



Ministry of Investments, Trade and Industry
State Department for Trade

TENDER DOSSIER

TENDER TITLE	DESIGN AND CONSTRUCTION OF UNDERGROUND DESIGN AND CONSTRUCTION OF UNDERGROUND, HIGH- AND LOW-LEVEL WATER TANKS, SEPTIC TANK, SEWER SYSTEM, PUBLIC TOILETS, COLD ROOM, HAZARDOUS ROOM AND TRANSHIPMENT SHED AT MOYALE BORDER POST
ISSUED ON:	24TH OCTOBER, 2023
TENDER REFERENCE NO.	MITI/SDT/OSBP/OT/001/2023-2024
CLOSING ON:	27TH DECEMBER, 2023; 11:00AM

**STANDARD ADVERTISEMENT FOR A LOCAL PUBLICATION
OF LOCAL OPEN TENDER PROCEDURES**

**11 EDF COMESA TRADE FACILITATION
PROGRAMME**

**NAME OF PROJECT:- DESIGN AND CONSTRUCTION
OF UNDERGROUND, HIGH AND LOW LEVEL WATER
TANKS, SEPTIC TANK, SEWER SYSTEM, PUBLIC
TOILETS, COLD ROOM, HAZARDOUS ROOM AND
TRANSHIPMENT SHED AT MOYALE BORDER POST**



REFERENCE: MITI/SDT/OSBP/OT/001/2023-2024

The Government of the Republic of Kenya through the Ministry of Investment Trade and Industry intends to award works contracts for the Design and Construction of underground, high and low level water tanks, septic tank, sewer system, public toilets, cold room, hazardous room and transshipment shed at Moyale Border Post in Kenya with the financial assistance from the Common Market for Eastern and Southern Africa (COMESA) Trade Facilitation Programme under the 11th European Development Fund (EDF). The tender dossier is available for inspection at the Ministry of Investment Trade and Industry, Telposta Towers, Kenyatta Avenue, Nairobi, Kenya. Also published on <http://tender.go.ke> and www.trade.go.ke

The deadline for submission of tender is 27th December, 2023 at 11:00hrs. Possible additional information or clarifications/questions shall be published on <http://tender.go.ke> and www.trade.go.ke



**Ministry of Investments, Trade and Industry
State Department for Trade**

CONTRACT NOTICE

CALL FOR TENDER: GENERAL INFORMATION

I.1) Name and address Contracting Authority

**Ministry of Investments, Trade and Industry,
Telposta Towers, Kenyatta Avenue,
P.O. Box 30430-00100
Nairobi, Kenya
Tel : +254-(0)20-3315001/2-4
Web :www.trade.go.ke**

II.1.1) Title:

Design and Construction of Underground Design and Construction of underground, high and low level water tanks, septic tank, sewer system, public toilets, cold room, hazardous room and transshipment shed at Moyale Border Post.

II.1.2) Main CPV¹ code

II.1.3) Type of contract

Works

II.1.4) Short description of the contract

Government of the Republic of Kenya, through the Ministry of Investment Trade and Industry intends to award a works contract for the Design and Construction of underground, high and low level water tanks, septic tank, sewer system, public toilets, cold room, hazardous room and transshipment shed at Moyale Border post with financial assistance from the Common Market for Eastern and Southern Africa (COMESA) Trade Facilitation Programme under the 11th European Development Fund (EDF).

II.1.5) Estimated total value

The currency of the Contract will be in US \$. All quoted amounts must exclude VAT and any other duties and taxes.

IV.1.1.) Type of Procedure

Local Open

II.1.6) Information about lots

This contract is divided into lots: **Yes**

Lot 1: Design and Construction of Underground, High- and Low-level water tanks and Pump House at Moyale Border Post

¹ The Common Procurement Vocabulary (CPV) is the mandatory reference nomenclature applicable to procurement contracts. The list of CPV codes is available on: <http://simap.ted.europa.eu/en/web/simap/cpv>

Lot 2: Design and Construction of Toilets and Rehabilitation of Sewer System at Moyale Border Post

Lot 3: Design and Construction of Cold Room and Hazardous Goods Room at Moyale Border Post

Lot 4: Design and Construction of a Transshipment Shed

Tenderers may be submitted for all lots.

II.2.3) Place performance

Geographical zone benefitting from the action: **Moyale Border Post**

II.2.5) Award Criteria

The award criteria is based on **Price**.

I.2.14) Additional information

Additional works

Subsequent to the initial contract resulting from the current tender procedure, new works consisting in the repetition of similar works, up to the estimated amount of **US\$150,000**, may be entrusted to the initial contractor by negotiated procedure without prior publication of a contract notice, provided the new works are in conformity with the same basic project.

IV.2.2) Time limit for submission of tenders or requests to participate

Date: 27th December 2023

Local Time: 11:00hrs.

IV.2.6) Minimum time frame during which the tenderer must maintain the tender

Duration in months: 90 days

IV.2.7) Conditions for opening of tenders

Date: 27th December 2023

Local time: 11:30

Place: Ministry of Investments, Trade and Industry, State Department of Trade, 17th Floor
Telposta Towers, Kenyatta Avenue, Nairobi Kenya

Additional Information about the Contract Notice

Design and Construction of underground, high and low level water tanks, septic tank, sewer system, public toilets, cold room, hazardous room and transshipment shed at Moyale Border Post

1. Nature of contract

Lumpsum

2. Programme title

Design and Construction of underground, high- and low-level water tanks, septic tank, sewer system, public toilets, cold room, hazardous room and transshipment shed at Moyale Border Post at Moyale Border Post with financial assistance from the Common Market for Eastern and Southern Africa (COMESA) Trade Facilitation Programme under the 11th European Development Fund (EDF).

3. Financing

11-EDF Trade Facilitation Programme

4. Eligibility and Rules of Origin

Participation in tendering is open on equal terms to all natural and legal persons (participating either individually or in a grouping – consortium – of candidates/tenderers) which are established in one of the Member States of the European Union, ACP States or in a country or territory authorised by the ACP-EC Partnership Agreement under which the contract is financed (see also heading ‘Legal basis’ below). Participation is also open to international organisations.

All supplies under this contract must originate in one or more of these countries. However, they may originate from any country when the amount of the supplies to be purchased is below EUR 60,000.

For UK candidates or tenderers: Please be aware that following the entry into force of the EU-UK Withdrawal Agreement* on 1 February 2020 and in particular Articles 127(6), 137 and 138, the references to natural or legal persons residing or established in a Member State of the European Union and to goods originating from an eligible country, as defined under Regulation (EU) No 236/2014** and Annex IV of the ACP-EU Partnership Agreement***, are to be understood as including natural or legal persons residing or established in, and to goods originating from, the United Kingdom ****. Those persons and goods are therefore eligible under this call.

*Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

** Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action.

*** Annex IV to the ACP-EU Partnership Agreement, as revised by Decision 1/2014 of the ACP-EU Council of Ministers (OJ L196/40, 3.7.2014)

**** including the Overseas Countries and Territories having special relations with the United Kingdom, as laid down in Part Four and Annex II of the TFEU]

5. Candidature

All eligible natural and legal persons (as per item 4 above) or groupings of such persons (consortia)

may apply.

A consortium may be a permanent, legally-established grouping or a grouping which has been constituted informally for a specific tender procedure. All partners of a consortium (i.e., the leader and all other partners) are jointly and severally liable to the contracting authority.

The participation of an ineligible natural or legal person will result in the automatic exclusion of that person. In particular, if that ineligible person belongs to a consortium, the whole consortium will be excluded.

6. Number of applications or tenders

No more than one application or tender can be submitted by a natural or legal person whatever the form of participation (as an individual legal entity or as leader or partner of a consortium submitting an application/tender). In the event that a natural or legal person submits more than one application or tender, all applications or tenders in which that person has participated will be excluded.

7. Tender guarantee

No Tender Guarantee is required.

8. Performance guarantee

The successful tenderer will be asked to provide a performance guarantee of 5% of the amount of the contract at the signing of the contract. This guarantee must be provided together with the return of the countersigned contract no later than 30 days after the tenderer receives the contract signed by the contracting authority. If the selected tenderer fails to provide such a guarantee within this period, the contract will be void and a new contract may be drawn up and sent to the tenderer which has submitted the next cheapest compliant tender.

9. Information meeting and/or site visit

A mandatory site visit will be held on 17th November 2023.

10. Tender validity

Tenders must remain valid for a period of 3 months after the deadline for submission of tenders. In exceptional circumstances, the contracting authority may, before the validity period expires, request that tenderers extend the validity of tenders for a specific period.

11. Shortlist alliances prohibited: NA

12. Grounds for exclusion

Candidates or tenderers must submit a signed declaration, included in the application form or tender form, to the effect that they are not in any of the situations listed in Section 2.6.10.1 of the **practical guide (PRAG)**. Where the candidate or tenderer intends to rely on capacity providing entities or subcontractor(s), he/she must provide the same declaration signed by this/these entity(ies).

Candidates or tenderers included in the lists of EU restrictive measures (see Section 2.4. of the PRAG) at the moment of the award decision cannot be awarded the contract.

13. Sub-contracting

Sub-contracting is allowed.

14. Number of candidates to be short-listed: NA

15. Provisional date of invitation to tender

24th October 2023.

16. Provisional commencement date of the contract

15th February 2023

17. Period of implementation of tasks

4 Months

SELECTION AND AWARD CRITERIA

18. Selection criteria

The selection criteria are described in section 12.2 of the **Instruction to Tenderers**.

19. Award criteria

The most economically advantageous tender is the technically compliant tender with the lowest price.

APPLICATION AND TENDERING

20. How to obtain the tender dossier

The tender dossier is available from:

Ministry of Investment Trade and Industry, State Department of Trade, 17th Floor Telposta Towers, Kenyatta Avenue, Nairobi Kenya

Tenders must be submitted using the standard tender form included in the tender dossier, whose format and instructions must be strictly observed.

Any request for additional information must be made in writing through the Contracting Authority at least 21 days before the deadline for submission of tenders given in item '**Deadline for submission of applications or tenders**'. Responses will be issued to all tenderers at the latest 5 days before the submission deadline and it is the tenderer's responsibility to check for updates and modifications during the submission period.

21. Tender opening session

27th December, 2023, 11:30hrs, 17th Floor, Telposta Towers, Kenyatta Avenue, Nairobi Kenya

22. Applications format and details to be provided: NA

23. How applications may be submitted

Applications must be submitted in English exclusively to the contracting authority in a sealed envelope.

- by courier service, in which case the evidence shall be constituted by the postmark or the date of the deposit slip, to:

**The Principal Secretary
Ministry of Investments, Trade and Industry,
State Department for Trade
Telposta Towers, Kenyatta Avenue,**

**P.O. Box 30430-00100
Nairobi, Kenya
Tel : +254-(0)20-3315001/2-4
Web: www.trade.go.ke**

- OR hand delivered by the participant in person or by an agent directly to the premises of the contracting authority in return for a signed and dated receipt, in which case the evidence shall be constituted by this acknowledgement of receipt, to:

**The Principal Secretary
Ministry of Investments, Trade and Industry,
State Department for Trade
Tel Posta Towers, Kenyatta Avenue,
P.O. Box 30430-00100
Nairobi, Kenya
Tel: +254-(0)20-3315001/2-4
Web: www.trade.go.ke**

The contract title and publication reference (see contract notice) must be clearly marked on the envelope containing the application and must always be mentioned in all subsequent correspondence with the contracting authority.

Applications submitted by any other means will not be considered.

By submitting an application, candidates accept to receive notification of the outcome of the procedure by electronic means. Such notification shall be deemed to have been received on the date upon which the contracting authority sends it to the electronic address referred to in the application form.

24. Deadline for submission of applications

The candidate's attention is drawn to the fact that there are two different systems for sending applications: one is by post or private mail service, the other is by hand delivery.

In the first case, the application must be sent before the date and time limit for submission, as evidenced by the postmark or deposit slip², but in the second case it is the acknowledgment of receipt given at the time of the delivery of the application that will serve as proof.

The deadline for submission of applications can be found in the Contract Notice under IV.2.2.

Any application sent to the contracting authority after this deadline will not be considered.

The contracting authority may, for reasons of administrative efficiency, reject any application submitted on time but received, for any reason beyond the contracting authority's control, after the effective date of approval of the short-list report, if accepting applications that were submitted on time but arrived late would considerably delay the evaluation procedure or jeopardise decisions already taken and notified.

25. Clarifications on the contract notice

Any request for additional information must be made in writing through the Contracting Authority at the latest 21 days before the deadline for submission of applications stated at section **IV.2.2) of the contract notice**.

Clarifications will be made in writing at the latest 5 days before the deadline for the submission of applications and the applicants' responsibility to check for updates and modifications during the submission period.

26. Alteration or withdrawal of applications

² It is recommended to use registered mail in case the postmark would not be readable.

Applicants may alter or withdraw their applications by written notification prior to the deadline for submission of applications. No applications may be altered after this deadline.

Any such notification of alteration or withdrawal shall be prepared and submitted in accordance with precedent item. The outer envelope (and the relevant inner envelope if used) must be marked 'Alteration' or 'Withdrawal' as appropriate.

27. Language of the procedure

All written communications for this tender procedure and contract must be in English.

28. Legal basis³

Annex IV to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 as amended in Luxembourg on 25 June 2005 and in Ouagadougou on 22 June 2010. Reference is made to Annex IV as revised by Decision 1/2014 of the ACP-EU Council of Ministers of 20 June 2014.

29. Additional information

Financial data to be provided by the candidate in the standard application form or the tenderer in the tender form must be expressed in EUR. If applicable, where a candidate refers to amounts originally expressed in a different currency, the conversion to EUR shall be made in accordance with the InforEuro exchange rate of, which can be found at the following address: <http://ec.europa.eu/budget/graphs/inforeuro.html>.

³ Please state any specificity that might have an impact on rules on participation (such as geographic or thematic or long/short term).

LETTER OF INVITATION TO TENDER
MINISTRY OF INVESTMENT TRADE AND INDUSTRY
STATE DEPARTMENT FOR TRADE

Date: 24th October 2023

Our ref.: **MITI/SDT/OSBP/OT/001/2023-2024**

SUBJECT: INVITATION TO TENDER FOR DESIGN AND CONSTRUCTION OF UNDERGROUND, HIGH- AND LOW-LEVEL WATER TANKS, SEPTIC TANK, SEWER SYSTEM, PUBLIC TOILETS, COLD ROOM, HAZARDOUS ROOM AND TRANSHIPMENT SHED AT MOYALE BORDER POST AT MOYALE BORDER POST

Dear Mr/Ms,

Further to your enquiry regarding the publication of the above-mentioned invitation to tender, please find enclosed the following documents, which constitute the tender dossier:

VOLUME 1

SECTION 1: INSTRUCTIONS TO TENDERERS

SECTION 2: TENDER FORM

Annex 1 - Declaration of honour on exclusion and selection criteria.....Form

A.14

SECTION 3: TENDER GUARANTEE FORM

SECTION 4: QUESTIONNAIRE

Additional notice to tenderers

General information about the tenderer.....Form 4.1

Organisation chart.....Form 4.2

Power of attorney.....Form 4.3

Financial statement.....Form 4.4

Financial identification form Forms 4.5 a) + b)

Technical qualifications:

Overview of the tenderer's staffForm 4.6.1.1

Staff to be employed on the contractForm 4.6.1.2

Professional experience of key staff

Curriculum vitae	Form 4.6.1.3
Plant	Form 4.6.2
Work plan and programme	Form 4.6.3
Experience as contractor	Form 4.6.4
Data on joint ventures	Form 4.6.5
Litigation history	Form 4.6.6
Quality assurance system(s)	Form 4.6.7
Accommodation for the supervisor	Form 4.6.8
Further information	Form 4.6.9

SECTION 5: ADMINISTRATIVE COMPLIANCE GRID AND EVALUATION GRID

Administrative compliance grid

Evaluation grid

VOLUME 2

SECTION 1: CONTRACT FORM

SECTION 2: GENERAL CONDITIONS FOR WORKS CONTRACTS

SECTION 3: SPECIAL CONDITIONS

SECTION 4: SPECIMEN PERFORMANCE GUARANTEE

SECTION 5: SPECIMEN PREFINANCING PAYMENT GUARANTEE

SECTION 6: SPECIMEN RETENTION GUARANTEE

[EDF: SECTION 7: TAX AND CUSTOMS ARRANGEMENTS]

VOLUME 3

TECHNICAL SPECIFICATIONS

VOLUME 4

FINANCIAL OFFER LUMPSUMS CONTRACTS

VOLUME 5

DESIGNS AND DRAWINGS

For full information about procurement procedures please consult the practical guide and its annexes, which can be downloaded from the following web page: www.trade.go.ke

By submitting a tender you accept to receive notification of the outcome of the procedure by electronic means. Such notification shall be deemed to have been received by you on the date upon which the contracting Ministry sends it to the electronic address you referred to in your offer.

If you decide not to submit a tender, we would be grateful if you could inform us in writing, stating the reasons for your decision.

Yours Sincerely,

VOLUME 1

SECTION 1:

INSTRUCTIONS TO TENDERERS

DESIGN AND CONSTRUCTION OF UNDERGROUND, HIGH- AND LOW-LEVEL WATER TANKS, SEPTIC TANK, SEWER SYSTEM, PUBLIC TOILETS, COLD ROOM, HAZARDOUS ROOM AND TRANSHIPMENT SHED AT MOYALE BORDER POST AT MOYALE BORDER POST

VOLUME 1 SECTION 1 - INSTRUCTIONS TO TENDERERS

PUBLICATION REF.: MITI/SDT/OSBP/OT/001/2023-2024

In submitting a tender, the tenderer accepts in full and without restriction the special and general conditions governing the contract as the sole basis of this tendering procedure, whatever its own conditions of sale may be, which it hereby waives. Tenderers are expected to examine carefully and comply with all instructions, forms, contract provisions and specifications contained in this tender dossier. Failure to submit a tender containing all the required information and documentation within the deadline will lead to rejection of the tender. No account can be taken of any reservation in the tender as regards the tender dossier; this may result in immediate rejection of the tender without further evaluation.

These instructions set out the rules for the submission, selection and implementation of contracts financed under this call for tenders, in conformity with the provisions of the practical guide, which is applicable to this call (available on the internet at this address: <http://ec.europa.eu/europeaid/prag/document.do>).

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GENERAL PART

GENERAL INSTRUCTIONS

- 1.1. Tenderers must tender for the whole of the works required by the dossier. Tenders will not be accepted for incomplete lots.
- 1.2. Timetable

	DATE	TIME*
Clarification/pre-bid meeting (optional)	NA	NA
Site visit (Mandatory)	17 th November, 2023	10:00hrs
Deadline for requesting any additional information from the contracting authority	04 th December, 2023	1600hrs
Last date on which additional information are issued by the contracting authority	15 th December, 2023	1600hrs
Deadline for submitting tenders	27 th December, 2023	1100hrs
Tender opening session	27 th December, 2023	1130hrs
Notification of award to the successful tenderer	31 st January, 2023	0900hrs
Signature of the contract	15 th February, 2023	1030hrs*

*** All times are in the time zone of the country of the contracting authority provisional date**

☐ **Provisional data**

FINANCING

The project is financed by the European Union, in accordance with the rules of sub delegation agreement signed between COMESA and the Government of the Republic of Kenya under the 11 EDF Trade Facilitation Programme.

PARTICIPATION

Participation in the call for tender is open on equal terms to natural and legal persons (participating either individually or in a grouping (consortium) of tenderers) established in one of the Member States of the European Union, ACP States or in a country or territory

authorised by the ACP-EC Partnership Agreement under which the contract is financed. Participation is also open to international organisations. All supplies and materials under this contract shall originate from one or more of those eligible countries. However, they may originate from any country when the amount value of the supplies and materials to be purchased is below EUR 60,000.

For UK candidates or tenderers: Please be aware that following the entry into force of the EU-UK Withdrawal Agreement* on 1 February 2020 and in particular Articles 127(6), 137 and 138, the references to natural or legal persons residing or established in a Member State of the European Union and to goods originating from an eligible country, as defined under Regulation (EU) No 236/2014** and Annex IV of the ACP-EU Partnership Agreement***, are to be understood as including natural or legal persons residing or established in, and to goods originating from, the United Kingdom ****. Those persons and goods are therefore eligible under this call.

* Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

** Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action.

*** Annex IV to the ACP-EU Partnership Agreement, as revised by Decision 1/2014 of the ACP-EU Council of Ministers (OJ L196/40, 3.7.2014)

**** including the Overseas Countries and Territories having special relations with the United Kingdom, as laid down in Part Four and Annex II of the TFEU]

- 1.3. These terms refer to all nationals of the above states and to all legal entities, companies or partnerships established in the above states. For the purposes of proving compliance with this rule, tenderers being legal persons, must present the documents required under that country's law.
- 1.4. The eligibility requirement detailed in sub clauses 3.1 and 3.2 applies to all members of a joint venture/consortium and all subcontractors, as well as to all entities upon whose capacity the tenderer relies for the selection criteria. Every tenderer, member of a joint venture/consortium, every capacity-providing entity, every subcontractor and every supplier must certify that they meet these conditions. They must prove their eligibility by a document dated less than one year earlier than the deadline for submitting tenders, drawn up in accordance with their national law or practice or by copies of the original documents stating the constitution and/or legal status and the place of registration and/or statutory seat and, if it is different, the place of central administration. The contracting authority may accept other satisfactory evidence that these conditions are met.
- 1.5. Natural persons, companies or undertakings falling into a situation set out in Section 2.4. (EU restrictive measures), 2.6.10.1. (exclusion criteria) or 2.6.10.1.2. (rejection from a procedure) of the practical guide, are not entitled to participate in this tender procedure or

be awarded a contract. Should they do so, their tender will be considered unsuitable or irregular respectively. Tenderers must provide declarations to the effect that they are not in any of the exclusion situations listed in Section 2.6.10.1. of the practical guide. The declarations must cover all the members of a joint venture/consortium and must also be submitted by any sub-contractor or capacity providing entity. Tenderers guilty of making false declarations may also incur financial penalties up to 10% of the total value of the contract and exclusion, in accordance with the Financial Regulation in force.

- 1.6. The exclusion situation referred to in sub clause 3.4 applies to all members of a joint venture/consortium, all subcontractors and all suppliers to tenderers, as well as to all entities upon whose capacity the tenderer relies for the selection criteria.
- 1.7. Subcontracting is allowed but the contractor will retain full liability towards the contracting authority for performance of the contract as a whole.

In the selection of subcontractors, preference must be given by the **contractor** to natural persons, companies or firms of ACP States capable of **performing the work** required on similar terms.

ONLY ONE TENDER PER TENDERER

A company may not tender for a given contract both individually and as a member of a joint venture/consortium. Participation by a tenderer in more than one tender for a contract will result in the disqualification of all those tenders for that contract in which the party is involved. The same company may only participate as subcontractor in different tenders if that is justified by the specific nature of the market and cleared by the contracting authority.

TENDER EXPENSES

- 1.8. The tenderer will bear all costs associated with preparing and submitting the tender. The contracting authority will not be responsible or liable for such costs, whatever the conduct or outcome of the procedure.
- 1.9. The contracting authority will neither be responsible for, nor cover, any expenses or losses incurred by the tenderer through site visits and inspections or any other aspect of its tender.

SITE VISIT AND CLARIFICATION MEETING

- 1.10. The tenderer is obliged to visit and inspect the site of the works and its surroundings for the purpose of assessing, at its own responsibility, expense and risk, the factors necessary for preparing its tender and signing the contract for the works (date, time and place, see the additional information about the contract notice.)
- 1.11. A clarification meeting will not be held by the contracting authority (date, time and place, see the additional information about the contract notice).
- 1.12. As proof of participation, tenderers will receive a certificate of their site visit.

CONTENT OF TENDER DOCUMENTS

The set of tender documents comprises the documents specified in the invitation letter.

Tenderers bear sole liability for examining with appropriate care the tender documents, including design documents available for inspection and any modification to the tender documents issued during the tendering period, and for obtaining reliable information on any conditions and obligations that may in any way affect the amount or nature of the tender or the execution of the works. In the event that the tenderer is successful, no claim for altering the tender amount will be entertained on the grounds of errors or omissions in the obligations of the tenderer described above.

EXPLANATIONS CONCERNING TENDER DOCUMENTS

- 1.13. Any request for additional information must be made in writing through the TED Tendering website accessible through the F&T portal at <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/home> and www.motri.gov.et. Registration on TED Tendering is required to be able to create and submit a question. In order to request for additional information click “Create a question” in the Questions & Answers tab at the latest 21 days before the deadline for submission of tenders stated at section IV.2.2) of the contract notice. The contracting authority has no obligation to provide additional information after this date.

The contracting authority must reply to all tenderers’ questions at least 11 days before the deadline for receipt of tenders.

- 1.14. The questions and answers will be published on www.trade.go.ke. The website will be updated regularly and it is the tenderer’s responsibility to check for updates and modifications during the submission period.

MODIFICATIONS TO TENDER DOCUMENTS

- 1.15. The contracting authority may amend the tender documents by publishing modifications up to 11 days before the deadline for submitting tenders.
- 1.16. Each modification published will constitute a part of the tender documents and will be published on TED Tendering accessible from the F&T portal at <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/home> and www.trade.go.ke
- 1.17. The contracting authority may, as necessary and in accordance with Clause 18, extend the deadline for submitting tenders to give tenderers sufficient time to take modifications into account when preparing their tenders.

TENDER PREPARATION

LANGUAGE OF TENDERS

- 1.18. The tender and all correspondence and documents related to the tender exchanged by the tenderer and the contracting authority must be written in the language of the procedure, which is English. All correspondence relating to payments, including invoices and interim and final payment certificates, must also be sent to the contracting authority in English.
- 1.19. If supporting documents are not written in one of the official languages of the European Union, a translation into the language of the call for tender must be attached. Where the documents are in an official language of the European Union other than English, it is strongly recommended to provide a translation into the language of the call for tenders, in order to facilitate the evaluation of the documents.

CONTENT AND PRESENTATION OF TENDER

- 1.20. Tenders must satisfy the following conditions:
 - 1.20.1. Tenders must comprise the documents and information in Clause 12 below.
 - 1.20.2. The tender must be signed on behalf of the tenderer/joint venture/consortium by a person or persons duly authorised to do so, empowered by power of attorney submitted in accordance with Form 4.3 in Volume 1, Section 4 of the tender dossier.
 - 1.20.3. The relevant pages of the documents specified in Clause 12 must be signed as indicated.
 - 1.20.4. The tenderer must provide all documents required by the tender dossier. All such documents, without exception, must comply strictly with these conditions and provisions and contain no amendments made by the tenderer. Tenders which do not comply with the requirements of the tender dossier may be rejected.
- 1.21. The contract is divided into lots. The tenderer may submit a tender for one lot, several or all of the lots.
 - 1.21.1. Each lot will form a separate contract and the quantities indicated for different lots will be indivisible. The tenderer must offer the entire quantity or quantities indicated for each lot. Under no circumstances will tenders for part of the quantities required be taken into consideration.
 - 1.21.2. A tenderer may include in its tender the overall discount it would grant in the event of some or all of the lots for which it has submitted a tender being awarded to it. The discount should be clearly indicated in such a way that it can be announced at the public tender opening session.
 - 1.21.3. Contracts will be awarded lot by lot, but the contracting authority must choose the most favourable overall solution taking account of the discounts offered.

INFORMATION/DOCUMENTS TO BE SUPPLIED BY THE TENDERER

- 1.22. All tenders must comprise the following information and duly completed documents:

- 1.22.1. Tender form, together with its Annex 1 "Declaration on honour on exclusion criteria and selection criteria"⁴
- 1.22.2. Documentation as required in the questionnaire in Volume 1, Section 4, including all forms attached;
- 1.22.3. The forms provided in Volume 4:

Volume 4.2.2 — Summary;

Volume 4.2.3 — Breakdown of the lump-sum price;

Volume 4.2.5 — Detailed breakdown of prices.

- 1.22.3.1. The breakdown of the lump-sum price and the detailed breakdown of prices do not derogate in any way to the clause stating that, in a lump-sum contract, the total contract price remains fixed irrespective of the quantity of work actually carried out. The prices in Volume 4 are deemed to have been set on the basis of the conditions in force 30 days prior to the deadline for submitting tenders.

The detailed breakdown of prices must be used when required for any purpose under the contract, notably to provide the coefficients for applying the price revision formula referred to in Article 48.2 of the special conditions. The tenderer must provide clear arithmetical calculations for the proposed coefficients. No price revision under the contract.

- 1.22.4. Cash flow statements as part of the financial statement form (Form 4.4).
- 1.22.5. Copies of the most recent documents showing the organisation chart, legal status and place of registration of the tenderer's headquarters, a power of attorney empowering the person signing the tender and all related documentation. These documents must follow the forms in Volume 1, Section 4 of the tender dossier:
 - general information about the tenderer (Form 4.1)
 - organisation chart (Form 4.2)
 - power of attorney (Form 4.3)
 - Valid tax clearance certificate
 - Construction Registration Certificate
- 1.22.6. Evidence showing that the liquid assets and access to credit facilities are adequate for this contract, confirmed by a financial statement for the last three years verified by a chartered accountant. This evidence must be provided using Form 4.4, Financial statement, in Volume 1, Section 4 of the tender documents.

⁴ See PRAG 2.6.10.1.3 A)

- 1.22.7. Financial identification form (Form 4.5a, Volume 1) and legal entity file (Form 4.5b, Volume 1). If the tenderer has already signed another contract financed by the European Union, it may provide instead of the forms and supporting documents either the file numbers received or copies of the forms provided on that occasion, unless a change occurred in the meantime.
- 1.22.8. Information about the tenderer's technical qualifications. This information must follow the forms in Volume 1, Section 4 of the tender documents and include:
- a presentation of the tenderer's organisation, including the total number of staff employed (Form 4.6.1.1),
 - a list of the staff proposed for execution of the contract, with the CVs of key staff (Forms 4.6.1.2 and 4.6.1.3),
 - a list of plant for execution of the contract. The descriptions must demonstrate the tenderer's ability to complete the works and should include amongst others, the following elements:

Equipment for the implementation of the contract.

- The Bidder must demonstrate that it will have available for the implementation of the contract equipment required.
- The tenderer must indicate whether this equipment is owned, hired or used by a subcontractor. Manufacturer's documents fully describing the equipment must be submitted with the tender (Form 4.6.2);
 - a list of materials and any supplies intended for use in the works, stating their origin;
 - a work plan with brief descriptions of the main tasks (Form 4.6.3), showing the sequence and proposed timetable for implementing the tasks. In particular, the proposal must detail the temporary and permanent works to be constructed. The tenderer must take account of weather conditions and the requirement to prepare designs and obtain building permits prior to carrying out construction works. The tenderer must also submit a comprehensive method statement, with drawings if necessary, showing the methods by which it proposes to carry out the works. In particular, the tenderer must indicate the numbers, types and capacities of the plant and staff it proposes to use on the main areas of work;
 - a critical milestone bar chart showing times and duties allocated for employees for this contract (Form 4.6.3);
 - data on subcontractors and the percentage of works to be subcontracted (Form 4.6.3);
 - evidence of relevant experience in carrying out works of a similar nature, including the nature and value of the contracts, works in hand and contractually committed (Form 4.6.4). The evidence must include successful experience as the prime contractor in construction of at least

3 projects of the same nature and complexity comparable to the works concerned by the tender during the last seven years;

- information regarding the proposed main site office (Form 4.6.3);
- an outline of the quality assurance system(s) to be used (Form 4.6.7).
- if applicable, information on tenderers involved in a joint venture/consortium (Form 4.6.5);
- details of their litigation history over the last 5 years (Form 4.6.6);
- details of the accommodation and facilities to be provided for the Supervisor (Form 4.6.8);
- any other information (Form 4.6.9).

1.22.9. Proof documents, declarations and undertakings according to Clauses 3.1-3.6 above. These documents should cover all members of a joint venture/consortium and all subcontractors as specified.

1.22.10. Unless otherwise provided in the contract, all goods purchased under the contract must originate in a Member State of the European Union or in a country or territory of the regions covered and/or authorised by the specific instruments applicable to the programme specified in Clause 3.1 above. However, they may originate from any country when the amount value of the supplies and materials to be purchased is below EUR 60, 000. For these purposes, "origin" means the place where the goods are mined, grown, produced or manufactured and/or from which services are provided. The origin of the goods must be determined according to the relevant international agreements (notably WTO agreements), which are reflected in EU legislation on rules of origin for customs purposes: the Customs Code (Council Regulation (EEC) No 2913/92) in particular its Articles 22 to 26 thereof, and the Code's implementing provisions (Commission Regulation (EEC) No 2454/93.

Goods originating in the EU include goods originating in the Overseas Countries and Territories.

