**JOINT ACTION 2014 – Grant Agreement N˚666174**

**Activity FIREWORKS 2**

JOINT TESTING – D9.4F – Organisation of Laboratory Testing

1. A notice inviting the test laboratories that were authorised to conduct tests in accordance with EN 15947- Pyrotechnic articles – Fireworks – Categories 1, 2 and 3 was posted on the PROSAFE website on 20 July 2015 to contact the Project Coordinator, Robert Chantry-Price, for further details of the invitation express an interest in tendering for testing fireworks. A copy of this invitation is attached at Annex 1.

2. A copy of the paper that was sent to the test laboratories formally inviting them to tender for the testing of the nine types of firework is reproduced at Annex 2.

3. The following test laboratories were invited to respond to the ‘Invitation to Tender’:

As at June 2015 the following 15 test laboratories were designated under the provisions of Directive 2007/23/EC:

NB 0080 Institut National de L’Environnement Industriel et des Risques, France

NB 0163 Laboratorio Oficial Jose Maria de Madariaga, Spain

NB 0200 Force Certification A/S, Denmark

NB 0499 Societe Nationale de Certification et D’homologation S.À.R.L. (SNCH), Luxembourg

NB 0589 BAM Bundesanstalt für Materialforschung und –prüfung, Germany

NB 1008 TÜV Rheinland InterCert Muszaki Felügyeleti és Tanúsító Korlátolt Felelosségu Társaság, Hungary

NB 1170 Aidico Certificacion, S.L., Spain

NB 1395 Konstrukta-Defence JSC, Slovakia

NB 1453 Glówny Instytut Górnictwa, Poland

NB 1646 Centre De Contrôle De Carnelle ASBL, Belgium

NB 1809 Institutul National de Cercetare-Dezvoltare pentru Securitate Miniera si Protectie Antiexploziva, Romania

NB 2231 Český úřad pro zkoušení zbraní a střeliva, Czech Republic

NB 2333 Wojskowy Instytut Techniczny Uzbrojenia, Poland

NB 2463 Georg Plaschke & Co OG, Austria

NB 2465 Agencija za prostore ugrožene eksplozivnom atmosferom (ex-Agencija), Croatia

On 1 July 2015 the list of test laboratories designated under the provisions of Directive 2007/23/EC was taken down and a new list of test labs was displayed. These were labs that had been approved under the provisions of Directive 2013/29/EU – relating to making available on the market of pyrotechnic articles (recast).

As at 7 July 2015, the date of the first Project Group meeting, only 2 labs had been designated under the provisions of the ‘recast’ Directive. The Project Group decided that, as the bulk of the fireworks that are being placed on the market during the course of the Joint Action had had their ‘Declarations of Conformity’ and their testing/marking made under the provisions of the 2007 Directive, it would be appropriate to use the list made under the 2007 Directive to invite test labs to tender for the products collected from the market during the course of JA 2014 – Fireworks 2.

Furthermore, the Grant Agreement, at Clause 4.3 on page 46/88, dated 13/05/2015, requires that, for the amount of funding available for testing of fireworks, a minimum of 5 bids are received.

You will have noted that in the Invitation to Tender it states that ‘PROSAFE will provide the labs with full tender documentation by 4 August 2015, for submission to PROSAFE (to include your full costings) by 6 September 2015.’

Annex 1

**Joint Market Surveillance Action on Consumer Products JA2014**

**Activity: Fireworks**

**Invitation for an ‘Expression of Interest’ in the testing of Fireworks**

The Consumers, Health and Food Executive Agency (Chafea) has signed a grant agreement with PROSAFE (the Product Safety Forum of Europe) for a Joint Action which will include a programme of tests on fireworks.

Test laboratories that are approved under the provisions of Directive 2007/23/EC – on the placing on the market of pyrotechnic articles, or anticipate being approved under the provisions of Directive 2013/29/EU – making available on the market of pyrotechnic articles (recast), are invited to contact the Activity Coordinator, Robert Chantry-Price at robertchantryprice@gmail.com, and keep in copy the PROSAFE Office at info@prosafe.org, for a formal invitation to tender for the testing of fireworks in categories 1, 2 or 3 by the close of business on 31 July 2015.

The project, which commenced in mid May 2015 will continue until mid July 2017 and involve market surveillance on a range of different types of firework by authorities in the following EU/EFTA Member States: Belgium, Bulgaria, Greece, Iceland, Luxembourg, Norway, Poland, Slovenia and The Netherlands.

Fireworks will be collected from the market during the run up to New Year 2016 and New Year 2017 and sent to the laboratories that are awarded the contract during the winters of 2015/16 and 2016/17. They will be tested in accordance with the provisions of EN 15947: 2010, Parts 1-5 – Pyrotechnic articles – Fireworks – Categories 1, 2 and 3.

We will provide you with full tender documentation by 4 August 2015, for submission to PROSAFE (to include your full costings) by 6 September 2015.

