convicted of any offence (if an individual) or judgment been made against it concerning its professional conduct by a judgment which has the force of res judicata?	Yes/No	Proof A or C required.
1.7	Has the Tenderer been guilty of grave professional misconduct?	Yes/No	Not Applicable
1.8	Has the Tenderer failed to fulfil its obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which 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?	Yes/No	Proof B or C required.
1.9	Has the Tenderer 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 European Community's financial interests?	Yes/No	Proof A or C required.
1.10	Following any other procurement procedure or grant award procedure	Yes/No	Not Applicable

	financed by the European Community budget, has the Tenderer been declared to be in serious breach of contract for failure to comply with their contractual obligation?		
--	--	--	--

Supporting documentation to be provided in support of above responses:

In support of the above responses, please provide the following documents:

- A. Proof regarding situations mentioned in points 1.1, 1.2, 1.3, 1.4, 1.5, 1.6 and 1.9 in the form of a recent extract from the judicial record, or failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that these requirements are satisfied. The extract(s) or equivalent documentation must be the most reasonably available.
- B. EMEA will accept a recent certificate issued by the competent authority of the country concerned as satisfactory evidence that the Tenderer is not in the situation mentioned in point 1.8 above. The certificate must be dated less than four months before the final date for submission of this tender.
- C. Where no such certificates or documents are issued in the country concerned, they may be replaced by a sworn or a solemn statement made by the Tenderer before a judicial or administrative authority, a notary or a qualified professional body in the country of origin or provenance.

Please note that supporting documents provided must relate to legal persons and/or natural persons including, where considered necessary by EMEA, company directors or any person with powers of representation, decision-making or control in relation to the candidate.

Tenderers should also sign and date the declaration below. Signature should be by either a company director or any person with powers of representation or control in relation to the candidate as follows:

- I hereby confirm that [insert name of company] does not have any conflict of interest in connection with the contract arising from economic interests, political or national affinities, family or emotional ties, or any other relevant connection or shared interest;
- I confirm that EMEA will be informed, without delay, of any situation constituting a conflict of interest or which could give rise to a conflict of interest;
- I confirm that no offer of any type whatsoever from which an advantage can be derived under the contract has been or will be made;
- I confirm that [insert name of company] 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, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to the award of the contract.
- I confirm that [insert name of company] is not guilty of any serious misrepresentation, either knowingly or negligently, in supplying any information required by EMEA.
- I acknowledge that EMEA reserves the right to check the responses to the above information.

Signed:

Print name and title of signatory

On behalf of: [insert name of company]

Date:

Joint Tenderers: Tenderers are requested to note that in the case of a joint application, the exclusion criteria declarations and supporting documents are required from each company individually.

ANNEX II – SUMMARY CHECKLIST OF DOCUMENTS
WHICH TENDERERS MUST SUBMIT

1. Letter enclosing the tender on the official letter headed paper of the company and signed by an authorised representative of that company.
2. Tender in three copies (one original, clearly marked as original, and two copies), containing the following elements:
 - A letter enclosing the tender on the official letter headed paper of the tenderer and signed by an authorised representative of the tenderer.
 - Information sheet on the tenderer (as detailed in point 15 above).
 - Completed questionnaire in Annex I relating to Exclusion Criteria AND supporting documentation.
 - Documentation requested to enable assessment of Selection Criteria (point 13) above.
 - Documentation requested to enable assessment of Award Criteria (point 14 above and Annex IV).
 - Statement by the tenderer to explain the basis for any revision in charges and fees payable during the contract term.
 - A statement to confirm that information provided in response to this tender is accurate and complete as at the date of submission and acknowledgement that the provision of false information, either knowingly or negligently, in response to this tender could result in the tenderer being excluded from future tenders for contracts with EMEA.
 - An undertaking to inform EMEA promptly following any matter which would alter or add to any of the information given in response to this tender.
 - Tenders submitted by consortia or by groups of service providers must indicate the role, title and experience of each member or of the group.
 - Tenderers are requested to make use of the checklist given in Annex II to ensure that no enclosure has been omitted in their tender.