Through their tender submission form, tenderers must provide an undertaking signed by their representative certifying compliance with this requirement. The tenderer is obliged to verify that the provided information is correct. Otherwise, the tenderer risks to be excluded because of negligently misrepresenting information. For more details, see Section 2.3.5. of the practical guide.

1.22.11. [NA]

1.22.12. No Tender Guarantee is required.

1.22.13. Site visit certificate.

1.23. In order to be eligible for the award of the contract, tenderers must provide evidence that they meet the selection criteria. This must be provided by tenderers using the forms described in 12.1 above and any additional forms tenderers may wish to use.

If a tender is submitted by a consortium, unless specified, the selection criteria will be applied to the consortium as a whole.

The selection criteria for each tenderer are as follows:

Economic and financial capacity of candidate (All Lots):

- the average annual turnover of the tenderer in the past 3 years must be at **least KES 100,000,000.00** In case of a joint venture at least one member must have an average annual turnover of at least **KES 150,000,000.00**. Bidders must provide audited accounts for the last 3 years

Technical and professional capacity of candidate (All Lots):

Technical capacity

- Bidder must have completed at least 3 project of the similar nature/amount/complexity as the works concerned by the tender and implemented during the following period: the last 7 years from the submission deadline.
- Bidder must submit three contracts with value of each contract not less than **KES 50,000,000.00** that have successfully been completed.
- The proposed designs conform to the technical specifications

Professional capacity

The tenderer's personnel must have at least the ***education and appropriate experience relevant for the contract*** as presented in the following Table.

Lot 1:

No.	Position	Minimum Education qualification	Number required	Minimum Total Work Experience (Years)
1.	Project Manager	Degree in Civil Engineering, Architecture, Construction Management or equivalent	1	10
2.	Civil Engineer	Degree in Civil Engineering, Construction Management or equivalent	1	6
3.	Civil work Forman	Diploma in Building and Civil Engineering, or equivalent	1	6

4.	Electrical Engineer	Degree in Electrical Engineering	1	6
5	Mechanical Engineers	Degree in Mechanical Engineering	1	6
5.	Quantity surveyor	Degree in Building Economics, Quantity Surveying or equivalent	1	4

Lot 2:

No.	Position	Minimum Education qualification	Number required	Minimum Total Work Experience (Years)
1.	Project Manager	Degree in Civil Engineering, Architecture, Construction Management or equivalent	1	10
2.	Architect	Degree in Architecture	1	6
3.	Civil Engineer	Degree in Civil Engineering, Construction Management or equivalent	1	6
4.	Civil work Forman	Diploma in Civil Engineering, or equivalent	1	4
5.	Electrical Engineer	Degree in Electrical Engineering	1	4
6.	Mechanical Engineers	Degree in Mechanical Engineering	1	4
7.	Quantity surveyor	Degree in Building Economics, Quantity Surveying or equivalent	1	4

Lot 3:

No.	Position	Minimum Education qualification	Number required	Minimum Total Work Experience (Years)
1.	Project Manager	Degree in Civil Engineering, Architecture, Construction Management or equivalent	1	10

2.	Architect	Degree in Architecture	1	6
3.	Civil Engineer	Degree in Civil Engineering, Construction Management or equivalent	1	6
4.	Civil work Forman	Diploma in Civil Engineering, or equivalent	1	6
5.	Electrical Engineer	Degree in Electrical Engineering	1	6
6.	Mechanical Engineers	Degree in Mechanical Engineering	1	6
7.	Quantity surveyor	Degree in Building Economics, Quantity Surveying or equivalent	1	4

Lot 4:

No.	Position	Minimum Education Qualification	Number required	Minimum Total Work Experience (Years)
1.	Project Manager	Degree in Civil Engineering, Architecture, Construction Management or equivalent	1	10
2.	Architect	Degree in Architecture	1	6
2.	Civil Engineer	Degree in Civil Engineering, Construction Management or equivalent	1	6
3.	Civil work Forman	Diploma in Civil Engineering, or equivalent	1	6
4.	Electrical Engineer	Degree in Electrical Engineering	1	6
5.	Mechanical Engineers	Degree in Mechanical Engineering	1	6
6.	Quantity surveyor	Degree in Building Economics, Quantity Surveying or equivalent	1	4
7.	Safety Officer	Degree or Diploma in Environmental Management or Construction Management or similar relevant qualification.	1	4

1.1.1. Capacity-providing entities:

An economic operator may, where appropriate and for a particular contract, rely on the capacity of other entities, regardless of the legal nature of the links which it has with them. If the tenderer relies on other entities, it must prove to the contracting authority that it will have at its disposal the resources necessary to perform the contract by producing a commitment on the part of those entities to place resources at its disposal. Such entities, for instance the parent company of the economic operator, must respect the same rules of eligibility and notably that of nationality, as the economic operator relying on them and must comply with the selection criteria for which the economic operator relies on them. Furthermore, the tender should include a separate document providing data on this third entity for the relevant selection criterion. Proof of capacity must be provided at the request of the contracting authority.

With regard to technical and professional criteria, a tenderer may only rely on the capacities of other entities where the latter will perform the works for which these capacities are required.

With regard to economic and financial criteria, the entities upon whose capacity the tenderer relies, become jointly and severally liable for the performance of the contract.

1.24. Tenders submitted by companies in partnerships forming a joint venture/consortium must also fulfil the following requirements:

- The tender must include all the information required in 12.1 above for each member of the joint venture/consortium and summary data for execution of works by the tenderer.
- The tender must be signed in a way that legally binds all members. One member must be appointed lead member and that appointment confirmed by submission of powers of attorney signed by legally empowered signatories representing all members. See Form 4.6.5 in Volume 1 and the tender form.
- All members of the joint venture/consortium are bound to remain in the joint venture/consortium for the whole execution period of the contract. See the declaration in the tender form.

TENDER PRICES

1.25. The currency of the tender is **US Dollar**.

- 1.26. The tenderer must provide for lumpsum contracts: breakdown of the lump-sum price in **US Dollars**. The tender price must cover all works as described in the tender documents. All sums in the breakdown of the lump-sum price, the questionnaire and other documents must also be expressed in this currency, with the exception of originals of bank and annual financial statements.
- 1.27. Tenderers must quote all components for lumpsum contracts: breakdown of the lump-sum price. No payment will be made for items which have not been costed; such items will be deemed to be covered by other items on the breakdown of the lump-sum price.
- 1.28. If a discount is offered by the tenderer, it must be clearly specified in breakdown of the lump-sum price in Volume 4 and indicated in the tender form in Volume 1, Section 1.2. The discount must be quoted for all works.
- 1.29. If the tenderer offers a discount, the discount must be included on each interim payment certificate and calculated on the same basis as in the tender.

PERIOD OF VALIDITY OF TENDERS

- 1.30. Tenders must remain valid for a period of 90 days after the deadline for submitting tenders indicated in the contract notice, the invitation to tender or as amended in accordance with Clauses 9 and/or 18.
- 1.31. In exceptional circumstances, the contracting authority may, before the validity period expires, request that tenderers extend the validity of tenders for a specific period, which may not exceed 40 days. Such requests and the responses to them must be made in writing. A tenderer may refuse to comply with such a request without forfeiting its tender guarantee. If the tenderer decides to accept the request, it may not amend its tender and it is bound to extend the validity of its tender guarantee for the revised period of validity of the tender. In case the contracting authority is required to obtain the recommendation of the panel referred to in Section 2.6.10.1.1. of the practical guide, the contracting authority may request an extension of the validity of the tenders up to the adoption of that recommendation.
- 1.32. The successful tenderer must maintain its tender for a further 60 days. This period is in addition to the validity period, irrespective of the date of notification.

TENDER GUARANTEE

- 1.33. No tender Guarantee is required.

VARIANT SOLUTIONS

Variant solutions will not be taken into consideration.

SUBMISSION OF TENDERS

17. SEALING, MARKING AND SUBMITTING TENDERS

- 17.1 The complete tender must be submitted in one original, clearly marked 'original' and 2 copies, clearly marked 'copy'. The softcopy of the technical proposal must also be submitted via flash disk and included in the envelop of the original technical proposal. In the event of any discrepancy between them, the original will prevail.
- 17.2 The technical and financial offers must be placed in separate sealed envelopes. The envelopes should then be placed in another sealed envelope/package, unless their volume requires a separate submission for each lot.
- 17.3 All tenders must be sent to the contracting authority before the deadline set in the contract notice.

Participants may choose to submit their tender:

(a) either by post or by courier service, in which case the evidence shall be constituted by the postmark or the date of the deposit slip⁵. In such case, the tender must be sent to the following address:

**The Principal Secretary
Ministry of Investment Trade and Industry,
State Department for Trade
17th Floor, Telposta Towers, Kenyatta Avenue,
P.O. Box 30430-00100
Nairobi, Kenya
Tel : +254-(0)20-3315001/2-4
Web :www.trade.go.ke**

(b) or by hand-delivery to the premises of the contracting authority by the participant in person or by an agent, in which case the evidence shall be constituted by acknowledgment of receipt. If tenders are hand delivered they should be delivered to the following address:

**The Principal Secretary
Ministry of Investment Trade and Industry,
State Department for Trade
17th Floor, Telposta Towers, Kenyatta Avenue,**

⁵ It is recommended to use registered mail in case the postmark would not be readable.

P.O. Box 30430-00100
Nairobi, Kenya
Tel : +254-(0)20-3315001/2-4
Web :www.trade.go.ke

The contracting authority may, for reasons of administrative efficiency, reject any application or tender submitted on time to the postal service but received, for any reason beyond the contracting authority's control, after the effective date of approval of the short-list report or of the evaluation report, if accepting applications or tenders that were submitted on time but arrived late would considerably delay the evaluation procedure or jeopardise decisions already taken and notified.

17.4 Tenders, including annexes and all supporting documents, must be submitted in a sealed envelope bearing only:

- (a) the above address;
- (b) the reference code of this tender procedure, (i.e., **MITI/SDT/OSBP/OT/001/2023-2024**)
- (c) where applicable, the number of the lot(s) tendered for;
- (d) the words 'Not to be opened before the tender opening session' in the language of the tender dossier
- (e) the name of the tenderer.

18. EXTENSION OF THE DEADLINE FOR SUBMITTING TENDERS

The contracting authority may, on its own discretion, extend the deadline for submitting tenders by issuing an amendment in accordance with Clause 9. In such cases, all rights and obligations of the contracting authority and the tenderer regarding the original date specified in the contract notice will be subject to the new date.

19. LATE TENDERS

- 19.1 All tenders submitted after the deadline for submission specified in the contract notice or these instructions will be kept by the contracting authority. The guarantees will be returned to the tenderers. See also last paragraph of point 17.3 above.
- 19.2 No liability can be accepted for late delivery of tenders. Late tenders will be rejected and will not be evaluated.

20. ALTERING AND WITHDRAWING TENDERS

- 20.1 Tenderers may alter or withdraw their tenders by written notification prior to the above deadline. No tender may be altered after the deadline for submission. Withdrawals must be unconditional and will end all participation in the tender procedure.
- 20.2 Any notification of alteration or withdrawal must be prepared and submitted in accordance with Clause 17, and the envelope must be marked 'alteration' or 'withdrawal', as appropriate.
- 20.3 Withdrawal of a tender in the period between the deadline for submission and the date of expiry of the validity of the tender will result in forfeiture of the tender guarantee.

OPENING AND EVALUATING TENDERS

21. OPENING TENDERS

- 21.1 The purpose of opening and examining tenders is to check whether the tenders are complete, whether the requisite tender guarantees have been furnished, whether the required documents are included and whether the tenders are generally in order.
- 21.2 Tenders will be opened in public session on the date and venue specified in the contract notice by the appointed committee. The committee will draw up minutes of the meeting, which must be available to tenderers on request.

In the case that at the date of the opening session some tenders have not been delivered to the contracting authority but their representatives can show evidence that they have been sent on time, the contracting authority will allow them to participate in the first opening session and inform all representatives of the tenderers that a second opening session will be organised.
- 21.3 At the tender opening session, the tenderers' names, the tender prices, any discounts offered, written notifications of alteration and withdrawal, the presence of the tender guarantee (if required) and such other information the contracting authority may consider appropriate may be announced.
- 21.4 After the public opening of the tenders, no information relating to the examination, clarification, evaluation or comparison of tenders or recommendations concerning the award of contract can be disclosed until after the contract has been awarded.

Any attempt by a tenderer to influence the evaluation committee in the process of examination, clarification, evaluation and comparison of tenders, to obtain information on how the procedure is progressing or to influence the contracting authority in its decision concerning the award of the contract will result in the immediate rejection of its tender.

22. EVALUATING TENDERS

The contracting authority reserves the right to ask a tenderer to clarify any part of its tender that the evaluation committee considers necessary to evaluate it. Such requests and the responses to them must be made in writing. They may in no circumstances alter or try to change the price or content of the tender, except to correct arithmetical errors discovered by the evaluation committee when analysing tenders.

The contracting authority reserves the right to check information submitted by the tenderer if the evaluation committee considers it necessary.

22.1 Examination of the administrative compliance of tenders

The aim at this stage is to check that tenders comply with the requirements of the tender dossier. A tender is deemed to comply if it satisfies all the conditions, procedures and specifications in the tender dossier without substantially departing from or attaching restrictions to them.

Substantial departures or restrictions are those which affect the scope, quality or execution of the contract, differ widely from the terms of the tender dossier, limit the rights of the contracting authority or the tenderer's obligations under the contract or distort competition for tenderers whose tenders do comply. Decisions to the effect that a tender is not administratively compliant must be duly justified in the evaluation minutes.

The evaluation committee will check that each tender:

- has been properly signed;
- includes a correct tender guarantee (if required);
- meets the requirements as set out in the administrative compliance grid;
- has complete documentation and information;
- substantially complies with the requirements of these tender documents.

If a tender does not meet the requirements set out in the administrative compliance grid, it may be rejected by the evaluation committee when checking admissibility.

22.2 Technical evaluation

The evaluation committee must evaluate only those tenders considered substantially compliant in accordance with Clause 22.1.

At this step of the evaluation procedure, the committee will analyse the tenders' technical conformity in relation to the technical specifications, classifying them technically compliant or non-compliant.

Subsequently, the committee will evaluate the technically compliant offers in accordance with the technical evaluation grid (setting out the technical criteria, sub criteria and weightings) attached to the tender dossier.

COMPLIANCE WITH WORKS SPECIFICATIONS

In this section, the bids will be analysed to determine compliance with:-

- a. Drawings/Specifications
 - 1. Provision of Architectural, Structural, Electrical, Mechanical and Civil Works drawings.
 - 2. General and Particular technical specifications for the works as indicated in the tender document or any other acceptable proposals.
 - 3. Itemized bills of quantities

The tenderer shall also submit relevant technical brochures/catalogues with the tender document, highlighting the catalogue Numbers of the proposed items. Such brochures/catalogues should indicate comprehensive relevant data of the proposed equipment/items which should include but not limited to the following:

- a) Standards of manufacture;
- b) Performance ratings/characteristics;
- c) Material of manufacture;
- d) Electrical power ratings; and
- e) Any other necessary requirements (Specify).
- f) Works Programme
- g) Method Statement
- h) Mobilization Schedule
- i) Construction Schedule
- j) Detailed method of Technology Transfer

22.3 Financial evaluation

Once the technical evaluation has been completed, the evaluation committee checks that the financial offers contain no arithmetical errors. If the tender procedure contains several lots, financial offers are compared for each lot. The financial evaluation will have to identify the best financial offer for each lot, taking due account of any discounts offered.

When analysing the tender, the evaluation committee will calculate the final tender price after adjusting it on the basis of Clause 23.

23 CORRECTING ERRORS

23.1 Possible errors in the financial offer will be corrected by the evaluation committee as follows:

- where there is a discrepancy between amounts in figures and in words, the amount in words will prevail;
- except for lump-sum contracts, where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will prevail.

- 23.2 The amount stated in the tender will be adjusted by the evaluation committee in the event of error, and the tenderer will be bound by that adjusted amount. If the tenderer does not accept the adjustment, its tender will be rejected and its tender guarantee forfeited.

CONTRACT AWARD

24. AWARD CRITERIA

The most economically advantageous tender is the technically compliant tender with the lowest price.

To encourage the widest participation of natural or legal persons of ACP States in the performance of contracts, special preference measures must be taken in order to permit the optimisation of the physical and human resources of those States. See Section 2.6.9. of the practical guide.

25. NOTIFICATION OF AWARD, CONTRACT CLARIFICATIONS

Prior to the expiry of the validity period of tenders, the contracting authority will notify the successful tenderer, in writing, that its tender has been selected and draw its attention to any arithmetical errors corrected during the evaluation process. This notification may take the form of an invitation to clarify certain contractual questions raised therein, to which the tenderer must be prepared to reply. This clarification will be confined to issues that had no direct bearing on the choice of the successful tender. The outcome of such clarification will be set out in a memorandum of clarification, to be signed by both parties and incorporated into the contract.

Evidence of financial, economic, technical and professional capacity according to the selection criteria specified in subsection 12.2 above will be requested unless satisfactory documents are already included in the tender.

If the successful tenderer fails to provide this documentary proof or statement within 15 calendar days following notification of award or if the successful tenderer is found to have provided false information, the award will be considered null and void. In this case, the contracting authority may award the tender to the next lowest tenderer or cancel the tender procedure.

The contracting authority will inform all tenderers simultaneously and individually of the award decision. The tender guarantee of the unsuccessful tenderers will be released once the contract is signed.

By submitting a tender, each tenderer accepts to receive notification of the outcome of the procedure by electronic means. Such notification shall be deemed to have been received on the date upon which the contracting authority sends it to the electronic address referred to in the offer.

26. CONTRACT SIGNING AND PERFORMANCE GUARANTEE

- 26.1 Within 30 days of receipt of the contract already signed by the contracting authority, the selected tenderer must sign and date the contract and return it, with the performance guarantee (if applicable) to the contracting authority. On signing the contract, the successful tenderer will become the contractor and the contract will enter into force.
- 26.2 If it fails to sign and return the contract and any financial guarantee required within 30 days after receipt of notification, the contracting authority may consider the acceptance of the tender to be cancelled, without prejudice to the contracting authority's right to invoke the guarantee, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the contracting authority.
- 26.3 The performance guarantee referred to in the general conditions is set at 5 % of the amount of the contract and must be presented in the form specified in the annex to the tender dossier, except where it takes the form of a certified cheque or a cash deposit. It will be released in accordance with the special conditions.

27. CANCELLATION OF THE TENDER PROCEDURE

In the event of cancellation of a tender procedure, tenderers will be notified by the contracting authority. If the tender procedure is cancelled before the tender opening session, the sealed envelopes will be returned, unopened, to the tenderers.

Cancellation may occur, for example, where:

- the tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no valid response at all;
- the economic or technical parameters of the project have been fundamentally altered;
- exceptional circumstances or force majeure render normal execution of the project impossible;
- all technically compliant tenders exceed the financial resources available;
- there have been irregularities in the procedure, in particular where these have prevented fair competition;
- the award is not in compliance with sound financial management, i.e. does not respect the principles of economy, efficiency and effectiveness (e.g. the price proposed by the tenderer to whom the contract is to be awarded is objectively disproportionate with regard to the price of the market).

In no event will the contracting authority be liable for any damages whatsoever including, without limitation, damages for loss of profits, in any way connected with the cancellation of a tender procedure, even if the contracting authority has been informed of the possibility of damage. Publication of a contract notice does not commit the contracting authority to implement the programme or project announced.

28. ETHICS CLAUSES AND CODE OF CONDUCT

28.1 Absence of conflict of interest

The tenderer must not be affected by any conflict of interest and must have no equivalent relation in that respect with other tenderers or parties involved in the project. Any attempt by a tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the evaluation committee or the contracting authority during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of its tender and may result in administrative penalties according to the Financial Regulation in force.

28.2 Respect for human rights as well as environmental legislation and core labour standards

The tenderer and its staff must comply with human rights and applicable data protection rules. In particular and in accordance with the applicable basic act, tenderers and applicants who have been awarded contracts must comply with the environmental legislation including multilateral environmental agreements, and with the core labour standards as applicable and as defined in the relevant International Labour Organisation conventions (such as the conventions on freedom of association and collective bargaining; elimination of forced and compulsory labour; abolition of child labour).

Zero tolerance for sexual exploitation, abuse and harassment:

The European Commission applies a policy of 'zero tolerance' in relation to all wrongful conduct which has an impact on the professional credibility of the tenderer.

Physical abuse or punishment, or threats of physical abuse, sexual abuse or exploitation, harassment and verbal abuse, as well as other forms of intimidation shall be prohibited.

28.3 Anti-corruption and anti-bribery

The tenderer shall comply with all applicable laws and regulations and codes relating to anti-bribery and anti-corruption. The European Commission reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process or during the execution of a contract and if the contracting authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, 'corrupt practices' are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or execution of a contract already concluded with the contracting authority.

28.4 Unusual commercial expenses

Tenders will be rejected or contracts terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any

actual and legitimate service, commissions remitted to a tax haven, commissions paid to a payee who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

Contractors found to have paid unusual commercial expenses on projects funded by the European Union are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving EU funds.

28.5 Breach of obligations, irregularities or fraud

The contracting authority reserves the right to suspend or cancel the procedure, where the award procedure proves to have been subject to breach of obligations, irregularities or fraud. If breach of obligations, irregularities or fraud are discovered after the award of the contract, the contracting authority may refrain from concluding the contract.

29. APPEALS

Tenderers believing that they have been harmed by an error or irregularity during the award process may file a complaint. See Section 2.12. of the practical guide.

30. DATA PROTECTION

Processing of personal data related to this tender procedure by the contracting authority takes place in accordance with the national legislation of the state of the contracting authority and with the provisions of the respective financing agreement.

The tender procedure and the contract relate to an external action funded by the EU, represented by the European Commission. If processing your reply to the invitation to tender involves transfer of personal data (such as names, contact details and CVs) to the European Commission, they will be processed solely for the purposes of the monitoring of the procurement procedure and of the implementation of the contract by the Commission, for the latter to comply with its obligations under the applicable legislative framework and under the financing agreement concluded between the EU and the Partner Country without prejudice to possible transmission to the bodies in charge of monitoring or inspection tasks in application of EU law. For the part of the data transferred by the contracting authority to the European Commission, the controller for the processing of personal data carried out within the Commission is the head of legal affairs unit of DG International Partnerships.

Details concerning processing of your personal data by the Commission are available on the privacy statement at:

<http://ec.europa.eu/europeaid/prag/annexes.do?chapterTitleCode=A>

In cases where you are processing personal data in the context of participation to a tender (e.g. CVs of both key and technical experts) and/or implementation of a contract (e.g. replacement of experts) you shall accordingly inform the data subjects of the possible transmission of their data to EU institutions and bodies and communicate the above mentioned privacy statement to them.

31. EARLY DETECTION AND EXCLUSION SYSTEM

The tenderers and, if they are legal entities, persons who have powers of representation, decision-making or control over them, are informed that, should they be in one of the situations of early detection or exclusion, their personal details (name, given name if natural person, address, legal form and name and given name of the persons with powers of representation, decision-making or control, if legal person) may be registered in the early detection and exclusion system (EDES) and communicated to the persons and entities concerned in relation to the award or the execution of a procurement contract.

* * *

VOLUME 1

SECTION 2

TENDER FORM

[APPENDIX TO BE USED ONLY BY NEAR ONLY IN FIDIC CONTRACTS]

APPENDIX TO THE TENDER

TENDER FORM FOR A WORKS CONTRACT

Publication reference: MITI/SDT/OSBP/OT/001/2023-2024

Name of contract: Design and construction of underground water storage tank, toilets, sewer system and store rooms at Moyale Border Post

<Place and date>

Name and address of contracting authority

**Ministry of Investments, Trade and Industry,
State Department for Trade
Telposta Towers, Kenyatta Avenue,
P.O. Box 30430-00100
Nairobi, Kenya
Tel : +254-(0)20-3315001/2-4
Web :www.trade.go.ke**

One signed form must be supplied (for each lot, if the tender procedure is divided into lots), together with the number of copies specified in the instructions to tenderers. The form must include **a signed declaration using the annexed format** from each legal entity

making the application. **All data included in this form must concern only the legal entity or entities making the application.** The attachments to this form (i.e. declarations, statements, proofs) may be in original or copy. If copies are submitted, the originals must be sent to the contracting authority upon request. For economical and ecological reasons, we strongly recommend that you submit your files on paper (no plastic folder or divider). We also suggest you use double-sided printing as much as possible.

Any additional documentation (brochures, letters, etc.) sent with the form will not be taken into consideration. Applications submitted by a **consortium** (i.e. either a permanent, legally-established grouping or a grouping which has been constituted informally for a specific tender procedure) must follow the instructions applicable to the consortium leader and its members.

1 SUBMITTED BY

	Name(s) of tenderer(s)	Nationality ⁶
Leader ⁷		
Member 2*		
Etc.		

2 CONTACT PERSON (for this tender)

Name	
Address	
Telephone	
Fax	
E-mail	

⁶ Country in which the legal entity is established.

⁷ Add/delete additional lines for members as appropriate. Note that a subcontractor is not considered to be a member for the purposes of this tender procedure. If this tender is being submitted by an individual tenderer, the name of the tenderer should be entered as 'leader' (and all other lines should be deleted).

3 TENDERER'S DECLARATION(S)

As part of their tender, each legal entity identified under point 1 of this form, including every consortium member (all sections), as well as each capacity-providing entity (only sections 1 and 2, as well as sections 7 to 14) and each subcontractor (only sections 1, 2 and 7, as well as sections 9 to 15), must submit a signed declaration using this format, together with the Declaration of honour on exclusion and selection criteria (Annex 1) (insert Form a.14).

In response to your letter of invitation to tender for the above contract,

we, the undersigned, hereby declare that:

1. We have examined and accept in full the content of the dossier for invitation to tender No [.....] of [../..]. We hereby accept its provisions in their entirety, without reservation or restriction.
2. We offer to execute, in accordance with the terms of the tender dossier and the conditions and time limits laid down, without reserve or restriction, the following works:

Lot No 1: *[description of works]* [for subcontractors: *description of the portion covered by the subcontract*]

Lot No 2: *[description of works]* [for subcontractors: *description of the portion covered by the subcontract*]

Etc.

3. The price of our tender *[excluding the discounts described under point 4]* is:

Lot No 1: [.....]

Lot No 2: [.....]

Etc.

4. We will grant a discount of [%], or [.....] [*in the event of our being awarded lot No ...and lot No*].
5. This tender is valid for a period of 90 days from the final date for submission of tenders.
6. [For contracts worth up to EUR 345 000, and on the basis of objective criteria such as the nature and value of the contract, the contracting authority may decide not to demand such a guarantee: If our tender is accepted, we undertake to provide a performance guarantee, as required by Article 15 of the special conditions.]
7. Our firm/company [*and our subcontractors*] has/have the following nationality:

<.....>
8. We are making this tender [on an individual basis/as member of the consortium led by < name of the leader / ourselves >]. We confirm that we are not tendering for the same contract in any other form. [We confirm, as a member of the consortium, that all members are jointly and severally bound in respect of the obligations under the contract, including any recoverable amount, that the lead member is authorised to bind, and receive instructions for and on behalf of, each member, that the execution of the contract, including payments, is the responsibility of the lead member, and that all members in the joint venture/consortium are bound to remain in the joint venture/consortium for the entire period of the contract's execution]. [We confirm, as capacity-providing entity to be jointly and severally bound in respect of the obligations under the contract, including for any recoverable amount.]
9. In the event that our tender is successful, we undertake, if required, to provide the proof usual under the law of the country in which we are effectively established that we do not fall into any of the exclusion situations. The date on the evidence or documents provided will be no earlier than one year before the date of submission of tender and, in addition, we will provide a statement that our situation has not altered in the period which has elapsed since the evidence in question was drawn up. We also understand that if we fail to provide this proof within 15 calendar days after receiving the notification of award, or if the information provided is proved false, the award may be considered null and void.
10. We agree to abide by the ethics clauses in Clause 28 of the instructions to tenderers and, in particular, have no professional conflicting of interests and/or any equivalent relation with other candidates or other parties in the tender procedure or behaviour which may distort competition at the time of the submission of this application according to Section 2.5.4. of the practical guide. We have no interest of any nature whatsoever in any other tender in this procedure.

We confirm that we, including all consortium members, if any, and subcontractors are not in the lists of EU restrictive measures (www.sanctionsmap.eu) and we understand that our tender may be rejected, if proved the contrary.

11. We will inform the contracting authority immediately if there is any change in the above circumstances at any stage during the implementation of the contract. We also fully recognise and accept that any inaccurate or incomplete information deliberately provided in this application may result in our exclusion from this and other contracts funded by the EU/EDF.
12. We note that the contracting authority is not bound to proceed with this invitation to tender and that it reserves the right to award only part of the contract. It will incur no liability towards us should it do so.
13. We fully recognise and accept that if the above-mentioned persons participate in spite of being in any of the situations listed in Section 2.6.10.1.1. of the practical guide or if the declarations or information provided prove to be false, they may be subject to rejection from this procedure and to administrative sanctions in the form of exclusion and financial penalties up to 10 % of the total estimated value of the contract being awarded and that this information may be published on the Commission website in accordance with the Financial Regulation in force.
14. We are aware that, for the purposes of safeguarding the EU's financial interests, our personal data may be transferred to internal audit services, to the early detection and exclusion system, to the European Court of Auditors, to the Financial Irregularities Panel or to the European Anti-Fraud Office.
15. We certify that the goods purchased under the contract, comply with the rules of origin laid down for this tender procedure.

[* Delete as applicable]

Name and first name: [.....]

Duly authorised to sign this tender on behalf of:

[.....]

Place and date: [.....]

Stamp of the firm/company:

This tender includes the following annexes:

[Numbered list of annexes with titles]

Declaration on honour on exclusion criteria and selection criteria

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

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

The person is not required to submit the declaration on exclusion criteria if the same declaration has already been submitted for the purposes of another award procedure of the same contracting authority, provided the situation has not changed, and that the time that has elapsed since the issuing date of the declaration does not exceed one year.

