

## VOLUME 2

### SECTION 1 CONTRACT FORM

## WORKS CONTRACT FOR EUROPEAN UNION EXTERNAL ACTIONS

NO. <Contract number>

FINANCED FROM THE GENERAL BUDGET OF THE UNION

Between

("The contracting authority"),

of the one part,

and

<Full official name of contractor>

[<Legal status/title>]<sup>1</sup>

[<Official registration number>]<sup>2</sup>

<Full official address>

[<VAT number>]<sup>3</sup>,

("the contractor")

of the other part,

have agreed as follows:

### PROJECT

### Edinet insights into tomorrow's cities

**CONTRACT TITLE Contract title: Modernization of the public lightning network in Edinet municipality**

**Identification number Publication reference: 2020/421-644/6.5**

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

#### Construction of

Public lightning network in Edinet municipality, including Telemangement and public video security system 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.

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<sup>1</sup> Where the contracting party is an individual.

<sup>2</sup> Where applicable.

<sup>3</sup> Except where the contracting party is not VAT registered.

- (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 breakdown of the lump-sum price,
  - (e) the technical and/or performance specifications,
  - (f) the design documentation (drawings),
  - (g) the tender form with all annexes
  - (h) 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) [EUR]

<amount in words> is

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,

the data controller is the head of contracts and finance unit R4 of DG Neighbourhood and Enlargement Negotiations

- (a) the data protection notice is available at <http://ec.europa.eu/europeaid/prag/annexes.do?chapterTitleCode=A>.

For indirect management insert the following

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 contracts and finance unit R4 of DG Neighbourhood and Enlargement Negotiations].

- (b) the data protection notice is available at <http://ec.europa.eu/europeaid/prag/annexes.do?chapterTitleCode=A>.

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, namely the contractor.

Done in English in [two] one original for the contracting authority, and one original for the contractor.

**For the contractor**

Name:

Title:

Signature:

Date:

**For the contracting authority**

Name:

Title:

Signature:

Date:

## 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 <Indicate here the contact persons, addresses of the parties, their other contact details, the documents to provide and the procedure to be used by the parties for communication.>
- 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 <Specify the resources available to the project supervisor and its representative.>
- 5.3 <Specify the powers of the project Supervisor and its representative.>
- 5.4 <Specify the practical arrangements for administrative orders.>

#### **Article 8 Documents to be provided**

- 8.1 Urban certificate, Construction authorization to be provided after receiving from the contractor of the necessary technical documentation

#### **Article 9 Access to the site**

- 9.1 The contractor is reminded that there is a head of delegation of the European Commission in the state of the contracting authority. The contractor is obliged to give the head of delegation free access to its sites, factories, workshops, etc., and generally assist the head of delegation, like the project Supervisor, in the performance of his duties. The same provisions also apply to the appointed representatives of the head of delegation.

All correspondence between the contractor and the contracting authority or project supervisor must be copied, for information, to the head of delegation of the European Commission at the following official address:

<Enter official address.>

## **Article 12 General obligations**

12.9

At the place of the works, it should be installed an information billboard with project visibility and name of the works, all supplied and installed equipment should contain project visibility according to the Communication and Visibility Manual for EU External Actions published by the European Commission

## **Article 15 Performance guarantee**

15.1 The amount of the performance 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 contract value

16.2 a)

By derogation from Article 16.2(a) first paragraph of the general conditions in 30 days after signing of the contract, 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 30 days 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**

5 months

## **Article 19 Contractor's drawings and execution studies**

19.1 Detailed drawings to be drawn up by the contractor and submitted for the supervisor's approval in 20 days from the contract signing, in 10 days to be verified according to national law and to be submitted to receive the construction authorization.

19.7 The language of the manuals and drawings will be Romanian

## **Article 20 Sufficiency of tender prices**

<Specify any additional provisions regarding the scope of the contractor's tender.>

**Article 21 Exceptional risks**

- 21.4 During exceptional weather conditions the contract can be stopped and the works can be resumed from the moment the conditions improve, according to the order of the technical Supervisor.

**Article 24 Interference with traffic**

- 24.1 <Specify any permission to impede traffic on communication links.>
- 24.2 no any special measures required of the contractor in respect of traffic on and around the site.>

**Article 27 Demolished materials**

- 27.2 demolition materials become the property of the contracting authority.

**Article 29 Temporary works**

- 29.2 no temporary works

**Article 30 Soil studies**

- 30.1 if for the technical design will be necessary additional soil studies, the contractor will carry out them within the frame of the contract.

**Article 32 Patents and licenses**

- 32.1 There is no derogation from Article 32 of the general conditions.

**Article 34 Period of implementation of tasks**

- 34.1 5 months

**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

**Article 39 Work register**

- 39.1 The work register should be kept by the contractor at the works place
- 39.2 all adjustments to the technical documentation should be coordinated with contracting authority through the site Supervisor

**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 instruction to tenderers. However, the goods to be purchased may originate from any country, whenever the total price of the estimated quantity of those goods, as reflected in a separate item of the

Breakdown of the lump-sum price (Volume 4.2.3)]

is below EUR 100 000.