* * * * *

ANNEX III – DRAFT CONTRACT

DRAFT CONTRACT NUMBER – EMEA/2006/35/ACC

European Medicines Agency (hereinafter referred to as "EMA"), which is represented for the purposes of the signature of this contract by Mr Andreas Pott, Head of Administration,

of the one part,

and

[official name in full of company and statutory registration number of company]
whose registered address is at [official address in full]

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

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 [complete] of [complete])

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

Annex III – Deliverables

[Other Annexes]

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

In the event of any conflict herein, 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).

For the avoidance of doubt, the Contractor acknowledges and agrees that the terms of the Contract shall apply to the exclusion of the Contractor's standard terms and conditions.

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 EMA, subject to the rights of the Contractor under Article I.7 should it dispute any such instruction.

I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

- I.1.1.** The subject of the Contract is the provision of banking services to EMEA (the “Services”).
- I.1.2.** The Contractor shall provide the Services assigned to it in accordance with the Tender Specifications annexed to the Contract (Annex I) and the Deliverables (Annex III).

ARTICLE I.2 - DURATION

- I.2.1.** The Contract shall become effective on the date on which it is signed by the last contracting party. Provision of the Services shall start from [date of entry into force of the Contract] [indicate specific date].
- I.2.2.** Provision of the Services may under no circumstances begin before the date on which the Contract becomes effective.
- I.2.3.** The duration of the Services shall not exceed five years. This period and all other periods specified in the Contract are calculated in calendar months.

ARTICLE I.3 – CONTRACT PRICE

- I.3.1.** The amounts to be paid by EMEA under the Contract shall be as set out in Annex II exclusive of VAT covering all the Services provided (the “Charges”).
- I.3.2.** It is agreed that the Charges include all other expenditure that may be incurred by the Contractor in performance of this Contract, including travel, subsistence or any other related expenses.
- I.3.3.** [Provisions on price revision to be completed].

ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES

Payment of the Charges under the Contract shall be made only if the Contractor has fulfilled all its contractual obligations by the date on which the invoice is correctly submitted.

All fees and Charges payable under the Contract may be collected by the Contractor by direct debit method.

ARTICLE I.5 – NOT APPLICABLE

ARTICLE I.6 – NOTICE / ADMINISTRATIVE PROVISIONS

Any notice or other 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 EMEA on the date on which it is registered by the department responsible indicated below. All notices or other communications shall be sent to the following addresses:

EMEA:

EMEA
Accounting Sector
7 Westferry Circus
Canary Wharf
London E14 4HB
UK

Contractor:

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

ARTICLE I.7– APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- I.7.1.** The Contract shall be governed and construed in accordance with the laws of England & Wales.
- I.7.2.** Failing an amicable settlement, the Court of Justice of the European Communities shall have exclusive jurisdiction in any dispute relating to the performance or the interpretation of the Contract.

ARTICLE I.8 – TERMINATION BY EITHER CONTRACTING PARTY

Either party may, of its own volition and without being required to pay compensation, terminate the Contract by serving six months' formal prior notice. Should EMEA terminate the Contract, the Contractor shall only be entitled to payment corresponding to part-performance of the Services before the date termination is notified to become effective ("Termination Date"). On receipt of such notice from EMEA, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce its commitment in relation to EMEA. It shall draw up any documents required by the Contract and its Annexes for the Services provided up to the Termination Date on which termination takes effect, within a period not exceeding sixty days from the Termination Date.

[ARTICLE I.9 – OTHER SPECIAL CONDITIONS]

II – GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

- II.1.1.** The Contractor shall perform the Services to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on it, notably, but not limited to, 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 Services under the laws and regulations in force at the place where the Services are to be provided.
- II.1.3.** Without prejudice to Article II.3 any reference made to any employee, director or other officer or member of staff of the Contractor (the "Contractor's Staff") in the Contract shall relate exclusively to individuals involved in the performance of the Services.
- II.1.4.** The Contractor must ensure that any of the Contractor's Staff performing the Contract have the professional qualifications and experience required for the performance of the Services assigned to them.
- II.1.5.** The Contractor shall neither hold itself out as representing EMEA nor behave in any way that would give such an impression. The Contractor shall inform third parties that it does not belong to the European public service.
- II.1.6.** The Contractor shall have sole responsibility for the Contractor's Staff who execute the Services assigned to them.