In this case, the signatory declares that the person has already provided the same declaration on exclusion criteria for a previous procedure and confirms that there has been no change in its situation:

Date of the declaration	Full reference to previous procedure

I – SITUATIONS OF EXCLUSION CONCERNING THE PERSON

(1) declares that the above-mentioned person is in one of the following situations:	YES	NO
(a) it is bankrupt, subject to insolvency or winding-up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors, its business activities are suspended or it is in any analogous situation arising from a similar procedure provided for under Union or national legislation or regulations;	<input type="checkbox"/>	<input type="checkbox"/>
(b) it has been established by a final judgement or a final administrative decision that the person is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law;	<input type="checkbox"/>	<input type="checkbox"/>
(c) it has been established by a final judgement or a final administrative decision that the person is guilty of grave professional misconduct by having violated		

applicable laws or regulations or ethical standards of the profession to which the person belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:		
(i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of eligibility or selection criteria or in the performance of a contract or an agreement;	<input type="checkbox"/>	<input type="checkbox"/>
(ii) entering into agreement with other persons with the aim of distorting competition;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) violating intellectual property rights;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) attempting to influence the decision-making process of the contracting authority during the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>
(v) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>
(d) it has been established by a final judgement that the person is guilty of any of the following:		
(i) fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 and Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995;	<input type="checkbox"/>	<input type="checkbox"/>
(ii) corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 or active corruption within the meaning of Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997, or conduct referred to in Article 2(1) of Council Framework Decision 2003/568/JHA, as well as corruption as defined in other applicable laws;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) conduct related to a criminal organisation, as referred to in Article 2 of Council Framework Decision 2008/841/JHA;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) money laundering or terrorist financing, within the meaning of Article 1(3), (4) and (5) of Directive (EU) 2015/849 of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
(v) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA, respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision;	<input type="checkbox"/>	<input type="checkbox"/>
(vi) child labour or other offences concerning trafficking in human beings as referred to in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
(e) it has shown significant deficiencies in complying with the main obligations in the performance of a contract or an agreement financed by the Union's budget, which has led to its early termination or to the application of liquidated damages	<input type="checkbox"/>	<input type="checkbox"/>

or other contractual penalties, or which has been discovered following checks, audits or investigations by a contracting authority, the European Anti-Fraud Office (OLAF) or the Court of Auditors;		
(f) it has been established by a final judgment or final administrative decision that the person has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95;	<input type="checkbox"/>	<input type="checkbox"/>
(g) it has been established by a final judgment or final administrative decision that the person has created an entity under a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations in the jurisdiction of its registered office, central administration or principal place of business.	<input type="checkbox"/>	<input type="checkbox"/>
(h) (<i>only for legal persons</i>) it has been established by a final judgment or final administrative decision that the person has been created with the intent provided for in point (g).	<input type="checkbox"/>	<input type="checkbox"/>
(i) for the situations referred to in points (c) to (h) above the person is subject to:		
i.facts established in the context of audits or investigations carried out by the European Public Prosecutor's Office after its establishment, the Court of Auditors, the European Anti-Fraud Office (OLAF) or the internal auditor, or any other check, audit or control performed under the responsibility of an authorising officer of an EU institution, of a European office or of an EU agency or body;	<input type="checkbox"/>	<input type="checkbox"/>
ii.non-final judgments or non-final administrative decisions which may include disciplinary measures taken by the competent supervisory body responsible for the verification of the application of standards of professional ethics;	<input type="checkbox"/>	<input type="checkbox"/>
iii. facts referred to in decisions of entities or persons being entrusted with EU budget implementation tasks;	<input type="checkbox"/>	<input type="checkbox"/>
iv.information transmitted by Member States implementing Union funds;	<input type="checkbox"/>	<input type="checkbox"/>
v.decisions of the Commission relating to the infringement of Union competition law or of a national competent authority relating to the infringement of Union or national competition law; or	<input type="checkbox"/>	<input type="checkbox"/>
vi. decisions of exclusion by an authorising officer of an EU institution, of a European office or of an EU agency or body.	<input type="checkbox"/>	<input type="checkbox"/>

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

Not applicable to natural persons, Member States and local authorities

(2) declares that a natural or legal person who is a member of the administrative, management or supervisory body of the above-mentioned legal person, or who has powers of representation, decision or control with	YES	NO	N/A
--	-----	----	-----

regard to the above-mentioned legal person (this covers e.g. company directors, members of management or supervisory bodies, and cases where one natural or legal person holds a majority of shares), or a beneficial owner of the person (as referred to in point 6 of article 3 of Directive (EU) No 2015/849) is in one of the following situations:			
Situation (c) above (grave professional misconduct)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (d) above (fraud, corruption or other criminal offence)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (e) above (significant deficiencies in performance of a contract)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (f) above (irregularity)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (g) above (creation of an entity with the intent to circumvent legal obligations)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (h) above (person created with the intent to circumvent legal obligations)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (i) above	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

(3) declares that a natural or legal person that assumes unlimited liability for the debts of the above-mentioned legal person is in one of the following situations <u>[If yes, please indicate in annex to this declaration which situation and the name(s) of the concerned person(s) with a brief explanation]:</u>	YES	NO	N/A
Situation (a) above (bankruptcy)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (b) above (breach in payment of taxes or social security contributions)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

IV – GROUNDS FOR REJECTION FROM THIS PROCEDURE

(4) declares that the above-mentioned person:	YES	NO
Was previously involved in the preparation of the procurement documents used in this award procedure, where this entailed a breach of the principle of equality of treatment including distortion of competition that cannot be remedied otherwise.	<input type="checkbox"/>	<input type="checkbox"/>

V – REMEDIAL MEASURES

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

VI – EVIDENCE UPON REQUEST

Upon request and within the time limit set by the contracting authority the person must provide information on natural or legal persons that are members of the administrative, management or supervisory body or that have powers of representation, decision or control, including legal and natural persons within the ownership and control structure and beneficial owners.

It must also provide the following evidence concerning the person itself and the natural or legal persons on whose capacity the person intends to rely, or a subcontractor and concerning the natural or legal persons which assume unlimited liability for the debts of the person:

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

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

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

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

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

VII – SELECTION CRITERIA

(1) declares that the above-mentioned person complies with the selection criteria applicable to it individually as provided in the tender documents:	YES	NO	N/A
(a) It has the legal and regulatory capacity to pursue the professional activity needed for performing the contract as required in section [insert] of the contract notice/Instructions to tenderers;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) It fulfills the applicable economic and financial criteria indicated in section [insert] of the contract notice/Instructions to tenderers;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) It fulfills the applicable technical and professional criteria indicated in section [insert] of the contract notice/Instructions to tenderers.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please adapt the table above to the criteria indicated in the tender documents (i.e. insert extra rows for each criterion or delete irrelevant rows).

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

VIII – EVIDENCE FOR SELECTION

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

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

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

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

The above-mentioned person must immediately inform the contracting authority of any changes in the situations as declared.

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

Full name

Date

Signature

VOLUME 1

**SECTION 3
TENDER GUARANTEE FORM**

TENDER GUARANTEE FORM

Works contract

(To be completed on paper bearing the letterhead of the financial institution)

For the attention of

.....

.....

referred to below as the ‘contracting authority’

Title of contract:

Identification number:

We, the undersigned, [name and address of financial institution], hereby irrevocably declare that we will guarantee, as primary obligor, and not merely as a surety on behalf of <tenderer’s name and address>, payment to the contracting authority of <amount of the tender guarantee>, this amount representing the guarantee referred to in [if open procedure: Article 11 of the procurement notice.] [if restricted procedure: Article 15 of the instructions to tenderers]

Payment shall be made without objection or legal proceedings of any kind, upon receipt of your first written claim (sent by registered letter with confirmation of receipt) if the tenderer does not fulfil all obligations stated in its tender. We shall not delay the payment, nor shall we oppose it for any reason whatsoever. We shall not under any circumstances benefit from the defences of the security. We shall inform you in writing as soon as payment has been made.

We note that the guarantee will be released at the latest within 45 days of expiry of the tender validity period, including any extensions, in accordance with Article 15 of the instructions to tenderers [and in any case at the latest on (one year after the deadline for submitting tenders)].⁸

The law applicable to this guarantee shall be that of [if the contracting authority is the European Union and the financial institution issuing the guarantee is established outside the EU: Belgium] [(i) if the contracting authority is the European Union and the financial institution issuing the guarantee is established inside the EU; OR (ii) if the contracting authority is an authority in the partner country: < the country in which the financial institution issuing the guarantee is established>]. Any dispute arising out of or in connection with this guarantee shall be referred to the courts of [if the contracting authority is the European Union and the financial institution issuing the guarantee is established outside the EU: Belgium] [(i) if the contracting authority is the European Union and the financial institution issuing the guarantee is established inside the EU; OR (ii) if the contracting authority is an authority in the partner country: <the country in which the financial institution issuing the guarantee is established>]

The guarantee will enter into force and take effect from the submission deadline of the tender.

Done at, ./../..

Name and first name: On behalf of:

Signature:

[stamp of the body providing the guarantee]

⁸ This mention has to be inserted only where required, for example where the law applicable to the guarantee stipulates a precise expiry date or where the guarantor can justify that he is unable to provide such a guarantee without expiry date.

VOLUME 1

SECTION 4

QUESTIONNAIRE

**VOLUME 1
SECTION 4
QUESTIONNAIRE
CONTENTS**

Additional notice to tenderers

Form 4.1 General information about the tenderer

Form 4.2 Organisation chart

Form 4.3 Power of attorney

Form 4.4 Financial statement

**Form 4.5 a) Financial identification form
 b) Legal entity files**

Form 4.6 Technical qualifications

4.6.1 Staff

4.6.2 Plant

4.6.3 Work plan and programme

4.6.4 Experience as contractor

4.6.5 Information on joint ventures

4.6.6 Litigation history

4.6.7 Quality assurance system(s)

4.6.8 Accommodation for the supervisor

4.6.9 Further information

These documents may be adapted as required by the project.

VOLUME 1
SECTION 4

ADDITIONAL NOTICE TO TENDERERS

1. Tenderers must answer all questions contained in the forms.
2. Additional sheets may be attached as necessary.
3. If a question does not apply to the tenderer, 'not applicable' should be entered alongside with a brief explanation.
4. Every page of each form must be numbered consecutively in the bottom right-hand corner.
5. Financial data and declarations submitted by the tenderer must be given in euro or national currency. Original bank statements may be also attached for reference.
6. If the requested supporting documents/certificates are not written in one of the official languages of the European Union, a translation into the language of the call for tender must be attached. If the documents are in an official language of the European Union, other than the procedural language, it is however strongly recommended to provide a translation into the language of the call for tenders in order to facilitate the evaluation of the documents.
7. Each member of a joint venture/consortium must fill in and submit separately the following forms: 4.1, 4.2, 4.3, 4.4, 4.5b, 4.6.1.1, 4.6.4, 4.6.6. All other forms must be filled in and submitted jointly.
8. Firms applying as a joint venture/consortium must also complete Form 4.6.5 concerning joint ventures/consortia.
9. The person signing this questionnaire guarantees the truthfulness and accuracy of all the statements made.

The accuracy of the answers to the questionnaire, their completeness and the attached documentation will be taken into account in the tender evaluation. Please be aware that a lack of data may result in their non-compliance in the related item

VOLUME 1

SECTION 4

FORM 4.1

GENERAL INFORMATION ABOUT THE TENDERER

- 4.1.1. Name of company
.....
.....
- 4.1.2. Registered address
.....
.....Telephone
..... Fax..... E-
mail.....
- 4.1.3. Names and nationalities of principals / directors and associates
.....
.....
.....
- 4.1.4. Type of company (natural person, partnership, corporation, etc.)
.....
.....
- 4.1.5. Description of company (e.g. general civil engineering contractor)
- 4.1.6. Company's nationality
- 4.1.7. Number of years' experience as contractor
- in own country.....
- internationally.....
- 4.1.8. Registration details
.....
.....
Please attach copy of the registration certificate
- 4.1.9. Equity in the company
Shares (%)
- 4.1.10. Name(s) and address(es) of companies involved in the project and whether parent/subsidiary/subcontractor/other:.....
.....
.....
- 4.1.11. If the company is a subsidiary, what involvement, if any, will the parent company have in the project?
.....
- 4.1.12. Foreign companies must state whether they are established in the state of the contracting authority in accordance with applicable regulations (for information only)

Signature:

(a person or persons authorised to sign on behalf of the tenderer)

Date:.....

VOLUME 1

SECTION 4

FORM 4.2

ORGANISATION CHART

Please give details here below of the organisation chart of your company, showing the position of directors, key staff and functions.

Signature.....

(a person or persons authorised to sign on behalf of the tenderer)

Date.....

VOLUME 1

SECTION 4

FORM 4.3

POWER OF ATTORNEY

Please attach here the power of attorney empowering the signatory of the tender and all related documentation.

Signature:

(a person or persons authorised to sign on behalf of the tenderer)

Date:

VOLUME 1

SECTION 4

FORM 4.4

FINANCIAL STATEMENT

Please provide all of the information required in Euro or national currency (NC) equivalent.

4.4.1 Basic capital

Amount..... Euro or NC

..

Currency..... Euro or NC

..

Authorised..... Euro or NC

..

Issued..... Euro or NC

..

4.4.2 [Annual value of construction work undertaken] [Annual turnover] for each of the last three years, and projected for the next two years.

Euro or NC	Year-3	Year-2	Last year	Current year	Year+1	Year+2
At home						
Abroad						
Total						

4.4.3 Approximate value of works in hand (at home and abroad)

..... (euro or national currency)

4.4.4⁹ Please attach copies of the company's certified statements of account for the previous three years (with translations into the procedural language, if necessary) from which the following basic data will be abstracted. Please provide estimates of the same information for the next two years.

⁹ Please see point 4 in the instructions to tenderers if documentary evidence/proof is needed.

VOLUME 1

SECTION 4

FORMS 4.6.1 TO 9
TECHNICAL QUALIFICATIONS

VOLUME 1

SECTION 4

FORM 4.6.1.1 OVERVIEW OF THE TENDERER'S STAFF

i - Overview	
a - Directors and management	.....
b - Administrative staff	.....
c - Technical staff	
- Engineers	.....
- Surveyors	
- Foremen	.....
- Mechanics	
- Technicians	.....
- Machine operators	
- Drivers	.....
- Other skilled staff	
- Labourers and unskilled staff	.....
<hr/>	
Total	=====
ii - Site operatives to be employed on the contract (if relevant)	
a - Site management	.....
b - Administrative staff	.....
c - Technical staff	
- Engineers	.....
- Surveyors	
- Foremen	.....
- Mechanics	
- Technicians	.....
- Machine operators	
- Drivers	.....
- Other skilled staff	

- Labourers and unskilled staff

Total =====

Signature
(*person(s) authorised to sign on behalf of the tenderer*)

Date

VOLUME 1

SECTION 4

FORM 4.6.1.2

STAFF TO BE EMPLOYED ON THE CONTRACT

Position/Name	Nationality		Education	Years of experience (with the company/in construction)	Major works for which responsible (project/value)	Employed by (in case of a joint tender, indicate the name of the consortium member employing the staff)
Quality control				/		
Others responsible for				/		

Others responsible for				/		
--	--	--	--	---	--	--

Signature

(person(s) authorised to sign on behalf of the tenderer)

Date.....

VOLUME 1

SECTION 4

FORM 4.6.1.3

PROFESSIONAL EXPERIENCE OF KEY STAFF

CURRICULUM VITAE

(maximum 3 pages + 3 pages of annexes)

Proposed position in the contract:

1. Surname:
2. Name:
3. Date and place of birth:
4. Nationality:
5. Civil status:
Address (phone/fax/e-mail):
6. Education:

Institutions:	
Date: From (month/year) To (month/year)	
Degree or qualification:	

7. Language skills

Indicate on a scale of A1 to C2 (from A1 (beginner) to C2 (proficient))¹⁰:

Language	Level	Passive	Spoken	Written
	Mother tongue			

8. Membership of professional bodies:
9. Other skills (e.g. computer literacy):
10. Current position:
11. Years of professional experience:
12. Key qualifications:
13. Specific experience in developing countries:

Country	Date: from (month/year) to (month/year)	Name and brief description of the project

¹⁰ Levels are based on the Common European Framework of Reference for Languages. See: <https://www.coe.int/en/web/common-european-framework-reference-languages/table-1-cefr-3.3-common-reference-levels-global-scale>. The linguistic competencies are to be demonstrated by certificate or by past relevant experience.

14. Professional experience:

Date: from (month/year) to (month/year)	
Place	
Company/organisation	
Position	
Job description	

15. Others:

15a. Publications and seminars:

15b. References:

Signature

(person(s) authorised to sign on behalf of the tenderer)

Date.....

VOLUME 1

SECTION 4

FORM 4.6.2

PLANT

Plant proposed and available for implementation of the contract¹¹

	DESCRIPTION (type/make/model)	Power/ capacity	No of units	Age (years)	Owned (O) or hired (H)/ and percentage of ownership	Origin (country)	Current approximate value in euro or national currency	Proposed by (in case of a joint tender, indicate the name of the consortium member proposing the plant)
	CONSTRUCTION PLANT							
					/			
					/			
					/			
					/			
					/			
					/			

¹¹ Not all the plant owned by the company.

					/			
					/			
					/			
					/			
					/			
					/			
					/			
					/			
					/			
					/			

	DESCRIPTION (type/make/model)	Power/ capacity	No of units	Age (years)	Owned (O) or hired (H)/ and percentage of ownership	Origin (country)	Current approximate value in euro or national currency
	VEHICLES AND TRUCKS						
					/		
					/		
					/		
					/		
					/		
	OTHER PLANT				/		
					/		
					/		
					/		
					/		
					/		
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					/		

Signature

(*person(s) authorised to sign on behalf of the tenderer*)

Date.....

VOLUME 1

SECTION 4

FORM 4.6.3

WORK PLAN AND PROGRAMME

- 4.6.3.1 State the proposed location of your main office on the site, stations (steel/concrete/asphalt structures), warehouses, laboratories, accommodation, etc. (sketches to be attached as required).
- 4.6.3.2 Give a brief outline of your programme for completing the works in accordance with the required method of construction and stated time of completion.
- 4.6.3.3 Attach a critical milestone bar chart (schedule of execution) representing the construction programme and detailing relevant activities, dates, allocation of labour and plant resources, etc.
- 4.6.3.4 If the tenderer plans to subcontract part of the works, he must provide the following details:

Work intended to be subcontracted	Name and details of subcontractors	Value of subcontracting as percentage of the total cost of the project	Experience in similar work (details to be specified)

Signature

(person(s) authorised to sign on behalf of the tenderer)

Date

VOLUME 1

SECTION 4

FORM 4.6.4

EXPERIENCE AS CONTRACTOR

4.6.4.1 List of contracts of similar nature and scale performed during the past 7 years

Name of project/type of works	Total value of works the contractor was responsible for ²	Period of contract	Start date	Percentage of works completed	Contracting authority and place	Prime contractor (P) or subcontractor (S)	Final acceptance issued? - Yes - Not yet (current contracts) - No
A) In home country							

Name of project/type of works	Total value of works the contractor was responsible for ¹²	Period of contract	Start date	Percentage of works completed	Contracting authority and place	Prime contractor (P) or subcontractor (S)	Final acceptance issued? - Yes - Not yet (current contracts) - No
B) Abroad							

4.6.4.2¹³ Please attach here available references and certificates from the relevant contracting authoritiesSignature.....

(person (s) authorised to sign on behalf of the tenderer)

Date.....

¹² Amounts actually paid, without the effect of inflation.

¹³ Please see point 4 in Instructions to Tenders if documentary evidence/proof is needed.

VOLUME 1

SECTION 4

FORM 4.6.5

DATA ON JOINT VENTURES

- 4.6.5.1** Name
- 4.6.5.2** Managing board's address
-
- Telex
- TelephoneFax.....E-mail.....
- 4.6.5.3** Agency in the state of the contracting authority, if any (for joint ventures/consortia with a foreign lead member)
- Office address
-
- Telex
- TelephoneFax.....
- 4.6.5.4** Names of members
- i)
- ii)
- iii)
- Etc.
- 4.6.5.5** Name of lead member
-
-
- 4.6.5.6** Agreement governing the formation of the joint venture/consortium
- i) Date of signature:
- ii) Place:
- iii) Enclosure — joint venture/consortium agreement

4.6.5.7 Proposed division of responsibilities between members (in %) with an indication of the type of work to be performed by each

.....

.....

.....

.....

.....

Signature:authorizes) *authorised to sign on behalf of the tenderer*)

Date:

VOLUME 1

SECTION 4

FORM 4.6.6

LITIGATION HISTORY

Please provide information on any history of litigation or arbitration resulting from contracts executed, whether as main contractor or as consortium-member, during the last <10 > years or currently under execution.

A separate sheet should be used for each partner of a joint venture/consortium.

Ye ar	Ruling FOR or AGAINST tenderer	Name of client, cause of litigation, and matter in dispute	Disputed amount (current value in euro or NC)

Signature

(person(s) authorised to sign on behalf of the tenderer)

Date

VOLUME 1

SECTION 4

FORM 4.6.7

QUALITY ASSURANCE SYSTEM(S)

Please provide details of the quality assurance system(s) you propose using to ensure successful completion of the works.

Signature

(person(s) authorised to sign on behalf of the tenderer)

Date

VOLUME 1

SECTION 4

FORM 4.6.8

ACCOMMODATION FOR THE SUPERVISOR

Please attach sketches and data detailing the accommodation and facilities intended to be provided by the tenderer under the relevant items in the bill of quantities/breakdown of the overall price.

Signature

(person(s) authorised to sign on behalf of the tenderer)

Date

VOLUME 1

SECTION 4

FORM 4.6.9

FURTHER INFORMATION

Tenderers may add here any further information that they deem useful for the evaluation of their tenders.

Signature
(*person(s) authorised to sign on behalf of the tenderer*)

Date

VOLUME 1

SECTION 5
EVALUATION GRID

EVALUATION GRID

(To be customised according to the project. The criteria indicated are to be used by the evaluation committee.)

This grid must be completed by each evaluator.

Contract title:	Design and Construction of underground, high and low level water tanks, septic tank, sewer system, public toilets, cold room, hazardous room and transshipment shed at Moyale Border Post at Moyale Border Post	Publication reference:	
------------------------	---	-------------------------------	--

Tender envelope no.	Tenderer's name	Rules of origin respected? (Yes/No)	Economic and financial capacity? (OK/a/b/...)	Professional capacity? (OK/a/b/...)	Technical capacity? (OK/a/b/...)	Compliance with technical specifications? (OK/a/b/...)	Staff.equipment Ancillary services as required? (OK/a/b/.../NA)	Nationalities of subcontractors eligible? (Yes/No)	Other technical requirements in tender dossier? (Yes/No/Not applicable)	Technical compliance? (Yes/No)	Observations

Tender envelope no.	Tenderer's name	Rules of origin respected? (Yes/No)	Economic and financial capacity? (OK/a/b/...)	Professional capacity? (OK/a/b/...)	Technical capacity? (OK/a/b/...)	Compliance with technical specifications? (OK/a/b/...)	Staff.equipment	Ancillary services as required? (OK/a/b/.../NA)	Nationalities of subcontractors eligible? (Yes/No)	Other technical requirements in tender dossier? (Yes/No/Not applicable)	Technical compliance? (Yes/No)	Observations

TABLE 2: Assessment of Compliance

Item	The following will be assessed for compliance :	Compliant	Not Compliant
1	Drawings/Specifications		
2	Works Programme		
3	Method statement		
4	Mobilization Schedule		
5	Construction Schedule		
6	Detailed method of Technology Transfer		
	COMMENT		

Any bidder who is NOT COMPLIANT in the above table shall be considered NON-RESPONSIVE and shall not be evaluated further.

Evaluator's name	
Evaluator's signature	
Date	

[Only very exceptionally, subject to derogation¹⁴, the works offers which comply with the minimum quality levels, should be technically scored.

If so, add a technical evaluation grid¹⁵ (setting out the technical criteria, sub criteria and weightings):

	Maximum
Criteria	
...	
...	
...	
Overall total score	100

¹⁴ Please note that such derogation is not required for 'Design-Build' ('DB') tender dossiers (see Article 18 of the DB contract notice, Article 24 of the DB instructions to tenderers, and footnote 3 in Section 5.3.3 'Selection and award criteria' of the PRAG.

¹⁵ For 'Design-Build' ('DB') tender dossiers where the award criterion is 'lowest aggregate of costs' (see option 3 of Article 18 of the DB contract notice and of Article 24 of the DB instructions to tenderers), the criteria on the basis of which the aggregation of capital expenditure ('CAPEX') and operational expenditure ('OPEX') costs will be calculated, must be specified in the 'Criteria' column and the 'Maximum' column can be deleted as ponderation is replaced with aggregation.

Strengths	
Weaknesses	

Evaluator's name	
Evaluator's signature	
Date	

Contract title :		Publication reference :	
-------------------------	--	--------------------------------	--

Tender envelope number	Tenderer name	Tender submission form duly completed? (Yes/No)	Others (Site certificate)	Tenderer's declaration (signed by each consortium member if	Language as required?	Sub-contracting statement acceptable? (Yes/No/ Not Applicable)	Nationality of sub-contractors eligible? (Yes/No)	Overall decision? (Accept / Reject)
1								
2								
3								
4								
5								
6								
7								
8								

Chairperson's name	
Chairperson's signature	
Date	

VOLUME 2
SECTION 1
CONTRACT FORM
WORKS CONTRACT FOR EUROPEAN UNION EXTERNAL ACTIONS
FINANCED FROM THE EDF

Between

Ministry of Investments, Trade and Industry,

State Department for Trade

Telposta Towers, Kenyatta Avenue,

P.O. Box 30430-00100

Nairobi, Kenya

Tel : +254-(0)20-3315001/2-4

Web :www.trade.go.ke

(“The contracting authority”), of the one part,
and

<Full official name of contractor>

[<Legal status/title>]¹⁶

[<Official registration number>]¹⁷

<Full official address>

[<VAT number>]¹⁸,

(“the contractor”) of the other part,

¹⁶ Where the contracting party is an individual.

¹⁷ Where applicable.

¹⁸ Except where the contracting party is not VAT registered.

have agreed as follows:

PROJECT: COMESA TRADE FACILITATION PROGRAMME

CONTRACT TITLE: DESIGN AND CONSTRUCTION OF UNDERGROUND, HIGH- AND LOW-LEVEL WATER TANKS, SEPTIC TANK, SEWER SYSTEM, PUBLIC TOILETS, COLD ROOM, HAZARDOUS ROOM AND TRANSHIPMENT SHED AT MOYALE BORDER POST AT MOYALE BORDER POST

Identification number: MITI/SDT/OSBP/OT/001/2023-2024

Whereas the contracting authority would like the contractor to carry out the following works:

Design and Construction of underground, high- and low-level water tanks, septic tank, sewer system, public toilets, cold room, hazardous room and transhipment shed at Moyale Border Post at Moyale Border Post and has accepted a tender by the contractor for the execution and completion of such works and the remedying of any defects therein.

It is hereby agreed as follows:

- (1) In this contract, words and expressions shall have the meanings assigned to them in the contractual conditions set out below.
- (2) The following documents shall be deemed to form and be read and construed as part of this contract, in the following order of precedence:
 - (a) the contract,
 - (b) the special conditions,
 - (c) the general conditions,
 - (d) the bill of quantities (after arithmetical corrections) and detailed breakdown of prices
 - (e) the technical and/or performance specifications,
 - (f) the design documentation (drawings),
 - (g) any other documents forming part of the contract.

The various documents making up the contract shall be deemed to be mutually explanatory; in cases of ambiguity or divergence, they shall prevail in the order in which they appear above. Addenda shall have the order of precedence of the document they are amending.

- (3) In consideration of the payments to be made by the contracting authority to the contractor as hereinafter mentioned, the contractor undertakes to execute and complete the works and remedy defects therein in full compliance with the provisions of the contract.
- (4) The contracting authority hereby agrees to pay the contractor in consideration of the execution and completion of the works and remedying of defects therein the amount of:
 - **Contract price (excluding VAT/other taxes) US \$ <amount>**

or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the contract. VAT will be paid in compliance with the binding regulations, national law and international agreements concerning the execution of the project. VAT and other taxes shall not be paid on the funds originating from EU funds.

[(5) Other specific conditions applying to the contract

[For the purpose of](#) Article 72 of the general conditions, for the part of the data transferred by the contracting authority to the European Commission:

(a) the controller for the processing of personal data carried out within the Commission is the head of legal affairs unit of DG International Cooperation and Development.

In witness whereof the parties hereto have signed the contract. This contract shall take effect on the date on which it is signed by the last party.

Done in English in three originals, one original being for the contracting authority, one original for COMESA and one original for the contractor.

For the contractor

Name:

Title:

Signature:

Date:

For the contracting authority

Name:

Title:

Signature:

Date:

VOLUME 2

SECTION 3

SPECIAL CONDITIONS

CONTENTS

These conditions amplify and supplement the general conditions governing the contract. Unless the special conditions provide otherwise, the general conditions remain fully applicable. The numbering of the articles of the special conditions is not consecutive but follows the numbering of the general conditions. Other special conditions should be indicated afterwards.

Article 2 Language of the contract

- 2.1 The language used shall be English.

Article 4 Communication

- 4.1 The address for notices and written communication between the contracting Authority, Supervisor, Supervisor's representative and Contractor are as follow:

(a) In the case of the contracting Authority

**Ministry of Investment Trade and Industry,
State Department for Trade
Telposta Towers, Kenyatta Avenue,
P.O. Box 30430-00100
Nairobi, Kenya
Tel : +254-(0)20-3315001/2-4
Web :www.trade.go.ke**

- 4.2 An electronic system will be used by the contracting authority and the contractor for all stages of implementation including, inter alia, management of the contract (amendments and administrative orders), reporting (including reporting on results) and payments. The contractor will be required to register in and use the appropriate electronic exchange system to allow for the e-management of the contract.

The electronic management of the contract through the aforementioned system may commence on the date on which implementation of the contract starts, as described in Article 33 of the general conditions to the contract, or at a later date. In the latter case, the contracting authority will inform the contractor in writing that he will be

required to use the electronic system for all communications within a maximum period of 3 months.

Article 5 Supervisor and supervisor's representative

- 5.2 The resources to be made available to the project Supervisor and its representative are included in the works contract and described in Volume 3 (specifications) and Volume 4 (BoQ) of the works tender dossier:
- 5.3 The powers of the project Supervisor are as provided in this contract. The responsibilities and limits of authority of the Supervisor's Representative are defined in his Contract. This document and other additional information will be made available to the Contractor upon the signing of the Contract.
- 5.4 Instructions given by the Supervisor shall be in writing by way of administrative orders, provided that if, for any reason, the Supervisor considers it necessary to give any such instructions orally the Contractor shall comply with such instruction. If the Supervisor receives a written confirmation of the instruction from the Contractor, within two working days after giving the instruction, and does not reply by issuing a written rejection and/or instruction within seven working days after receiving the confirmation then the confirmation shall constitute the written instruction of the Supervisor. The provisions of this paragraph shall equally apply to instructions given by the Supervisor's representative.

Administrative Orders shall be hand delivered in four (4) originals to the Contractor by the Supervisor at the Contractor's main site office, to a person working full-time in the office and to be designated by the Contractor. The Contractor's staff in charge of receiving the Administrative Order shall stamp, date and sign a duplicate of the order presented by the Supervisor. Such stamped, dated and signed document shall be proof of receipt of the Administrative Order by the Contractor. On the four (4) original documents, one will remain with the Contractor, three with the Supervisor who will have to send formally one to the Contracting Authority and one to COMESA. A copy will be sent to the Supervisor's representative by the Supervisor.

Article 7 Subcontracting

- 7.3 In the selection of subcontractors, the contractor shall give preference to natural persons, companies or firms of ACP States capable of implementing the tasks required on similar terms.

Article 8 Documents to be provided

- 8.1 The Contractor shall be responsible for preparing his own construction drawings as per Article 19 of the General and Special Conditions of this contract.

The Contractor shall adhere to all relevant laws governing the construction industry.

Article 9 Access to the site

- 9.1 The contractor is obliged to give the Contracting Authority and COMESA Secretariat free access to its sites, factories, workshops etc. The same provisions also apply to the appointed representatives of the European Union Head of Delegation.

All correspondence between the contractor and the contracting authority or project supervisor must be copied, for information, to the COMESA Secretariat at the following official address:

COMESA Secretariat
COMESA Center, Benbella Road
P.O Box 30051
Lusaka Zambia
Email: mmwiinga@comesa.int;

Article 12 General obligations

12.9 N/A

Article 15 Performance guarantee

- 15.1 The amount of the performance bank guarantee will be 5 % of the amount of the contract and any addenda thereto.
- 15.8 Within 60 days after the deliverance of the certificate of provisional acceptance according to Article 60.1 and the completion of any outstanding work or reservation, 100% of the amount of the performance guarantee may be released.

Article 16 Liabilities and insurance

- 16.1 a) By way of derogation from Article 16.1, a) paragraph 2, of the general conditions, compensation for damage to the works resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to contract value.
- 16.1 b) By way of derogation from Article 16.1(b), paragraph 2, of the general conditions, compensation for damage resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to the contract value.
- 16.2 a) By derogation from Article 16.2(a) first paragraph of the general conditions, at the return of the countersigned contract and beginning of implementation of tasks, the contractor shall ensure that itself, its staff, its subcontractors and any person for which the contractor is answerable, are adequately insured with insurance companies recognized on the international insurance market, unless the contracting authority has given its express written consent on a specific insurance company.

- 16.2 a) By derogation from Article 16.2(a) paragraph 2 of the general conditions it is at the return of the countersigned contract and beginning of implementation of tasks that the contractor shall provide the contracting authority and the supervisor with all cover notes and/or insurance certificates showing that the contractor's obligations relating to insurance are fully respected.

Article 17 Programme of implementation of tasks

- 17.1. Notwithstanding any work programme submitted as part of its tender, the contractor shall provide the supervisor with a programme of implementation of tasks, broken down by activity and by month within 14 days of the signature of the contract. This programme includes at least the following information;
- a) the order and time limits within which the contractor proposes to carry out works,
 - b) the time limits within which submission and approval of the drawings are required,
 - c) an organisation chart containing the names, qualification and CV of the staff responsible for the site,
 - d) a general description of the method including the sequence, by month and by nature, which the contractor proposes to carry out the works;
 - e) a plan for the setting out and organisation of the site, and
 - f) Such further details and information as the supervisor may reasonably require.
- 17.2. The supervisor shall return these documents to the contractor with its approval or any relevant remarks within ten days of receipt, save where the supervisor, within those ten days notifies the contractor of its wish for a meeting in order to discuss the documents submitted.
- 17.3. If the supervisor fails to notify its decision or remarks or wish for a meeting within these 10 days, the programme submitted is deemed approved.
- 17.4. The approval of the programme by the supervisor shall not relieve the contractor from any of its obligations under the contract.
- 17.5. No material alteration to the programme shall be made without the approval of the supervisor. If, however, the progress of the works does not conform to the programme, the supervisor may instruct the contractor to submit a revised programme in accordance with the procedure laid down in Article 17.

Article 19 Contractor's drawings and execution studies

The Contractor shall prepare and submit to the Supervisor for approval in triplicate all the drawings, calculations, technical notes, and any other subjects he is to provide for the

Supervisor's approval at least one month before commencing construction of the works in question.