We look forward to receiving your response to this request. Yours faithfully,

Nicolaas Olie

*PROSAFE Executive Director*

ANNEX 2

Brussels, 04.07.2015

**Joint Action 2014 – Activity on Fireworks 2**

**Grant Agreement N˚666174 – JA2014**

**Call for tenders from Test Laboratories**

1. **Background**

PROSAFE is an international non-governmental organisation established in 1991 by market surveillance officers from various countries throughout Europe. Its main aim is to contribute to the safety of products and services by promoting best practices in market surveillance. Since 2006, PROSAFE has established itself as the organising and coordinating body for Joint Market Surveillance Actions in Europe. PROSAFE’s official name is “Stichting PROSAFE”. It is a foundation under Dutch law.

PROSAFE’s main task is to coordinate Joint Actions. Each Joint Action comprises a number of product-specific activities that target specific product groups, and a number of activities aiming at developing methods and best practices.

In May 2015, PROSAFE became the coordinator for the Joint Market Surveillance Action 2014. The Action started in May 2015 and will end in July 2017. One of the product-specific activities in the Joint Action will address Fireworks.

The Joint Action identifies a number of roles and responsibilities:

* A Project Leader for the Joint Action has been appointed. He is responsible for the performance, reporting and coordination of the Activity Leaders;
* A Member State representative has been selected as Activity Leader responsible for carrying out the Activity on Fireworks.
* An external consultant, Robert Chantry-Price, has been selected as Activity Coordinator responsible for the daily coordination of the Activity Fireworks 2;
* PROSAFE’s Executive Director is responsible for the general and financial management of the Joint Action;
* The financial and project administration is handled by the PROSAFE Office.

1. **The scope of the tender**

An important part of the Joint Action is the testing of a number of Fireworks. Within this Joint Action, a Firework is defined as: *A pyrotechnic article intended for entertainment purposes.*

The purpose of the Activity is:

To develop best practices and exchange experiences by carrying out market surveillance activities for fireworks;

To detect dangerous fireworks on the market place and take action against them;

To develop a priority list of fireworks to be targeted in future Joint Actions.

The purpose of the testing is:

To clarify whether the firework that is being investigated is so unsafe that the authorities will have to take action against it’s continued presence on the market.

1. **Types of firework being collected from the market**

The Joint Action will collect from the market examples of fireworks from Categories 1/F1, 2/F2 and/or 3/F3, viz.:

Category 1/F1: Fireworks which present a very low hazard and negligible noise level and which are intended for use in confined areas, including fireworks which are intended for use inside domestic buildings;

Category 2/F2: Fireworks which present a low hazard and low noise level and which are intended for outdoor use in confined areas;

Category 3/F3: Fireworks which present a medium hazard, which are intended for outdoor use in large open areas and whose noise level is not harmful to human health.

It is anticipated that the fireworks selected for testing will be from the following types of firework:

Category 1 – Hand held sparklers

Category 2/3 – Bangers and Double Bangers

Category 2/3 – Batteries and Combinations

Category 2/3 – Flash bangers

Category 2/3 – Jumping ground spinners

Category 2/3 – Roman Candles

Category 2/3 - Rockets

Category 2/3 – Compound fireworks (i.e. fireworks which are securely fixed on the same base, and connected together by linking the protruding and reserve fuses of each firework, or with separately CE marked pyrotechnic cords according to EN 16265, or a mixture of both, with one or two points of ignition, without external support – as per prEN 15947:2: 2014 – clause 6)

The agreement foresees the testing of a number of fireworks that are placed on the market in accordance with the provisions of Directive 2013/29/EU or Directive 2007/23/EC and in accordance certain clause EN 15947: 2010 – Part 5. PROSAFE is calling for one or more laboratories to undertake this testing.

The purpose of the testing is to evaluate whether each of the fireworks collected from the market is safe and complies with the applicable legislation and/or safety standard.

The task comprises the following services:

* The testing of at least 190 samples of fireworks. The precise number of samples may deviate. It will be determined by the Activity Leader and the Activity Coordinator during the course of the Action. Testing of further samples might be requested by individual Member States outside the financial scheme of the Action.
* The Activity may ask the laboratory to participate in one or more project meetings, for instance to explain test methods or test results to the Member States.
* The Activity may ask the laboratory to host a project meeting for the representatives from the sampling Member States.
* The Activity may ask that further testing is undertaken by individual Member States, but this will be outside the financial scheme of the action.
* Assistance with other services, such as the provision of transport under the provisions of the ADR Scheme between the location of the offices of participating Member State and the test laboratory.

The samples will be provided by Market Surveillance Authorities from: Belgium, Bulgaria, Greece, Iceland, Luxembourg, Norway, Poland, Slovenia, the Netherlands. The Member States will provide ten items of each product for examination and testing.

Each product will be sent to the laboratory directly from the Member States. It will be accompanied by a list that identifies the sample, the Joint Action, the submitting Member State and specific requirements for the testing.