The Contractor shall make provision for the following employment or service relationships with the Contractor's Staff:

- the Contractor's Staff performing the Services assigned to the Contractor may not accept orders or instructions direct from EMEA;
- EMEA may not under any circumstances be considered to be the employer of the Contractor's Staff and the said staff shall undertake if requested by EMEA and as far as they are able not to invoke in respect of EMEA any right arising from the contractual relationship between EMEA and the Contractor.

II.1.7. Notwithstanding the above, the Contractor shall indemnify and hold EMEA harmless against all and any claims, loss, cost or expenses suffered as a consequence of any claim arising from any employee or other member of the Contractor's Staff or any claim, assessment or other levy made by any competent taxation or other governmental agency in connection with the provision of the Services by the Contractor to EMEA.

II.1.8. In the event of disruption resulting from the action of a member of the Contractor's staff working on EMEA's 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. EMEA shall have the right to request the replacement of any such member of the Contractor's 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 Services assigned to him resulting from the replacement of the Contractor's Staff in accordance with this Article.

II.1.9. Should any unforeseen event, action or omission directly or indirectly hamper execution of the Services, either partially or totally, the Contractor shall immediately and on its own initiative record it and report it to EMEA. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with its obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.

II.1.10. Should the Contractor fail to perform its obligations under the Contract in accordance with the provisions laid down therein, EMEA may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, EMEA may impose penalties or liquidated damages provided for in Article II.16.

ARTICLE II.2 – LIABILITY

II.2.1. EMEA shall not be liable for any claim, loss, cost or expense sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of EMEA.

II.2.2. The Contractor shall be liable for any claim, loss, cost or expense sustained by EMEA but caused by the performance of the Contract, including that arising in the event of subcontracting under Article II.13. EMEA 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 indemnify and hold EMEA harmless and provide compensation in the event of any action, claim or proceeding brought against EMEA by a third party caused by the Contractor in performance of the Contract.

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

II.2.5. The Contractor shall take out and maintain for the duration of the Contract insurance against all normal business risks and damage relating to performance of the Contract including but not limited to Employer's Liability Insurance (if applicable) and Public Liability Insurance, both to a minimum cover of £5,000,000.00 or the equivalent in Euro. If required by the relevant applicable legislation the Contractor shall take out supplementary insurance as reasonably required in accordance with reasonably prudent practices in its industry. A copy of all the relevant insurance contracts shall be sent to EMEA 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 conflicts of interest 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 conflicts of interest which could arise during performance of the Contract must be notified to EMEA in writing without delay. In the event of any such conflict, the Contractor shall immediately take all necessary steps to resolve it.

EMEA 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 the Contractor's Staff are not placed in a situation which could give rise to conflicts of interest. Without prejudice to Article II.1 the Contractor shall replace, immediately and without compensation from EMEA, any member of the Contractor's Staff exposed to such a situation.

II.3.2. The Contractor shall abstain from entering into any contact likely to compromise its independence.

II.3.3. The Contractor declares:

- that it has not made and will not make any offer or agreement with any third party of any type whatsoever from which an advantage can be derived under the Contract,
- that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any third 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 the Contractor's Staff, 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 EMEA should it so request.

ARTICLE II.4 – PAYMENTS

II.4.1. Not applicable.

II.4.2. Not applicable.

II.4.3. Not applicable.

II.4.4. Not applicable.

ARTICLE II.5 – NOT APPLICABLE

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 on receipt of the debit note, in the manner and within the time limits set by EMEA.
- 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.** EMEA may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Communities that is certain, of a fixed amount and due. EMEA may also claim against any guarantee, where provided for.

ARTICLE II.7 – NOT APPLICABLE

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

- II.8.1.** Any copyright, trademarks, trade names, designs or patents (whether registered or unregistered) including all other intellectual or industrial property rights (the “Intellectual Property Rights”), arising, or created by the Contractor, in the performance of the Contract, shall be owned solely by EMEA, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation.
- II.8.2.** Where Intellectual Property Rights exist prior to the Contract being entered into and are utilised in the provision of, and ongoing benefit of, the Services the Contractor shall, or shall procure that any third party owner of said Intellectual Property Rights shall, grant to EMEA a perpetual, royalty free licence in connection therewith.
- II.8.3.** The Contractor shall execute any documents and do all things necessary to vest the Intellectual Property Rights, referred to in Article II.8.1 above, in the ownership of EMEA as may be requested by EMEA from time to time.
- II.8.4.** The Contractor represents and warrants that the Intellectual Property Rights arising, or utilised, in accordance with Articles II.8.1-2 are or shall be original and will not infringe any Intellectual Property Rights owned by any third party (including, but without limitation to, all moral rights).