During the execution of the contract, the Contractor shall draw up and submit for the approval of the project supervisor's representative the following documents:

(a) one month before setting up site, excavate site and storage areas:

- The location of the parcels to be used,
- A list of agreements with the owners and current users of the site and the proof that these users have been able to find similar site to continue their activities,
- A general map showing the area of the site, the planned layout and a description of the developments planned,
- An environmental protection plan for the site earmarked for the construction camp before its building commences. This plan will include all appropriate measures for the elimination of wastewater and solid waste in order to prevent all pollution and danger to human and animal health.
- The Contractor will take all reasonable precautions to prevent leaks and accidental spillage of products likely to cause water or soil pollution. He will specify the measures he plans to take in the environmental protection plan for the site.

(b) Monthly:

- an update on the level of site safety and the measures taken to maintain a high level of safety;
- Monthly progress reports.

(c) On completion of the works:

- Completion report with relevant brochures, manuals and commissioning report.
- As built drawings

The Contractor must insert in the documents, rules and proposals submitted to the project supervisor's representative the corrections or notes arising from the latter's observations concerning them within 15 (fifteen) days of being notified of these observations. The documents shall be resubmitted for the approval of the project supervisor's representative under the same procedure.

The endorsement of the project supervisor's representative shall in no way diminish the Contractor's liability.

Article 20 Sufficiency of tender prices

The bidder shall fill in rates and prices for all items of the Works described in the Bills of Quantities.

The rates and prices quoted by the bidder shall be fixed for the duration of the Contract and shall not be subject to adjustment on any account.

The contractor shall be deemed to have done a detailed inspection of the Site prior to submission of the tender and to have identified all risks, contingencies and all other circumstances influencing or affecting its tender.

Article 21 Exceptional risks

Weather leading to exceptionally adverse effect on the performance of the contract will be that poor state of weather occurring over a calendar month or more and on average less frequent than once in ten years. The contractor shall prove to the contracting authority that such adverse weather occurred and that it was the cause of the adverse effect which could not be lessened by the mitigation preparedness.

Article 24 Interference with traffic

24.1 The Contractor must maintain the flow of traffic and residents' access at all times during the works.

24.2 The Contractor must enforce a speed limit for all his vehicles using public roads. This must be set at a maximum of 80 km/h in the open countryside and a maximum of 50 km/h in urban areas and villages. Drivers exceeding these limits must be subject to disciplinary measures including possible dismissal. The Contractor's vehicles and movement of equipment must comply with the Highway Code applicable in Kenya, and in particular acts and rules concerning the weight of laden vehicles speed limit.

Article 27 Demolished materials

27.1. Where the contract includes demolition work, materials and articles obtained therefrom shall, unless the special conditions and /or the law of the country in which the works are executed otherwise provide and subject to the provisions of Article 28, become the property of the contractor.

27.2. Should the special conditions reserve to the contracting authority the right of ownership of materials or all or part of the articles obtained from the demolition work, the contractor shall take all the necessary precautions to ensure that these are preserved. It shall be liable for any destruction of, or damage to, such materials or articles caused by it or its agents.

27.4. Save where the special conditions provide otherwise, the contractor shall, at its expense, progressively remove rubble and other demolition materials, rubbish and debris from the site.

Article 29 Temporary works

29.2 Where the design of particular temporary works is specified in the special conditions to be the responsibility of the contracting authority, the supervisor shall provide the contractor with all drawings necessary within ten days upon request to enable the contractor to undertake the temporary works in accordance with its programme. In such cases, the contracting authority shall be solely responsible for the safety and adequacy of the design. However, the contractor shall be responsible for the proper construction.

Article 30 Soil studies

30.1. N/A

Article 34 Period of implementation of tasks

34.1 The period of implementation of tasks is Four (04) months but not later than 20th May 2024.

Article 36 Delays in the implementation of tasks

36.1 The rate of liquidated damages for delays in the completion of works shall be 0.1% of the contract price for every day or part thereof which elapses between the end of the period of implementation of tasks and the actual date of completion, up to a maximum amount of 10% of the contract price or, if the contract is subdivided into phases, 10% of the price of the phase concerned.

Article 39 Work register

39.1 The format of the works register will be determined by the Supervisor after the Contractor's submission of the detailed performance programme for the works. The Supervisor may revise the format from time to time. The work register shall contain at least the information on the subjects specified in article 39.1 of the GC.

The Contractor shall keep proper wage books and time sheets showing the wages paid to and time worked by workers engaged in the execution of the Contract and he shall be bound, whenever required, to produce such wage books and time sheets for the inspection of an authorised officer of the Government and/or the Supervisor.

The work register will also include all failings or incidents resulting in a significant impact on the environment or in an accident or incident with the local community and the corrective measures taken. One work register must be kept for each and every site operating.

- 39.2 Statements regarding the works must always compare work performed with work foreseen in order to provide a tool to assess overall project progress. They must also provide evidence that the works were performed in accordance with the technical specifications. Statements regarding completed works must include all finding from internal and/or external inspections performed related with these works. Statements regarding materials must refer to all key characteristics of the materials and compare them with the characteristics provided at the technical specifications.

Article 40 Origin and quality of works and materials

- 40.1 All goods purchased under the contract must originate in any eligible source country as defined in the 11 EDF COMESA Trade Facilitation Programme. However, the goods to be purchased may originate from any country, whenever the total price of the estimated quantity of those goods is less than Euro 60,000, as reflected in a separate item of the Bill of Quantities (Volume 4.3.2)]

A category of similar goods to be purchased shall not be broken down over more than 1 item for unit price contracts :bill of quantities (Volume 4.3.2)]

For these purposes, ‘origin’ means the place where the goods are mined, grown, produced or manufactured and/or from which services are provided. The origin of the goods must be determined according to the EU Customs Code or the applicable international agreement.

Goods originating in the EU include goods originating in the Overseas Countries and Territories.

When importing goods, any change in the specified origin must be pointed out to the project supervisor and approved by him.

- 40.2 The works and the objects, appliances, equipment or materials used in their construction must comply with the specifications, drawings, surveys, models, samples, patterns and other requirements in the contract which shall be held at the disposal of the contracting authority or the supervisor for the purposes of identification throughout the period of performance.
- 40.3 Any preliminary technical acceptance stipulated in the special conditions shall be the subject of a request sent by the contractor to the supervisor. The request shall indicate the reference to the contract, the lot number and the place where such acceptance is to take place, as appropriate. The components and materials specified in the request must be certified by the supervisor as meeting the requirements for such acceptance prior to their incorporation in the works.

Article 41 Inspection and testing

Components and materials will be in general tested at the site(s) and the laboratories provided by the Contractor. The Supervisor must be informed in time

in order to participate in the process especially considering the remote location of the site. In case that the tests and documentation and/or certificates provided for crucial materials, are considered to be not satisfactory by the Supervisor, tests might be performed by a competent authority.

Article 43 Ownership of plant and materials

43.2 The equipment, temporary structures, plant and materials on the site shall for the duration of the execution of the works, be vested in the Contractor.

Article 44: General principles for payments

44.1 Payments shall be made in US\$.

44.2 If invoices are submitted to the contracting authority, the contractor shall inform the Coordinating Ministry thereof by sending a copy to:

The Principal Secretary
Ministry of Investment Trade and Industry,
Telposta Towers, Kenyatta Avenue,
P.O. Box 30430-00100
Nairobi, Kenya
Tel : +254-(0)20-3315001/2-4
Web :www.trade.go.ke

With copy to:

The Secretary General
COMESA Secretariat
COMESA Center, Benbella Road
Lusaka, Zambia
Email: mmwiinga@comesa.int;

44.3 By derogation, pre-financing payment to the contractor for the lump-sum advance shall be made within 30 days. Other pre-financing payments to the contractor shall be made within 90 days. Interim payments to the contractor of the amounts due under each of the interim payment certificates approved by the supervisor shall be made within 90 days, and the final payment to the contractor of the amounts due after the final statement of account issued by the supervisor shall be made within 90 days.

Article 46 Pre-financing

46.1 The only pre-financing advance granted to the contractor, is the lump sum advance referred to in Article 46.1(a) of the general conditions.

46.2 The lump sum advance referred to in Article 46.1(a) shall be a maximum of 20% of the original contract price against an unconditional bank guarantee.

46.3(c) N/A

46.8 Repayment of the pre-financing shall take the form of deductions based on monthly claims.

- a) The flat-rate pre-financing (maximum of 10 %) shall be repaid by means of deductions from instalments and, if necessary, the balance due to the contractor. This repayment shall begin with the first instalment and be completed, at the very latest, by the time 80 % of the amount of the contract has been paid.

Repayment shall be made in the same currency as the pre-financing.

The amount to be deducted from each instalment shall be calculated using the following formula:

$$R = \frac{V_a \times D}{V_t \times 0.8}$$

where:

R = the amount to be repaid

V_a = the total amount of pre-financing

V_t = the initial contract amount

D = the amount of the instalment.

The result is rounded up to two decimal places.

- b) The pre-financing for plant, machinery and tools — and the pre-financing for other major prior outlays (20 % maximum) — shall be repaid by means of deductions from instalments and, if necessary, the balance due to the contractor. Repayment shall begin with the first instalment and end, at the very latest, by the time 90 % of the amount of the contract has been paid.

The amount to be deducted from each instalment shall be calculated using the following formula:

$$R = \frac{Va \times D}{Vt \times 0.9}$$

where:

R = the amount to be repaid

Va = the total amount of pre-financing

Vt = the initial contract amount

D = the amount of the instalment.

Article 47 Retention monies

The sum retained to guarantee implementation of the contractor's obligations during the defects liability period is 10% of the contract price.

Article 48 Price revision

N/A

Article 49 Measurement

49.1 This is a lumpsum contract.

The payment will be made for executed work only.

The frequency of interim payment shall be paid based on the agreed milestones between the Contracting Authority and the Contractor.

The contractor shall prepare the executed work payment certificate which will be approved by the supervisor.

Article 50 Interim payments

50.1 The interim payments will be paid as determined in Article 49.1 of these special conditions.

Article 51 Final statement of account

51.1 The contractor shall, submit to the supervisor a draft final statement of account when it applies for the final acceptance certificate. In order to enable the supervisor to prepare the final statement of account, the draft final statement of account is submitted with supporting documents showing in detail the value of the work done in accordance with the contract and all further sums which the contractor considers to be due to it under the contract.

51.2 Within 30 days from issuing the final acceptance certificate referred to in Article 62, the supervisor shall prepare and signed the final statement of account.

Article 53 Delayed payments

- 53.1 By derogation from Article 53.1 of the general conditions, once the time-limit referred Article 44.3 has expired, the contractor shall be entitled to late-payment interest at the rate and for the period mentioned in the general conditions.

Article 60 Provisional acceptance

- 60.1 Provisional acceptance will be conducted in line with Article 60.1 of the general conditions.

Article 61 Defects liability

- 61.1 The defects liability period is defined as the period commencing on the date of provisional acceptance, during which the contractor is required to make good any defect in, or damage to, any part of the work which may appear or occur during this period as notified by the supervisor or the contracting authority. The rights and obligations of the parties with regard to this defects liability period are laid down in Article 61 of the general conditions.
- 61.7 The duration of the defects liability period is Six (06) months.

Article 68 Dispute settlement

- 68.4 Any dispute arising out of or relating to this contract which cannot be settled otherwise shall
- (a) in the case of a national contract, be settled in accordance with the national legislation of the state of the contracting authority or through the COMESA Court of Justice; and
 - (b) in the case of a transnational contract, be settled either:
 - (i) if the parties to the contract so agree, in accordance with the national legislation of the state of the contracting authority or its established international practices; or
 - (ii) by arbitration in accordance with the procedural rules on conciliation and arbitration of contracts financed by the European Development Fund, adopted by Decision No 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 (Official Journal No L 382 of 31.12.1990, Annex A12 of the practical guide.)

Article 72 Data protection

1. Processing of personal data related to the implementation of the contract by the contracting authority takes place in accordance with the national legislation of the state of the contracting authority and with the provisions of the respective financing agreement.

2. To the extent that the contract covers an action financed by the European Union, the Contracting Authority may share communications related to the implementation of the contract, with the European Commission. These exchanges shall be made to the Commission, solely for the purpose of allowing the latter to exercise its rights and obligations under the applicable legislative framework and under the financing agreement with the Partner country – contracting authority. The exchanges may involve transfers of personal data (such as names, contact details, signatures and CVs) of natural persons involved in the implementation of the contract (such as contractors, staff, experts, trainees, subcontractors, insurers, guarantors, auditors and legal counsel). In cases where the contractor is processing personal data in the context of the implementation of the contract, he/she shall accordingly inform the data subjects of the possible transmission of their data to the Commission. When personal data is transmitted to the Commission, the latter processes them in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC¹⁹ and as detailed in the specific privacy statement published at ePRAG.

Article 73 Further additional clauses

73.1 NA

¹⁹ OJ L 205 of 21.11.2018, p. 39

VOLUME 2

SECTION 4 PERFORMANCE GUARANTEE²⁰

(To be completed on paper bearing the letterhead of the financial institution)

For the attention of

<name and address of the contracting authority>

referred to below as the ‘contracting authority’

Subject: Guarantee no. ...

Performance guarantee for the full and proper execution of contract <contract number and title>
(please quote number and title in all correspondence)

We, the undersigned, <name, and address of financial institution>, hereby irrevocably declare that we guarantee, as primary obligor, and not merely as a surety on behalf of <contractor’s name and address>, hereinafter referred to as “the contractor”, payment to the contracting authority of <amount of the performance guarantee>, representing the performance guarantee mentioned in Article 15 of the special conditions of the contract <contract number and title> concluded between the contractor and the contracting authority, hereinafter referred to as ‘the contract’.

Payment will be made without objection or legal proceedings of any kind, upon receipt of your first written claim (sent by registered letter with confirmation of receipt) stating that the contractor has failed to fulfil its contractual obligations fully and properly. We will not delay the payment, nor will we oppose it for any reason whatsoever. We shall not under any circumstances benefit from the defences of the security. We will inform you in writing as soon as payment has been made.

We accept that no amendment to the terms of the contract can release us from our obligation under this guarantee. We waive the right to be informed of any change, addition or amendment to the contract.

²⁰ Guidance on the verification of financial guarantees can be found in chapter 9.1 of the DEVCO Companion. In indirect management, the contracting authority should seek guidance from the European Commission before accepting a financial guarantee.

We note that the guarantee will be released in accordance with Article 15.8 of the general conditions to the contract [and at the latest on <at the expiry of 18 months after the implementation period of the contract>].²¹

[The whole paragraph should be deleted when the contracting authority is the European Union or the Beneficiary Country under indirect management in the framework of IPA:

Any request to pay under the terms of the guarantee must be countersigned by the head of delegation of the European Union in the country of the contracting authority or his designated empowered deputy as par the applicable Commission rules. In case of a temporary substitution of the contracting authority by the Commission, any request to pay will only be signed by the representative of the Commission, namely whether the head of delegation, his designated empowered deputy or the authorised person at headquarters' level.]

The law applicable to this guarantee will be that of [if the contracting authority is the European Union and the financial institution issuing the guarantee is established outside the EU: Belgium] [(i) if the contracting authority is the European Union and the financial institution issuing the guarantee is established inside the EU; OR (ii) if the contracting authority is an authority in the partner country: <the country in which the financial institution issuing the guarantee is established>]. Any dispute arising out of or in connection with this guarantee will be referred to the courts of [if the contracting authority is the European Union and the financial institution issuing the guarantee is established outside the EU: Belgium] [(i) if the contracting authority is the European Union and the financial institution issuing the guarantee is established inside the EU; OR (ii) if the contracting authority is an authority in the partner country: <the country in which the financial institution issuing the guarantee is established>].

The guarantee will enter into force and take effect upon its signature.

Done at [*insert place*], on [*insert date*]

[*Signature*]

[*Signature*]

[*Function at the financial institution/bank*]

[*Function at the financial institution/bank*]

Stamp of the body providing the guarantee

²¹ This mention should be inserted only where required, for example where the law applicable to the guarantee imposes a precise expiry date or where the guarantor can justify that he is unable to provide such a guarantee without expiry date.

VOLUME 2

SECTION 5: GUARANTEE ON PRE-FINANCING²²

(To be completed on paper bearing the letterhead of the financial institution)

For the attention of

<name and address of the contracting authority>

Referred to below as the ‘contracting authority’

Subject: Guarantee No. ...

Financing guarantee for the repayment of pre-financing payable under contract <contract number and title> (please quote number and title in all correspondence)

We the undersigned, <name, and address of financial institution>, hereby irrevocably declare that we guarantee as primary obligor, and not merely as surety on behalf of <contractor's name and address>, hereinafter referred to as “the contractor”, the payment to the contracting authority of <indicate the amount of the pre-financing>, corresponding to the pre-financing as mentioned in Article 46 of the special conditions of the contract <contract number and title> concluded between the contractor and the contracting authority, hereinafter referred to as ‘the contract’.

Payment shall be made without objection or legal proceedings of any kind, upon receipt of your first written claim (sent by registered letter with confirmation or receipt) stating that the contractor has not repaid the pre-financing on request or that the contract has been terminated. We shall not delay the payment, nor shall we oppose it for any reason whatsoever. We shall not under any circumstances benefit from the defences of the security. We shall inform you in writing as soon as payment has been made.

²² Guidance on the verification of financial guarantees can be found in chapter 9.1 of the DEVCO Companion. In indirect management, the contracting authority should seek guidance from the European Commission before accepting a financial guarantee.

We accept notably that no amendment to the terms of the contract can release us from our obligation under this guarantee. We waive the right to be informed of any change, addition or amendment of the contract.

We note that the guarantee will be released in accordance with the Article 46.7 of the general conditions. [and in any case at the latest on (at the expiry of 18 months after the implementation period of the contract)]²³.

[The whole paragraph should be deleted when the contracting authority is the European Union or the Beneficiary Country under indirect management in the framework of IPA:

Any request to pay under the terms of the guarantee must be countersigned by the head of delegation of the European Union in the country of the contracting authority or his designated empowered deputy as par the applicable Commission rules. In case of a temporary substitution of the contracting authority by the Commission, any request to pay will only be signed by the representative of the Commission, namely whether the head of delegation, his designated empowered deputy or the authorised person at headquarters' level.]

The law applicable to this guarantee shall be that of [if the contracting authority is the European Union and the financial institution issuing the guarantee is established outside the EU: Belgium] [(i) if the contracting authority is the European Union and the financial institution issuing the guarantee is established inside the EU; OR (ii) if the contracting authority is an authority in the partner country: <the country in which the financial institution issuing the guarantee is established>]. Any dispute arising out of or in connection with this guarantee shall be referred to the courts of [if the contracting authority is the European Union and the financial institution issuing the guarantee is established outside the EU: Belgium] [(i) if the contracting authority is the European Union and the financial institution issuing the guarantee is established inside the EU; OR (ii) if the contracting authority is an authority in the partner country: <the country in which the financial institution issuing the guarantee is established>].

The guarantee will enter into force and take effect on payment of the pre-financing to the contractor.

Done at *[insert place]*, on *[insert date]*

[Signature]

[Signature]

[Function at the financial institution/bank]

[Function at the financial institution/bank]

Stamp of the body providing the guarantee

²³ This mention has to be inserted only where required, for example where the law applicable to the guarantee imposes a precise expiry date or where the guarantor can justify that he is unable to provide such a guarantee without expiry date.

VOLUME 2

SECTION 6 RETENTION GUARANTEE²⁴

(To be completed on paper bearing the letterhead of the financial institution)

For the attention of

<name and address of the contracting authority>

referred to below as the “contracting authority”

Subject: Guarantee no. <...>

Retention guarantee for contract <contract number and title> (please quote number and title in all correspondence)

We, the undersigned, <name, and address of financial institution>, hereby irrevocably declare that we guarantee, as primary obligor, and not merely as a surety on behalf of <contractor’s name and address>, hereinafter referred to as ‘the contractor’, payment to the contracting authority of <amount of the retention guarantee>, representing the retention guarantee mentioned in Article 47 of the special conditions of the contract (contract number and title) concluded between the contractor and the contracting authority, hereinafter referred to as ‘the contract’.

Payment will be made without objection or legal proceedings of any kind, upon receipt of your first written claim (sent by registered letter with confirmation of receipt) stating that the contractor has failed to fulfil its contractual obligations fully and properly. We will not delay the payment, nor will we oppose it for any reason whatsoever. We shall not under any circumstances benefit from the defences of the security. We will inform you in writing as soon as payment has been made.

We accept that no amendment to the terms of the contract can release us from our obligation under this guarantee. We waive the right to be informed of any change, addition or amendment to the contract.

²⁴ Guidance on the verification of financial guarantees can be found in chapter 9.1 of the DEVCO Companion. In indirect management, the contracting authority should seek guidance from the European Commission before accepting a financial guarantee.

We note that the guarantee will be released in accordance with Article 47.3 of the general conditions to the contract [and in any case at the latest on <at the expiry of 18 months after the implementation period of the contract>].²⁵

[The whole paragraph should be deleted when the contracting authority is the European Union or the Beneficiary Country under indirect management in the framework of IPA:

Any request to pay under the terms of the guarantee must be countersigned by the head of delegation of the European Union in the country of the contracting authority or his designated empowered deputy as par the applicable Commission rules. In case of a temporary substitution of the contracting authority by the Commission, any request to pay will only be signed by the representative of the Commission, namely whether the head of delegation, his designated empowered deputy or the authorised person at headquarters' level.]

The law applicable to this guarantee will be that of [if the contracting authority is the European Union and the financial institution issuing the guarantee is established outside the EU: Belgium] [(i) if the contracting authority is the European Union and the financial institution issuing the guarantee is established inside the EU; OR (ii) if the contracting authority is an authority in the partner country: <the country in which the financial institution issuing the guarantee is established>]. Any dispute arising out of or in connection with this guarantee will be referred to the courts of [if the contracting authority is the European Union and the financial institution issuing the guarantee is established outside the EU: Belgium] [(i) if the contracting authority is the European Union and the financial institution issuing the guarantee is established inside the EU; OR (ii) if the contracting authority is an authority in the partner country: <the country in which the financial institution issuing the guarantee is established>].

The guarantee will enter into force and take effect upon its signature.

Done at *[insert place]*, on *[insert date]*

[Signature]

[Signature]

[Function at the financial institution/bank]

[Function at the financial institution/bank]

Stamp of the body providing the guarantee

²⁵ This mention should be inserted only where required, for example where the law applicable to the guarantee imposes a precise expiry date or where the guarantor can justify that he is unable to provide such a guarantee without expiry date.

EDF only

Tax and customs arrangements

Article 31 from Annex IV to the Cotonou Agreement

1. The ACP States shall apply to contracts financed by the Community tax and customs arrangements no less favourable than those applied by them to the most favoured States or international development organisations with which they have relations. For the purpose of determining the most-favoured-nation (MFN) treatment, account shall not be taken of arrangements applied by the ACP State concerned to other ACP States, or to other developing countries.
2. Subject to the above provisions the following shall apply to contracts financed by the Community:
 - (a) the contract shall not be subject in the beneficiary ACP State to stamp or registration duties or to fiscal charges having equivalent effect, whether such charges already exist or are to be instituted in the future; however, such contracts shall be registered in accordance with the laws in force in the ACP State and a fee corresponding to the service rendered may be charged for it;
 - (b) profits and/or income arising from the performance of contracts shall be taxable according to the internal fiscal arrangements of the ACP State concerned, provided that the natural or legal persons who realise such profit and/or income have a permanent place of business in that State, or that the performance of the contract takes longer than six months;
 - (c) enterprises which must import professional equipment in order to carry out works contracts shall, if they so request, benefit from the system of temporary admission as laid down by the national legislation of the beneficiary ACP State in respect of the said equipment;
 - (d) professional equipment necessary for carrying out tasks defined in a service contract shall be temporarily admitted into the beneficiary ACP State or States in accordance with its national legislation free of fiscal, import and customs duties and of other charges having equivalent effect where these duties and charges do not constitute remuneration for services rendered;
 - (e) imports under supply contracts shall be admitted into the beneficiary ACP State without customs duties, import duties, taxes or fiscal charges having equivalent effect. The contract for supplies originating in the ACP State concerned shall be concluded on the basis of the ex-works price of the supplies to which may be added such internal fiscal charges as may be applicable to those supplies in the ACP State;
 - (f) fuels, lubricants and hydrocarbon binders and, in general, all materials used in the performance of works contracts shall be deemed to have been purchased on the local market and shall be subject to fiscal rules applicable under the national legislation in force in the beneficiary ACP State; and

- (g) personal and household effects imported for use by natural persons, other than those recruited locally, engaged in carrying out tasks defined in a service contract and members of their families, shall be exempt from customs or import duties, taxes and other fiscal charges having equivalent effect, within the limit of the national legislation in force in the beneficiary ACP State.
- 3. Any matter not covered by the above provisions on tax and customs arrangements shall remain subject to the national legislation of the ACP State concerned.

VOLUME 3

TECHNICAL SPECIFICATIONS

DESIGN AND CONSTRUCTION OF UNDERGROUND, HIGH- AND LOW-LEVEL WATER TANKS, SEPTIC TANK, SEWER SYSTEM, PUBLIC TOILETS, COLD ROOM, HAZARDOUS ROOM AND TRANSHIPMENT SHED

LOT 1: DESIGN AND CONSTRUCTION OF UNDERGROUND, HIGH- AND LOW-LEVEL WATER TANKS AND PUMP HOUSE AT MOYALE BORDER POST

Item	Description
1	<p><u>High and Low level water tanks and Booster pumps</u></p> <p>High level water tank volume = 50 Cubic Meters Tower for High Level water tank = 15 meters Low level water tank volume = 100 Cubic Meters</p> <p>The tanks to have the following:</p> <ul style="list-style-type: none"> • 6mm thick cold pressed mild steel plates with uniform black bituminous paint internally and external finish to have zinc phosphate primer with 3 coats aluminium paint, • internal & external ladders, • pitched 4mm thick dust proof & weather proof cover • Zinc coated tensile bolts, nut & washers • Water level indicators • Non toxic strip sealant for leakproof joints • All necessary cleats, stays, rafters and braces • All foundation works and bases to be done to project manager's approval • All tanks to be sterilized <p>Water transfer pump-set to deliver 3.6 litres /second to a head of 30m. this will comprise</p> <ul style="list-style-type: none"> • Two identical centrifugal pumps, one duty one standby mounted on a common base frame. • 50 litre diaphragm pressure vessel • Pressure switch and pressure gauge • Gms pipework • Automatic changeover from duty to standby pump • Control panel mounted on same base frame • Associated electrical works
2	<p><u>Underground water tank</u></p> <p>Underground water tank volume = 150 Cubic Meters Walls = Reinforced Concrete Other components = for full functionality of the tank</p>

3	<p><u>Pump and Control House</u></p> <p>Room volume = 18 Cubic Metres</p> <p>Concrete Walling = 200mm thick with natural ventilation</p> <p>Roof = Cladding of box profile Iron sheet gauge 28</p> <p>Other Components = Eletrical works , Mechanical(BS) works</p>
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LOT 2: DESIGN AND CONSTRUCTION OF TOILETS AND REHABILITATION OF SEWER SYSTEM AT MOYALE BORDER POST

1	<p><u>Septic Tank</u></p> <p>Septic Tank of reinforced concrete volume = 90 Cubic Meters</p> <p>Wall - Concrete of width = 200mm</p> <p>Appropriate soakage to international environmental standards</p>
2	<p><u>Sewer Line System</u></p> <p>Length = 145 meters</p> <p>Pipe = 150 mm and 200mm UPVC</p> <p>Manholes = conform to (50) 5301 public works civil codes</p>
3	<p><u>Public Toilets</u></p> <p>Area = 90 Square Metres</p> <p>clear ceiling height =2.7m</p> <p>Ladies - 4No.Cubicals</p> <p>- 4No. Wash hand Basin</p> <p>- 4 Water closet</p> <p>- Separate for PWD facility of 1.8m x 1.8m</p> <p>-Cleaners point of 1.2m x1.2m</p> <p>Gents - 2No.Cubicals</p> <p>- 4No. Wash hand Basin</p> <p>- 4 Water closet</p> <p>- Urinal of Length 1.8m with dividers</p> <p>- Separate for PWD facility of 1.8m x 1.8m</p> <p>Walls - External 200mm masonry</p> <p>- Partition walls = 150mm thick tiled to 1.5m of 2.7m</p> <p>Roof Cladding of Iron sheet with gutters and rainwater downpipes</p> <p>Door - Solid core veneered painted</p> <p>Frame - 150mm x 50mm hard wood</p>

	<p>Ceiling - Soft Board with three coats paint</p> <p>Internal wall finish to be tiled with 6mm thick wall tiles to 1500mm height with the remainder height plastered and painted</p> <p>External finish to be plastered and painted with appropriate weather resistant paint</p> <p>Internal floor to be have 8mm thick ceramic floor tiles</p> <p>Provide two rows of 600x600x50mm paving slabs externally</p> <p>Plumbing - to conform to building codes</p> <p>Electrical works - to conform to building codes</p>
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LOT 3 - PROPOSED CONSTRUCTION OF COLD ROOMS AND DANGEROUS(HAZARDOUS) GOODS STORE

Item	Description
1	<p><u>Cold Rooms</u></p> <p>Cooling room volume = 24 Cubic Metres</p> <p>Minimum clear height = 2.1metres</p> <p>Walling = 200mm</p> <p>Roof = Concrete Slab of 150mm with screed finish, roofing felt and protective interlocking tiles</p> <p>Cooling Temperature = to 0 Deg.</p> <p>Other Components = Cooling Equipment and accessories, cold room door size 800x2100, internal insulation to floors, walls and ceiling,</p> <p>Electrical works, Mechanical(BS) works</p> <p>All external equipment to be protected against vandalism and weather elements</p>
2	<p><u>Hazardous Room</u></p> <p>Room area = 20 square Metres</p> <p>Minimum clear ceiling height = 3.0metres</p> <p>Concrete Walling = 200mm</p> <p>Roof = Concrete Slab of 150mm</p> <p>Other Components = Cooling Equipment and accessories , Electrical works, Mechanical(BS) works</p> <p>Internal wall finish to be plastered and painted</p> <p>External wall finish to be plastered and painted with appropriate weather resistant paint</p> <p>Walling to have at least 25% natural ventilation with vent blocks</p> <p>Door to be 1500mm wide steel louvered double door with minimum 50x50 framing</p> <p>Floor finish to be chemical resistant hardened screed with steel trowel finish</p> <p>Provide two rows of 600x600x50mm paving slabs externally</p>

LOT 4: DESIGN AND CONSTRUCTION OF A TRANSHIPMENT SHED

Item	Description
1	<p><u>Building Structure</u></p> <p>Floor area = 500sq.m Eaves height = 6.0 m Main structural Member = Steel structure Roofing = box profile Iron Sheet Concrete Ground floor = Strength of 49KN/mm2 Provide access ramps as appropriate Civil works - to conform to building codes</p> <p>Mechanical(BS) works - to conform to building codes Electrical works -to conform to building codes</p>

BILL OF QUANTITY

The bidder is required to prepare sufficiently itemized bills of quantities in accordance with appropriate professional standards and methods of measurements applicable to the Republic of Kenya.

VOLUME 4.1

FINANCIAL BID TEMPLATES

INTERPRETATIVE NOTES

Contracts may be:

- a) lump-sum contracts,
- b) unit-price contracts,
- c) hybrid contracts.

1. In lump-sum contracts, an all-in price covers all the works concerned by the contract. The all-in price will, if necessary, be calculated on the basis of the breakdown of the lump-sum price. In the latter case, an all-in price will be given for each separate item in the itemised breakdown. The total price will be calculated by adding together the various all-in prices for all such items. Where items are accompanied by quantities, these will be firm quantities drawn up by the contracting authority. The firm quantity is the quantity for which the contractor has submitted an all-in price, which will be paid to it irrespective of the quantity actually supplied.
2. In unit-price contracts, the works are broken down into different items on the basis of a bill of quantities drawn up by the contracting authority, and the proposed unit price for each item is indicated. The amounts due under the contract will be calculated by applying the unit prices to the quantities actually supplied, in accordance with the contract.
3. In hybrid contracts, the prices will be fixed and works paid for in accordance with two or more of the methods laid down in paragraphs 1 and 2. The tender dossier for a hybrid contract will indicate how prices are to be calculated.
4. Each tender dossier must specify the exact type of contract used. The bill of quantities and price schedule (for unit-price contracts)/breakdown of the lump-sum price (for lump-sum contracts) must provide sufficient information on the quantities of works to be performed to enable bids to be prepared, and when a contract has been entered into, to provide an itemised basis for measuring the works executed. In order to attain these objectives, works should be itemised in the bill of quantities and price schedule (for unit-price contracts)/breakdown of the lump-sum price (for lump-sum contracts) in sufficient detail to distinguish between the different categories of works, or between works of the same nature carried out in different locations or any other circumstances which may give rise to variations in cost. Their layout

and content should be as simple and brief as possible, while remaining consistent with these requirements.