The testing is provisionally planned to take place during the winter period 2015/16 and during the winter period 2016/17. This timeline may change.

It is emphasised that PROSAFE may decide to assign the testing to more than one laboratory.

1. **Requirements, tenderer**

The main requirements for undertaking the assignment are:

* Ability to carry out the tests required. Preferably with an accreditation according to EN 17025:2005 or similar for the required standard and tests.
* Full independence from manufacturers, importers or other economic operators in the market for firework.
* Excellent active and passive knowledge of the English language. Preferably good knowledge of other official European languages.

The following management requirements apply:

* It is the responsibility of the laboratory to carry out its testing and calibration activities in such a way as to meet the respective requirements of the tender specifications.
* The laboratory shall have managerial and technical personnel who have the authority and resources needed to carry out their duties.
* The laboratory shall provide adequate supervision of testing and calibration staff by persons familiar with methods and procedures, purpose of each test and/or calibration, and with the assessment of the test or calibration results.
* The laboratory shall establish and maintain procedures for the review of requests. The policies and procedures for these reviews leading to a contract for testing and/or calibration shall ensure that the laboratory has the capability and resources to meet the requirements.
* Any differences between the request and the contract shall be resolved before any work commences.
* The Activity Coordinator shall be informed immediately of any deviation from the contract.
* The laboratory shall establish and maintain procedures for identification, collection, indexing, access, filing, storage, maintenance and disposal of quality and technical records.
* The laboratory shall have procedures to protect and backup records stored electronically and to prevent unauthorized access to or amendment of these records.

The following requirements regarding the technical skills apply:

* The laboratory management shall ensure the competence of all who operate specific equipment, perform test and/or calibrations, evaluate results, and sign test reports and certificates. When using staff undergoing training, appropriate supervision shall be provided. Personnel performing specific tasks shall be qualified based on appropriate education, training, experience and/or demonstrated skills, as required.
* Laboratory facilities for testing and/or calibration, including but not limited to energy sources, lighting and environmental conditions, shall be such as to facilitate correct performance of the tests and/or calibrations.
* All equipment used for tests and/or calibrations, including equipment for subsidiary measurements having a significant effect on the accuracy or validity of the result of the test, calibration or sampling, shall be calibrated before being put into service.
* The laboratory shall have due experience in the field of testing.
* The laboratory shall have experience in performing tests related to firework according to the standards mentioned and in interpreting test results and classification issues.

The following requirements apply to subcontracting:

* PROSAFE does not accept that the selected laboratory further subcontracts the testing services.
* If the need to subcontract becomes apparent only after the work has been commissioned, the laboratory must ask for PROSAFE’s Executive Director’s permission before such a decision is adopted.

1. **Requirements, quotation**
   1. Testing to all the clauses specified in EN 15947 will not be required. Testing will need to be undertaken to the following clauses specified in EN 15947-5:

4.1.1 - Construction materials – General requirements – Critical

4.1.2 – Construction requirements – Specific requirements – Critical

4.3 - Elements in batteries & combinations – Major

6.2 - Protection of initial fuse and reserve fuse (if applicable) – Major

6.3 - Attachment of means of ignition – Major

6.4.1 – Ignition of initial fuse and reserve fuse (if applicable) Major &

Duration of initial fuse & reserve fuse (if applicable) – Major

6.4.2 - Invisible burning of Roman Candles; Ignition time of sparklers - Major

7.1.2.1 – Integrity – General requirements – Major

7.1.2.2 – Integrity – Specific requirements – Major

7.1.3 - Stabilisation of flight - Critical

7.2.2 – Functioning – Major

7.2.3 – Angle of ascent or flight – Major

7.2.4 - Motion – applies to jumping ground spinners only - Major

7.2.5 – Stability during functioning – Critical

7.2.6 – Height of explosion – Major

7.2.7 – Sound pressure level – Major

7.2.8 – Explosion & other factors – Critical

7.2.9 - Burning or incandescent matter - Major

7.2.11 – Project debris – Major

7.3.2 – Plastics body – Major

(Note: At EN 15947 – 5: 2010 – Annex A – the applicable requirements for each firework type are detailed, except in the case of compound fireworks[[1]](#footnote-1). Each type of firework will not necessarily need to be tested to all the clauses listed above, only to those specified in EN 15947-5: 2010 - Annex A. For this reason it is anticipated that the cost of testing may vary from one type of firework to another.)

The quotation should therefore include the cost of compliance testing for each of the nine types of firework (Hand held sparklers; Bangers; Double Bangers; Batteries and Combinations; Flash bangers; Jumping ground spinners; Rockets; Roman Candles; Compound fireworks) to the clauses in detailed in 1 above to EN 15947 for 1-10, 11-20, 21 – 30, 31 – 40 and > 30 products.