ARTICLE II.9 – CONFIDENTIALITY

- II.9.1.** In this Article, “Information” shall include any information intentionally or unintentionally provided directly or indirectly by either EMEA or the Contractor to the other in oral or documentary form or by way of electronically accessible media or other tangible form or by demonstrations and whether created or arising in connection with the Services or existing before, on or after the date of the Contract.
- II.9.2.** In this Article, “Confidential Information” shall mean:
- (a) in respect of Information provided in documentary or by way of a presentation or in other tangible form, Information which at the time of provision is marked or otherwise designated to show expressly or is created or arises as a consequence of the provision of the Services or by necessary implication that it is imparted in confidence; and
 - (b) in respect of Information that is imparted orally, any information that EMEA or its representatives informed at the time of disclosure was imparted in confidence; and

- (c) in respect of Confidential Information imparted orally, any note or record of the disclosure; and
- (d) any copy of any of the foregoing; and
- (e) the fact that Services are being provided hereunder.

II.9.3. The Contractor undertakes to treat in the strictest confidence and not make use of or divulge or disclose to any third parties any Confidential Information. The Contractor shall continue to be bound by this undertaking after the termination or expiry of this Contract.

II.9.4. The Contractor shall obtain from each member of the Contractor's Staff an undertaking that they will respect the confidentiality of any of the Confidential Information and that they will not divulge or disclose to any third parties or use for their own benefit or that of any third party any Confidential Information not available publicly, even after termination or expiry of this Contract.

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

II.10.1. The Contractor shall authorise EMEA 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 any Confidential Information (as defined in Article II.9 above).

II.10.2. Unless otherwise provided by the Special Conditions, EMEA shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the Confidential Information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from EMEA.

II.10.3. Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from EMEA and shall mention the amount paid by EMEA. It shall state that the opinions expressed are those of the Contractor only and do not represent EMEA's official position.

II.10.4. The use of Confidential Information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless EMEA 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 it. Failure to comply shall render the relevant invoices invalid.

II.11.2. The Contractor recognises that EMEA is, as a rule, exempt from all taxes and duties, and in certain circumstances is entitled to a refund for indirect tax incurred such as value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities.

II.11.3. The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and Services required for performance of the Contract are exempt from taxes and duties, including VAT (if applicable).

II.11.4. Invoices presented by the Contractor shall indicate its 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 including acts of terrorism 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.1.9, if either 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 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 its contractual obligations owing to force majeure, it shall have the right to remuneration only for Services actually executed.
- II.12.4.** The parties shall take all necessary measures to reduce damage to a minimum including the right of EMEA to terminate and retain new suppliers.

ARTICLE II.13 – SUBCONTRACTING

- II.13.1.** The Contractor shall not subcontract the performance of the Services without prior written consent from EMEA nor cause the Contract to be performed in fact by third parties.
- II.13.2.** Even where EMEA authorises the Contractor to subcontract to third parties, the Contractor shall remain bound by its obligations to EMEA under the Contract and shall guarantee the provision of the Services and be liable for the proper performance of the Contract as if it were performing the Services itself.
- II.13.3.** The Contractor shall ensure that the subcontracting of its obligations does not affect rights and guarantees to which EMEA is entitled by virtue of the Contract and agrees to indemnify EMEA against any claim, loss, cost or expenses sustained by EMEA as a consequence thereof.

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 consent from EMEA.
- II.14.2.** In the absence of the authorisation referred to in II.14.1 above, or in the event of failure to observe the terms thereof, assignment by the Contractor shall be void against and shall have no effect on EMEA.