Daily work schedule

A daily work schedule could be included for unforeseen works not covered by the bill of quantities or by the breakdown of the lump-sum price. The day work schedule should comprise a list of the various categories of labour, materials, and construction plant for which basic day work prices are given by the tenderer, together with a statement of the conditions under which the contractor will be paid for work executed on a day work basis. The day work schedule should also contain the estimated quantities for each item of day work.

A general provision for day works may be made by including a provisional sum.

These notes for preparing financial bids are intended only as information for the contracting authority or the person drafting the documents for the invitation to tender. They should not be included in the final documents. Attached are examples of financial offer templates for unit-price contracts. These templates are purely indicative and may be adapted/combined as required by the project.

VOLUME 4.3

FINANCIAL OFFER TEMPLATES

UNIT PRICE CONTRACTS

Content

4.3.1 — Introduction

4.3.2 — Bill of quantities

4.3.3 — Price schedule

4.3.4 — Daily works schedule

4.3.5 — Detailed breakdown of prices

VOLUME 4.3.1 — INTRODUCTION

1. General

- 1.1 The bill of quantities (Volume 4.3.2) is the document containing an itemised breakdown of the works to be carried out in a unit price contract, indicating a quantity for each item and the corresponding unit price. The quantities set out in the bill of quantities are estimated quantities. Each price for each item of the bill of quantities is detailed in the price schedule (Volume 4.3.3).

The amounts due will be calculated by measuring the actual quantities of the works executed and by applying the unit rates to the quantities actually executed for each item.

- 1.2 The detailed breakdown of prices (Volume 4.3.5) is the list containing the basic costs, net costs and mark-ups from which each price on the bill of quantities and the price schedule and on the daywork schedule results.

The detailed breakdown of prices provides the coefficients for applying the price revision formula referred to in Article 48.2 of the special conditions and can provide the basis for valuation of additional work ordered referred to in Article 37.5 of the general conditions.

- 1.3 Provisional sums for use when works are to be executed on a daily work basis (Volume 4.3.4) can only be executed by administrative order of the supervisor in accordance with the terms of the contract.

2. Specific to Volumes 4.3.2, 4.3.3 and 4.3.4

- 2.1 The prices inserted in the bill of quantities and price schedule are to be the full inclusive values of the works described under the items, including all costs and expenses that may be required in and for the construction of the works described, together with any temporary works and installations which may be necessary and all general risks, liabilities and obligations specified or implied in the documents on which the tender is based. It will be assumed that establishment charges, profit and allowances for all obligations are spread evenly over all unit rates.
- 2.2 Save where the technical specifications or the bill of quantities and the price schedule specifically and expressly state otherwise, only permanent works are to be measured.
- 2.3 No allowance will be made for loss of materials or volume thereof during transport or compaction.
- 2.4 The prices of the bill of quantities, price schedule and daily work schedule are all-inclusive and include any non-exonerated tax or fiscal duty.
- 2.5 The unit prices in Volumes 4.3.2 and 4.3.4 are obtained by multiplying the net cost of Volume 4.3.5 - Table D, on the one hand, with the coefficient K, on the other hand.

The coefficient K represents the proportions between the Site costs (Fc) of Volume 4.3.5 - Table E and the Total net costs (Ps) and between the General costs (Fg) of Volume 4.3.5 - Table F and the Contract price (Pv): $K = (1+A)/(1-B)$ whereby

$$A = F_c/P_s$$

$$B = F_g/P_v$$

- 2.5 The units of measurement used in the annexed technical documentation are those of the International System of Units (SI). No other units may be used for measurements, pricing, detail drawings etc. (Any units not mentioned in the technical documentation must also be expressed in terms of the SI.) Abbreviations used in the bill of quantities are to be interpreted as follows:

mm	means	millimetre
m	means	metre
mm ²	means	square millimetre
m ²	means	square metre
m ³	means	cubic metre
kg	means	kilogram
to	means	tonne (1000 kg)
pcs	means	pieces
h	means	hour
L.s.	means	Lump sum
km	means	kilometre
l	means	litre
%	means	per cent
N.d	means	nominal diameter
m/m	means	man-month
m/d	means	man-day

VOLUME 4.3.2 — BILL OF QUANTITIES

PRICE No	TITLE	UNIT	UNIT PRICE	ESTIMATED QUANTITIES	AMOUNT
(a)	(b)	(c)	(d)	(e)	(f = d * e)
000	<for instance: installation of the site>				
001					
...					
	Total 000-99				
100					
101					
...					
	Total 100-199				
200					
201					
...					
	Total 200-299				
300					
301					
...					
	Total 300-399				
....					

Total amount of the works, outside dayworks					
Dayworks					
Total					

Note: the numbering of prices under (a) and titles under (b) correspond to the numbering in the price schedule

VOLUME 4.3.3 — PRICE SCHEDULE

<p style="text-align: center;">PRICE No <for example: PRICE No 201></p> <p style="text-align: center;">Title: ... <for example: EXCAVATE TOPSOIL WITHIN ROADWAY></p>	
<p>Description of the implementation modalities of the works comprised within this price, as well as the measurement modalities of the quantities executed and to be paid by this price.</p> <p><for example: This price is for excavation of topsoil paid per square meter (m²) executed. Measurement is made horizontally. Excavation of topsoil is executed within the roadway.</p> <p>The price includes:</p> <ul style="list-style-type: none"> - excavation of topsoil, loading, and transportation (all distance inclusive), unloading and disposal (provisory or definitive) in a place agreed with the engineer; - the cleaning of the existing ditches within the roadway - all other costs related to topsoil excavation. <p>This price is per square meter of surface excavated. Measurement is performed contradictory>.</p>	
<p>PRICE No ... — TITLE:</p> <p><for example: PRICE No 201 — EXCAVATE TOPSOIL WITHIN ROADWAY></p>	
<p>Price in words:</p> <p><for example: per square meter: GNF (Guinean Franc)></p>	<p>Price in numbers:</p> <p><for example: GNF (Guinean Franc)></p>

<p align="center">PRICE No <for example: PRICE No 202></p> <p align="center">Title: ...</p>	
<p>Description of the implementation modalities of the works comprised within this price, as well as the measurement modalities of the quantities executed and to be paid by this price.</p>	
<p>PRICE No ... — TITLE:</p>	
<p>Price in words:</p>	<p>Price in numbers:</p>

Etc.

VOLUME 4.3.4 – DAYWORKS SCHEDULE

Item	Description	Unit	Unit price	Estimated quantities	Provisional sums [EUR] [local currency]
	<for example: - Labourer - Mason - Driver - ... - Bull Dozer - Water Tank - ...>				
Total Dayworks					

VOLUME 4.3.5 — DETAILED BREAKDOWN OF PRICES

A) Breakdown of the basic prices for labour (converted into local currency or €/hour)

NO	Qualification	Monthly pay (1)	Hourly pay (2)	Overtime (3)	Soc. security contributions (4)	Travel time (5)	Hourly total (6)
A1	Labourer, Cat 1						
A2	Skilled worker, Cat. 3						
A3	Skilled worker, Cat. 5						
A4	Foreman, Cat. 7						
A5	Site manager						
A6	HGV driver						
A7	Heavy plant driver						
A8	Clerk of works						
A9	Mechanic, Cat. 7						
A9	Land surveyor						
A1 0	Planning draughtsman						
A1 1	...						

The above list is given by way of example and is not exhaustive.

- (1) Salary if the employee is paid monthly.
- (2) Hourly pay if the employee is paid hourly, otherwise monthly salary divided by the legal working hours (... hours/month).
- (3) Average cost of overtime, i.e. hourly pay times the overtime coefficient.
Average coefficient to be applied to the salary to take account of overtime..... (= total gross salary/gross salary without overtime).
- (4) Percentage of the social security contributions (including social welfare, leave, etc.) times the gross salary (this percentage may vary according to the category of employee).
- (5) Average monthly or daily travel time divided by the number of daily or monthly legal working hours.
- (6) = (2) + (3) + (4) + (5).

Done at

The tenderer (signature)

B) Breakdown of basic supply prices for materials and consumables
(in local currency or €/unit)

NO	Description		Origin (1)	Unit price origin (2)	Transport to site (3)	Tax, duties and other charges (4)	Losses		Total (6)
							%	Value (5)	
C1	Gasoil								
C2	Aggregates for concrete								
C3	Sand for concrete 2/4								
C4	Cement								
C5	Steel for reinforced concrete								

C6	Annealed wire								
C7	Timber formwork								
C8	Plywood								
C9	Plasticisers								
C10	Concrete coating								
C11	Asphalt concrete								
C13	Inspection ladders								
C14	Fencing								
C15	Traffic signs								
C16	...								

This list is not exhaustive.

- (1) Geographical location of the supplier or quarry.
- (2) Supply or cost price at the quarry or on delivery in the country.
- (3) Cost price of transport from the quarry or delivery in the country to the site.
- (4) To be borne by the firm.
- (5) Any losses or breakages to be determined by the tenderer.
- (6) Basic prices for supply of materials: $(6) = (2) + (3) + (4) + (5)$.

Done at

The tenderer (signature)

C) Breakdown of basic hourly prices for equipment
(in local currency or €/hour)

	Description	Purchase date of equipment	Replacement value (RV) (1)	Duties Taxes (2)	Number of days useful life (4)	Depreciation /day (5)		Lubricant cost/day (7)	Spare parts (SP) cost /day (8)	Lubricant & SP taxes/day (9)	Labour cost/day (10)	Total /day (11)	Average daily working time (12)	Total /hour (13)
	D8N bulldozer													
	14G grader													
	CAT-type crawler excavator													
	CAT wheeled excavator													

Trencher type ...															
Pump															
Concrete vibrating poker															
...															

- (1) Estimated purchase price (excl. tax) of a piece of equipment of same kind, but new, purchased in the country's capital at the end of machine life span.
- (2) Duties and taxes charged to the contractor at the purchase date.
- (3) = (1)+(2)
- (4) Number of depreciation years by number of days worked per year.
- (5) Daily depreciation = (3)/(4).
- (6) Average daily fuel consumption; the cost of the fuel is given with tax.
- (7) Daily cost of lubricants (excl. tax).
- (8) Daily cost of spare parts (excl. tax).
- (9) Duties and taxes charged to the contractor on lubricants and spare parts.
- (10) Manpower price (man/day).
- (11) Daily basic prices of piece of equipment = (5)+(6)+(7)+(8)+(9)+(10)..
- (12) Hours of operations (average).
- (13) Hourly operational price of piece of equipment = (11)/(12)

Done at

The tenderer (signature)

D) Breakdown of unit prices in the price schedule
(in local currency or €)

No of the unit price:

Output per day: m³/day

Designation of the unit price:

Estimated quantities:

COMPONENTS OF THE PRICE EQUIPMENT, SUPPLIES AND SUBCONTRACTED WORKS DESIGNATION	Quantity or time using h/day (Q)	U	EQUIPMENT				LABOUR		TOTALS €/day
			DEPRECIATION €/h (1)	MAINTENANCE €/h (2)	FUEL- LUBRICANTS €/h (3)	TOTAL €/day Qx(1+2+3)	Unit price	TOTAL €/day	
EQUIPMENT		h							
		h							
MATERIALS									

		h							
LABOUR		h							
		h							
				TOTAL €/day					
				Net cost €/m ³					

E) Detailed breakdown of site costs (Fc)
(in local currency or €)

Means deployed	Number (1)	Basic price (2)	Total net cost (3)=(1)+(2)
Labour			
A1 Site supervisor A2 Engineer A3 Clerk of works A4 Secretary A5 Drivers A6 Orderlies A7			
Subtotal labour			
Equipment			
B1 4x4 vehicle B2 Saloon car B3 Van-type people carrier B4...			
Subtotal equipment			
Materials			
C1 Gasoil C2...			
Subtotal materials			
Other			
D1 Rentals D2 Telephone D3...			
Subtotal other			
GENERAL TOTAL			

F) Detailed breakdown of the general costs (Fg)
(general overheads and profits)

N o		% of the bid
1	Financial charges	
2	Insurance premiums	
3	Guarantee costs	
4	Price revision	
5	Direct taxes	
6	Other expenses	
7	Penalties	
8	Contingencies	
9	Office and agency expenses	
10	Net profits	
11	Corporation taxes	
GENERAL TOTAL		

1. Financial charges are expenses incurred outside the production process (project start-up, overdrafts, etc.).
2. Insurance is the insurance described in Article 16 of the general conditions for works contracts.
3. Guarantee costs are the bank charges for issuing the guarantee (advance, performance, retention guarantee, etc.).
4. Firms may or may not make provision under this heading, depending on their judgment concerning the quality of the price revision formula.
5. This involves VAT in the country of works, customs duties on the imported materials, etc.
7. If firms think there may be a delay in the works, they can take out cover against it.
8. Contingencies here are related to uncertainties concerning tender documents, lack of knowledge of the country, etc.

9. General and administrative expenses are made up of firms' fixed overheads such as accounts and quality control, management, various departments and office buildings and are common to all the firm's works contracts. Agency expenses are expenses common to all the works in the agency's area of responsibility.
11. These are taxes paid in the country of the works or in the country where the firm has its place of business (for international companies).

VOLUME 4 of 6:

VOLUME 2

SECTION 2

GENERAL CONDITIONS FOR WORKS CONTRACTS FINANCED BY THE EUROPEAN UNION BUDGET OR THE EUROPEAN DEVELOPMENT FUND (EDF)

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PRELIMINARY PROVISIONS

Article 1 - Definitions

- 1.1. The definitions of the terms used throughout this general conditions are laid down in the 'Glossary of terms', annex A1a to the practical guide, which forms an integral part of this contract.
- 1.2. The headings and titles in these general conditions shall not be taken as part thereof or be taken into consideration in the interpretation of the contract.
- 1.3. Where the context so permits, words in the singular shall be deemed to include the plural and vice versa, and words in the masculine shall be deemed to include the feminine and vice versa.
- 1.4. Words designating persons or parties shall include firms and companies and any organisation having legal capacity.

Article 2 - Language of the contract

- 2.1. The language of the contract and of all communications between the contractor, contracting authority and supervisor or their representatives shall be as stated in the special conditions.

Article 3 - Order of precedence of contract documents

- 3.1. The order of precedence of the contract documents shall be as stated in the contract.

Article 4 - Communications

- 4.1. Any written communications between the contracting authority and/or the supervisor on the one hand, and the contractor on the other hand, shall state the contract title and identification number and shall be sent by post, cable, telex, facsimile transmission, e- mail or personal delivery, to the appropriate addresses designated by those parties for that purpose in the special conditions.
- 4.2. If the sender requires evidence of receipt, it shall state such requirement in its communication and shall demand such evidence of receipt whenever there is a deadline for the receipt of the communication. In any event, the sender shall take all the necessary measures to ensure timely receipt of its communication.
- 4.3. Wherever the contract provides for the giving or issue of any notice, consent, approval, certificate or decision, unless otherwise specified such notice, consent, approval, certificate or decision shall be in writing and the words 'notify', 'consent', 'certify'

‘approve’ or ‘decide’ shall be construed accordingly. Any such consent, approval, certificate or decision shall not unreasonably be withheld or delayed.

Article 5 - Supervisor and supervisor's representative

- 5.1. The supervisor shall carry out the duties specified in the contract. Except as expressly stated in the contract, the supervisor shall not have authority to relieve the contractor of any of its obligations under the contract.
- 5.2. The supervisor may, from time to time, while retaining ultimate responsibility, delegate to the supervisor's representative any of the duties and authority vested in the supervisor and he may at any time revoke such delegation or replace the representative. Any such delegation, revocation or replacement shall be in writing and shall not take effect until a copy thereof has been delivered to the contractor. The administrative order which determines the duties, authority and identity of the supervisor's representative shall be issued by the supervisor at the moment of the commencement order. The role of the supervisor's representative shall be to supervise and inspect works and to test and examine the materials employed and the quality of workmanship. Under no circumstances will the supervisor's representative be empowered to relieve the contractor of its obligations under the contract or – save where express instructions to that effect are given below or in the contract – order works resulting in an extension of the period of implementation of tasks or additional costs to be paid by the contracting authority or introduce variants in the nature or scale of the works.
- 5.3. Any communication given by the supervisor's representative to the contractor in accordance with the terms of such delegation shall have the same effect as though it had been given by the supervisor, provided that:
 - a) any failure on the part of the supervisor's representative to disapprove any work, materials or plant shall not prejudice the authority of the supervisor to disapprove such work, materials or plant and to give the instructions necessary for the rectification thereof;
 - b) the supervisor shall be at liberty to reverse or vary the contents of such communication.
- 5.4. Instructions and/or orders issued in writing by the supervisor shall be considered an administrative order. Such orders shall be dated, numbered and entered by the supervisor in a register, and copies thereof delivered by hand, where appropriate, to the contractor's representative.

Article 6 - Assignment

- 6.1. An assignment shall be valid only if it is a written agreement by which the contractor transfers its contract or part thereof to a third party.
- 6.2. The contractor shall not, without the prior consent of the contracting authority, assign the contract or any part thereof, or any benefit or interest thereunder, except in the following cases:

- a) a charge, in favour of the contractor's bankers, of any monies due or to become due under the contract; or
 - b) the assignment to the contractor's insurers of the contractor's right to obtain relief against any other person liable in cases where the insurers have discharged the contractor's loss or liability.
- 6.3. For the purpose of Article 6.2 the approval of an assignment by the contracting authority shall not relieve the contractor of its obligations for the part of the contract already performed or the part not assigned for which the contractor's performance guarantee may be kept.
- 6.4. If the contractor has assigned its contract without authorization, the contracting authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Article 63 and 64.
- 6.5. Assignees must satisfy the eligibility criteria applicable for the award of the contract and they cannot fall under the exclusion criteria described in the tender dossier.
- 6.6. Before giving its approval the contracting authority should receive as needed a performance guarantee which may be requested for the full contract, a pre-financing guarantee and retention guarantee, from the assignees.

Article 7 - Subcontracting

- 7.1. A subcontract shall be valid only if it is a written agreement by which the contractor entrusts performance of a part of the contract to a third party. Simple plant hire, labour only and supply contracts are not considered or construed 'subcontracts' for the purpose of this article.
- 7.2. The contractor shall request to the contracting authority the authorisation to subcontract. The request must indicate the elements of the contract to be subcontracted and the identity of the subcontractors.

Within 30 days of receipt of this request, the contracting authority must either extend the delay for a maximum of 15 days or notify the contractor of its decision, stating reasons should he withhold such authorization. If the contracting authority fails to notify its decision within the time limit referred to above, the request is deemed to be approved at the end of the time limit.

- 7.3. Subcontractors must satisfy the eligibility criteria applicable for the award of the contract. They cannot fall under the exclusion criteria described in the tender dossier and the contractor shall ensure that subcontractors are not subject to EU restrictive measures.
- 7.4. Subject to Articles 7.6 and 52, no subcontract creates contractual relations between any subcontractor and the contracting authority.
- 7.5. The contractor shall be responsible for the acts, defaults and negligence of its subcontractors and their agents or employees, as if they were the acts, defaults or negligence of the contractor, its agents or employees. The approval by the contracting authority of

the sub-contracting of any part of the contract or of the subcontractor to perform any part of the works shall not relieve the contractor of any of its obligations under the contract.

- 7.6. If a subcontractor has undertaken any continuing obligation for a period exceeding that of the defects liability period under the contract towards the contractor in respect of the work executed or the goods, materials, plant or services supplied by the subcontractor, the contractor shall, at any time after the expiration of the defects liability period, transfer immediately to the contracting authority, at the contracting authority's request and cost, the benefit of such obligation for the unexpired duration thereof. If the contractor fails to effect such a transfer, the said continuing obligation(s) shall be transferred automatically.
- 7.7. If the contractor enters into a subcontract without approval, the contracting authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Article 63 and 64.
- 7.8. If a subcontractor is found by the contracting authority or the supervisor to be incompetent in discharging its duties, the contracting authority or the supervisor may request the contractor to forthwith remove the subcontractor from the site and either to provide a subcontractor with qualifications and experience acceptable to the contracting authority as a replacement, or to resume the implementation of the tasks itself.

OBLIGATIONS OF THE CONTRACTING AUTHORITY

Article 8 - Supply of documents

- 8.1. Save where otherwise provided in the special conditions, within 30 days of the signing of the contract, the supervisor shall provide to the contractor, free of charge, a copy of the drawings prepared for the implementation of tasks as well as two copies of the specifications and other contract documents. The contractor may purchase additional copies of these drawings, specifications and other documents, insofar as they are available. Upon the final acceptance, the contractor shall return to the supervisor all drawings, specifications and other contract documents.
- 8.2. The contracting authority co-operates with the contractor to provide information that the latter may reasonably request in order to perform the contract.
- 8.3. Unless it is necessary for the purposes of the contract, the drawings, specifications and other documents provided by the contracting authority shall not be used or communicated to a third party by the contractor without the prior consent of the supervisor.
- 8.4. The supervisor shall have authority to issue to the contractor administrative orders incorporating such supplementary documents and instructions as shall be necessary for the proper and adequate execution of the works and the remedying of any defects therein.

Article 9 - Access to site

- 9.1. The contracting authority shall, in due time and in conformity with the progress of the works, place the site and access thereto at the disposal of the contractor in accordance

with the approved programme of implementation of tasks referred to in Article 17. The contractor grants appropriate access to other persons as set out in the special conditions or as instructed.

- 9.2. Any land procured for the contractor by the contracting authority shall not be used by the contractor for purposes other than the implementation of tasks.
- 9.3. The contractor shall preserve any facilities placed at its disposal in a good state while it is in occupation and shall, if so required by the contracting authority or the supervisor, restore them to their original state on completion of the contract, taking into account normal wear and tear.
- 9.4. The contractor shall not be entitled to any payment for improvements resulting from work carried out on its own initiative.

Article 10 - Assistance with local regulations

- 10.1. The contractor may request the assistance of the contracting authority in obtaining copies of laws, regulations and information on local customs, orders or by-laws of the country in which the works are executed, which may affect the contractor in the performance of its obligations under the contract. The contracting authority may provide the assistance requested to the contractor at the contractor's cost.
- 10.2. Subject to the provisions of the laws and regulations on foreign labour of the country in which the works are to be executed, the contracting authority provides reasonable assistance to the contractor, at its request, for its application for any visas and permits required by the law of the country in which the works are executed, including work and residence permits, for the personnel whose services the contractor and the contracting Authority consider necessary, as well as residence permits for their families.

Article 11 - Delayed payments to the contractor's staff

11.1. Where there is a delay in the payment to the contractor's employees of wages and salaries owing and of the allowances and contributions laid down by the law of the country in which the works are executed, the contracting authority may give notice to the contractor that within 15 days of the notice the contracting authority intends to pay such wages, salaries, allowances and contributions direct. Should the contractor contest that such payments are due, it shall make representations to the contracting authority with reasons, within the 15 day period. If the contracting authority, having considered such representations, is of the opinion that payment of the wages and salaries should be made, it may pay such wages, salaries, allowances and contributions out of amounts due to the contractor. Failing this, the contracting authority may obtain a contribution under any of the guarantees provided for in these general conditions. Any action taken by the contracting authority under this Article shall not relieve the contractor of its obligations to its employees, except to the extent that any obligation may be satisfied by this action. The contracting authority shall not assume any responsibility towards the contractor's employees by this action.

OBLIGATIONS OF THE CONTRACTOR

Article 12 - General obligations

- 12.1. The contractor shall, with due care and diligence, design the works to the extent stated in the contract, execute and complete the works in accordance with the contract and with the supervisor instructions, and shall remedy any defects in the works.
- 12.2. The contractor shall provide all superintendence, personnel, materials, plant, equipment and all other items, of a temporary or permanent nature required in and for such design, execution, completion and remedying of any defects, insofar as specified in, or may be reasonably inferred from the contract.
- 12.3. The contractor shall take full responsibility for the adequacy, stability and safety of all operations and methods of construction under the contract.
- 12.4. The contractor shall comply with any administrative orders given to him. Where the contractor considers that the requirements of an administrative order go beyond the authority of the supervisor or of the scope of the contract, the contractor shall give notice, with reasons, to the supervisor. If the contractor fails to notify within the 30 day period after receipt thereof, he shall be barred from so doing. Execution of the administrative order shall not be suspended because of this notice.
- 12.5. The contractor shall supply, without delay, any information and documents to the contracting authority or the European Commission upon request, regarding the conditions in which the contract is being executed.
- 12.6. The contractor shall respect and abide by all laws and regulations in force in the country in which the works are executed and shall ensure that its personnel, their dependants, and its local employees also respect and abide by all such laws and regulations. The contractor shall indemnify the contracting authority against any claims and proceedings arising from any infringement by the contractor, its employees and their dependants of such laws and regulations.
- 12.7. Subject to Article 12.9, the contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to the performance of the contract without the prior consent of the contracting authority. The contractor shall continue to be bound by this undertaking after completion of the tasks and shall obtain from each member of its staff the same undertaking. However, use of the contract's reference for marketing or tendering purposes does not require prior approval of the contracting authority, except where the contracting authority declares the contract to be confidential.
- 12.8. If the contractor acts on behalf of or is a joint venture or consortium of two or more persons, all such persons shall be jointly and severally bound in respect of the obligations under the contract, including any recoverable amount. The person designated by the consortium to act on its behalf for the purposes of this contract shall have the authority to bind the consortium. The composition or the constitution of the joint venture or consortium, including the share distribution between its members, shall not be altered

without the prior consent of the contracting authority. Any alteration of the composition or the constitution of the joint venture or consortium without the prior consent of the contracting authority may result in the termination of the contract.

12.9. Save where the European Commission requests or agrees otherwise, the contractor shall ensure the highest visibility to the financial contribution of the European Union. To ensure such publicity the contractor shall implement among other actions the specific activities described in the special conditions. All measures must comply with the rules in the Communication and Visibility Manual for EU External Actions published by the European Commission.

12.10. Any records must be kept for a 7-year period after the final payment is made under the contract. In case of failure to maintain such the contracting authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Article 63 and 64.

58 Article 12a - Code of conduct

12a.1 The contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of its profession. It shall refrain from making public statements about the project or services without the contracting authority's prior approval. It shall not commit the contracting authority in any way whatsoever without its prior consent and shall make this obligation clear to third parties.

Physical abuse or punishment, or threats of physical abuse, sexual abuse or exploitation, harassment and verbal abuse, as well as other forms of intimidation shall be prohibited. The contractor shall also provide to inform the contracting authority of any breach of ethical standards or code of conduct as set in the present Article. In case the contractor is aware of any violations of the abovementioned standards he shall report in writing within 30 days to the contracting authority.

12a.2 The contractor and its staff shall respect human rights and applicable data protection rules.

12a.3 The contractor shall respect environmental legislation applicable in the country in which the works are executed and internationally agreed core labour standards, i.e. the ILO core labour standards, conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation, and the abolition of child labour, as well as applicable obligations established by these Conventions:

- Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);
- Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention);

- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10 September 1998, and its 3 regional Protocols.

12a.4 The contractor or any of its sub-contractors, agents or personnel shall not abuse of its entrusted power for private gain. The contractor or any of its sub-contractors, agents or personnel shall not receive or agree to receive from any person or offer or agree to give to any person or procure for any person, gift, gratuity, commission or consideration of any kind as an inducement or reward for performing or refraining from any act relating to the performance of the contract or for showing favour or disfavour to any person in relation to the contract. The contractor shall comply with all applicable laws and regulations and codes relating to anti-bribery and anti-corruption.

12a.5 The payments to the contractor under the contract shall constitute the only income or benefit it may derive in connection with the contract. The contractor and its staff must not exercise any activity or receive any advantage inconsistent with their obligations under the contract.

12a.6 The execution of the contract shall not give rise to unusual commercial expenses. Unusual commercial expenses are commissions not mentioned in the contract or not stemming from a properly concluded contract referring to the contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commission paid to a company which has every appearance of being a front company. The European Commission may carry out documentary or on-the-spot checks it deems necessary to find evidence in case of suspected unusual commercial expenses.

The respect of the code of conduct set out in the present Article constitutes a contractual obligation. Failure to comply with the code of conduct is always deemed to be a breach of the contract under Article 63 of the General Conditions. In addition, failure to comply with the provision set out in the present Article can be qualified as grave professional misconduct that may lead either to suspension or termination of the contract, without prejudice to the application of administrative sanctions including exclusion from participation in future contract award procedures.

59 *Article 12b - Conflict of Interest*

12b.1 The contractor shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of the contract. Such conflict of interests may arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which may arise during performance of the contract must be notified to the contracting authority without delay. In the event of such conflict, the contractor shall immediately take all necessary steps to resolve it.

12b.2 The contracting authority reserves the right to verify that such measures are adequate and may require additional measures to be taken if necessary. The contractor shall ensure that its staff, including its management, is not placed in a situation which could give rise to conflict of interests. Without prejudice to its obligation under the contract the contractor shall replace, immediately and without compensation from the contracting authority, any member of its staff exposed to such a situation.

12b.3 The contractor shall refrain from any contact which would compromise its independence or that of its personnel.

12b.4 The contractor shall limit its role in connection with the project to the provision of the works described in the contract.

12b.5 The contractor and anyone working under its authority or control in the performance of the contract or on any other activity shall be excluded from access to other EU budget/EDF funds available under the same project. However, if the contractor is able to prove that his involvement in a previous stages of the project does not constitute unfair competition, he may participate, subject to the prior approval of the contracting authority.

Article 13 - Superintendence of the works

- 13.1. The contractor shall itself superintend the works or shall appoint a representative to do so. Such appointment shall be submitted to the supervisor for approval within 30 days of the signature of the contract. The supervisor shall approve or refuse the appointment within 10 days. The approval may at any time be withdrawn. Should the supervisor refuse the representative appointed within the deadline, or withdraw approval of the appointment, it shall set out the grounds on which its decision is based, and the contractor shall submit an alternative appointment without delay. The address of the contractor's representative shall be deemed to be the address for service given by the contractor.
- 13.2. If the supervisor withdraws its approval of the contractor's representative, the contractor shall, as soon as is practicable, after receiving notice of such withdrawal, remove the representative from the works and replace it with another representative approved by the supervisor.
- 13.3. The contractor's representative shall have full authority to make any decision necessary for the execution of the works, to receive and carry out administrative orders and to countersign the work register referred to in Article 39 or attachment, where appropriate. In any event, the contractor shall be responsible for ensuring that the works are carried out satisfactorily including ensuring that the specifications and administrative orders are adhered to by its own employees and by its sub-contractors and their employees.

Article 14 - Staff

- 14.1. The persons employed by the contractor must be sufficient in number, and permit the optimum use of the human resources of the country in which the works are executed. Such employees must have the skills and experience necessary to ensure due progress and satisfactory execution of the works. The contractor shall immediately replace all employees indicated by the supervisor, in a letter stating reasons, as likely to jeopardize the satisfactory execution of the works.
- 14.2. The contractor shall make its own arrangements for the engagement of all staff and labour. The rates of remuneration and the general working conditions, as laid down by the law of the country in which the works are executed, shall apply as a minimum to employees on the site.

Article 15 - Performance guarantee

- 15.1. The contractor shall, together with the return of the countersigned contract, furnish to the contracting authority a guarantee for the full and proper performance of the contract. The amount of the guarantee shall be as specified in the special conditions and shall be in the range of 5 and 10% of the amount of the contract price including any amounts stipulated in addenda to the contract.
- 15.2. The performance guarantee shall be held against payment to the contracting authority for any loss resulting from the contractor's failure to perform its obligations under the contract.
- 15.3. The performance guarantee shall be in the format provided for in the contract and may be provided in the form of a bank guarantee, a banker's draft, a certified cheque, a bond provided by an insurance and/or bonding company, an irrevocable letter of credit or a cash deposit made with the contracting authority. If the performance guarantee is to be provided in the form of a bank guarantee, a banker's draft, a certified cheque or a bond, it shall be issued by a bank or bonding and/or insurance company approved by the contracting authority.
- 15.4. Unless stated otherwise in the special conditions, the performance guarantee shall be denominated in the types and proportions of currencies in which the original contract is payable.
- 15.5. No payments shall be made in favour of the contractor prior to the provision of the guarantee. The guarantee shall continue to remain valid until the date of the issuing of the signed final statement of account referred to in Article 51.
- 15.6. During the performance of the contract, if the natural or legal person providing the guarantee (i) is not able or willing to abide by its commitments, (ii) is not authorised to issue guarantees to contracting authorities, or (iii) appears not to be financially reliable, the guarantee shall be replaced. The contracting authority shall give formal notice to the contractor to provide a new guarantee on the same terms as the previous one. Should the contractor fail to provide a new guarantee, the contracting authority may terminate the contract.
- 15.7. The contracting authority shall demand payment from the guarantee of all sums for which the guarantor is liable under the guarantee due to the contractor's default under the contract, in accordance with the terms of the guarantee and up to the value thereof. The guarantor shall, without delay, pay those sums upon first demand by the contracting authority and the guarantor may not raise any objection for any reason whatsoever. Prior to making any claim under the performance guarantee, the contracting authority shall notify the contractor stating the nature of the default in respect of which the claim is to be made.
- 15.8. Unless the special conditions provide otherwise, the performance guarantee shall be released within 60 days of the issuing of the signed final statement of account referred to in Article 51, for its total amount except for amounts which are the subject of amicable settlement, conciliation, arbitration or litigation.