A category of similar goods to be purchased shall not be broken down over more than 1 item of the breakdown of the lump-sum price (Volume 4.2.3)]]

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.

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:

(\*) specifications mentioned in the tender dossier

(\*) the requirements of the technical document(s) should correspond to the national construction legislation in the Republic of Moldova and EU norms for smart technologies.

#### **Article 41 Inspection and testing**

All the equipment will be tested at the place of its instalment and from the management

#### **Article 43 Ownership of plant and materials**

43.2 Temporary structures, plant and materials on the site belong to the contracting authority under Article 43 of the general conditions

#### **Article 44: General principles for payments**

44.1 Payments shall be made in MDL at the rate of NBM in the day of exchanging the tranche by the contracting authority

44.2 If invoices are submitted to the contracting authority, the contractor shall inform the Contracting Authority

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 Pre-financing is possible

46.2 The total amount of the pre-financing must not exceed 10 % of the original contract price for the lump-sum advance

46.3(c) When (i) the pre-financing requested is equal or below EUR 300 000 **and** (ii) the contracting authority does not require a financial guarantee following a risk assessment, by derogation from Article 46.3(c) of the general conditions no pre-financing guarantee is required.

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:

$$R = \frac{Va \times D}{Vt \times 0.8}$$

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.

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**

- 47.1 The sum to be retained from interim payments to guarantee implementation of the contractor's obligations during the defects liability period is 5% of each instalment.

#### **Article 48 Price revision**

Prices must be revised for contracts:

- With a total amount above EUR 5 000 000 (excluding VAT) and/or
- With a duration above 1 year

This contract does not provide the price revision unless force major or unforeseen circumstances that affect the good realization the contract

if the price revision will be applied it will be calculated or on basis of weight coefficient of inputs which composed the contract price, or the contracting authority may use its own established price revision formula.

- 48.1 Prices contained in the contractor's tender must be deemed to have been established at the economic conditions in force 30 days prior the latest date fixed for the submission of the tenders (reference date = <specify reference date (mm/yy)>). If there is a variation in the



economic conditions during the works, the monthly interim payment certificate will be adjusted by applying the revision formulas in accordance with Article 48.2.

48.2 The revision of prices must be calculated by combining the application of (a) mono-material formula and (b) proportional formula as follows:

a) the mono-material formula will be applied to the following unit prices of the bill of quantities :

- <specify unit price (n°, material to revise)>
- <specify unit price (n°, material to revise)>

The unit prices to which the mono-material formula applies must be chosen among those including one specific material (or input) or more which :

- have a significant volatility
- represent a significant part of the total contract amount
- is clearly identified in the detailed breakdown of prices.

(For example the mono material formula can be applied to such unit prices of the bill of quantities (but not exclusively):

- reinforced concrete (for materials like cement and steel)
- pavement (for materials like bitumen)

The revision of the above listed unit price(s) will be calculated by revision of the price(s) of their respective material(s) or input(s) in the detailed breakdown of prices according to the following formula:

$$p_n = p_0 \times \frac{Mat_n}{Mat_0} \times \frac{Tx_n}{Tx_0}$$

Where :

$p_0$  = Material unit price (in the detailed breakdown of prices) at reference date

$p_n$  = Revised material unit price (in the detailed breakdown of prices) at month n

$Mat_0$  = official supply price or relevant index of the concerned material at the reference date

$Mat_n$  = official supply price or relevant index of the concerned material at the month n

$Tx_0$  = exchange rate between the currency of the indicator MATo 'C' and the currency of contract payment 'E' (according to Article 44.1) at the reference date:  $1 C = Tx_0 E$   
The exchange rates shall be those published on the InforEuro website, currently at [http://ec.europa.eu/budget/index\\_en.cfm](http://ec.europa.eu/budget/index_en.cfm)

$Tx_n$  = same exchange rate at the month n:  $1 C = Tx_n E$

The special conditions must then define:

- the nature of official supply price or relevant index,
- the reference values of prices, index and currencies exchange rate

For this contract the following index and reference values will be used:

| Material     | Mat<br>(official supply price or relevant index)                            | Currency of Mat                           | Mat <sub>0</sub>            | Tx <sub>0</sub>            |
|--------------|---|---|-----------------------------|----------------------------|
| <Material 1> | <Specify official supply price or relevant index and source of publication> | <currency of the contract/other currency> | <Specify Mat <sub>0</sub> > | <Specify Tx <sub>0</sub> > |
| <Material 2> | <Specify official supply price or relevant index and source of publication> | <currency of the contract/other currency> | <Specify Mat <sub>0</sub> > | <Specify Tx <sub>0</sub> > |
| ...          | ...   | ...                                       |                             |                            |

|              |   |   |                             |                            |
|--------------|---|---|-----------------------------|----------------------------|
| <Material i> | <Specify official supply price or relevant index and source of publication> | <currency of the contract/other currency> | <Specify Mat <sub>0</sub> > | <Specify Tx <sub>0</sub> > |
|--------------|---|---|-----------------------------|----------------------------|