(Note: Each product will include 10 samples of that product, all of which should be tested). It would be helpful if the cost of testing each type of firework/quantity of fireworks could be specified in the following format:

*Type of firework No of products, each consisting of 10 specimens*

*0-10 11-20 21-30 31-40 >40 products*

Cat 1 – Fountains **…… …… …… …… ……**

Cat 2/3 Bangers **…… …… …… …… ……**

Cat 2/3 Double bangers **…… …… …… …… ……**

Cat 2/3 Batteries and combinations **…… …… …… …… ……**

Cat 2/3 Flash bangers **…… …… ……**  *Y* **……**

Cat 2/3 Jumping ground spinners **…… …… …… …… ……**

Cat 2/3 Rockets **…… …… …… …… ……**

**Cat 2/3** Roman candles **…… …… …… …… ……**

Cat 2/3 Compound fireworks **…… …… …… …… ……**

*Explanatory Note for the avoidance of doubt: The intention is that two market surveillance exercises will be conducted during the course of the project, viz. one during the winter 2015/16, the other during the winter 2016/17. If, for example 20 tests are required for Flash bangers during the winter 2015/16 market surveillance exercise and a further 15 tests are required during the winter 2016/15 market surveillance exercise, then the total no of tests on this type of firework that will be required throughout the lifetime of the project will be 20 + 15 = 35 tests. These will be charged at the rate of 35 x* ***Y*** *euros using the information in the table above. (Y being the* cost of testing a flash banger when 35 of these products are submitted to the laboratory for testing.)

5.2 A test report giving the results of the testing of each sample from each product will be required. Where applicable, the test report must indicate the measured value for each property, not only “failed/passed”. The quote must be per product. The test report must be in a format specified by PROSAFE.

5.3 The test laboratory shall produce an overview table with the findings from 5.1 and 5.2 above for all received products.

The tenderer must quote all prices including VAT. PROSAFE is not able to recover VAT and does not accept the reverse charge method.

The tenderer must explain where the testing will take place (which country). For practical reasons, PROSAFE will only in exceptional cases engage with laboratories where the testing is going to take place outside the EU/EEA countries.

The tenderer must describe his qualifications and experience in line with the above-mentioned requirements.

1. **Deadline**

Quotations shall be sent to the PROSAFE Office in hardcopy (Avenue des Arts/Kunstlaan 41, 2nd floor, B-1040 Brussels, Belgium) and via email to [info@prosafe.org](mailto:info@prosafe.org).

### The email shall be copied to the Activity Coordinator, Robert Chantry-Price, at [robertchantryprice@gmail.com](mailto:robertchantryprice@gmail.com) and to the Activity Leader, Arno van Dop, at [arno.van.dop@ilent.nl](mailto:arno.van.dop@ilent.nl).

***Quotations shall be received at PROSAFE no later than 17:00 on 6 September 2015*** (Time Zone: GMT +1 hour). Quotations that will be received after the deadline will be rejected.

1. **Selection process**

The selection will be based on the following criteria:

* The tenderer’s ability to carry out the specific tests.
* The tenderer’s experience with testing of fireworks in categories 1, 2 and 3. (In this connection, please indicate the volume of tests you have conducted annually during the last 2 years.)
* The tenderer’s formal qualifications (e.g. accreditation(s)).
* Price including VAT.

(NOTE: If the service supplied by your laboratory is exempt from VAT, your laboratory will be required to provide certification from your customs authority that this is the case. Otherwise, invoices to PROSAFE must include VAT.)

* Delivery time.
* Terms of delivery.
* The tenderer’s ability to supply additional services to the Joint Action. Examples might be:

1. The ability to transport fireworks from the participating Member State authority to the test lab, or to recommend a supplier local to the test lab that that is experienced and reliable and could undertake this procedure in accordance with the requirements of the ADR scheme. It is anticipated that the amount carried will be under the ‘1000 points’ threshold that is defined within the scheme;
2. Participation in ‘round robin’ tests on fireworks, i.e. by conducting inter-lab tests to test the accuracy of your equipment and procedures relating to the application of EN 15947;
3. Participation in CEN Technical Committee (TC) 212 – Pyrotechnic Articles, or in national ‘mirror’ committees that review the work of CEN TC 212.

* The tenderer’s ability to serve individual Member State with testing of fireworks outside the Joint Action.
* PROSAFE’s general impression of the tenderer’s ability to undertake the job.

The selection will follow a 2-stage process. First, one or more laboratories will be shortlisted based on the received tenders. At this stage further information may be required from the laboratory to clarify any aspect of their submission that requires clarification. Second, a meeting may be arranged between representatives from the Joint Action and representatives from the shortlisted laboratory(-ies) in their premises to allow a more thorough discussion of the assignment.

The tenderer is invited to provide additional information to ease PROSAFE’s evaluation of the services being offered. This includes details of the prices and other aspects related to the selection criteria as mentioned above.