Article 16 - Liabilities, insurance and security arrangements

16.1. Liabilities

a) Liability for damage to works

Without prejudice to Article 61 (defects liability) and Article 66 (force majeure), the contractor shall assume (i) full responsibility for maintaining the integrity of the works and (ii) the risk of loss and damage, whatever their cause, until the final acceptance as foreseen in Article 62.

Compensation for damage to the works resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to one million euros if the contract value is less than or equal to one million euros. If the contract value is greater than one million euros, compensation for damages resulting from the contractor's liability shall be capped to the contract value.

However, compensation for loss or damage resulting from fraud or gross negligence of the contractor, its staff, its subcontractors and any person for which the contractor is answerable, can in no case be capped.

After the final acceptance as foreseen in Article 62, the contractor shall remain responsible for any breach of its obligations under the contract for such period as may be determined by the law governing the contract, or by default for a period of 10 years.

b) Contractor's liability in respect of the contracting authority

At any time, the contractor shall be responsible for and shall indemnify the contracting authority for any damage caused, during the performance of the works, to the contracting authority by the contractor, its staff, its subcontractors and any person for which the contractor is answerable.

Compensation for damage resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to one million euros if the contract value is less than or equal to one million euros. If the contract value is greater than one million euros, compensation for damages resulting from the contractor's liability shall be capped to the contract value.

However, compensation for loss or damage resulting from the contractor's liability in case of bodily injury, including death, can in no case be capped. The same applies to compensation for any damages of any kind resulting from fraud or gross negligence of the contractor, its staff, its subcontractors and any person for which the contractor is answerable.

c) Contractor's liability in respect of third parties

The contractor shall, at its own expense, indemnify, protect and defend, the contracting authority, its agents and employees, from and against all actions, claims, losses or damage, direct or indirect, of whatever nature (hereinafter 'claim(s)') arising

from any act or omission by the contractor, its staff, its subcontractors and/or any person for which the contractor is answerable, in the performance of the duties.

The contracting authority must notify any third party claim to the contractor as soon as possible after the contracting authority becomes aware of them.

If the contracting authority chooses to challenge and defend itself against the claim(s), the contractor shall bear the reasonable costs of defence incurred by the contracting authority, its agents and employees.

Under these general conditions, the agents and employees of the contracting authority, as well as the contractor's staff, its subcontractors and any person for which the contractor is answerable are considered to be third parties.

The contractor shall treat all claims in close consultation with the contracting authority

Any settlement or agreement settling a claim requires the prior express consent of the contracting authority and the contractor.

16.2. Insurance

a) Insurance – general issues

At the latest together with the return of the countersigned contract, and for the period of implementation of tasks, the contractor shall ensure that itself, its staff, its subcontractors and any person for which the contractor is answerable, are adequately insured with insurance companies recognized on the international insurance market, unless the contracting authority has given its express written consent on a specific insurance company.

At the latest together with the return of the countersigned contract, the contractor shall provide the contracting authority and the supervisor with all cover notes and/or certificates of insurance showing that the contractor's obligations relating to insurance are fully respected. The contractor shall submit without delay, whenever the contracting authority or the project manager so requests, an updated version of the cover notes and/or certificates of insurance.

The contractor shall obtain from the insurers that they commit to personally and directly inform the contracting authority and the supervisor of any event likely to reduce, cancel or alter in any manner whatsoever, that coverage. The insurers shall deliver this information as quickly as possible, and in any event at least thirty (30) days before the reduction, cancellation or alteration of the cover is effective. The contracting authority reserves the right to indemnify the insurer in case the contractor fails to pay the premium, without prejudice to the contracting authority's right to recover the amount of the premium it paid, and to subsequently seek compensation for its possible resulting damage.

Whenever possible, the contractor shall ensure that the subscribed insurance contracts contain a waiver of recourse in favour of the contracting authority and the supervisor, their agents and employees.

The purchase of adequate insurances by the contractor shall in no case exempt it from its statutory and/or contractual liabilities. As a minimum, the insurances listed hereafter shall provide cover up to the minimum contractual liabilities laid down in pursuance of Article 16.1 or minimum statutory liabilities laid down in pursuance of the applicable national legislation, whichever is the highest.

The contractor shall fully bear the consequences of a total or partial lack of coverage, and to the full discharge of the contracting authority and the supervisor.

The contractor shall ensure that its staff, its subcontractors and any person for which the contractor is answerable comply with the same insurance requirements imposed to it under this contract. In case of default of insurance or inadequate insurance of its staff, its subcontractors or any person for which the contractor is answerable, the contractor shall indemnify the contracting authority and the supervisor from all consequences resulting therefrom.

Under its own responsibility and without prejudice to the obligation to take out all insurance covering its obligations under this contract, the contractor shall ensure that all compulsory insurances are subscribed in compliance with the laws and regulations in force in the country in which the works are executed. It shall also ensure that all possible statutory obligations applying to the coverage are complied with.

The contracting authority and the supervisor shall not bear any liability for the assessment and adequacy of insurance policies taken out by the contractor with their contractual and/or statutory obligations.

b) Insurance – Specific issues

1. *Insurance for damage to third parties*

The contractor shall take out a civil liability insurance covering bodily injury and property damage that may be caused to third parties by reason of the execution of the works, as well as during the defects liability period. The insurance policy must specify that the contracting authority's and the supervisor's staff, as well as that of other contractors and third parties located on site are considered third parties under this insurance, which shall be unlimited for bodily injury.

2. *Works insurance*

The contractor shall take out a 'Contractor All Risk' insurance to the joint benefit of itself, its subcontractors, the contracting authority and the supervisor.

This insurance shall cover all damage to which the works included in the contract may be subject, including damage due to a defect or a design flaw of the plans, the building materials or the implementation for which the contractor is responsible under the contract and the damages due to natural events. This insurance shall also cover damage to existing goods and properties of the contracting authority and of the supervisor.

This insurance shall also cover the equipment and the temporary works on the site up to their total value of reconstruction/replacement.

3. *Motor insurance*

The contractor shall take out insurance covering all vehicles used by the contractor or its subcontractors (whether they own them or not) in connection with the contract.

4. *Insurance against accidents at work*

The contractor shall take out insurance policies providing coverage of the contractor itself, its staff, its subcontractors and any person for which the contractor is answerable, in case of an accident at work or on the way to work. It shall ensure that its subcontractors do the same. It indemnifies the contracting authority against any claims that its employees or those of its subcontractors could have in this regard. For its permanent expatriate staff, where appropriate, the contractor shall in addition comply with the laws and regulations applicable in the country of origin.

5. *Insurance of liability related to the soundness of the works*

The contractor shall take out insurance covering in full its liability that may be triggered with regard to the soundness of the works even after final acceptance, as foreseen by the law of the country in which the works are executed.

- 16.3. The contractor shall put in place security measures for its staff commensurate with the physical danger possibly facing them in the country in which they work. The contractor shall be responsible for monitoring the level of physical risk to which its staff are exposed and for keeping the contracting authority informed of the situation. If the contracting authority or the contractor becomes aware of an imminent threat to the life or health of any of the contractor's staff, the contractor must take immediate emergency action to remove the individuals concerned to safety. If the contractor takes such action, he must communicate this immediately to the supervisor.

Article 17 - Programme of implementation of tasks

- 17.1. Notwithstanding any work programme submitted as part of its tender, the contractor shall provide the supervisor with a programme of implementation of tasks, broken down by activity and by month within 30 days of the signature of the contract. This programme includes at least the following information:

- a) the order and time limits within which the contractor proposes to carry out the works;
- b) the time limits within which submission and approval of the drawings are required;
- c) an organisation chart containing the names, qualifications and curricula vitae of the staff responsible for the site,
- d) a general description of the method including the sequence, by month and by nature, which the contractor proposes to carry out the works;

- e) a plan for the setting out and organisation of the site, and
 - f) such further details and information as the supervisor may reasonably require.
- 17.2. The supervisor shall return these documents to the contractor with its approval or any relevant remarks within ten days of receipt, save where the supervisor, within those ten days, notifies the contractor of its wish for a meeting in order to discuss the documents submitted.
- 17.3. If the supervisor fails to notify its decision or remarks or wish for a meeting within these 10 days, the programme submitted is deemed approved.
- 17.4. The approval of the programme by the supervisor shall not relieve the contractor from any of its obligations under the contract.
- 17.5. No material alteration to the programme shall be made without the approval of the supervisor. If, however, the progress of the works does not conform to the programme, the supervisor may instruct the contractor to submit a revised programme in accordance with the procedure laid down in Article 17.

Article 18 - Detailed breakdown of prices

- 18.1. If not provided in its tender and where necessary for the purposes of the contract, the contractor shall provide a detailed breakdown of its rates and prices within no more than 20 days following the supervisor's reasoned request.
- 18.2. Within 30 days of notification of the award of contract, the contractor shall provide to the supervisor for its information only, a detailed cash flow estimate, in quarterly periods, of all payments which may be due to the contractor under the contract. The contractor shall subsequently supply revised cash flow estimates at quarterly intervals, if so required by the supervisor. The communication shall not impose any liability whatsoever on the contracting authority or the supervisor.

Article 19 - Contractor's drawings and execution studies

- 19.1. The contractor shall submit to the supervisor for approval at its own expense, all design and construction drawings and other documents and objects necessary for the proper execution of the contract, and in particular:
- a) drawings, documents, samples and/or models as may be specified in the contract within the time limits and procedures laid down therein or in the programme of implementation of tasks;
 - b) drawings as the supervisor may reasonably require for the implementation of tasks.
 - c) plans, drawings and calculations needed to provide evidence of the stability and resistance of the structures, including foundation design and detailed reinforcement plan. These calculations and surveys should be sustained by sufficient site investigations and should be submitted in triplicate to the

supervisor for approval at least 30 days before commencing construction of the works in question.

- 19.2. The supervisor shall return to the contractor the drawings, documents, samples, models, design calculations, objects and other documents required under Article 19.1 with either its endorsement or its remarks within the time limits referred to in the contract or the approved programme of implementation of tasks or, if no time limit is specified, within 15 days of receipt. In the light of the complexity or the number of documents submitted for approval, if the supervisor cannot send its endorsement or its remarks within the time limit mentioned above, the supervisor shall send within 15 days of receipt a holding reply, indicating another time limit by which it will send its endorsement or its remarks, taking into account the relative urgency and complexity of the matter.

If the supervisor fails to notify its endorsement, remarks or holding reply within the time limits referred above, the drawings, documents, samples, models, design calculations, objects and other documents submitted to the supervisor according to Article 19.1 shall be deemed to be approved at the end of the time limits specified above.

- 19.3. Approved drawings, documents, samples and models shall be signed or otherwise identified by the supervisor and shall not be departed from except as otherwise instructed by the supervisor. Any contractor's drawings, documents, samples or models which the supervisor refuses to approve, shall be modified to meet the requirements of the supervisor and resubmitted by the contractor for approval. Within 15 days of being notified of the supervisor's remarks, the contractor shall make the requisite corrections, adjustments etc. to the documents, drawings, design calculations etc. The corrected or adjusted documents, drawings, design calculations etc. shall be resubmitted for the supervisor's approval under the same procedure.
- 19.4. The contractor shall supply additional copies of approved drawings in the form and number stated in the contract or in subsequent administrative orders.
- 19.5. The approval of any drawings, documents, samples or models by the supervisor shall not relieve the contractor from any of its obligations under the contract.
- 19.6. The supervisor shall have the right at all reasonable times to inspect all drawings, documents, samples or models relating to the contract at the contractor's premises.
- 19.7. Before provisional acceptance of the works, the contractor shall supply operation and maintenance manuals together with drawings to the contracting authority, which shall be in such detail as will enable the contracting authority to operate, maintain, adjust and repair all parts of the works. Unless otherwise stated in the special conditions, the manuals and drawings shall be in the language of the contract. The works shall not be considered to be completed for the purpose of provisional acceptance until such manuals and drawings have been supplied to the contracting authority.

Article 20 - Sufficiency of tender prices

- 20.1. Subject to any additional provisions which may be laid down in the special conditions, the contractor shall be deemed to have inspected and examined the site and its surroundings and to have satisfied itself before submitting its tender, as to the nature of

the ground and sub-soil, and to have taken into account the form and nature of the site, the extent and nature of the work and materials necessary for the completion of the works, the means of communication with and access to the site, the accommodation it may require and in general to have obtained for itself all necessary information as to risks, contingencies and all other circumstances influencing or affecting its tender.

- 20.2. The contractor shall be deemed to have satisfied itself before submitting its tender as to the correctness and sufficiency of the tender and of the rates and prices stated in the bill of quantities or price schedule which shall, except in so far as it is otherwise provided in the contract, cover all its obligations under the contract.
- 20.3. Since the contractor is deemed to have determined its prices on the basis of its own calculations, operations and estimates, it shall carry out without additional charge any work which is the subject of any item whatsoever in its tender for which it neither indicates a unit price nor a lump sum.

Article 21 - Exceptional risks

- 21.1. If during the execution of the works the contractor encounters artificial obstructions or physical conditions which could not reasonably have been foreseen by an experienced contractor, and if the contractor is of the opinion that additional costs will be incurred and/or an extension of the period of implementation of tasks will be necessary as a result of this, it shall give notice to the supervisor in accordance with Articles 35 and/or 55. The contractor shall specify in such notice the artificial obstructions and/or physical conditions, giving details of the anticipated effects thereof, the measures it is taking or intends to take and the extent of the anticipated delay in or interference with the execution of the works.
- 21.2. Following receipt of the notice, the supervisor may inter alia:
- a) require the contractor to provide an estimate of the cost of the measures it is taking or intends to take;
 - b) approve measures referred to in Article 21.2 (a) with or without modification;
 - c) give written instructions as to how the artificial obstructions or physical conditions are to be dealt with;
 - d) order an amendment to, a suspension, or termination of the contract.
- 21.3. To the extent that the supervisor decides that the whole or part of the said artificial obstructions or physical conditions could not reasonably have been foreseen by an experienced contractor, the supervisor shall:
- a) take into account any delay suffered by the contractor as a result of such obstructions or conditions in determining any extension of the period of implementation of tasks to which the contractor is entitled under Article 35; and/or

- b) in case of artificial obstructions or physical conditions other than weather conditions, determine additional payments due to the contractor in accordance with Article 55.

21.4. Weather conditions shall not entitle the contractor to claims under Article 55.

21.5. If the supervisor decides that the artificial obstructions or physical conditions could, in whole or in part, have been reasonably foreseen by an experienced contractor, he shall so inform the contractor as soon as practicable.

Article 22 - Safety on sites

22.1. The contractor shall have the right to forbid access to the site to any person not involved in the performance of the contract, with the exception of persons authorised by the supervisor or the contracting authority.

22.2. The contractor shall ensure the safety on sites during the whole period of execution and shall be responsible for taking the necessary steps, in the interests of its employees, agents of the contracting authority and third parties, to prevent any loss or accident which may result from carrying out the works.

22.3. The contractor shall take all essential steps, on its own responsibility and at its expense, to ensure that existing structures and installations are protected, preserved and maintained. It shall be responsible for providing and maintaining at its expense all lighting, protection, fencing and security equipment which proves necessary for the proper implementation of the tasks or which may reasonably be required by the supervisor.

22.4. If, during the implementation of the tasks, urgent measures are necessary to obviate any risk of accident or damage or to ensure security following any accident or damage, the supervisor shall give formal notice to the contractor to do what is necessary. If the contractor is unwilling or unable to undertake the necessary measures, the supervisor may carry out the work at the expense of the contractor to the extent that the contractor is liable.

Article 23 - Safeguarding adjacent properties

23.1. On its own responsibility and at its expense, the contractor shall take all the precautions required by good construction practice and by the prevailing circumstances to safeguard adjacent properties and avoid causing any abnormal disturbance therein.

23.2. The contractor shall indemnify the contracting authority against the financial consequences of all claims by neighbouring landowners or residents to the extent that the contractor is liable and to the extent that the damage to adjacent properties is not the result of a hazard created through the design or method of construction imposed by the contracting authority or the supervisor upon the contractor.

Article 24 - Interference with traffic

- 24.1. The contractor shall ensure that the works and installations do not cause damage to, or obstruct traffic on, communication links such as roads, railways, waterways and airports, save as permitted under the special conditions. It shall, in particular, take account of weight restrictions when selecting routes and vehicles.
- 24.2. Any special measures which the contractor considers necessary or which are specified in the special conditions or which are required by the contracting authority in order to protect or strengthen sections of roads, tracks or bridges, shall be at the expense of the contractor, whether or not they are carried out by the contractor. The contractor shall inform the supervisor of any special measures it intends to take before carrying them out. The repair of any damage caused to roads, tracks or bridges by the transport of materials, plant or equipment shall be at the expense of the contractor.

Article 25 - Cables and conduits

- 25.1. Where, in the course of carrying out the works, the contractor encounters bench-marks indicating the course of underground cables, conduits and installations, it shall keep such bench-marks in position or replace them, should execution of the works have necessitated their temporary removal. Such related operations require the authorisation of the supervisor.
- 25.2. The contractor shall be responsible for the preservation, removal and replacement, as the case may be, of the cables, conduits and installations specified by the contracting authority in the contract and for the cost thereof.
- 25.3. Where the presence of cables, conduits and installations has not been specified in the contract but is revealed by bench-marks and references, the contractor shall be under a general duty of care and similar obligations regarding preservation, removal and replacement to those set out above. In this case, the contracting authority shall compensate it for expenditure, to the extent that such work is necessary for the execution of the contract.
- 25.4. However, the obligations to remove and replace cables, conduits and installations and the expenditure resulting therefrom shall not be the responsibility of the contractor if the contracting authority decides to accept that responsibility. The same shall apply where this obligation and the expenditure resulting therefrom devolve upon another specialist administration or an agent.
- 25.5. When any work on the site is likely to cause disturbances in or damage to a public utility service, the contractor shall immediately inform the supervisor in writing, giving a reasonable period of notice so that suitable measures may be taken in time to allow work to continue normally.

Article 26 - Setting-out

- 26.1. The contractor shall be responsible for:

- a) the accurate setting-out of the works in relation to original marks, lines and levels of reference given by the supervisor;
 - b) the correctness, of the position, levels, dimensions and alignment of all parts of the works; and
 - c) the provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities.
- 26.2. If, at any time during the execution of the works, any error appears in the position, levels, dimensions or alignment of any part of the works, the contractor, shall, if the supervisor so requires, at the contractor's cost, rectify such error to the satisfaction of the supervisor, unless such error is based on incorrect data supplied by the supervisor which an experienced contractor exercising due care would not have discovered, in which case the contracting authority shall be responsible for the cost of rectification.
- 26.3. The checking of any setting-out or of any line or level by the supervisor shall not in any way relieve the contractor of its responsibility for the accuracy thereof and the contractor shall carefully protect and preserve all bench-marks, sight-rails, pegs and other items used in setting-out the works.

Article 27 - Demolished materials

- 27.1. Where the contract includes demolition work, materials and articles obtained therefrom shall, unless the special conditions and /or the law of the country in which the works are executed otherwise provide and subject to the provisions of Article 28, become the property of the contractor.
- 27.2. Should the special conditions reserve to the contracting authority the right of ownership of materials or all or part of the articles obtained from the demolition work, the contractor shall take all the necessary precautions to ensure that these are preserved. It shall be liable for any destruction of, or damage to, such materials or articles caused by it or its agents.
- 27.3. Irrespective of the use to which the contracting authority intends to put the materials or articles, in respect of which it reserves the right of ownership, all costs incurred in transporting and storing them and all warehouse charges at the place indicated by the supervisor shall be borne by the contractor for any carriage not exceeding 1000 meters.
- 27.4. Save where the special conditions provide otherwise, the contractor shall, at its expense, progressively remove rubble and other demolition materials, rubbish and debris from the site.

Article 28 - Discoveries

- 28.1. Discoveries of any interest whatsoever made during excavation or demolition work shall be brought immediately to the attention of the supervisor. The supervisor shall decide how such discoveries are to be dealt with, taking due account of the law of the country in which the works are executed.

- 28.2. The contracting authority reserves the right of ownership of materials found during the excavation and demolition work carried out on land belonging to it, subject to compensating the contractor for any special efforts.
- 28.3. Artefacts, antiquities and natural, numismatic, or other objects which are of scientific interest, and also rare objects or objects made of precious metals found during excavation or demolition work shall be the property of the contracting authority.
- 28.4. In the event of disagreements, the contracting authority shall have sole authority to decide as to the qualifications set out in Articles 28.1 and 28.3.

Article 29 - Temporary works

- 29.1. The contractor shall carry out at its expense all the temporary works to enable the works to be carried out. The contractor shall submit to the supervisor the drawings for temporary works which the contractor intends to use, such as cofferdams, scaffolding, trusses and shuttering. The contractor shall take into account any observations made by the supervisor while assuming responsibility for these drawings.
- 29.2. Where the design of particular temporary works is specified in the special conditions to be the responsibility of the contracting authority, the supervisor shall provide the contractor with all drawings necessary in reasonable time to enable the contractor to undertake the temporary works in accordance with its programme. In such cases, the contracting authority shall be solely responsible for the safety and adequacy of the design. However, the contractor shall be responsible for the proper construction.

Article 30 - Soil studies

- 30.1. Subject to the special conditions and to the technical specifications, the contractor shall make available to the supervisor, the personnel and equipment necessary for carrying out any soil survey which the supervisor considers reasonably necessary. The contractor shall be compensated for the actual cost of the manpower and equipment used or made available in such work, plus a reasonable profit, if not already provided for in the contract.

Article 31 - Overlapping contracts

- 31.1. The contractor shall, in accordance with the requirements of the supervisor, afford all reasonable opportunities for carrying out their work to any other contractors employed by the contracting authority and their workmen, to the workmen of the contracting authority and of any other public authorities who may be employed on or near the site in the execution of any work not included in the contract, or of any contract which the contracting authority may enter into in connection with, or ancillary to, the works.
- 31.2. If, however, the contractor, on the written request of the supervisor, makes available to any such contractor, or public authority, or to the contracting authority, any roads or ways for the maintenance of which the contractor is responsible, or permits the use by any such other persons of the contractor's temporary works, scaffolding or other equipment on the site, or provides any other service of whatsoever nature, which was not provided for in

the contract, the contracting authority shall pay to the contractor in respect of such use or service, such sums and/or grant such extension of time, as shall, in the opinion of the supervisor, be reasonable.

- 31.3. The contractor shall not by reason of Article 31 be relieved of any of its obligations under the contract nor shall it be entitled to any claims other than those provided for in Article 31.2.
- 31.4. In no circumstances may difficulties arising with regard to one contract entitle the contractor to modify or delay implementation of other contracts. Similarly, the contracting authority may not take advantage of such difficulties to suspend payments due under another contract.

Article 32 - Patents and licenses

- 32.1. Save where otherwise provided in the special conditions, the contractor shall indemnify and hold the contracting authority and the supervisor harmless for all damages and cost incurred due to any claim brought by any third party including creators and intermediaries for any alleged or actual violations of intellectual, industrial or other property rights of any kind whatsoever based on the contracting authority's use as specified in the contract of patents, licenses, drawings, designs, models, or brand or trademarks, except where such infringement results from compliance with the design or specification provided by the contracting authority and/or the supervisor.
- 32.2. All industrial, intellectual and other property rights (including but not limited to patent rights and copyright) developed in connection with the tasks by or on behalf of the contractor, including but not limited to any rights in any documents prepared for the purpose of the contract or the tasks, shall remain vested in the contractor but the contracting authority shall have an irrevocable, royalty-free, non-exclusive licence of the above-mentioned rights for the purpose of the contract.

Such licence shall carry the right to grant sub-licences and shall be transferable by the contracting authority to third parties without the consent of the contractor being required.

All industrial, intellectual and other property rights (including but not limited to patent rights and copyright) developed in connection with the tasks by or on behalf of the contracting authority, including but not limited to any rights in any documents prepared for the purpose of the contract or the tasks, shall remain vested in the contracting authority but the contractor shall have the right at its cost to copy, use and obtain communication of these documents for the purpose of the contract.

Upon and notwithstanding any termination of the contract howsoever arising, as well as after completion of the tasks, the contracting authority shall continue to have the benefit of the licence referred to in Article 32.2, first paragraph.

IMPLEMENTATION OF THE TASKS AND DELAYS

Article 33 - Commencement orders

- 33.1. The supervisor issues an administrative order notifying the contractor of the date on which the period of implementation of tasks must start.
- 33.2. Save where the parties agree otherwise, the period of implementation of tasks shall not start before:
- a) in conformity with Article 9, the site, or part of the site has been placed at the disposal of the contractor according to the progress of the work set out in the programme of implementation of tasks approved by the supervisor;
 - b) the documents mentioned under Article 8.1 have been provided to the contractor.
- 33.3. Save where the parties agree otherwise, the period of implementation of tasks shall start no later than 180 days following notification of award of the contract.

Article 34 - Period of implementation of tasks

- 34.1. The period of implementation of tasks shall be as laid down in the special conditions, without prejudice to extensions of the period which may be granted under Article 35.
- 34.2. If provision is made for distinct periods of implementation of tasks for separate lots, in cases where one contractor is awarded more than one lot per contract, the periods of implementation of tasks for the separate lots will not be accumulated.

Article 35 - Extension of the period of implementation of tasks

- 35.1. The contractor may request an extension to the period of implementation of tasks if it is or will be delayed in completing the contract by any of the following reasons:
- a) exceptional weather conditions in the country in which the works are executed which may affect the implementation of the tasks;
 - b) artificial obstructions or physical conditions which could not reasonably have been foreseen by an experienced contractor;
 - c) administrative orders affecting the date of completion other than those arising from the contractor's default;
 - d) failure of the contracting authority to fulfil its obligations under the contract;
 - e) any suspension of the works which is not due to the contractor's default;
 - f) force majeure;
 - g) any other causes referred to in these general conditions which are not due to the contractor's default.

35.2. If the contractor considers itself to be entitled to any extension of the period of implementation under the contract, the contractor shall:

- a) give notice to the supervisor of its intention to make such a request no later than 15 days after the contractor became aware, or should have become aware of the event or circumstance giving rise to the request.

If the contractor fails to give notice of a request for extension of the period of implementation within such period of 15 days, the period of implementation shall not be extended and the contracting authority shall be discharged from all liability in connection with the request; and

- b) submit to the supervisor full and detailed particulars of the request, within 30 days from the above notification unless otherwise agreed between the contractor and the supervisor, in order that such request may be investigated.

35.3. Within 30 days from receipt of the contractor's detailed particulars of the request, the supervisor shall, by notice to the contractor after due consultation with the contracting authority and, where appropriate, the contractor, grant such extension of the period of implementation as may be justified, either prospectively or retrospectively, or inform the contractor that it is not entitled to an extension.

Article 36 - Delays in implementation of the tasks

36.1. If the contractor fails to complete the works within the time period(s) specified in the contract, the contracting authority shall, without formal notice and without prejudice to its other remedies under the contract be entitled to liquidated damages for every day or part thereof which shall elapse between the end of the period specified for implementation of tasks or extended period of implementation of tasks under Article 35 and the actual date of completion, at the rate and up to the maximum amount specified in the special conditions.

If the works have been the subject of partial acceptance in accordance with Article 59, the liquidated damages specified in the special conditions may be reduced in the proportion which the value of the accepted part bears to the value of the whole of the works.

36.2. If the contracting authority has become entitled to the maximum claim under Article 36.1 it may, after giving notice to the contractor:

- a) seize the performance guarantee; and/or
- b) terminate the contract; and/or
- c) enter into a contract with a third party at the contractor's cost for the provision of the balance of the works.

Article 37 - Amendments

37.1. Contract amendments must be formalised by a contract addendum signed by both parties or by an administrative order issued by the supervisor except if the amendments result from the application of the contract.

- 37.2. The supervisor shall have the power to order any amendment to any part of the works necessary for the proper completion and/or functioning of the works. Such amendments by administrative order may include additions, omissions, substitutions, changes in quality, quantity, form, character, kind, position, dimension, level or line and changes in the specified sequence, method or timing of execution of the works. No administrative order shall have the effect of invalidating the contract, but the financial effect, if any, of all such amendments shall be valued in accordance with Articles 37.5 and 37.7.
- 37.3. All administrative orders shall be issued in writing, it being understood that:
- a) if, for any reason, the supervisor finds it necessary to give an order orally, it shall as soon as possible thereafter confirm the order by an administrative order;
 - b) if the contractor confirms in writing an oral order given for the purpose of Article 37.3 (a) and the confirmation is not contradicted in writing forthwith by the supervisor, the supervisor shall be deemed to have issued an administrative order;
 - c) no administrative order is required to increase or decrease the quantity of any work where such increase or decrease is the result of the quantity exceeding or being less than that stated in the bill of quantities or price schedule, as the result of measurement laid down in Article 49.
- 37.4. Save as provided by Article 37.3 prior to issuing an administrative order, the supervisor shall notify the contractor of the nature and form of such amendment. The contractor shall then, without delay, submit to the supervisor a written proposal containing:
- a) a description of the tasks to be implemented or the measures to be taken and a programme for execution;
 - b) any necessary amendments to the programme of implementation of tasks or to any of the contractor's obligations resulting from this contract; and
 - c) any adjustment to the contract price in accordance with the rules set out in Article 37.
- 37.5. Following the receipt of the contractor's submission referred to in Article 37.4, the supervisor shall, after due consultation with the contracting authority and, where appropriate, the contractor, decide without delay whether or not to accept the amendment. If the supervisor accepts the amendment, it shall notify the contractor through an administrative order stating that the contractor shall carry out the amendment at the prices and under the conditions given in the contractor's submission referred to in Article 37.4 or as modified by the supervisor in accordance with Article 37.6.
- 37.6. The supervisor shall, for all amendments ordered by it in accordance with Article 37.3 and 37.5, ascertain the prices in accordance with the following principles:
- a) where work is of similar character and executed under similar conditions as work priced in the bill of quantities or price schedule, it shall be valued at such rates and prices contained therein;
 - b) where work is not of a similar character or is not executed under similar conditions, the rates and prices in the contract shall be used as the basis for valuation as far as is reasonable, failing which the supervisor shall make a fair valuation;

- c) if the nature or amount of any amendment relative to the nature or amount of the whole contract or to any part thereof is such that, in the opinion of the supervisor, any rate or price contained in the contract for any item of work is, by reason of such amendment, rendered unreasonable, the supervisor shall fix such rate or price as he thinks reasonable and proper in the circumstances;
 - d) where an amendment is required by a default or breach of contract by the contractor, any additional cost attributable to such amendment shall be borne by the contractor.
- 37.7. On receipt of the administrative order, the contractor shall carry out the requested amendment according to the following principles:
- a) The contractor will be bound by these general conditions as if the amendment requested by administrative order were stated in the contract.
 - b) The contractor shall not delay the execution of the administrative order pending the granting of any extension of time for completion or adjustment to the contract price.
 - c) Where the administrative order precedes the adjustment to the contract price, the contractor shall keep records of the costs of undertaking the amendment and of the time expended thereon. Such records shall be open to inspection by the supervisor at all reasonable times.
- 37.8. Where on provisional acceptance an increase or reduction in the total value of the works resulting from an administrative order, or from some other circumstance which is not caused by the contractor's default, exceeds 15% of the initial contract price (or as amended by addendum), the supervisor shall, after consulting the contracting authority and the contractor, determine any addition to or reduction from the contract price as a consequence of applying Article 37.6. The sum so determined shall be based on the amount by which the increase or decrease in value of the works exceeds 15%. The supervisor shall notify the sum to the contracting authority and the contractor, and adjust the contract price accordingly.
- 37.9. The contractor shall notify the contracting authority of any change of bank account, using the form in Annex V. The contracting authority shall have the right to oppose the contractor's change of bank account.

Article 38 - Suspension

38.1. Suspension by administrative order of the supervisor:

The contractor shall, on the order of the supervisor, suspend the progress of the works or any part thereof for such time or times and in such manner as the supervisor may consider necessary. The suspension shall take effect on the day the contractor receives the order or at a later date when the order so provides. The supervisor shall, as soon as possible, instruct the contractor to resume the contract suspended.