Example:

| Inputs | Mat<br>(official supply price or relevant index)                        | Currency of Mat | Mat <sub>0</sub>            | Tx <sub>0</sub>            |
|--------|---|-----------------|-----------------------------|----------------------------|
| Cement | Official prices in country Y of one ton of cement published in review X | XOF             | 150 000 XOF                 | <Specify Tx <sub>0</sub> > |
| Steel  | Steel index in country W published in review Z                          | Currency W      | <Specify Mat <sub>0</sub> > | <Specify Tx <sub>0</sub> > |
| ...    | ...   | ...             |                             |                            |

- b) the proportional revision shall then be applied to the amount of each interim payment certificate after deduction of any amount due for repayment of pre-financing:

$$P_n = P_0 \left( a + b \frac{E_n}{E_0} \times \frac{Tx_n}{Tx_0} + c \frac{Mt_n}{Mt_0} \times \frac{Tx'_n}{Tx'_0} + d \frac{G_n}{G_0} \times \frac{Tx''_n}{Tx''_0} \right)$$

Where:

$P_n$  = amount of the interim payment certificate after deduction of any amount due for repayment of pre-financing after price revision

$P_0$  = amount of the interim payment certificate after deduction of any amount due for repayment of pre-financing before application of proportional price revision

$E_0$  = < Specify official price or relevant index of labour cost in at the reference date >

$E_n$  = < Specify official price or relevant index of labour cost in at month n >

$Mt_0$  = < Specify official price or relevant index for the supply and maintenance of equipment at the reference date >

$Mt_n$  = < Specify official price or relevant index for the supply and maintenance of equipment at month n >

$G_0$  = < Specify official price or relevant index of petrol, gas or diesel in at the reference date >

$G_n$  = < Specify official price or relevant index of petrol, gas or diesel in at month n >

$Tx_0$  = exchange rate between the currency of the selected indicator 'C' and the currency of contract payment 'E' at the reference date: 1 C = Tx<sub>0</sub> E

The exchange rates shall be those published on the InforEuro website, currently at [http://ec.europa.eu/budget/index\\_en.cfm](http://ec.europa.eu/budget/index_en.cfm)

$Tx_n$  = same exchange rate at the month n: 1 C = Tx<sub>n</sub> E

The indexes or prices (E Mt and G) shall be selected as the most reliable amongst those available. The indices listed above are understood to be strictly defined as in the source document. The publishing entity and the title of the concerned publication shall be also specified.

The total of the coefficients must be equal to 1.

[As a general rule, the average 'a' coefficient of the proportional formula calculated for road construction projects should exceed 0.35.]

The coefficients a, b, c and d will be calculated on the basis of the detailed breakdown of prices provided by the contractor in its submission. The contractor will have to provide clear arithmetical calculations for the proposed coefficients.

In order to avoid a double price revision, coefficient a must include the weight of inputs or materials for which the mono-material formula is applied.

- c) there will be no revision threshold;
- d) If the contractor modifies the country of origin of the source of its materials or other components to be used for the execution of works, it shall inform by writing within 30 days the supervisor, who will change the formula for the revision of prices by introducing the indices of the new country of origin.

#### **Article 49 Measurement**

49.1 This is a lump-sum contract.

The amounts due shall be calculated by measuring the works carried out in relation to the firm quantities of each item of the breakdown of the lump-sum price, according to the elaborated local budget estimates, included in the approved works' technical design.

#### **Article 50 Interim payments**

50.1 For each interim payment the contractor will elaborate the protocol of works reception, signed by the site supervisor, and submit for approval by the legal representative of the Contracting authority together with the invoice.

#### **Article 51 Final statement of account**

51.(1) and (2)

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 being 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 sign 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.

However, when the interest calculated in accordance with the first subparagraph is lower than or equal to EUR 200, it shall be paid to the creditor only upon a demand submitted within two months of receiving late payment

#### **Article 60 Provisional acceptance**

60.1 In complement to Article 60.1 of the general conditions the provisional acceptance will be realised according to provisions of the Republic of Moldova regulation.

#### **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 notify 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.

Additional obligations under the guarantee are according to the technical specifications mentioned in the tender dossier.

- 61.6 The defects liability work necessitated by normal wear and tear is to be carried out by the contractor.
- 61.7 The duration of the defects liability period is less than the maximum of 365 days. According to the contractor's offer.

**Article 68 Dispute settlement**

68.4

Any dispute arising out of or relating to this contract which cannot be settled otherwise shall be referred to the exclusive jurisdiction of Republic of Moldova in accordance with the national legislation of the state of the contracting authority.

**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/EC<sup>4</sup> and as detailed in the specific privacy statement published at ePRAG.

**Article 73 Further additional clauses**

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<sup>4</sup> OJ L 205 of 21.11.2018, p. 39