1. **Further information**

A pro forma is provided for the submission of the tender. It is important that when drafting your tender document that you pay particular attention to ensuring you cover ALL the issues listed at 3, 4 and 5 above.

The contract will be signed under Dutch legislation.

Further information regarding the task and the selection procedure can be obtained from the Activity Coordinator, Robert Chantry-Price, at the following address:

Email: [robertchantryprice@gmail.com](mailto:robertchantryprice@gmail.com);

With best regards,

Nicolaas Olie

*Executive Director*

PROSAFE Office

Avenue des Arts/Kunstlaan 41, 2nd floor

B-1040 Brussels

Belgium

Email: [info@prosafe.org](mailto:info@prosafe.org) Phone: +32 2 8080 996

#### ANNEX 1

##### GENERAL CONDITIONS OF TENDER FOR PROSAFE CONTRACTS

###### Definition

*The word ‘PROS****A****FE’ within the tender documents refers to the Product Safety Enforcement Forum of Europe which is a non-profit organisation established by market surveillance officers from various countries throughout Europe and refers specifically to the foundation - Stichting PROSAFE – which is registered in the Netherlands (Kamer van Koophandel Haaglanden No. 27253826, dated 15 Oct. 2002)*

The following General Conditions shall apply to all Invitations to Tender (ITT) and Requests for Quotation (RFQ) issued by PROSAFE, except for where they are modified or amended by the Special Conditions of the Tender issued as part of the ITT or RFQ. In case of any differences between the Specific Conditions and these General Conditions, the Specific Conditions are to be considered as correct.

A. GENERAL STANDARDS OF PRESENTATION

1. Structure of the tender

The tender shall present the information required, in the form specified in the Special Conditions of Tender forming part of the ITT/RFQ.

2. Length of tender documents

The tender should be precise and concise. Unless expressly so stated in the Special Conditions of Tender, there is no limitation on the number of pages, but it should be borne in mind that the quality of the tender will not be increased by unnecessary length or by needlessly detailed descriptions. Mere repetitions of PROSAFE’s requirements should be avoided.

3. Use of English language

The tender and all correspondence relating to it shall be in English, unless the Special Conditions of Tender state otherwise, or on request of a tenderer, permission is given in writing by PROSAFE for the use of another language for the tender or parts thereof.

B. FORMAL CONDITIONS, COMMITMENTS, UNDERTAKINGS

1. Certification of free competition

By submission of the tender, the tenderer implicitly certifies that:

* The prices in the tender have been arrived at independently without consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices, with any other tenderer or competitor;
* Unless otherwise required by law, the prices quoted in the tender have not knowingly been disclosed by the tenderer and will not knowingly be disclosed, directly or indirectly, to any other tenderer or competitor until he has been informed of the result of the ITT/RFQ;
* No attempt has been made or will be made by the tenderer to induce any other tenderer or competitor to submit or abstain from submitting a tender for the purpose of restricting competition.

2. Restriction on publicity actions

Tenderer are not authorised to mention in their publicity that they have been invited to tender, are tendering or have tendered, until after notification of the result of the ITT/RFQ.

3. Validity period of tender

The tender shall specifically state a period of validity of 6 months from the closing date for the receipt of tenders, or such other period as may be provided for in the Special Conditions of Tender.

4. Period for tender preparation

The closing date for submission of tenders is stated in the cover letter to the ITT/RFQ. Extensions of this period, requested in writing, will only be considered by PROSAFE if operational requirements so permit, and if, in the case of competitive tendering, fair competition is not thereby impaired. Requests for extensions received less than two weeks before the closing date will, for competitive ITT/RFQ’s, not be considered.

5. Right to audit

PROSAFE will be entitled, after receipt of the tender and during its validity period, to request the tenderer to provide evidence of any element of his quotation and may call for additional detailed information irrespective of the type of price proposed. PROSAFE reserves the right to audit the quoted prices.

6. Negotiation prior to contract award

PROSAFE reserves the right to negotiate with one or more tenderer before taking a decision on the placing of a contract. The offer shall remain valid until changes are agreed in writing. The original offer, as modified shall constitute a binding revised offer.

7. Retention of tenders

Any document submitted in reply to the ITT/RFQ shall become the property of the PROSAFE. It will use commercially confidential or proprietary information solely for the purpose of the evaluation of tenders and the selection of a contractor. PROSAFE reserves the right to eliminate from considerations tenders which purport to restrict the use of documents or information beyond these provisions.

8. No reimbursement of tender expenses

Expenses incurred in the preparation and dispatch of the tender will not be reimbursed.

9. No commitment by PROSAFE

The ITT/RFQ does not bind PROSAFE in any way to place a contract, and PROSAFE reserves the right to place a contract for only part of the activity covered by the ITT/RFQ.

Although PROSAFE will ensure to abide with a level of fairness and transparency throughout the tendering process, it reserves the right to accept any tender which is deemed the most advantageous for the particular job, even if this is not the most economically advantageous.