38.2. Suspension by notice of the contractor:

Any default in payment of more than 30 days under any certificate issued by the supervisor from the expiry of the time-limit referred to in Article 44.3(b) entitles the contractor, after giving not less than 30 days' notice to the contracting authority, to suspend the work, or reduce the rate of the work, unless and until the contractor has received reasonable evidence of payment or payment.

The contractor's action shall not prejudice its entitlements to interest for delayed payment under Article 53.1 and to termination under Article 65.1.

If the contractor subsequently receives such evidence or payment before giving notice of termination, the contractor shall resume normal working as soon as reasonably practicable and, unless the parties agree otherwise, no later than 30 days after receiving the evidence or the payment.

38.3. Suspension in the event of presumed breach of obligations, irregularities or fraud:

The contract may be suspended in order to verify whether presumed breach of obligations or irregularities or fraud occurred during the award procedure or the performance of the contract. If these are not confirmed, performance of the contract shall resume as soon as possible.

38.4. During the period of suspension, the contractor shall take such protective measures as may be necessary to safeguard the works, plant, equipment and site against any deterioration, loss or damage. Additional expenses incurred in connection with such protective measures may be added to the contract price, unless:

- a) otherwise provided for in the contract; or
- b) such suspension is necessary by reason of some breach or default of the contractor; or
- c) such suspension is necessary by reason of normal climatic conditions on site; or
- d) such suspension is necessary for the safety or the proper execution of the works or any part thereof insofar as such necessity does not arise from any act, breach or default by the supervisor or the contracting authority or from any of the exceptional risks referred to in Article 21, or
- e) the presumed breach of obligations or irregularities or fraud mentioned in Article

38.3 are confirmed and attributable to the contractor.

38.5. The contractor shall introduce claims for additional payment or extension of the period of implementation in accordance with Articles 35 and 55.

38.6. If the period of suspension exceeds 180 days and the suspension is not due to the contractor's breach or default, the contractor may, by notice to the supervisor, request to proceed with the contract within 30 days, or terminate the contract.

38.7. The contracting authority shall, as soon as possible, order the contractor to resume the contract suspended or inform the contractor that it terminates the contract.

MATERIALS AND WORKMANSHIP

Article 39 - Work register

- 39.1. A work register shall, unless otherwise provided by the special conditions, be kept on the site by the supervisor, who shall enter in it at least the following information:
- a) the weather conditions, interruptions of work owing to inclement weather, hours of work, number and type of workmen employed on the site, materials supplied, equipment in use, equipment not in working order, tests carried out in situ, samples dispatched, unforeseen circumstances, as well as orders given to the contractor;
 - b) detailed statements of all the quantitative and qualitative elements of the work done and the supplies delivered and used, capable of being checked on the site and relevant in calculating payments to be made to the contractor.
- 39.2. The statements shall form an integral part of the work register but may, where appropriate, be recorded in separate documents. The technical rules for drawing up the statements shall be as set out in the special conditions.
- 39.3. The contractor shall ensure that statements are drawn up, in good time and in accordance with the special conditions, in respect of work, services and supplies which cannot be measured or verified subsequently; failing this, it shall accept the decisions of the supervisor, unless, at its own expense, it provides evidence to the contrary.
- 39.4. Entries made in the work register as work progresses shall be signed by the supervisor and countersigned by the contractor or its representative. If the contractor objects, it shall communicate its views to the supervisor within 15 days following the date on which the entry or the statements objected to are recorded. Should it fail to countersign or to submit its views within the period allowed, the contractor shall be deemed to agree with the notes shown in the register. The contractor may examine the work register at any time and may, without removing the document, make or receive a copy of entries which it considers necessary for its own information.
- 39.5. The contractor shall, on request, provide the supervisor with the information needed to keep the work register in good order.

Article 40 - Origin and quality of works and materials

- 40.1. Save where otherwise provided for in the special conditions, all goods purchased under the contract shall have their origin in any eligible source country as defined in the invitation to tender. The contractor must certify that the goods tendered comply with this requirement, specifying their countries of origin. It may be required to provide more detailed information in this respect. Failure to comply with this condition may result in the termination of the contract and/or suspension of payment.
- 40.2. The works, components and materials shall conform to the specifications, drawings, surveys, models, samples, patterns and other requirements in the contract which shall be

held at the disposal of the contracting authority or the supervisor for the purposes of identification throughout the period of performance.

- 40.3. Any preliminary technical acceptance stipulated in the special conditions shall be the subject of a request sent by the contractor to the supervisor. The request shall indicate the reference to the contract, the lot number and the place where such acceptance is to take place, as appropriate. The components and materials specified in the request must be certified by the supervisor as meeting the requirements for such acceptance prior to their incorporation in the works.
- 40.4. Even if materials or items to be incorporated in the works or in the manufacture of components have been technically accepted in this way, they may still be rejected if a further examination reveals defects or faults, in which case they must immediately be replaced by the contractor. The contractor may be given the opportunity to repair and make good materials and items which have been rejected, but such materials and items will be accepted for incorporation in the works only if they have been repaired and made good to the satisfaction of the supervisor.

Article 41 - Inspection and testing

- 41.1. The contractor shall ensure that the components and materials are delivered to the site in time to allow the supervisor to proceed with acceptance of the components and materials. The contractor is deemed to have fully appreciated the difficulties which it might encounter in this respect, and it shall not be permitted to advance any grounds for delay in fulfilling its obligations.
- 41.2. The supervisor shall be entitled to inspect, examine, measure and test the components, materials and workmanship, and check the progress of preparation, fabrication or manufacture of anything being prepared, fabricated or manufactured for delivery under the contract in order to establish whether the components, materials and workmanship are of the requisite quality and quantity. This shall take place at the place of manufacture, fabrication, preparation or on the site or at such other places as may be specified in the special conditions.
- 41.3. For the purposes of such tests and inspections, the contractor shall:
- a) provide to the supervisor, temporarily and free of charge, such assistance, test samples or parts, machines, equipment, tools, labour, materials, drawings and production data as are normally required for inspection and testing;
 - b) agree, with the supervisor, on the time and place for tests;
 - c) provide access for the supervisor at all reasonable times to the place where the tests are to be carried out.
- 41.4. If the supervisor is not present on the date agreed for tests, the contractor may, unless otherwise instructed by the supervisor, proceed with the tests, which shall be deemed to have been made in the supervisor's presence. The contractor shall immediately send duly certified copies of the test results to the supervisor, who shall, if he has not attended the test, be bound by the test results.

- 41.5. When components and materials have passed the above-mentioned tests, the supervisor shall notify the contractor or endorse the procedure's certificate to that effect.
- 41.6. If the supervisor and the contractor disagree on the test results, each shall give a statement of its views to the other within 15 days after such disagreement arises. The supervisor or the contractor may require such tests to be repeated on the same terms and conditions or, if either party so requests, by an expert to be selected by common consent. All test reports shall be submitted to the supervisor who shall communicate the results of these tests without delay to the contractor. The results of the re-testing shall be conclusive. The cost of re-testing shall be borne by the party whose views are proved wrong by the re-testing.
- 41.7. In the performance of its duties, the supervisor and any persons authorised by him shall not disclose to unauthorised persons information concerning the undertaking's methods of manufacture and operation obtained through inspection and testing.

Article 42 - Rejection

- 42.1. Components and materials which are not of the specified quality shall be rejected. A special mark may be applied to the rejected components or materials. This shall not be such as to alter them or affect their commercial value. Rejected components and materials shall be removed by the contractor from the site within a period which the supervisor shall specify, failing which they shall be removed by the supervisor as of right at the expense and risk of the contractor. Any work incorporating rejected components or materials shall be rejected.
- 42.2. The supervisor shall, during the progress of the works and before the works are taken over, have the power to order or decide:
- a) the removal from the site, within such time limits as may be specified in the order, of any components or materials which, in the opinion of the supervisor, are not in accordance with the contract;
 - b) the substitution of proper and suitable components or materials; or
 - c) the demolition and proper re-execution, or satisfactory repair, notwithstanding any previous test thereof or interim payment therefore, of any work which, in respect of components, materials, workmanship or design by the contractor for which it is responsible, is not, in the opinion of the supervisor, in accordance with the contract.
- 42.3. The supervisor shall, as soon as reasonably practicable, give to the contractor notice of its decision specifying particulars of the alleged defects.
- 42.4. The contractor shall with all speed and at its expense make good the defects so specified. If the contractor does not comply with such order, the contracting authority shall be entitled to employ other persons to carry out the same and all expenses consequent thereon or incidental thereto may be deducted by the contracting authority from any monies due or which may become due to the contractor.

- 42.5. The provisions of Article 42 shall not affect the right of the contracting authority to claim under Articles 36 and 63.

Article 43 - Ownership of plant and materials

- 43.1. All equipment, temporary works, plant and materials provided by the contractor shall, when brought on the site, be deemed to be exclusively intended for the execution of the works and the contractor shall not remove the same or any part thereof, except for the purpose of moving it from one part of the site to another, without the consent of the supervisor. Such consent shall, however, not be required for vehicles engaged in transporting any staff, labour, equipment, temporary works, plant or materials to or from the site.
- 43.2. The special conditions may provide that all equipment, temporary works, plant and materials on site owned by the contractor or by any company in which the contractor has a controlling interest shall, for the duration of the execution of the works, be:
- a) vested in the contracting authority; or
 - b) made subject to a lien in favour of the contracting authority; or
 - c) made subject to any other arrangement regarding priority interest or security.
- 43.3. In the event of termination of the contract in accordance with Article 63 due to the contractor's breach of contract, the contracting authority shall be entitled to use the equipment, temporary works, plant and materials on site in order to complete the works.
- 43.4. Any agreement for the hire by the contractor of equipment, temporary works, plant and materials brought onto the site, shall contain a provision that on request in writing made by the contracting authority within 7 days after the date on which the termination under Article 64 becomes effective, and on the contracting authority undertaking to pay all hire charges in respect thereof from such date, the owner thereof will hire such equipment, temporary works, plant or materials to the contracting authority on the same terms as they were hired by the contractor, save that the contracting authority shall be entitled to permit the use thereof by any other contractor employed by it for completing the works under the provisions of Article 64.3.
- 43.5. Upon termination of the contract before completion of the works, the contractor shall deliver to the contracting authority any plant, temporary works, equipment or materials the property in which has vested in the contracting authority or been made subject to a lien by virtue of Article 43.2. If it fails to do so, the contracting authority may take such appropriate action as it deems fit in order to obtain possession of such plant, temporary works, equipment and materials and recover the cost of so doing from the contractor.

PAYMENTS

Article 44 - General principles

- 44.1. Payments shall be made in euro or national currency as specified in the special conditions. The special conditions shall lay down the administrative or technical conditions governing payments of pre-financing, interim and/or final payments made in accordance with the general conditions.
- 44.2. Payments due by the contracting authority shall be made to the bank account mentioned on the financial identification form completed by the contractor. The same form, annexed to the payment request must be used to report changes of bank account.
- 44.3. Payment to the contractor shall be done as follows:
- a) Pre-financing payments shall be made within 90 days of receipt by the contracting authority of the contractor's invoice and the documents referred to in Article 46.3. The date of payment shall be the date on which the paying account is debited.
 - b) Payments to the contractor of the amounts due under each of the interim payment certificates and the final statement of account issued by the supervisor shall be made within 90 days of such certificate of statement accompanied by the contractor's invoice being delivered to the contracting authority. The date of payment shall be the date on which the paying account is debited.
- 44.4. The period referred to in 44.3 may be suspended by notifying the contractor that the invoice cannot be paid because the sum is not due, because appropriate substantiating documents have not been provided or because there is evidence that the expenditure might not be eligible. In the latter case, an inspection may be carried out on the spot for the purpose of further checks. The contractor shall provide clarifications, modifications or further information within 30 days of being asked to do so. Within 30 days of receipt of the clarification, the supervisor shall decide and issue if need be a revised payment certificate or a final statement of account and the payment period shall continue to run from this date.
- 44.5. The contractor undertakes to repay to the contracting authority any amounts paid in excess of the final amount due, before the deadline indicated in the debit note which is 45 days from the issuing of that note.

Should the contractor fail to make repayment within the above deadline, the contracting authority may (unless the contractor is a government department or public body of a Member State of the European Union) increase the amounts due by adding interest:

- at the rediscount rate applied by the central bank of the country of the contracting authority if payments are in the currency of that country;
- at the rate applied by the European Central Bank to its main refinancing transactions in euro, as published in the Official Journal of the European Union, C series, where payments are in euro,

on the first day of the month in which the time-limit expired, plus three and a half percentage points. The default interest shall be incurred over the time which elapses between the date of the payment deadline and the date on which payment is actually made. Any partial payments shall first cover the interest thus established.

Amounts to be repaid to the contracting authority may be offset against amounts of any kind due to the contractor. This shall not affect the parties' right to agree on payment in instalments. Bank charges arising from the repayment of amounts due to the contracting authority shall be borne entirely by the contractor.

Without prejudice to the prerogative of the contracting authority, if necessary, the European Union may as donor proceed itself to the recovery by any means.

- 44.6. Prior to, or instead of, terminating the contract as provided for in Article 64, the contracting authority may suspend payments as a precautionary measure without prior notice.
- 44.7. Where the award procedure or the performance of the contract proves to have been subject to breach of obligations, irregularities or fraud attributable to the contractor, the contracting authority may in addition to the possibility to suspend the performance of the contract in accordance with Article 38.3 and terminate the contract as provided for in Article 64, suspend payments and/or recover amounts already paid, in proportion to the seriousness of the breach of obligations irregularities or fraud. In addition to measures referred above, the contracting authority may reduce the contract value in proportion to the seriousness of the irregularities, fraud or of the breach of obligations, including where the activities concerned were not implemented or were implemented poorly, partially or late.

Article 45 - Provisional price contracts

- 45.1. In exceptional cases, where a provisional price contract has been awarded, the amount payable under the contract shall be calculated as follows:
- a) as for cost-plus contracts in Article 49.1 (c); or
 - b) initially on the basis of provisional prices and, after the conditions for performing the contract are known, as for lump-sum contracts or unit price contracts in Article 49.1 (a) and (b) respectively, or as in a hybrid contract.
- 45.2. The contractor shall supply such information as the contracting authority or the supervisor may reasonably require in respect of any matter relating to the contract for the purpose of the calculation. Where agreement cannot be reached on the valuation of the works, the amounts payable shall be determined by the supervisor.

Article 46 - Pre-financing

- 46.1. If the special conditions so provide, pre-financing may be granted to the contractor, at its request and before the first interim payment takes place, for operations connected with the implementation of the tasks, in the cases listed hereinafter:

- a) as a lump-sum advance enabling it to meet expenditure resulting from the commencement of the contract;
 - b) as pre-financing for the purchase or order of : materials, plant, equipment, machines, tools and of any other substantial prior expenses such as the acquisition of patents or study costs, necessary for the execution of the contract. A proof of the conclusion of such purchase or order shall be provided by the contractor to obtain the pre-financing.
- 46.2. The special conditions shall state the amount of the pre-financing which shall not exceed 10% of the original contract price for the lump-sum referred to in Article 46.1 (a) and 20 % of the contract price for all other pre-financing referred to in Article 46.1 (b).
- 46.3. No pre-financing shall be granted until:
- a) the signature of the contract;
 - b) provision of the performance guarantee in accordance with Article 15;
 - c) provision, for the full amount of the pre-financing, of a financial guarantee issued in accordance with Article 15.3 and 15.6 which shall remain effective until the pre-financing has been completely repaid by the contractor out of interim payments under the contract unless otherwise provided for in the special conditions;
 - d) fulfilment of the contractor's obligation under Article 16;
 - e) approval of the programme of implementation of tasks by the supervisor.
- 46.4. The contractor shall use the pre-financing exclusively for operations connected with the implementation of the tasks. Should the contractor misuse any portion of the pre- financing, it shall become due and repayable immediately and no further pre-financing payments will be made.
- 46.5. Should the pre-financing guarantee cease to be valid and the contractor fail to re-validate it, either a deduction equal to the amount of the pre-financing may be made by the contracting authority from future payments due to the contractor under the contract, or the contracting authority may apply the provisions of Article 15.6.
- 46.6. If the contract is terminated for any reason whatsoever or the Contractor has not repaid the pre-financing on request, the guarantees securing the pre-financing may be invoked forthwith in order to repay the balance of the pre-financing still owed by the contractor, and the guarantor shall not delay payment or raise objection for any reason whatever.
- 46.7. The pre-financing guarantee provided for in Article 46 shall be released as and when pre-financing is repaid.
- 46.8. Further conditions and procedures for granting and repaying pre-financing shall be as laid down in the special conditions.

Article 47 - Retention monies

- 47.1. The sum which shall be retained from interim payments by way of guarantee to meet the contractor's obligations during the defects liability period, and the detailed rules governing that guarantee, shall be stipulated in the special conditions, provided that it shall, in no case, exceed 10% of the contract price.
- 47.2. Subject to the approval of the contracting authority, the contractor may, if it so wishes, substitute, not later than the date fixed for the commencement of the works, these retention sums by a retention guarantee, respecting the provisions of Articles 15.3 and 15.6.
- 47.3. The sum retained or the retention guarantee shall be released within 60 days of the issuing of the signed final statement of account referred to in Article 51, for its total amount except for amounts which are the subject of amicable settlement, conciliation, arbitration or litigation.

Article 48 - Revision of prices

- 48.1. Unless otherwise stipulated in the special conditions, and except as provided in Article 48.4 the contract shall be at fixed prices which shall not be revised.
- 48.2. Where prices may be revised under the contract, such revision shall take into account variations in the prices of significant local or external elements which serve as a basis for the calculation of the tender price, such as manpower, services, materials and supplies, as well as charges laid down by law or regulation. The detailed rules for the revision shall be as laid down in the special conditions.
- 48.3. Prices contained in the contractor's tender shall be deemed:
 - a) to have been arrived at on the basis of the conditions in force 30 days prior to the latest date fixed for submission of tenders; or in the case of direct agreement contracts, on the date of the contract;
 - b) to have taken account of the legislation and the relevant tax arrangements applicable at the reference date fixed in Article 48.3 (a).
- 48.4. In the event of changes to, or introduction of, any national or State statute, ordinance, decree or other law, or any regulation or by-law of any local or other public authority, after the date stated in Article 48.3 which causes a change in the contractual relationship between the parties to the contract, the contracting authority and the contractor shall consult on how best to proceed further under the contract, and may as a result of such consultation decide:
 - a) to amend the contract; or
 - b) on payment of compensation for the resulting imbalance by one party to the other; or
 - c) to terminate the contract by mutual agreement.

- 48.5. In the event of a delay in the implementation of the tasks for which the contractor is responsible, the indices to be considered for the revision of prices during the period of delay shall be the most advantageous to the contracting authority between those applied to the last interim certificate issued for tasks implemented during the period of implementation of tasks and those revised up to the provisional acceptance of the tasks.

Article 49 - Measurement

49.1. The following methods shall apply to the valuation of works contracts:

- a) For lump-sum contracts, the amount due under the contract shall be determined on the basis of the breakdown of the overall contract price, or on the basis of a breakdown expressed as a percentage of the contract price corresponding to completed stages of the works. Where items are accompanied by quantities, these shall be firm quantities for which the contractor has submitted its all-in price, and shall be paid for irrespective of the quantities of work actually carried out.
- b) For unit price contracts:
 - i. the amount due under the contract shall be calculated by applying the unit rates to the quantities actually executed for the respective items, in accordance with the contract;
 - ii. the quantities set out in the bill of quantities shall be the estimated quantities of the works, which shall not be taken as the actual and correct quantities of the works to be executed by the contractor in fulfilment of its obligations under the contract;
 - iii. the supervisor shall determine by measurement the actual quantities of the works executed by the contractor, and these shall be paid for in accordance with Article 50. Unless otherwise provided in the special conditions no additions shall be made to the items in the bill of quantities except as a result of an amendment in accordance with Article 37 or another provision of the contract entitling the contractor to additional payment;
 - iv. the supervisor shall, when he requires any parts of the works to be measured, give reasonable notice to the contractor to attend, or to send a qualified agent to represent him. The contractor or its agent shall assist the supervisor in making such measurements and shall furnish all particulars required by the supervisor. Should the contractor not attend, or omit to send such agent, the measurement made by the supervisor or approved by him shall be binding on the contractor;
 - v. the works shall be measured net, notwithstanding any general or local custom, except where otherwise provided for in the contract.
- c) For cost-plus contracts, the amount due under the contract shall be determined on the basis of actual costs with an agreed addition for overheads and profit. The special conditions shall stipulate the information which the contractor is required to submit to the supervisor for the purpose of Article 49.1 (c) and the manner in which it should be submitted.

- 49.2. Where an item in the contract is indicated as ‘provisional’ the provisional sum set aside for it shall not be taken into account in calculating the percentages referred to in Article 37.

Article 50 - Interim payments

- 50.1. The contractor shall submit an invoice for interim payment to the supervisor at the end of each period referred to in Article 50.7 in a form approved by the supervisor. The invoice shall include the following items, as applicable:
- a) the estimated contract value of the permanent works implemented up to the end of the period in question;
 - b) an amount reflecting any revision of prices pursuant to Article 48;
 - c) an amount to be withheld as retention sum under Article 47;
 - d) any credit and/or debit for the period in question in respect of plant and materials on site intended for, but not yet incorporated in, the permanent works in the amount and under the conditions set out in Article 50.2;
 - e) an amount to be deducted on account of the pre-financing repayment under the provisions of Article 46; and
 - f) any other sum to which the contractor may be entitled under the contract.
- 50.2. The contractor shall be entitled to such sums as the supervisor may consider proper in respect of plant and materials intended for, but not yet incorporated in, the permanent works provided that:
- a) the plant and materials conform with the specifications for the permanent works and are set out in batches in a way that they may be recognized by the supervisor;
 - b) such plant and materials have been delivered to the site, and are properly stored and protected against loss or damage or deterioration to the satisfaction of the supervisor;
 - c) the contractor's record of requirements, orders, receipts and use of plant and materials under the contract are kept in a form approved by the supervisor and such records are available for inspection by the supervisor;
 - d) the contractor submits with its statement, the estimated value of the plant and materials on site together with such documents as may be required by the supervisor for the purpose of valuation of the plant and materials and providing evidence of ownership and payment therefor; and
 - e) where the special conditions so provide, ownership of the plant and materials referred to in Article 43 shall be deemed to be vested in the contracting authority.
- 50.3. Approval by the supervisor of any interim invoice certified by him in respect of plant and materials pursuant to Article 50 shall be without prejudice to the exercise of any power of the supervisor under the contract to reject any plant or materials which are not in accordance with the provisions of the contract.

- 50.4. The contractor shall be responsible for any loss or damage to, and for the cost of storing and handling of, such plant and materials on site and shall effect such additional insurance as may be necessary to cover the risk of such loss or damage from any cause.
- 50.5. Within 30 days of receipt of the said invoice for interim payment, the supervisor shall:
- a) verify that, in the supervisor's opinion, the invoice for interim payment reflects the amount due to the contractor in accordance with the contract. In cases where there is a difference of opinion as to the value of an item, the supervisor's view shall prevail.
 - b) on determination of the amount due to the contractor, issue and transmit to the contracting authority for payment and to the contractor for information, an interim payment certificate for the amount due to the contractor and shall inform the contractor of the works for which payment is being made.
- 50.6. The supervisor may, by an interim payment certificate, make any corrections or modifications to any previous certificate issued by him, and has power to modify the valuation in or withhold the issue of, any interim payment certificate if the works or any part thereof is not being carried out to its satisfaction.
- 50.7. Unless the special conditions provide otherwise, the frequency shall be one interim payment per month.

Article 51 - Final statement of account

- 51.1. Unless otherwise agreed in the special conditions, the contractor shall submit to the supervisor a draft final statement of account no later than 90 days after the issue of the final acceptance certificate referred to in Article 62. In order to enable the supervisor to prepare the final statement of account, the draft final statement of account is submitted with supporting documents showing in detail the value of the work done in accordance with the contract and all further sums which the contractor considers to be due to it under the contract.
- 51.2. Within 90 days after receipt of the draft final statement of account and of all information reasonably required for its verification, the supervisor shall prepare and sign the final statement of account, which determines:
- a) the amount which in its opinion is finally due under the contract; and
 - b) after establishing the amounts previously paid by the contracting authority and all sums to which the contracting authority is entitled under the contract, the balance, if any, due from the contracting authority to the contractor, or from the contractor to the contracting authority, as the case may be.
- 51.3. The supervisor shall issue to the contracting authority or to its duly authorized representative, and to the contractor, the final statement of account showing the final amount to which the contractor is entitled under the contract. The contracting authority or its duly authorized representative and the contractor shall sign the final statement of account as an acknowledgement of the full and final value of the work implemented under the contract and shall promptly submit a signed copy to the supervisor together

with the invoice for the payment of the agreed balance, if any, due to the contractor. However, the final statement of account and the invoice for the payment of the balance shall not include amounts in dispute which are the subject of negotiations, conciliation, arbitration or litigation.

- 51.4. The final statement of account signed by the contractor constitutes a written discharge of the contracting authority confirming that the total in the final statement of account represents full and final settlement of all monies due to the contractor under the contract, other than those amounts which are the subject of amicable settlement, arbitration or litigation. However, such discharge becomes effective only after any payment due in accordance with the final statement of account has been made and the performance guarantee referred to in Article 15 has been returned to the contractor.
- 51.5. The contracting authority is not liable to the contractor for any matter or thing whatsoever arising out of, or in accordance with, the contract or execution of the works, unless the contractor has included a claim in respect thereof in its draft final statement of account.

Article 52 - Direct payments to sub-contractors

- 52.1. When the supervisor receives a claim from a sub-contractor duly approved under Article 7 to the effect that the contractor has not met its financial obligations so far as the sub-contractor is concerned, the supervisor gives notice to the contractor either to pay the sub-contractor or to inform it of the reasons why payment should not be made. Should such payment not be made, or reasons not be given within the period of notice, the supervisor may, after satisfying itself that the work has been carried out, certify, and the contracting authority pays the debt claimed by the sub-contractor out of the sums remaining due to the contractor. The contractor remains entirely responsible for the work in respect of which direct payment has been made.
- 52.2. If the contractor gives adequate reasons for refusing to settle all or part of the debt claimed by the sub-contractor, the contracting authority only pays to the sub-contractor only the amounts not in dispute. Sums claimed by the sub-contractor in respect of which the contractor has given adequate reasons for its refusal to pay shall be paid by the contracting authority only after the parties have come to an amicable settlement, or after the decision of an arbitrating authority or after a judgment of a court has been duly notified to the supervisor.
- 52.3. Direct payments to sub-contractors shall not exceed the value at contract prices of the services performed by the sub-contractors for which they request payment; the value at contract prices is calculated or assessed on the basis of the bill of quantities, the price schedule or the breakdown of the lump sum price.
- 52.4. Direct payments to sub-contractors are made entirely in the national currency of the country in which the works are executed, or partly in such national currency and partly in foreign currency, in accordance with the contract.
- 52.5. Where direct payments to sub-contractors are made in foreign currency, they are calculated in accordance with Article 56. They shall not result in any increase in the total amount payable in foreign currency, as stipulated in the contract.

- 52.6. The provisions of Article 52 apply subject to the requirements of the law applicable by virtue of Article 54 concerning the right to payment of creditors who are beneficiaries of an assignment of credit or of a collateral security.

Article 53 - Delayed payments

- 53.1. Once the time-limit referred to in Article 44.3 of the general conditions has expired, the contractor will, upon demand, submitted within two months of receiving late payment, be entitled to late-payment interest:
- at the rediscount rate applied by the central bank by the law of the country in which the works are executed if payments are in the currency of that country;
 - at the rate applied by the European Central Bank to its main refinancing transactions in euro, as published in the Official Journal of the European Union, C series, if payments are in euro,
- on the first day of the month in which the time-limit expired, plus three and a half percentage points. The interest shall be payable for the time elapsed between the expiry of the payment deadline and the date on which the contracting authority's account is debited.
- 53.2. Any default in payment of more than 30 days after the expiry of the time-limit stated in Article 44.3(b) shall entitle the contractor to suspend the work in accordance with the procedure laid down in Article 38.2.
- 53.3. Any default in payment of more than 120 days after the expiry of the time-limit stated in Article 44.3(b) shall entitle the contractor to terminate the contract in accordance with the procedure laid down in Article 65.

Article 54 - Payments to third parties

- 54.1. Orders for payments to third parties may be carried out only after an assignment made in accordance with Article 6. The assignment is notified to the contracting authority.
- 54.2. Notification of beneficiaries of the assignment is the sole responsibility of the contractor.
- 54.3. In the event of a legally binding attachment of the property of the contractor affecting payments due to it under the contract, and without prejudice to the time limit laid down in Article 53, the contracting authority has 30 days, starting from the day when it receives notification of the definitive lifting of the obstacle to payment, to resume payments to the contractor.

Article 55 - Claims for additional payment

- 55.1. If the contractor considers itself being entitled to additional payment under the contract, the contractor shall:
- a) if it intends to make any claim for additional payment, give to the supervisor notice of its intention or make such claim no later than 15 days after the

contractor became aware, or should have become aware of the event or circumstances giving rise of such claim, stating the reason for its claim;

If the contractor fails to give notice of a claim for additional payment within such period of 15 days, the contractor shall not be entitled to additional payment, and the contracting authority shall be discharged from all liability in connection with the request; and

- b) submit full and detailed particulars of its claim as soon as it is reasonably practicable, but no later than 60 days after the date of such notice, unless otherwise agreed by the supervisor. In case the supervisor agrees to another deadline than the said 60 days, the agreed upon deadline will, in any event, require that such particulars shall be submitted no later than the date of submission of the draft final statement of account. The contractor shall thereafter promptly submit such further particulars as the supervisor may reasonably require assessing the validity of the claim.

55.2. When the supervisor has received the full and detailed particulars of the contractor's claim that it requires, he shall, without prejudice to Article 21.4, after due consultation with the contracting authority and, where appropriate, the contractor, determine whether the contractor is entitled to additional payment and notify the parties accordingly.

55.3. The supervisor may reject any claim for additional payment which does not comply with the requirements of Article 55.

Article 56 - End date

56.1. The payment obligations of the EC under this contract shall cease at most 18 months after the end of the period of implementation of tasks, unless the contract is terminated in accordance with these general conditions. In the event of co-financing, this date shall be laid down in the special conditions.

ACCEPTANCE AND DEFECTS LIABILITY

Article 57 - General principles

57.1. Verification of the works by the supervisor with a view to provisional or final acceptance shall take place in the presence of the contractor. The absence of the contractor shall not be a bar to verification on condition that the contractor has been summoned in due format least 30 days prior to the date of verification.

57.2. Should exceptional circumstances make it impossible to ascertain the state of the works or otherwise proceed with their acceptance during the period fixed for provisional or final acceptance, a statement certifying such impossibility shall be drawn up by the supervisor after consultation, where possible, with the contractor. The verification shall take place and a statement of acceptance or rejection shall be drawn up by the supervisor within 30 days following the date on which such impossibility ceases to exist. The contractor shall

not invoke these circumstances in order to avoid its obligation of presenting the works in a state suitable for acceptance.

Article 58 - Tests on completion

- 59.1. The works shall not be accepted until the prescribed verifications and tests have been carried out at the expense of the contractor. The contractor shall notify the supervisor of the date on which such verification and tests may commence.
- 59.2. Works which do not satisfy the terms and conditions of the contract, or in the absence of such terms and conditions, which are not carried out in accordance with trade practices in the country in which the works are executed, shall, if required, be demolished and rebuilt by the contractor or repaired to the satisfaction of the supervisor, otherwise this shall be done as of right after due notice at the expense of the contractor, by order of the supervisor. The supervisor may also require the demolition and reconstruction by the contractor, or repair to the satisfaction of the supervisor, under the same conditions, of any work in which unacceptable materials have been used, or carried out in the periods of suspension provided for in Article 38.

Article 59 - Partial acceptance

- 59.1. The contracting authority may make use of the various structures, parts of structures or sections of the works forming part of the contract as and when they are completed. Any taking over of the structures, parts of structures or sections of the works by the contracting authority shall be preceded by their partial provisional acceptance. However, works may in cases of urgency be taken over prior to acceptance provided an inventory of outstanding work is drawn up by the supervisor and agreed to by the contractor and the supervisor beforehand. Once the contracting authority has taken possession of a structure, a part thereof or section of the works, the contractor shall no longer be required to make good any damage resulting otherwise than from faulty construction or workmanship.
- 59.2. The supervisor may, at the request of the contractor and if the nature of the works so permits, proceed with partial provisional acceptance, provided that the structures, parts of structures or sections of the works are completed and suited to the use as described in the contract.
- 59.3. In the cases of partial provisional acceptance referred to in Article 59.1 and 59.2 the defects liability period provided for in Article 62 shall, unless the special conditions provide otherwise, run as from the date of such partial provisional acceptance.