ARTICLE II.15 – TERMINATION BY EMEA

- II.15.1.** Notwithstanding any other term of this Contract, EMEA may terminate the Contract forthwith in the following circumstances:
- (a) where the Contractor is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, is being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations applicable to the Contractor;
 - (b) where the Contractor is an individual, he has been convicted of a criminal offence by a judgment which has the force of *res judicata* (other than minor road traffic offences which do not affect the provision of the Services);

- (c) where the Contractor has been sanctioned for professional misconduct proven by any means which the sanctioning authority can reasonably justify;
- (d) where EMEA has reasonable grounds to suspect the Contractor of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to EMEA's financial and/or reputational interests;
- (e) where the Contractor was guilty of misrepresentation in supplying the information in the Contractor's Tender or required by EMEA as a condition of entering into the Contract or failed to supply this information;
- (f) where there is a change of control of the Contractor and or any holding company of the Contractor whereby EMEA (acting reasonably at all times) considers there is a material detriment to its financial situation or its ability to carry out its functions in the way expected of it. In this clause (f), control means the ability to direct the affairs of another, whether by way of contract, ownership of shares or otherwise howsoever;
- (g) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes, whether or not in connection with the Contractor's Staff, in accordance with the legal provisions of the country in which it is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (h) where the Contractor is in breach of any obligations under Articles II.3 and II.9.

II.15.2 Notwithstanding any other term of this Contract, EMEA may terminate the contract forthwith in the following circumstances:

- (a) where a change in the Contractor's legal, financial, technical or organisational situation could, in EMEA's reasonable opinion, have a significant effect on the performance of the Contract;
- (b) where provision of the Services has not actually commenced within one month of the date agreed, and the new date proposed, if any, is considered unacceptable by EMEA;
- (c) where the Contractor is unable, through its own fault, to obtain any permit or licence required for performance of the Contract;
- (d) where the Contractor is in breach of any other obligations hereunder;

PROVIDED the Contractor fails to remedy said breach, only after receiving formal notice in writing to remedy said breach which specifies the nature of the alleged breach and gives the Contractor the opportunity to remedy the breach within a reasonable period following receipt of the formal notice but in any event not exceeding 14 days.

II.15.3. In case of force majeure, notified in accordance with Article II.12, either contracting party may terminate the Contract at any time, where performance thereof cannot be ensured for a period corresponding to at least one fifth of the period laid down in Article I.2.3 immediately following the event amounting to force majeure occurring.

II.15.4. Prior to termination under point a), b), c), or d) of Article II.15.2, the Contractor shall be given the opportunity to submit its observations.

II.15.5 Termination shall take effect on the date on which a notice with pro-forma acknowledgment of receipt attached terminating the Contract is received by the Contractor, or on any other date indicated in the notice.

II.15.6. Consequences of termination:

In the event of EMEA 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 its commitments. The Contractor shall draw up any documents required by the Special Conditions for the Services already performed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

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

On termination EMEA may engage any other contractor to provide the Services. EMEA 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.16 – NOT APPLICABLE

ARTICLE II.17 – ACCESS, INSPECTION AND AUDITS

II.17.1 The Contractor, during the currency of the Contract shall, or shall procure that its subcontractors shall gather, compile, correlate, collect and otherwise maintain all relevant accounts, records, books and other information in documentary form or on easily accessible electronic media (“Records”), arising in connection with the performance of the Contract.

II.17.2. In accordance with EMEA’s Financial Regulation, the European Court of Auditors shall be entitled upon reasonable notice to access, inspect and audit the Records held by the Contractor in connection with the performance of the Contract up to five years after the last payment is made to the Contractor by EMEA.

II.17.3. EMEA or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of access, inspection and audit of the Records in accordance with Article II.17.2 above.

II.17.4. In addition, the Contractor acknowledges that 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 and agrees to submit thereto.

ARTICLE II.18 - CANCELLATION OF SERVICES

Where execution of the Services has not actually commenced within one month of the date foreseen for the commencement of execution and the new date proposed, if any, is considered unacceptable by EMEA, EMEA may cancel such Services with no prior notice. Cancellation shall take effect from the day after the day on which the Contractor receives a registered letter with acknowledgement of receipt or equivalent.

ARTICLE II.19 – WHOLE AGREEMENT AND AMENDMENTS

This Contract (together with any documents referred to herein) constitutes the whole agreement between the parties hereto relating to its subject matter and no variations or amendments to the Contract shall be effective unless the subject of a written agreement concluded by the contracting parties. An oral agreement shall not be binding on the contracting parties.

ARTICLE II.20 – SUSPENSION OF THE CONTRACT

Without prejudice to EMEA's right to terminate the Contract, EMEA may at any time and for any reason suspend provision of the Services 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. EMEA may at any time following suspension give notice to the Contractor to resume the Services suspended. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.