10. Responsiveness of the tender

a) General compliance and presentation

The tender shall comply in all respects with the ITT/RFQ, and shall be so presented that it can be related, point by point, to the requirements.

b) Cover letter

The tender shall have a cover letter duly signed by a person authorised and explicitly stating compliance with both the specific and general conditions of the tender.

c) Compliance with technical and management requirements

The tenderer shall explicitly state that the requirements of the specification and/or work statement will be met. Any reservation must be clearly identified. The consequences of the reservation, the reasons therefore and the possibility of and conditions for it being withdrawn shall be described.

d) Compliance with contract conditions

The tenderer shall explicitly state that the contract conditions are read, understood and accepted and that any of his sales conditions do not apply. In case, exceptionally, that he wishes to propose modifications or amendments, the full text of such modifications or amendments shall be given and the reasons for their being requested be clearly explained.

e) Reservations

Any reservations to the requirements, or proposed modifications or amendments to the contract conditions will be taken into account in the evaluation. Acceptance of a tender containing reservations, or proposed modifications or amendments is not to be construed as acceptance of these, until such acceptance is stated in writing by PROSAFE.

f) Options

If the Special Conditions of Tender call for the submission of options or alternatives, or if the tenderer wishes of his own initiative to submit these, PROSAFE reserves the right to disregard such a submission if a tender compliant with the requirements is not also made.

C. CONDITIONS RELATING TO INTELLECTUAL PROPERTY RIGHTS

1. Third party commitments

The tenderer shall indicate if he has entered into any arrangements or licence agreements as to intellectual property rights concerning the subject of the ITT/RFQ, either as part of a general arrangement or with specific reference to the ITT/RFQ. A copy of the document recording the commitment, or an appropriate part thereof, shall be submitted with the tender. If such arrangement or agreement would result in costs to be borne by PROSAFE these must be separately identified.

2. Reservation and restrictions

If as a result of

* A commitment with a third party as to intellectual property rights, or
* An existing intellectual property right of the tenderer, or a claim by the tenderer that intellectual property rights will be generated under the contract which are not paid for by PROSAFE, or
* Any other reason.

If the tenderer wishes to make any restriction on the rights of distribution and use, as foreseen and defined in the conditions of the contract, of any data, including documentation, related to the work under the contract, such proposed restriction must be clearly defined and justified in the tender. It will be taken into account in the evaluation and if contrary to the stated objectives of the ITT/RFQ, might render the tender unacceptable. PROSAFE will not accept reservations made subsequent to the closing date of the ITT/RFQ.

D. CONDITIONS RELATING TO SUBCONTRACTS

1. Placing of subcontracts

If the tenderer intends to place subcontracts, he shall do so, unless otherwise provided for in the Special Conditions of Tender, on a competitive basis wherever possible and inform PROSAFE of this intention within the submitted tender documents.

2. Identification of subcontracts

The tenderer shall indicate proposed subcontracts, the country to which the subcontractors belong, the place of execution of the subcontracted work as well as the corresponding percentage of the total price of the tender.

3. Information concerning subcontractors’ offers

In submitting tender containing proposed subcontractors, the tenderer shall indicate the reasons why, and means by which he has selected the proposed subcontractor, and the status of negotiation with him.

4. PROSAFE participation in subcontractor evaluation

If, in exceptional cases, PROSAFE wishes to participate in the evaluation and/or selection of subcontractors, the Special Conditions shall so specify, together with the procedures and conditions applicable to such activity.

E. AMENDMENTS TO DOCUMENTS AND COMMUNICATIONS

1. Amendment of the ITT/RFQ

PROSAFE reserves the right to issue amendments to the ITT/RFQ.

2. Questions relating to the ITT/RFQ or tender

Any questions by invitees to tender concerning the ITT/RFQ shall be submitted in writing not later than two weeks before the closing date or any other period specified within the specific conditions, to the nominated officer concerned as indicated within the specific conditions. Questions may be sent in writing to the nominated officer via email as long as a specific email address has been given within the specific conditions of the tender. Questions shall, where possible, make specific reference to the appropriate section(s) of the ITT/RFQ documents. When PROSAFE gives a reply it will normally forward the reply(ies) together with the question(s) to all invitees to tender.

Any request for documentation referred to in the ITT/RFQ shall be sent to the nominated officer as indicated within the specific conditions. PROSAFE does not undertake to make any document available unless the ITT/RFQ documents specifically state that such document is available on request for the purpose of the ITT/RFQ.

PROSAFE reserves the right to ask tenderer for clarifications of their tenders during the evaluation period. Answers, addressed in writing to the nominated officer, must be received within three days of dispatch of the request, if no other period is stated. Clarifications shall not be regarded as amendments or modifications of the tender, in the case of competitive tenders.

3. No information about evaluation during evaluation period

Tenderer are not entitled to contact PROSAFE during the evaluation and selection period to ask for information on the evaluation. PROSAFE reserves the right to eliminate from the evaluation a tenderer contravening this provision.

4. Amendment, withdrawal or resubmission of the tender

Amendment, withdrawal or resubmission of the tender will be permitted if they reach PROSAFE before the closing date and time identified within the specific conditions.

5. Information about the result of the ITT/RFQ

Tenderer will be informed in writing via email of the result of the ITT/RFQ after a decision has been taken. Upon receiving notice that his tender has been unsuccessful, a tenderer may request the nominated officer to advise him of the reasons why the tender has not been retained. Any information will be limited to the tenderer’s own tender. The decision on the result of the ITT/RFQ will be without appeal, and PROSAFE will not enter into correspondence on the reasons for the decision.

F. ADDITIONAL OBLIGATIONS

#### *Once a tenderer is finally chosen by PROSAFE to perform the required services or products to be supplied (referred within this section as the “contractor”), and a contract is entered into between both parties, the following conditions will apply:*

1. Performance of work

The contractor shall assure that all the services as per contract are carried out according to the highest professional standards. Whilst carrying out all the services of the contract, the contractor is obliged to use only his own highly qualified, professional staff.

The contractor undertakes to provide PROSAFE with any information it may request for the management of the contract.

If the contractor is not a company but a registered person, under no circumstance will the contractor be considered to be an employee of PROSAFE during the execution of the services provided or products supplied by the contractor.

# 2. Assignment

The contractor is not permitted to assign or in any other way transfer the rights or obligations under the contract to a third party without prior written acceptance from PROSAFE.

# 3. Subcontracting

If any part of the work is to be subcontracted, PROSAFE must be informed before the subcontract is signed. If the need to subcontract becomes apparent only after the work has been commissioned, the permission/agreement of the person signing the contract on behalf of PROSAFE must be obtained before the subcontract is signed or takes effect.

The contractor is ultimately liable for any services provided by subcontractors engaged by the contractor in accordance with the contract.

**4. Substantial non-fulfilment**

If one of the parties (hereinafter referred to as the offender) causes a substantial non-fulfilment of the contract, then the other party (hereinafter referred to as the offended) is entitled to terminate the contract with immediate effect.

However, if a non-fulfilment is demonstrated the offended is obliged to protest to the offender in writing without delay.

The contractor is obliged to inform the nominated officer within PROSAFE as per specific conditions of the contract of any substantial non-fulfilment should it arise. PROSAFE will then decide if substantial non-fulfilment has occurred. Failure to inform about substantial non-fulfilment may lead to termination of the contract with immediate effect.

In case of a cancellation, none of the parties are obliged to supply services according to the contract. However services already supplied or products already supplied shall be settled.

Examples of substantial non-fulfilment are shown below (non-exhaustive list):

* Not informing PROSAFE about possible substantial non-fulfilment.
* Repeated non-fulfilments of payments from PROSAFE’s side.
* Repeated or significant delays in the services or products to be provided.
* Repeated significant shortcomings that are not remedied when claimed.

Specifically on delays

If it is clear that services provided or products supplied cannot be delivered within the agreed delivery time, the contractor is obliged to inform without delay the nominated officer of PROSAFE as per specific conditions of the contract, regardless of the cause of the delay.

PROSAFE considers repeated or significant delays as substantial non-fulfilment, which justifies PROSAFE to cancel the contract with immediate effect.

Specifically on shortcomings

If shortcomings are found in the provision of a specific service or product supplied by the contractor, then PROSAFE can demand that the contractor remedies the shortcomings without further payments. In such instances the parties shall agree on a new time limit that is reasonably in proportion to the time limits that would normally apply to such services.

If this cannot be remedied, PROSAFE is entitled to demand a proportionate discount.

# 5. Conflicts of interest and substantial non-fulfilment

The contractor is allowed to work for other parties provided that it does not compromise the services or product being offered or the obligations towards PROSAFE since ultimately it may lead to substantial non-fulfilment.

# 6. Exclusiveness

The contractor does not have any exclusive rights related to the actual services being provided or products supplied to PROSAFE.

# 7. Proprietary Right and Copyright

Where applicable, PROSAFE has the proprietary right and copyright of any results, content material or outcome derived from the provision of services supplied by the contractor or through the utilisation of products supplied by the contractor, in accordance with the contract.

# 8. Termination

The contract can only be denounced due to substantial non-fulfilment. Termination of the contract must be confirmed in writing without delay.

If the contract is denounced by either party, the contractor shall produce an invoice for any services or products already supplied according to the contract until the date of termination. This invoice should be delivered to the nominated officer of PROSAFE as per specific conditions of the contract.

# 9. Liability and Renouncement

PROSAFE and the contractor are liable in accordance with the Dutch law.

# 10. Confidentiality

Any results, confidential or sensitive information derived from the respective services or products supplied, should under no circumstance be made available to the public or any other third parties unless prior authorisation is given by PROSAFE. This obligation continues after the contract ends, except in relation to specific material made public by PROSAFE. Such occurrence will be considered as substantial non-fulfilment and may lead to termination of the contract.

The content of this contract is confidential to any third parties except for any parties identified and approved by PROSAFE.

# 11. Force Majeure

PROSAFE and the contractor are released from liability in the event that their performance of the contract or part thereof is prevented, rendered more difficult, or delayed as a consequence of circumstances beyond that party’s control (force majeure), including but not limited to war and military conscription, natural disasters, fire, key personnel’s death or serious illness, regulation of import and export.

PROSAFE or the contractor can only invoke a force majeure if the party concerned has informed the other party in writing immediately after the circumstances causing the force majeure has come into force.

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# 12. Disputes

All disputes arising after the contract is signed by both PROSAFE and the contractor shall be finally settled at the “Nederlands Arbitrage Instituut” (The Dutch Arbitration Institute).

The court of arbitration shall comprise three members. Stichting PROSAFE and the contractor shall designate one arbitrator each while the chairman is appointed by the Dutch Arbitration Institute. If one of the party’s fails to designate an arbitrator within 30 days after presentation or receipt of a petition for arbitration, this arbitrator is also designated by the Dutch Arbitration Institute.

All proceedings of the arbitration shall be conducted in the English language.

## Annex 2 – FORM TO BE USED FOR THE SUBMISSION OF THE TENDER

1. Name and address of test laboratory:
2. Principal contact person at the lab & their email address and telephone number:
3. Location(s) where ALL the testing will be carried out:
4. Ability of the laboratory to conduct the testing to the requirements detailed at paragraph 4, viz.:
5. Please provide details of your accreditation to EN 17025: 2005;
6. Is the laboratory fully independent from manufacturers, importers or other economic operators?
7. Detail the names, qualifications and experience of those member of staff who will be involved in the testing of the products presented for testing by the Member States participating in JA 2014- Fireworks 2. (Please include details of their competence in English and other European languages)
8. Is the laboratory able to meet all the management and technical requirements specified in paragraph 4?
9. Ability of the laboratory to undertake testing of the types of firework specified in paragraph 3 and the tests specified in paragraph 5 to EN 15947: 2010
10. Does the laboratory have the facilities to test all the samples that will be provided during the course of the Joint Action to the requirements of EN 15947? Include details of the no of fireworks that you test each year to (i) EN 15947 and (ii) to other national standards;
11. Is the laboratory able to participate in project meetings for JA 2014 – Fireworks 2 and what would be the cost, per diem or part thereof) if such a meting was to be held at a location, such as Brussels. (It is assumed that meetings held at the laboratory’s premises will not be charged.) Travel costs would be reclaimable at PROSAFE’s normal rates.)
12. Is the laboratory able to host a meeting of the Project Group (usually 11 people) without charge?
13. Is the laboratory able, if required, to undertake further testing for individual Member States at the rate specified in your response to this quotation?
14. Is the laboratory able to provide transport for the specimens collected during the market surveillance exercise from the participating Member State(s) to your laboratory, or to recommend a supplier, local to the test lab, that that is experienced and reliable and could undertake this procedure in accordance with the requirements of the ADR scheme. Please provide details concerning this issue.
15. Quotation

Please detail the cost of testing the various types of firework, including VAT using the table below:

*Type of firework No of products, each consisting of 10 specimens*

*0-10 11-20 21-30 31-40 >40 products*

Cat 1 – Fountains **…… …… …… …… ……**

Cat 2/3 Bangers **…… …… …… …… ……**

Cat 2/3 Double bangers **…… …… …… …… ……**

Cat 2/3 Batteries and combinations **…… …… …… …… ……**

Cat 2/3 Flash bangers **…… …… ……** *……* **……**

Cat 2/3 Jumping ground spinners **…… …… …… …… ……**

Cat 2/3 Rockets **…… …… …… …… ……**

**Cat 2/3** Roman candles **…… …… …… …… ……**

Cat 2/3 Compound fireworks **…… …… …… …… ……**

1. Reports

Please supply a sample of the test report you will be using and a sample of the Overview table giving the results from the all the samples tested

1. Other issues

(a) Please give details of the time that will usually be taken to produce a report once the sample has been received by the laboratory.

(b) If applicable, please include details of any terms and conditions relating to the quotation that are specified by the laboratory during your normal course of business.

(c) Please provide any further information in this section which you think would be helpful when evaluating your tender, e.g. membership of CEN or national committees that specify the safety requirements for fireworks; participation in the ‘round robin’ testing of fireworks etc..

1. In the case of compound fireworks the product will need to be tested to the requirements of each single article in the compound firework. It shall be orientated as individually type tested. In addition, the requirements specified at prEN 15947-5: 2014 – Clauses 6.4.2, 7.1.2.2, 7.2.5, 7.2.6 and 7.2.11 shall be satisfied. [↑](#footnote-ref-1)