Article 60 - Provisional acceptance

- 60.1. The works shall be taken over by the contracting authority when they have satisfactorily passed the tests on completion and a certificate of provisional acceptance has been issued or is deemed to have been issued.
- 60.2. The contractor may apply, by notice to the supervisor, for a certificate of provisional acceptance not earlier than 15 days before the works, in the contractor's opinion, are

complete and ready for provisional acceptance. The supervisor shall within 30 days after the receipt of the contractor's application either:

- a) issue the certificate of provisional acceptance to the contractor with a copy to the contracting authority stating, where appropriate, its reservations, and, inter alia, the date on which, in its opinion, the works were completed in accordance with the contract and ready for provisional acceptance; or
- b) reject the application giving its reasons and specifying the action which, in its opinion, is required of the contractor for the certificate to be issued.

60.3. If the supervisor fails either to issue the certificate of provisional acceptance or to reject the contractor's application within the period of 30 days, he shall be deemed to have issued the certificate on the last day of that period. The certificate of provisional acceptance shall not be deemed to be an admission that the works have been completed in every respect. If the works are divided by the contract into sections, the contractor shall be entitled to apply for separate certificates for each of the sections.

60.4. Upon provisional acceptance of the works, the contractor shall dismantle and remove temporary structures as well as materials no longer required for use in connection with the implementation of the contract. It shall also remove any litter or obstruction and redress any change in the condition of the site as required by the contract.

60.5. Immediately after provisional acceptance, the contracting authority may make use of all the works as completed.

Article 61 - Defects liability

61.1. The contractor shall be responsible for making good any defect in, or damage to, any part of the works which may appear or occur during the defects liability period and which:

- a) results from the use of defective plant or materials or faulty workmanship or design of the contractor; and/or
- b) results from any act or omission of the contractor during the defects liability period; and/or;
- c) appears in the course of an inspection made by, or on behalf of the contracting authority.

61.2. The contractor shall at its own cost make good the defect or damage as soon as practicable. The defects liability period for all items replaced or renewed shall recommence from the date when the replacement or renewal was made to the satisfaction of the supervisor. If the contract provides for partial acceptance, the defects liability period shall be extended only for the part of the works affected by the replacement or renewal.

61.3. If any such defect appears or such damage occurs, during the defects liability period, the contracting authority or the supervisor shall notify the contractor. If the contractor fails to

remedy a defect or damage within the time limit stipulated in the notification, the contracting authority may:

- a) carry out the works itself, or employ someone else to carry out the works at the contractor's risk and cost, in which case the costs incurred by the contracting authority shall be deducted from monies due to or from guarantees held against the contractor or from both; or
- b) terminate the contract.

- 61.4. If the defect or damage is such that the contracting authority has been deprived substantially of the whole or a part of the benefit of the works, the contracting authority shall, without prejudice to any other remedy, be entitled to recover all sums paid in respect of the parts of the works concerned together with the cost of dismantling such parts and clearing the site.
- 61.5. In case of emergency, where the contractor is not immediately available or, having been reached, is unable to take the measures required, the contracting authority or the supervisor may have the work carried out at the expense of the contractor. The contracting authority or the supervisor shall as soon as practicable inform the contractor of the action taken.
- 61.6. Where the special conditions stipulate that the maintenance work, necessitated by normal wear and tear, shall be carried out by the contractor, such work shall be paid for from a provisional sum. Deterioration resulting from the circumstances provided for in Article 21 or from abnormal use shall be excluded from this obligation unless it reveals a fault or defect justifying the request for repair or replacement under Article 61.
- 61.7. The defects liability period shall be stipulated in the special conditions and technical specifications. If the duration of the defects liability period is not specified, it shall be 365 days. The defects liability period shall commence on the date of provisional acceptance and may recommence in accordance with Article 61.2.
- 61.8. After provisional acceptance and without prejudice to the defects liability referred to in Article 61, the contractor shall no longer be responsible for risks which may affect the works and which result from causes not attributable to it. However, the contractor shall be responsible as from the date of provisional acceptance for the soundness of the construction, as laid down in the law of the country in which the works are executed.

Article 62 - Final acceptance

- 62.1. Upon the expiry of the defects liability period, or where there is more than one such period, upon the expiry of the latest period, and when all defects or damage have been rectified, the supervisor shall issue to the contractor a final acceptance certificate and a copy thereof to the contracting authority stating the date on which the contractor completed its obligations under the contract to the supervisor's satisfaction. The final acceptance certificate shall be given by the supervisor within 30 days after the expiration of the defects liability period, or as soon as any works ordered under Article 61 have been completed to the satisfaction of the supervisor.

- 62.2. The works shall not be considered as completed until the final acceptance certificate has been signed by the supervisor and delivered to the contracting authority, with a copy to the contractor.
- 62.3. Notwithstanding the issuance of the final acceptance certificate, the contractor and the contracting authority shall remain liable for the fulfilment of any obligation incurred under the contract prior to the issue of the final acceptance certificate, which remains unperformed at the time such final acceptance certificate is issued. The nature and extent of any such obligation shall be determined by reference to the provisions of the contract.

BREACH OF CONTRACT AND TERMINATION

Article 63 - Breach of contract

- 63.1. Either party commits a breach of contract where it fails to perform its obligations in accordance with the provisions of the contract.
- 63.2. Where a breach of contract occurs, the party injured by the breach is entitled to the following remedies:
- a) damages; and/or
 - b) termination of the contract.
- 63.3. Damages may be either:
- a) general damages; or
 - b) liquidated damages.
- 63.4. Should the contractor fail to perform any of its obligations in accordance with the provisions of the contract, the contracting authority is without prejudice to its right under Article 63.2, also entitled to the following remedies:
- a) suspension of payments; and/or
 - b) reduction or recovery of payments in proportion to the failure's extent.
- 63.5. Where the contracting authority is entitled to damages, it may deduct such damages from any sums due to the contractor or call on the appropriate guarantee.

Article 64 - Termination by the contracting authority

- 64.1. The contracting authority may, at any time and with immediate effect, subject to Article 64.9, terminate the contract, except as provided for under Article 64.2.
- 64.2. Subject to any other provision of these general conditions the contracting authority may, by giving seven days' notice to the contractor, terminate the contract and expel the contractor from the site in any of the following cases where:

- a) the contractor is in serious breach of contract for failure to perform its contractual obligations;
- b) the contractor fails to comply within a reasonable time with the notice given by the supervisor requiring it to make good the neglect or failure to perform its obligations under the contract which seriously affects the proper and timely performance of the works;
- c) the contractor refuses or neglects to carry out any administrative orders given by the supervisor;
- d) the contractor assigns the contract or sub-contracts without the authorisation of the contracting authority;
- e) the contractor is bankrupt, subject to insolvency or winding up procedures, is having its assets administered by a liquidator or by the courts, has entered into an arrangement with creditors, has suspended business activities, or is in any analogous situation arising from a similar procedure provided for under any national law or regulation relevant to that contractor;
- f) any organisational modification occurs involving a change in the legal personality, nature or control of the contractor, unless such modification is recorded in an addendum to the contract;
- g) any other legal disability hindering performance of the contract occurs;
- h) the contractor fails to provide the required guarantees or insurance, or the person providing the earlier guarantee or insurance is not able to abide by its commitments;
- i) the contractor has been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- j) it has been established by a final judgment or a final administrative decision or by proof in possession of the contracting authority that the contractor has been guilty of fraud, corruption, involvement in a criminal organisation, money laundering or terrorist financing, terrorist related offences, child labour or other forms of trafficking in human beings or circumventing fiscal, social or any other applicable legal obligations, including through the creation of an entity for this purpose;
- k) the contractor, in the performance of another contract financed by the EU budget/EDF funds, has been declared to be in serious breach of contract, which has led to its early termination or the application of liquidated damages or other contractual penalties or which has been discovered following checks, audits or investigations by the European Commission, the contracting authority, OLAF or the Court of Auditors;
- l) after the award of the contract, the award procedure or the performance of the contract proves to have been subject to breach of obligations, irregularities or fraud;

- m) the award procedure or the performance of another contract financed by the EU budget/EDF funds proves to have been subject to breach of obligations, irregularities or fraud which are likely to affect the performance of the present contract;
- n) the contractor fails to perform its obligation in accordance with Article 12.8, Article 12a or Article 12b;
- o) the contracting authority has become entitled to the maximum claim under Article 36.1;
- p) the contractor fails to perform its obligation in accordance with Article 61.3;
- q) the contractor is in breach of the data protection obligations resulting from Article 72 of these general conditions.

The cases of termination under points (e), (i), (j), (l), (m) and (n) may refer also to persons who are members of the administrative, management or supervisory body of the contractor and/or to persons having powers of representation, decision or control with regard to the contractor.

The cases of termination under points (a), (e), (f), (g), (i), (j), (k), (l), (m) and (n) may refer also to persons jointly and severally liable for the performance of the contract.

The cases under points (e), (i), (j), (k), (l), (m), (n) and (q) may refer also to subcontractors.

64.3. Termination shall be without prejudice to any other rights or powers under the contract of the contracting authority and the contractor. The contracting authority may, thereafter, complete the works itself or conclude any other contract with a third party, at the contractor's own expense. The contractor's liability for delay in completion shall immediately cease when the contracting authority terminates the contract without prejudice to any liability thereunder that may already have arisen.

64.4. Upon termination of the contract or when it has received notice thereof, the contractor shall take immediate steps to bring the works to a close in a prompt and orderly manner and to reduce expenditure to a minimum.

64.5. The supervisor shall, as soon as possible after termination, certify the value of the works and all sums due to the contractor as at the date of termination.

64.6. In the event of termination:

- a) a report of work performed by the contractor shall be drawn up by the supervisor as soon as possible after inspection of the works, and inventory taken of temporary structures, materials, plant and equipment. The contractor shall be summoned to be present during the inspection and the taking of the inventory. The supervisor shall also draw up statements of emoluments still owed by the contractor to workers employed by him in relation to the contract and of sums owed by the contractor to the contracting authority;

- b) the contracting authority shall have the option of acquiring in whole or in part temporary structures which have been approved by the supervisor, equipment, plant and materials specifically supplied or manufactured in connection with the execution of work under the contract;
 - c) the purchase price of the temporary structures, equipment, plant and materials referred to above shall not exceed the unpaid portion of the expenditure incurred by the contractor, such expenditure being limited to that required for the performance of the contract under normal conditions;
 - d) the contracting authority may purchase, at market prices, the materials and items supplied or ordered by the contractor and not already paid for by the contracting authority on such conditions as the supervisor considers appropriate.
- 64.7. The contracting authority shall not be obliged to make any further payments to the contractor until the works are completed. After the works are completed, the contracting authority shall recover from the contractor the extra costs, if any, of completing the works, or shall pay any balance still due to the contractor.
- 64.8. If the contracting authority terminates the contract pursuant to Article 64.2, it shall, in addition to the extra costs for completion of the works and without prejudice to its other remedies under the contract, be entitled to recover from the contractor any loss it has suffered up to 10% of the contract price.
- 64.9. Where the termination is not due to an act or omission of the contractor, force majeure or other circumstances beyond the control of the contracting authority, the contractor shall be entitled to claim in addition to sums owed to it for work already performed, an indemnity for loss suffered.
- 64.10. This contract shall be automatically terminated if it has not given rise to any payment in the two years following its signing by both parties.

Article 65 - Termination by the contractor

- 65.1. The contractor may, by giving 14 days' notice to the contracting authority, terminate the contract if the contracting authority:
- a) fails for more than 120 days to pay the contractor the amounts due under any certificate issued by the supervisor after the expiry of the time limit stated in Article 44.3; or
 - b) consistently fails to meet its obligations after repeated reminders; or
 - c) suspends the progress of the works or any part thereof for more than 180 days for reasons not specified in the contract, or not attributable to the contractor's breach or default.
- 65.2. Such termination shall be without prejudice to any other rights of the contracting authority or the contractor acquired under the contract. Upon such termination, the

contractor shall, subject to the law of the country in which the works are executed, be entitled to immediately remove its equipment from the site.

- 65.3. In the event of such termination, the contracting authority shall pay the contractor for any loss or damage the contractor may have suffered. The maximum amount shall be 10% of the contract price.

Article 66 - Force majeure

- 66.1. Neither party shall be considered to be in default or in breach of its obligations under the contract if the performance of such obligations is prevented by any circumstances of force majeure which arises after the date of notification of award or the date when the contract becomes effective.
- 66.2. The term force majeure, as used herein covers any unforeseeable events, not within the control of either party and which by the exercise of due diligence neither party is able to overcome such as acts of God, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars whether declared or not, blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosions. A decision of the European Union to suspend the cooperation with the partner country is considered to be a case of force majeure when it implies suspension of funding this contract.
- 66.3. Notwithstanding the provisions of Articles 36 and 64, the contractor shall not be liable to forfeiture of its performance guarantee, liquidated damages or termination for default if, and to the extent that, its delay in performance or other failure to perform its obligations under the contract is the result of an event of force majeure. The contracting authority shall similarly not be liable, notwithstanding the provisions of Articles 53 and 65, for payment of interest on delayed payments, for non-performance or for termination by the contractor for default, if, and to the extent that, the contracting authority's delay or other failure to perform its obligations is the result of force majeure.
- 66.4. If either party considers that any circumstances of force majeure have occurred which may affect performance of its obligations, it shall promptly notify the other party and the supervisor, giving details of the nature, the probable duration and the likely effect of the circumstances. Unless otherwise directed by the supervisor in writing, the contractor shall continue to perform its obligations under the contract as far as is reasonably practicable, and shall seek all reasonable alternative means for performance of its obligations which are not prevented by the force majeure event. The contractor shall not put into effect such alternative means unless directed so to do by the supervisor.
- 66.5. If the contractor incurs additional costs in complying with the supervisor's directions or using alternative means under Article 66.4, the amount thereof shall be certified by the supervisor.
- 66.6. If circumstances of force majeure have occurred and continue for a period of 180 days then, notwithstanding any extension of time for completion of the works that the contractor may by reason thereof have been granted, either party shall be entitled to serve upon the other 30 days' notice to terminate the contract. If, at the expiry of the period of 30 days, force majeure persists, the contract shall terminate and, in consequence thereof

under the law governing the contract, the parties shall be released from further performance of the contract.

Article 67 - Decease

- 67.1. Where the contractor is a natural person, the contract shall be automatically terminated if that person dies. However, the contracting authority shall examine any proposal made by the heirs or beneficiaries if they have notified their wish to continue the contract.
- 67.2. Where the contractor consists of a number of persons and one or more of them die, a report shall be agreed between the parties on the progress of the works, and the contracting authority shall decide whether to terminate or continue the contract in accordance with the undertaking given by the survivors and by the heirs or beneficiaries, as the case may be. The decision of the contracting authority shall be notified to those concerned within 30 days of receipt of such proposal.
- 67.3. In the cases provided for in Article 67.1 and 67.2, persons offering to continue to perform the contract shall notify the contracting authority thereof within 15 days of the date of decease.
- 67.4. Such persons shall be jointly and severally liable for the proper performance of the contract to the same extent as the deceased contractor. Continuation of the contract shall be subject to the rules relating to establishment of any guarantee provided for in the contract.

SETTLEMENT OF DISPUTES AND APPLICABLE LAW

Article 68 - Settlement of disputes

- 68.1. The parties shall make every effort to settle amicably any dispute relating to the contract which may arise between them, or between the supervisor and the contractor.
- 68.2. Once a dispute has arisen, a party shall notify the other party of the dispute, stating its position on the dispute and any solution which it envisages, and requesting an amicable settlement. The other party shall respond to this request for amicable settlement within 30 days, stating its position on the dispute. Unless the parties agree otherwise, the maximum time period laid down for reaching an amicable settlement shall be 120 days from the date of the notification requesting such a procedure. Should a party not agree to the other party's request for amicable settlement, should a party not respond in time to that request or should no amicable settlement be reached within the maximum time period, the amicable settlement procedure is considered to have failed.
- 68.3. In the absence of an amicable settlement, a party may notify the other party requesting a settlement through conciliation by a third person. If the European Commission is not a party to the contract, it may accept to intervene as conciliator. The other party shall respond to the request for conciliation within 30 days. Unless the parties agree otherwise, the maximum time period laid down for reaching a settlement through conciliation shall be 120 days from the notification requesting such a procedure. Should a party not agree to

the other party's request for conciliation, should a party not respond in time to that request or should no settlement be reached within the maximum time period, the conciliation procedure is considered to have failed.

- 68.4. If the amicable settlement procedure and, if so requested, the conciliation procedure fails, each party may refer the dispute to either the decision of a national jurisdiction or arbitration, as specified in the special conditions.

Article 69 - Applicable Law

69.1. This contract shall be governed by the law of the country of the contracting authority or, where the contracting authority is the European Commission, by the applicable European Union law complemented where necessary by the law of Belgium.

FINAL PROVISIONS

Article 70 - Administrative sanctions

- 70.1. Without prejudice to the application of other remedies laid down in the contract, a sanction of exclusion from all contracts and grants financed by the EU, may be imposed, after an adversarial procedure in line with the applicable Financial Regulation, upon the contractor who, in particular,
- a) is guilty of grave professional misconduct, has committed irregularities or has shown significant deficiencies in complying with the main obligations in the performance of the contract or has been circumventing fiscal, social or any other applicable legal obligations, including through the creation of an entity for this purpose. The duration of the exclusion shall not exceed the duration set by final judgement or final administrative decision or, in the absence thereof, three years;
 - b) is guilty of fraud, corruption, participation in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings. The duration of the exclusion shall not exceed the duration set by final judgement or final administrative decision or, in the absence thereof, five years.
- 70.2. In the situations mentioned in Article 70.1, in addition or in alternative to the sanction of exclusion, the contractor may also be subject to financial penalties representing 2-10% of the contract price.
- 70.3. Where the contracting authority is entitled to impose financial penalties, it may deduct such financial penalties from any sums due to the contractor or call on the appropriate guarantee.
- 70.4. The decision to impose administrative sanctions may be published on a dedicated internet-site, explicitly naming the contractor.

Article 71 - Verifications, checks and audits by European Union bodies

- 71.1. The contractor will allow the European Commission, the European Anti-Fraud Office and the European Court of Auditors to verify, by examining the documents and to make copies thereof or by means of on-the-spot checks, including checks of documents (original or copies), the implementation of the contract. In order to carry out these verifications and audits, the EU bodies mentioned above shall be allowed to conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document relevant to the financing of the project. The contractor shall ensure that on-the-spot accesses is available at all reasonable times, notably at the contractor's offices, to its computer data, to its accounting data and to all the information needed to carry out the audits, including information on individual salaries of persons involved in the project. The contractor shall ensure that the information is readily available at the moment of the audit and, if so requested, that data be handed over in an appropriate form. These inspections may take place up to 7 years after the final payment.
- 71.2. Furthermore, the contractor will allow the European Anti-Fraud Office to carry out checks and verification on the spot in accordance with the procedures set out in the European Union legislation for the protection of the financial interests of the European Union against fraud and other irregularities.
- 71.3. To this end, the contractor undertakes to give appropriate access to staff or agents of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors to the sites and locations at which the contract is carried out, including its information systems, as well as all documents and databases concerning the technical and financial management of the project and to take all steps to facilitate their work. Access given to agents of the European Commission, European Anti-Fraud Office and the European Court of Auditors shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject. Documents must be easily accessible and filed so as to facilitate their examination and the contractor must inform the contracting authority of their precise location.
- 71.4. The contractor guarantees that the rights of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors to carry out audits, checks and verification will be equally applicable, under the same conditions and according to the same rules as those set out in this Article, to any sub-contractor or any other party benefiting from EU budget/EDF funds.
- 71.5. Failure to comply with the obligations set forth in Article 71.1 to 71.4 constitutes a case of serious breach of contract.

Article 72 - Data protection

72.1. Processing of personal data by the contracting authority

Any personal data included in or relating to the contract, including its implementation, shall be processed in accordance with Regulation (EU) 2018/1725. Such data shall be processed solely for the purposes of the implementation, management and monitoring of the contract by the data controller.

The contractor or any other person whose personal data is processed by the data controller in relation to this contract has specific rights as a data subject under Chapter III (Articles 14-25) of Regulation (EU) 2018/1725, in particular the right to access, rectify or erase their personal data and the right to restrict the processing of their personal data or, where applicable, the right to object to processing or the right to data portability.

Should the contractor or any other person whose personal data is processed in relation to this contract have any queries concerning the processing of its personal data, it shall address itself to the data controller. They may also address themselves to the Data Protection Officer of the data controller. They have the right to lodge a complaint at any time to the European Data Protection Supervisor.

Details concerning the processing of personal data are available in the data protection notice referred to in the special conditions.

72.2 Processing of personal data by the contractor

The processing of personal data by the contractor shall meet the requirements of the general conditions and be processed solely for the purposes set out by the controller.

The contractor shall assist the controller for the fulfilment of the controller's obligation to respond to requests for exercising rights of person whose personal data is processed in relation to this contract as laid down in Chapter III (Articles 14-25) of Regulation (EU) 2018/1725. The contractor shall inform without delay the controller about such requests.

The contractor may act only on documented written instructions and under the supervision of the controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.

The contractor shall grant personnel access to the data to the extent strictly necessary for the implementation, management and monitoring of the contract. The contractor must ensure that personnel authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality in accordance with the provisions of Article 12.7 of these general conditions.

The contractor shall adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the processing and to the nature, scope, context and purposes of processing, in order to ensure, in particular, as appropriate:

- (a) the pseudonymisation and encryption of personal data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
- (e) measures to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.

The contractor shall notify relevant personal data breaches to the controller without undue delay and at the latest within 48 hours after the contractor becomes aware of the breach. In such cases, the contractor shall provide the controller with at least the following information:

- (a) nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
- (b) likely consequences of the breach;
- (c) measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.

The contractor shall immediately inform the data controller if, in its opinion, an instruction infringes Regulation (EU) 2018/1725, Regulation (EU) 2016/679, or other Union or Member State or third country applicable data protection provisions as referred to in the tender specifications.

The contractor shall assist the controller for the fulfilment of its obligations pursuant to Article 33 to 41 under Regulation (EU) 2018/1725 to:

- (a) ensure compliance with its data protection obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users;
- (b) notify a personal data breach to the European Data Protection Supervisor;
- (c) communicate a personal data breach without undue delay to the data subject, where applicable;
- (d) carry out data protection impact assessments and prior consultations as necessary.

The contractor shall maintain a record of all data processing operations carried on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requests for access to personal data by third parties.

The contracting authority is subject to Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union, particularly as regards the inviolability of archives (including the physical location of data and services) and data security, which includes personal data held on behalf of the contracting authority in the premises of the contractor or subcontractor.

The contractor shall notify the contracting authority without delay of any legally binding request for disclosure of the personal data processed on behalf of the contracting authority made by any national public authority, including an authority from a third country. The contractor may not give such access without the prior written authorisation of the contracting authority.

The duration of processing of personal data by the contractor will not exceed the period referred to in Article 12.10 of these general conditions. Upon expiry of this period, the contractor shall, at the choice of the controller, return, without any undue delay in a commonly agreed format, all personal data processed on behalf of the controller and the copies thereof or shall effectively delete all personal data unless Union or national law requires a longer storage of personal data.

For the purpose of Article 7 of these general conditions, if part or all of the processing of personal data is subcontracted to a third party, the contractor shall pass on the obligations referred to in the present article in writing to those parties, including subcontractors. At the request of the contracting authority, the contractor shall provide a document providing evidence of this commitment.

* * *



FINANCIAL IDENTIFICATION

PRIVACY STATEMENT

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

Please use CAPITAL LETTERS and LATIN CHARACTERS when filling in the form.

BANKING DETAILS ①

ACCOUNT NAME ②			
IBAN/ACCOUNT NUMBER ③			
CURRENCY			
BIC/SWIFT CODE		BRANCH CODE ④	
BANK NAME			
ADDRESS OF BANK BRANCH			
STREET & NUMBER			
TOWN/CITY		POSTCODE	
COUNTRY			

ACCOUNT HOLDER'S DATA

AS DECLARED TO THE BANK

ACCOUNT HOLDER			
STREET & NUMBER			
TOWN/CITY		POSTCODE	
COUNTRY			

REMARK	
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BANK STAMP + SIGNATURE OF BANK REPRESENTATIVE ⑤	DATE (Obligatory)
	SIGNATURE OF ACCOUNT HOLDER (Obligatory)

- ① Enter the final bank data and not the data of the intermediary bank.
- ② This does not refer to the type of account. The account name is usually the one of the account holder. However, the account holder may have chosen to give a different name to its bank account.
- ③ Fill in the IBAN Code (International Bank Account Number) if it exists in the country where your bank is established
- ④ Only applicable for US (ABA code), for AU/NZ (BSB code) and for CA (Transit code). Does not apply for other countries.
- ⑤ It is preferable to attach a copy of RECENT bank statement. Please note that the bank statement has to confirm all the information listed above under 'ACCOUNT NAME', 'ACCOUNT NUMBER/IBAN' and 'BANK NAME'. With an attached statement, the stamp of the bank and the signature of the bank's representative are not required. The signature of the account-holder and the date are ALWAYS mandatory.



THIS "LEGAL ENTITY" SHEET MUST BE COMPLETED AND SIGNED, AND SUBMITTED TOGETHER WITH A LEGIBLE PHOTOCOPY OF THE IDENTITY DOCUMENT

LEGAL ENTITY

PRIVACY STATEMENT

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

Please use CAPITAL LETTERS and LATIN CHARACTERS when filling in the form.

NATURAL PERSON

I. PERSONAL DATA

FAMILY NAME(S) ①			
FIRST NAME(S) ①			
DATE OF BIRTH	<input type="text"/> DD	<input type="text"/> MM	<input type="text"/> YYYY
PLACE OF BIRTH (CITY, VILLAGE)	<input type="text"/>	COUNTRY OF BIRTH	<input type="text"/>
TYPE OF IDENTITY DOCUMENT			
IDENTITY CARD <input type="checkbox"/> PASSPORT <input type="checkbox"/> DRIVING LICENCE ② <input type="checkbox"/> OTHER ③ <input type="checkbox"/>			
ISSUING COUNTRY	<input type="text"/>		
IDENTITY DOCUMENT NUMBER	<input type="text"/>		
PERSONAL IDENTIFICATION NUMBER ④	<input type="text"/>		
PERMANENT PRIVATE ADDRESS	<input type="text"/>		
POSTCODE	<input type="text"/>	P.O. BOX	<input type="text"/>
CITY	<input type="text"/>		
REGION ⑤	<input type="text"/>	COUNTRY	<input type="text"/>
PRIVATE PHONE	<input type="text"/>		

PRIVATE E-MAIL

II. BUSINESS DATA

Do you run your own business without a separate legal personality (e.g. sole traders, self-employed etc.) and you provide as such services to the Commission, other Institutions, Agencies and EU-Bodies?

YES NO

If YES, please provide business data and attach copies of official supporting documents

BUSINESS NAME
(if applicable)

VAT NUMBER

REGISTRATION NUMBER

PLACE OF REGISTRATION: CITY

COUNTRY

① As indicated on the official document.

② Accepted only for Great Britain, Ireland, Denmark, Sweden, Finland, Norway, Iceland, Canada, United States and Australia.

③ Failing other identity documents: residence permit or diplomatic passport.

④ See table with corresponding denominations by country.

⑤ To be completed with Region, State or Province by non EU countries only, excluding EFTA and candidate countries.

TABLE WITH CORRESPONDING FIELD DENOMINATION BY COUNTRY

ISO CODE	PERSONAL IDENTIFICATION NUMBER
AT	N/A
BE	N° d'identification du Registre national / Identificatienummer van het Rijksregister
BG	ЕГН- Единен граждански номер (ЕГН) Edinen grazhdanski nomer
CY	N/A
CZ	Rodné číslo (RČ)
DE	N/A
DK	Personnummer (Da. CPR, Det Centrale Personregister)
EE	Isikukood (IK)
ES	Documento Nacional de Identidad (DNI)/Numero de identificacion fiscal(NIF)/Id.N°
FI	Finnish: Henkilötunnus (HETU), Swedish: Personbeteckning
FR	N/A
GR	N/A
HR	Osobni identifikacijski broj (OIB)
HU	N/A
IE	N/A
IT	Codice fiscale
LT	Asmens kodas
LU	N/A
LV	Personas kods
MT	Identify card number
NL	Burgerservicenummer (BSN)
PL	Powszechny Elektroniczny System Ewidencji Ludności (PESEL)
PT	N° identificação civil
RO	Cod Numeric Personal (CNP)
SE	Personnummer
SI	Enotna matična številka občana (EMŠO)
SK	Rodné číslo (RČ)



PLEASE COMPLETE AND SIGN THIS FORM AND ATTACH COPIES OF OFFICIAL SUPPORTING DOCUMENTS (REGISTER(S) OF COMPANIES, OFFICIAL GAZETTE, VAT REGISTRATION, ETC.)

LEGAL ENTITY

PRIVACY STATEMENT

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

Please use CAPITAL LETTERS and LATIN CHARACTERS when filling in the form.

PRIVATE/PUBLIC LAW BODY WITH LEGAL FORM

OFFICIAL NAME ①			
BUSINESS NAME (if different)			
ABBREVIATION			
LEGAL FORM			
ORGANISATION TYPE	FOR PROFIT <input type="checkbox"/>		
	NON FOR PROFIT <input type="checkbox"/> NGO ② YES <input type="checkbox"/> NO <input type="checkbox"/>		
MAIN REGISTRATION NUMBER ③			
SECONDARY REGISTRATION NUMBER (if applicable)			
PLACE OF MAIN REGISTRATION	CITY		
	COUNTRY		
DATE OF MAIN REGISTRATION	<input type="text"/> DD	<input type="text"/> MM	<input type="text"/> YYYY
VAT NUMBER			
ADDRESS OF HEAD OFFICE			
POSTCODE	<input type="text"/>	P.O. BOX	<input type="text"/>
COUNTRY	<input type="text"/>	PHONE	<input type="text"/>
E-MAIL	<input type="text"/>		
DATE			
DATE			
SIGNATURE OF AUTHORISED REPRESENTATIVE			
STAMP			

① National denomination and its translation in EN or FR if existing.

② NGO – Non Governmental Organisation, to be completed if NFPO is indicated.

③ Registration number in the national register of companies. See table with corresponding field denomination by country.

TABLE WITH CORRESPONDING FIELD DENOMINATION BY COUNTRY

ISO CODE	MAIN REGISTRATION NUMBER
AT	Firmenbuchnummer (FN) ZentraleVereinregister (ZVR-Zahl) Ordnungsnummer
BE	Numéro d'entreprise Ondernemingsnummer Unternehmensnummer
BG	Булстат (Bulstat Code) Единен идентификационен код (ЕИК/ПИК) Unified Identification Code (UIC)
CY	Αριθμός Εγγραφής Αριθμός Μητρώου
CZ	Identifikační číslo (IČO)
DE	Handelsregister Genossenschaftsregister (Nummer de Firma) Vereinsregister (Nummer des Vereins) Nummer der Partnerschaft (Partnerschaftsregister)
DK	Det centrale virksomhedsregister (CVR-nummer)
EE	Registrikood
ES	HOJA number
FI	Yritys- ja yhteisötunnus (Y-tunnus) Företags- och organisationsnummer (FO-nummer) Business Identity code (Business ID)
FR	Immatriculation au Registre de Commerce et de Sociétés (RCS) Système Informatique du Répertoire des Entreprises (SIRENE)
GB	Company number
GR	ΑΡΙΘΜΟΣ Γ.Ε.ΜΗ (Γενικού Εμπορικού Μητρώου) Δικηγορικός Σύλλογος Αθηνών (Δ.Σ.Α)
HR	Matični broj subjekta(MBS) Pod registarskim Brojem Matični broj obrta (MBO) Registarski Broj kakladnog
HU	Cégjegyzékszám
IE	Company number Grouping registration number in Ireland
IT	Repertorio Economico Amministrativo (REA)
LT	Kodas
LU	Registre de commerce et des sociétés RCS Numéro d'immatriculation Handelsregisternummer
LV	Vienotais Reģistrācijas Numurs

MT	Registration number Register of Voluntary Organisation (Identification number)
NL	Kamer van Koophandel (KvK-nummer) Dossiernummer
PL	REGON
PT	Numero de identificaçao de pessoa colectiva (NIPC)
RO	Numar de ordine in registrul comertului Numarul inscrierii in registrul special
SE	Organisationsnummer
SI	Matična številka
SK	Identifikačné číslo (ICO)