SIGNATURES

For the Contractor,
[*Company name/forename/surname/title*]

For EMEA,
Mr Andreas Pott, Head of Administration

signature[s]: _____

signature:_____

Done at [place], [date]

Done at London, [date]

In duplicate in English.

ANNEX IV- TECHNICAL AND FINANCIAL PROPOSAL

I) Use of electronic systems for sending and receiving transactions, information, payment confirmation, statements and remittance advices.

a) EMEA currently generates payment requests through its accounting software called Si2 (Si2 is an accounting software written in PowerBuilder 6.5 using native drivers to Oracle 9i –RAC under Linux database on Windows XP). The bank shall process the file and execute the transactions. In addition, the bank shall send back an electronic file of the same format with feedback information (e.g. outcome on execution of payment) for the system of EMEA. The bank shall state its willingness to cooperate with EMEA if EMEA decides to use another general accounting software package or another program for generating payment requests, and support the development and/or the installation of compatible software.

Signature of the bank's
representative

The bank declares it is able to provide the above services

Comments:

(Enclose documentation and full price list)

b) Specify the number of characters sent to beneficiaries or their bank and also any additional expense for using additional characters:

Number of standard characters:	
Maximum possible number of characters:	
Any additional costs in EUR:	

c) Tick ✓ the relevant box to indicate the level of automation of the administrative procedure for processing messages sent in electronic form that your bank can offer (consider the possibility of alternative procedures in the event of electronic failure):

	Yes	No
Automatic		
Partially automatic		
Manual		

II) Control of expenses and commissions received for processing operations and value dates of DEBIT transactions

The bank should state its policy on control and value date.

For each of the operations shown in the following table, specify and consider the following:

- The number of working days (zero, 1 or 2) applied to carry out the operation (column C) provided that the instruction reaches the bank by the cut-off time (column D)
- The cost of the operation. (column E);

Table A

Transmission procedure	Payment type	Execution time in working days	Cut-off Time	Cost
A	B	C	D	E
Computerised transfers by modem or Internet (ref. Award criteria, procedure)	In GBP at your bank			
	In GBP to another bank in UK			
	In EUR to a country of the EU			
	in EUR to a country out of the EU			
Non-computerised transfer (back-up in the event of computer system failures)	In GBP at your bank			
	In GBP to another bank in UK			
	In EUR to a country of the EU			
	in EUR to a country out of the EU			

III) Control of expenses and commissions received for processing operations and value dates of CREDIT transactions

The bank shall undertake to guarantee that value dates for credit operations correspond to the dates on which the funds are received at no cost. Specify cases when it will not be possible to apply this rule.

Signature of the bank's
representative

The bank declares it is able to provide the above services

Comments:

IV) Control of remuneration on current account deposits

The tenderers should state the formula on which interest calculation will be based.

V) Control of liquidity and balances and account overdrafts

The bank shall continually monitor the liquidity status of current accounts opened by EMEA and prevent the occurrence of overdrafts. EMEA cannot accrue interest liabilities or carry out payments or operations when its current account is overdrawn. The bank undertakes to suspend the execution of any payment that would make the account overdrawn due to its date and value date and undertakes to inform EMEA. Accordingly, NO debit interest will be accepted.

Signature of the bank's
representative

The bank declares it is able to provide the above services

Comments:

VI) Confirmation of current account balances

On 31 December each year, the bank shall send out a duly signed official letter to confirm the operations and the balances as required by the European Court of Auditors.

Signature of the bank's
representative

The bank declares it is able to provide the above services

Comments:

VII) Transactions in GBP, Euro and other foreign currency

The bank shall execute transactions in the currency indicated by EMEA.

Signature of the bank's
representative

The bank declares it is able to provide the above services

Comments:

VIII) Control of authorised signatures

The bank undertakes to suspend the execution of a payment that is not authorised in accordance with Bank Mandate.

Signature of the bank's
representative

The bank declares it is able to provide the above services

Comments:

IX) Contact person for EMEA

The bank shall arrange to appoint a contact person for EMEA and notify EMEA of any changes in writing.

Signature of the bank's
representative

The bank declares it is able to provide the above services

Comments:

Name	
Surname	
Position	

X) Workflow systems

The bank can provide a payment system with a workflow authorisation process to execute payments.

Signature of the bank's
representative

The bank declares it is able to provide the above services

Comments: