

# INSTRUCTIONS TO TENDERERS

**REFERENCE:** RMCO 81701/27.06.2019 – 3.3. Site supervision

When submitting their tenders, tenderers must follow all instructions, forms, terms of reference, contract provisions and specifications contained in this tender dossier. Failure to submit a tender containing all the required information and documentation within the deadline specified may lead to the rejection of the tender.

These instructions set out the rules for submitting, selecting and implementing contracts financed under this call for tenders, in conformity with the practical guide, (available on the internet at this address: <http://ec.europa.eu/europeaid/prag/document.do> ).

## 1. Services to be provided

The services required by the Contracting Authority are described in the terms of reference. They are set out in Annex II to the draft contract, which forms Part B of this tender dossier.

## 2. Timetable

	DATE	TIME*
Deadline for requesting clarification from the contracting authority	30.07.2020	10:00
Last date for the contracting authority to issue clarification	13.08.2020	-
Deadline for submitting tenders	01.09.2020	10:00
Interviews (if any)		-
Completion date for evaluating technical offers	01.09.2020	-
Notification of award	Date at most 90 days after deadline for tenders	-
Contract signature	Date at most 150 days after deadline for tenders	-
Start date	<b>21.09.2020</b>	-

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

<sup>b</sup> Provisional date

## 3. Participation, experts and subcontracting

- a) Participation in this tender procedure is open only to the invited tenderers. For the eligibility, please see point 10 of the contract notice.
- b) Natural or legal persons are not entitled to participate in this tender procedure or be awarded a contract if they are in any of the situations mentioned in Sections 2.3.3.1 or 2.3.3.2 of the Practical Guide. Should they do so, their tender will be considered unsuitable or irregular respectively.
- c) In the cases listed in Section 2.3.3.1 of the **Practical Guide** tenderers may be excluded from EU financed procedures and be subject to financial penalties representing 2 % to 10 % of the total value of the contract in accordance with the conditions set in Section 2.3.4 of the **Practical Guide**. This information may be published on the Commission website in accordance with the conditions set in Section 2.3.4 of the Practical Guide.

- d) Tenders should be submitted by the same service provider or consortium that submitted the application form on the basis of which it was short-listed and to which the letter of invitation to tender is addressed. No change whatsoever in the identity or composition of the tenderer is permitted unless the contracting authority has given its prior approval in writing-
- e) The service providers or consortia are not allowed to form alliances with any other firms or to subcontract to each other for the purposes of this contract.
- f) The contract between the tenderer/contractor and its experts shall contain a provision stating that it is subject to the approval of the partner country. It is furthermore recommended that this contract contains a dispute resolution clause.
- g) Subcontracting is the only permitted form of collaboration with firms that have not been short-listed and only on condition that the tenderer explicitly states that it is the sole party that will be contractually liable. If the tenderer intends to subcontract one or more parts of the contracted services, this must be clearly stated in the organisation and methodology and the tender submission form.
- h) Even if subcontracting is allowed, the short-listed candidate must intend to provide the majority of the services itself except for the tasks entrusted to experts either as natural persons or single-member companies.
- i) All subcontractors must be eligible for the contract. If the identity of the intended subcontractor is already known at the time of submitting the tender, the tenderer must furnish a statement guaranteeing the eligibility of the subcontractor. If any subcontractor identified in this way does not meet the eligibility criteria, the tender shall be rejected. If the identity of the subcontractor is not known at the time of submitting the tender, any subcontract must be awarded according to Article 4 of the General Conditions of the contract.
- j) Subcontractors cannot be in any of the exclusion situations listed in Section 2.3.3 of the Practical Guide. Whenever requested by the Contracting Authority, the successful tenderer/contractor shall submit a declaration from the intended subcontractor that it is not in one of the exclusion situations. In the event of doubt, the Contracting Authority shall request documentary evidence that the subcontractor is not in a situation of exclusion.
- k) If the offer includes subcontracting, it is recommended that the contractual arrangements between the tenderer and its subcontractors include mediation, according to national and international practices, as a method of dispute resolution.

#### 4. Content of tenders

Offers, all correspondence and documents related to the tender exchanged by the tenderer and the contracting authority must be written in English, or Romanian.

Supporting documents and printed literature furnished by the tenderer may be in another language, provided they are accompanied by a translation into the language of the procedure. For the purposes of interpreting the tender, the language of the procedure has precedence.

The tender must include a technical offer and a financial offer.

##### 4.1. Technical offer

The technical offer must include the following documents:

- (1) **Tender submission form** (see Part D of this tender dossier) including:
  - a) A signed **declaration** using the format attached to the tender submission form.
  - b) A completed **financial identification form** (see Annex VI to the draft contract) to indicate the bank account into which payments should be made if the tender is successful. (If the tenderer has already signed another contract with the European Commission, it may provide instead either its financial identification form number or a copy of the financial identification form provided on that occasion, unless it has changed in the meantime).

- c) The **legal entity file** and supporting documents (if the tenderer has already signed another contract with the European Commission, it may provide instead either its legal entity number or a copy of the legal entity file provided on that occasion, unless it has changed its legal status in the meantime).
- d) **Duly authorised signature: an official document** (statutes, power of attorney, notary statement, etc.) proving that the person who signs on behalf of the company/joint venture/consortium is duly authorised to do so.
- e) **Tender guarantee - 1%** of the budget available for the contract. This guarantee will be provided in the form of a bank guarantee, a banker's draft, a certified check, a guarantee provided by an insurance company and / or an irrevocable guarantee.

- (2) **Organisation and methodology** (will become Annex III to the contract), to be drawn up by the tenderer using the format in Annex III to the draft contract.

The 'Estimated number of working days' worksheet (in the budget breakdown spread sheet for Annex V) must be included in the Organisation and methodology.

Their positions and responsibilities are defined in Section 6.1.1 of the Terms of Reference in Annex II to the draft contract and they are subject to evaluation according to the evaluation grid in Part C of this tender dossier. The Evaluation Committee may also call them for interview.

- (3) **Key experts** (to become Annex IV to the contract). The key experts are those whose involvement is considered to be instrumental to achieve the contract objectives.

Annex IV to the draft contract contains the templates that tenderers must use, including:

- a) **a list of the names of the key experts;**

**b) the CVs of each of the key experts.** Each CV should be no longer than 3 pages and only one CV must be provided for each position identified in the terms of reference. Only the work experience mentioned in the CV will be considered by the evaluation committee. Note that the CVs of non-key experts must not be submitted.

The qualifications and experience of each key expert must clearly match the profiles indicated in the terms of reference. If an expert does not meet the minimum requirements for each evaluation criterion (i.e. qualification and skills, general professional experience and specific professional experience), he/she must be rejected. In such case the entire tender shall be rejected.

Tenderers must provide the following documents for any key experts proposed:

- **a copy of the diplomas mentioned in their CVs,**
- **a copy of certificate for works supervision.**

Only diplomas and documented experience will be taken into account. Previous experience which would have led to breach of contract and termination shall not be used as reference

- (4) **Non key experts** may also be instrumental to achieve the contract objectives. However, they are not subject to evaluation by the evaluation Committee. Their positions and responsibilities may be defined in Section 6.1.1 of the Terms of Reference in Annex II to the draft contract.

(5) **Documentary proof or statements required under the law of the country in which the company (or each of the companies for consortia)** is effectively established, to show that it is not in any of the exclusion situations listed in section 2.3.3 of the Practical Guide. This evidence, documents or statements must be dated, no more than one year before the date of submission of the tender. In addition, a

statement must be furnished stating that the situations described in these documents have not changed since then.

If the nature of your entity is such that it cannot fall into the exclusion situations and/or cannot provide the documents indicated above (for instance, national public administrations and international organisations), please provide a declaration explaining this situation.

The Contracting Authority may waive the obligation of any candidate or tenderer to submit the documentary evidence referred to above if such evidence has already been submitted for the purposes of another procurement procedure, provided that the issue date of the documents does not exceed one year and that they are still valid. In this case, the candidate or tenderer must declare on his/her honour that the documentary evidence has already been provided in a previous procurement procedure and confirm that his/her situation has not changed.

**(6) Documentary evidence of the financial and economic capacity as well as the technical and professional capacity according to the selection criteria specified in the contract notice** (see further point 2.4.11 of the Practical Guide). For the technical selection criteria, you are only requested to submit documentary evidence for these references.

If the documentary evidence submitted is not written in one of the official languages of the European Union, a translation into the language of the procedure must be attached. Where the documents are in an official language of the European Union other than the one of the procedure, it is however strongly recommended to provide a translation into the language of the procedure, in order to facilitate the evaluation of the documents. Documentary proof or statements may be in original or copy. If copies are submitted, the originals must be available to send to the contracting authority upon request.

Tenderers are reminded that the provision of false information in this tender procedure may lead to the rejection of their tender and to their exclusion from EU-funded procedures and contracts.

#### **4.2. Financial offer**

The Financial offer must be presented in MDL and must include the following documents (using the templates included in the fee-based version of Annex V to part B of this tender dossier. The electronic version of this document 'B8 - Budget breakdown for a fee-based contract' can be found on the website

<http://ec.europa.eu/europeaid/prag/document.do>):

**Budget breakdown**

**Working days**

**To complete the spread sheet:**

- 1) Enter the fee rates for each category of expert in the first worksheet ('Budget breakdown')
- 2) Enter the estimated numbers of working days for each category of expert during the period of implementation of the tasks in the second worksheet ('Working days') per lot
- 3) Enter all fee estimated for contract implementation per each lot

Tenderers are reminded that the maximum budget available for this contract, as stated in the contract notice:

**Giurgiuleşti CBP: 58 000 MDL**

Payments under this contract will be made in the national currency of RM.

The applicable tax and customs arrangements are as follows:

Exemption of taxes

In conformity of the Government Decision No.413/ 21.08.2019, all activities implemented through the Grant Contract No. 81701/27.06.2019 will be exonerated for the customs and fiscal duties.

#### **5. Variant solutions**

Tenderers are not authorised to tender for a variant in addition to this tender.

## **6. Period during which tenders are binding**

Tenderers are bound by their tenders for 90 days after the deadline for submitting tenders or until they have been notified of non-award.

The selected tenderer must maintain its tender for a further 60 days. This 60-day period is added to the validity period irrespective of the date of notification.

## **7. Additional information before the deadline for submitting tenders**

The tender dossier should be clear enough to avoid tenderers having to request additional information during the procedure. If the contracting authority, either on its own initiative or in response to a request from a tenderer, provides additional information on the tender dossier, it must send such information in writing to all the tenderers at the same time.

Tenderers may submit questions in writing to the following address up to 21 days before the deadline for submission of tenders, specifying the publication reference and the contract title: <https://mtender.gov.md/>

The contracting authority has no obligation to provide clarification after this date.

Any tenderer seeking to arrange individual meetings with the contracting authority and/or the government of the partner country and/or the European Commission concerning this contract during the tender period may be excluded from the tender procedure.

No information meeting or site visit is foreseen.

## **8. Submission of tenders**

Tenders must be delivered to the Contracting Authority for **receipt** before date & time of deadline, at least 30 days after the date of the invitation letter and at the close of business of a working day. They must include the requested documents in clause 4 above and be submitted: <https://mtender.gov.md/>

**Tenders submitted by any other means will not be considered.**

Tenders must be submitted using the double envelope system, 'Technical offer' and the other 'Financial offer'. All parts of the tender other than the financial offer must be submitted in Envelope A (i.e. including the tender submission form, statements of exclusivity and availability of the key experts and declarations).

Tenders may be submitted for one, two lots or for all lots, indicating the financial offer, the time allotted and the proposed experts (engineers) on each separate lot.

## **9. Amending or withdrawing tenders**

Tenderers may amend or withdraw their tenders by written notification prior to the deadline for submitting tenders. Tenders may not be amended after this deadline.

## **10. Costs for preparing tenders**

No costs incurred by the tenderer in preparing and submitting the tender are reimbursable. All such costs must be borne by the tenderer, including the cost of interviewing proposed experts.

## **11. Ownership of tenders**

The contracting authority retains ownership of all tenders received under this tendering procedure. Consequently, tenderers do not have the right to have their tenders returned to them.

## **12. Evaluation of tenders**

### **12.1. Evaluation of technical offers**

The quality of each technical offer per lot will be evaluated in accordance with the award criteria and the weighting detailed in the evaluation grid in Part C of this tender dossier. No other award criteria will be used. The award criteria will be examined in accordance with the requirements indicated in the terms of reference.

The evaluation of the technical offers will follow the procedures set out in Section 3.3.10. of the Practical Guide (available on the internet at: <http://ec.europa.eu/europeaid/prag/document.do> ).

#### **12.1.1. Interviews**

The Evaluation Committee may interview the key experts proposed in the technically compliant tenders, after having written provisional conclusions but before concluding the technical evaluation.

The date and time of these interviews will be confirmed or notified to the tenderer at least ten days in advance. If a tenderer is unable to participate in an interview by force majeure, a mutually convenient alternative date and time is arranged with the tenderer. If the tenderer is unable to participate in this second scheduled time, its tender will be eliminated from the evaluation process.

#### **12.2. Evaluation of financial offers**

Upon completion of the technical evaluation, the envelopes containing the financial offers for tenders that were not eliminated during the technical evaluation will be opened (i.e. those with an average score of 75 points or more). Tenders exceeding the maximum budget available for the contract per lot are unacceptable and will be eliminated.

#### **12.3. Choice of selected tenderer**

The best price-quality ratio is established by weighing technical quality against price on an 80/20 basis.

#### **12.4. Confidentiality**

The entire evaluation procedure is confidential, subject to the contracting authority's legislation on access to documents. The evaluation committee's decisions are collective and its deliberations are held in closed session. The members of the evaluation committee are bound to secrecy. The evaluation reports and written records are for official use only and may be communicated neither to the tenderers nor to any party other than the contracting authority, the European Commission, the European Anti-Fraud Office and the European Court of Auditors.

### **13. Ethics clauses / Corruptive practices**

- a) 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.
- b) 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.
- c) 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.
- d) 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.

- e) The Contracting Authority reserves the right to suspend or cancel the procedure, where the award procedure proves to have been subject to substantial errors, irregularities or fraud. If substantial errors, irregularities or fraud are discovered after the award of the Contract, the Contracting Authority may refrain from concluding the Contract.

## **14. Signature of contract(s)**

### **14.1. Notification of award**

The successful tenderer will be informed in writing that its tender has been accepted.

The successful tenderer shall then confirm availability or unavailability of their key-experts within 5 days from the date of the notification of award.

In case of unavailability the tenderer will be allowed to propose replacement key-expert(s). The successful tenderer shall give due justification for the exchange of key-expert but the acceptance will not be limited to specific cases. Several replacement key-experts may be proposed but only one time-period of 15 days from the date of the notification of award will be offered. The replacement key-expert(s) cannot be an expert proposed by another tenderer in the same call for tender.

The replacement key-expert's total score must be at least as high as the scores of the key-expert proposed in the tender. It must be emphasised that the minimum requirements for each evaluation criteria must be met by the replacement expert.

If replacement key-experts are not proposed within the 15 days delay or if the replacement experts are not sufficiently qualified, or that the proposal of the replacement key-expert amends the award conditions which took place, the Contracting Authority may decide to award the contract to the second best technically compliant tenderer (also giving them a chance to replace a key-expert should he/she not be available).

Should the Contracting Authority learn that a tenderer has confirmed the availability of a key expert and signed the contract although the tenderer has deliberately concealed the fact that the key-expert is unavailable from the date specified in the tender dossier for the start of the assignment, the Contracting Authority may decide to terminate the contract on the basis of article 36.2 (m) of the General Conditions.

It is reminded that the tenderer/contractor may also be subject to administrative and financial penalties foreseen in section 2.3.4 of the PRAG and article 10.2 of the General Conditions of service contracts. Furthermore, it may lead to a tenderer's /contractor's exclusion from other contracts funded by the European Union.

### **14.2. Signature of the contract(s)**

Within 30 days of receipt of the contract already signed by the contracting authority, the selected tenderer shall sign and date the contract and return it to the contracting authority.

Failure of the selected tenderer to comply with this requirement may constitute grounds for annulling the decision to award the contract. In this event, the contracting authority may award the tender to another tenderer or cancel the tender procedure.

The other tenderers will, at the same time as the notification of award is submitted, be informed that their tenders were not retained, by electronic means or standard letter, including an indication of the relative weaknesses of their tender by way of a comparative table of the scores for the winning tender and the unsuccessful tender. The second best tenderer is informed of the notification of award to the successful tenderer with the reservation of the possibility to receive a notification of award in case of inability to sign the contract with the first ranked tenderer. The validity of the offer of the second best tenderer will be kept. The second tenderer may refuse the award of the contract if, when receiving a notification of award, the 90 days of validity of their tender has expired.

The contracting authority will furthermore, at the same time, also inform the remaining unsuccessful tenderers and the consequence of these letters will be that the validity of their offers must not be retained.

## **15. Cancellation of the tender procedure**

In the event of cancellation of the tender procedure, the contracting authority will notify tenderers of the cancellation. If the tender procedure is cancelled before the outer envelope of any tender has been opened, the unopened and sealed envelopes will be returned to the tenderers.

Cancellation may occur, for example, where:

- the tender procedure has been unsuccessful, i.e. no suitable, qualitatively or financially acceptable tender has been received or there is no valid response at all;
- there are fundamental changes to the economic or technical data of the project;
- exceptional circumstances or force majeure render normal performance of the contract impossible;
- all technically acceptable tenders exceed the financial resources available;
- there have been breach of obligations, irregularities or frauds in the procedure, in particular if they 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 shall 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 advised of the possibility of damages. The publication of a contract notice does not commit the contracting authority to implement the programme or project announced.

## **16. Appeals**

Tenderers believing that they have been harmed by an error or irregularity during the award process may file a complaint. See section 2.4.15. of the Practical Guide.



# SERVICE CONTRACT NOTICE

## Site Supervision Services,

Inside the project entitled „Rehabilitation and modernization of the customs offices from the Romanian/Moldavian border, respectively the public finances and fiscal-fiscal responsibility customs offices of Albița - Leușeni, Sculeni – Sculeni and Giurgiulești – Giurgiulești”, financed by the European Union.

**1. Publication reference**

RMCO 81701 /27.06.2019 – **3.3 Site supervision**

**2. Procedure**

Competitive negotiated

**3. Programme title**

**Joint Operational Programme Romania – Republic of Moldova 2014 – 2020, according to the Grant Contract no. 81701 /27.06.2019.**

**4. Financing**

Budget line RMCO project– **3.3 Site supervision**

**5. Contracting Authority**

Customs Service of the Republic of Moldova

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## CONTRACT SPECIFICATION

**6. Nature of contract**

Fee based

**7. Contract description**

This contract is established between the **Customs Service of the Republic of Moldova** “the Contracting Authority,, and” the services **provider**“ and purposes of this contract are as follows:

- Perform daily monitoring and control of the conformity of the construction works, the materials used, the equipment delivered with the requirements from the project documentation, with the norms and regulations in the field of construction,
- To monitor the compliance of the methodological and technological indications, with the contractual obligations of the construction companies subcontracted by the beneficiary for realization of the works for each lot.
- To control the volumes and costs of the performs works, that will be the subject of payments, according to the project documentation and the estimated costs;
- Elaboration of monthly progress reports, the final work supervision report, as well as other reports at the request of the Contracting Authority
- To ensure the delivery to the Beneficiary of the documents of reception and of the technical book of the construction after the final reception.

**8.Title: Supervision of works on Giurgiulesti CBP:**

1. Rehabilitation and modernization of the rainwater drainage system;
2. Construction of the scanning platform and the protection wall;
3. Rehabilitation of access roads.

**9. Maximum budget**

**Giurgiulești CBP: 58 000 MDL**

## CONDITIONS OF PARTICIPATION

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### 10. Eligibility

Participation is open to all natural persons who are nationals of and legal persons [participating either individually or in a grouping (consortium) of tenderers] which are effectively established in a Member State of the European Union or in an eligible country or territory as defined under the Regulation (EU) N°236/2014 establishing common rules and procedures for the implementation of the Union's instruments for external action (CIR) for the applicable Instrument under which the contract is financed (see also heading 24 below) . Participation is also open to international organisations.

### 11. Candidature

All eligible natural and legal persons (as per item 11 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 members of a consortium (i.e., the leader and all other members) are jointly and severally liable to the Contracting Authority.

The participation of an ineligible natural or legal person (as per item 11) 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.

### 12. Number of tenders

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

### 13. Grounds for exclusion

As part of the tender, tenderers must submit a signed declaration, included in the tender form, to the effect that they are not in any of the exclusion situations listed in Section 2.3.3. of the Practical Guide.

### 14. Sub-contracting

Subcontracting is allowed.

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## PROVISIONAL TIMETABLE

### 15. Provisional commencement date of the contract

*18.09.2020.*

### 16. Implementation period of the tasks

During the execution of the works and **final reception of the works:**

maximum 8 months of execution of the works.

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## SELECTION AND AWARD CRITERIA

### 17. Selection criteria

The following selection criteria will be applied to candidates. In the case of applications submitted by a consortium, these selection criteria will be applied to the consortium as a whole unless specified otherwise.

- 1) **Economic and financial capacity of candidate** (based on item 3 of the application form). In case of candidate being a public body, equivalent information should be provided. The reference period which will be taken into account will be the last three financial years for which accounts have been closed.

#### **Criteria for legal and natural persons:**

1. Annual revenues recorded in the last three years (2017, 2018, 2019), with a minimum value equal to the amount of the offer, confirmed by financial reports / revenue declaration;
2. Lack of debts to the public budget, confirmed by fiscal administration;

3. Available financial resources (min 10%) from the tender value; confirmed by bank statement/extract

2) **Professional capacity of candidate** (based on items 4 and 5 of the application form). The reference period which will be taken into account will be the last three years from tender submission deadline.

Criteria for legal and natural persons:

1. Has experience in construction and works supervision, minimum 3 years from the date of registration.
2. Has staff employed for the areas related to this contract.

3) **Technical capacity of candidate** (based on items 5 and 6 of the application form). The reference period which will be taken into account will be the last three years from tender submission deadline.

Criteria for legal and natural persons:

1. The staff involved must be certified for the works included in the lot for which the tender is submitted, with the presentation of certificates and identification cards issued by the competent authorities, valid at the time of submission of the tender for those areas:
  - ✓ **Giurgiuleşti CBP - “Civil constructions”, “Electrical installations and external networks”.**

2. The proposed staff will have:

Qualifications and skills

- Reporting skills and knowledge in the field of construction (confirmed by CV and based on the interview).

General professional experience

- Minimum 5 years of general professional experience in the field of construction (CV and other certificates)

Specific professional experience

- At least 3 years of experience in supervising the works (CV and other documents proving the experience)
- Minimum 2 letters of recommendation.

All experts must be independent and free from conflicts of interest in the responsibilities they take on.

Previous experience which caused breach of contract and termination by a Contracting Authority shall not be used as reference.

An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the Contracting Authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing a commitment on the part of those entities to place those resources at its disposal. Such entities, for instance the parent company of the economic operator, must respect the same rules of eligibility - notably that of nationality - and must fulfil the same relevant selection criteria as the economic operator. With regard to technical and professional criteria, an economic operator may only rely on the capacities of other entities where the latter will perform the works or services 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.

The only factors which will be taken into consideration during this re-examination are:

1. the highest number of service contracts that meet criterion 3.2
2. the highest number of years of works supervisions by the proposed experts

**18. Award criteria**

Best price-quality ratio.

The best value for money is established by weighing technical quality against price on an 80/20 basis

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## TENDERING

### 19. **Deadline for submission of tenders: 01.09.2020**

The deadline for receipt of tenders is specified in point 8 of the Instruction to Tenderers.

### 20. **Tender format and details to be provided**

Tenders must be submitted using the standard tender form for Competitive Negotiated Procedures, the format and instructions of which must be strictly observed.

The tender form is available from the following Internet address: <http://ec.europa.eu/europeaid/prag/annexes.do?group=B> , under the zip file called Simplified Tender dossier.

The tender must be accompanied by a declaration of honour on exclusion and selection criteria using the template available from the following Internet address:

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

Any additional documentation (brochure, letter, etc.) sent with a tender will not be taken into consideration.

The tender dossier is also available on the website: <https://customs.gov.md/ro/content/achizitii-publice>

### 21. **How tenders may be submitted**

Applications must be submitted in English or Romanian, exclusively to the Contracting Authority, using the means specified in point 8 of the Instructions to Tenderers.

Tenders submitted by any other means will not be considered.

By submitting a tender tenderer accept to receive notification of the outcome of the procedure by electronic means.

### 22. **Alteration or withdrawal of applications**

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

### 23. **Operational language**

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

### 24. **Legal basis<sup>1</sup>**

Regulation (EU) N°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 and ENI, see Annex A2 of the practical guide.

## 25. **Additional information**

### 25.1 **Guarantee for the offer**

25.1.1 The tenderer must provide, as part of his tender, a tender guarantee. The amount of the tender security must be 1% of the tender value.

25.1.2 It may be provided in the form of a bank guarantee, a banker's project, a certified check, a guarantee provided by an insurance company and / or a guarantee or an irrevocable letter of credit made to the Contracting Authority.

25.1.3 The tendering security must remain valid for 45 days after the period of validity of the tender, including any extension, and be issued to the contracting authority for the necessary amount.

25.1.4 The tender guarantees of the unsuccessful tenderers will be returned together with the information letter

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on which the tenderer failed.

25.1.5 The successful tenderer's must be released when the tenderer has signed the contract and provided the necessary performance guarantee.

## **25.2 Guarantee of good performance of the contract**

25.2.1 Within 30 days of receipt of the contract signed by the Contracting Authority, the successful tenderer shall sign, date, and return the contract to the Contracting Authority together with the performance guarantee (as appropriate). Thus, by signing the contract, the winning bidder will become the Contractor and the contract will enter into force.

25.2.2 If he does not sign and return the contract within 30 days of notification, the Contracting Authority may cancel the acceptance of the Offer without prejudice to his right to invoke the guarantee, to request compensation or to proceed to any other. remedy in connection with this failure, and the winning tenderer will not have the right to complain to the Contracting Authority.

25.2.3 The performance guarantee provided in the General Conditions **is set at 5%** of the value of the contract.

\* \* \*

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## **1. BACKGROUND INFORMATION**

### **1.1. Partner country**

Republic of Moldova

### **1.2. Contracting authority**

The Customs Service of the Republic of Moldova

### **1.3. Country background**

Republic of Moldova is a landlocked country in Eastern Europe, bordered by Romania to the west and Ukraine to the north, east, and south. The capital city is Chişinău. Moldova is a parliamentary republic with a president as head of state and a prime minister as head of government. It is a member state of the United Nations, the Council of Europe, the World Trade Organization (WTO), the Organization for Security and Cooperation in Europe (OSCE), the GUAM Organization for Democracy and Economic Development, the Commonwealth of Independent States (CIS) and the Organization of the Black Sea Economic Cooperation (BSEC) and aspires to join the European Union.

### **1.4. Current situation in the sector**

The Customs Service of the Republic of Moldova is a public body, subordinated to the Ministry of Finance that ensures the economic security of the State, implements the customs policy and manages directly the customs activity in the Republic of Moldova.

The Customs Service has the mission to implement the customs policy, to ensure the observance of the customs regulations for goods, means of transport and travelers crossing the customs border of the Republic of Moldova, to collect the import and export duties and to carry out customs clearance, control and customs surveillance. The customs activity is carried out according to the international laws and practices.

## **2. OBJECTIVE, PURPOSE & EXPECTED RESULTS**

### **2.1. Overall objective**

The overall objective of the project of which this contract will be a part is as follows:

- Ensuring the good implementation of the LIP project and Increasing the institutional and operational efficiency of the beneficiary Customs Service of the Republic of Moldova

### **2.2. Purpose**

The purposes of this contract is to supervise the construction works on the Giurgiulesti CBP, to be realised in the frame of the project on behalf of the beneficiary

### **2.3. Description of the works to be realized in the frame of the project**

#### **Giurgiulesti CBP:**

1. Rehabilitation and modernization of the rainwater drainage system;
2. Construction of the scanning platform and the protection wall;
3. Rehabilitation of access roads.

### **3. ASSUMPTIONS & RISKS**

#### **3.1.1. Assumptions underlying the project**

- Good cooperation between project team and Contractor
- Climatic conditions conducive to the realization of construction works

#### **3.1.2. Risks**

- Risks of human resources: project team does not always have sufficient skills to manage in optimal conditions at all stages of the project.
- Financial risks: poor financial forecasting, where resources are undervalued, leading to failure of the project.
- Technical risks. Violating the terms and conditions of purchase of services and work to the project, leading to delays in project implementation.

### **4. SCOPE OF THE WORK**

#### **4.1. General**

##### **4.1.1. Project description**

In order to ensure the good implementation of the project Rehabilitation and modernisation of the customs offices from Romanian and Moldavian borders and improvement of the conditions in which the customs control is carried out according to international requirements, it is necessary to provide Services for works **site supervision:**

- Perform daily monitoring and control of the conformity of the construction works, the materials used, the equipment delivered with the requirements from the project documentation, with the norms and regulations in the field of construction, the methodological and technological indications, with the contractual obligations of the construction companies subcontracted by the beneficiary for realization of the works for each lot.
- Monitors and controls the volumes and costs of the performed works, that will be the subject of payments, according to the project documentation and the estimated costs.
- Performs the checks provided for in the technical regulations and signs the documents drawn up as a result of the checks.
- Elaboration of monthly progress reports, the final work supervision report, as well as other reports at the request of the Contracting Authority
- Ensures the delivery to the Beneficiary of the documents of reception and of the technical book of the construction after the final reception.

##### **4.1.2. Geographical area to be covered**

National , Girgiulesti village

##### **4.1.3. Target groups**

Giurgiulești BCP.

#### **4.2. Specific work**

a) to exercise the main obligations and attributions of the technical expert/engineer in the activity of verifying the execution of the capital construction works in accordance with the Regulation regarding the verification of the execution of the construction works by the certified officials, approved by order no. 65 of 27.05.1996 of the Department of construction and spatial planning and the provisions of the Law on quality in construction, no. 721-XIII of 02.02.1996;



- b) to carry out the activity as a representative of the Beneficiary in the relations with the designer, builder, suppliers, service providers in carrying out the works contract;
- c) to act for the Beneficiary and in the interest of the Beneficiary both towards the Contractor, as well as with the Suppliers and Designers;
- d) to monitor and coordinate the construction works of the object;
- e) to participate together with the designer and the executor in the general drawing of the construction and in establishing the landmarks;
- f) to identify and solve the technical problems, issues regarding quality assurance and control, as well as monitoring the work of the general contractor;
- h) to verify and approve:
  - the technological projects regarding the execution of the construction works;
  - the technical procedures for executing the works;
  - execution verification programs;
  - execution organization projects (site organization);
  - the execution graphics of the works related to the essential requirements;
  - the minutes regarding the hidden works.
- j) to exercise the control of the execution of the works according to the verification program;
- k) to control the way in which the qualitative reception of the materials and of the construction elements (prefabricated, joinery, etc.) is carried out;
- l) to verify the respect of the execution technologies, their correct application in order to ensure the qualitative level provided in the project documentation, in the contract and in the technical norms in force;
- m) to prohibit the use of new technologies not technically ungrated, as well as of ungrated products;
- n) to control the volumes and the cost of the works executed and presented by the construction-assembly organizations for payment according to the project documentation and the cost estimates;
- o) to verify the quality of the construction elements that are realized in their own workshops;
- p) to stop the execution of the construction works in case of serious quality defects or deviations from the provisions of the execution project;
- q) to take measures to correct or restore the works, found to be inadequate;
- r) to request the designer's approval for the liquidation of deficiencies that affect the essential requirements for the construction works or the deviations from the project;
- s) to inform operatively the management of the construction organization about the liquidation of the deficiencies found and the measures taken to exclude their repetition;
- t) to participate in the verification in determining phases;
- u) to carry out the checks provided for in the technical regulations and to sign the documents drawn up as a result of the checks (minutes in determining phases, minutes of works that become hidden, etc.);
- v) to draw up and keep up to date the record book of the verified construction works;
- w) to take the documents from the builder and designer and complete the technical book of construction with all the documents provided by the legal regulations;
- x) to ensure the secretariat of the reception and the preparation of the reception documents;
- y) to follow the solution of the objections included in the annexes to the minutes of the reception at the completion of the works and the recommendations of the reception commission;
- z) to ensure the delivery to the investor / user of the receipt documents and the technical book of the construction after the final reception is performed.

### 4.3. Project management

#### 4.3.1. Responsible body

Customs Service of the Republic of Moldova

#### 4.3.2. Management structure

The implementation of the project will be carried out by the project team created on the basis of the Customs Service order, which will include the component and their attributions.

#### 4.3.3. Facilities to be provided by the Contracting Authority and/or other parties

Project office in the frame of the main office building of the Contracting Authority.

## 5. LOGISTICS AND TIMING

### 5.1. Location

The Customs Service of the Republic of Moldova, 30, N. Starostenco street, Chişinău; MD-2065, Republic of Moldova

### 5.2. Start date & period of implementation

The signing of contracts: August-September

The implementation period of the tasks is during the execution of the construction and including the final reception of works:

*Giurgiuleşti BCP : works construction maximum 8 months.*

## 6. REQUIREMENTS

### 6.1. Staff

Note that civil servants and other staff of the public administration, of the partner country or of international/regional organisations based in the country, shall only be approved to work as experts if well justified. The justification should be submitted with the tender and shall include information on the added value the expert will bring as well as proof that the expert is seconded or on personal leave.

#### 6.1.1. Key experts

Key expert/engineer has a crucial role in implementing the contract. These terms of reference contain the required key experts' profile. The tenderer shall submit CV and statements of exclusivity and availability for key experts.

#### Key expert /experts

Qualifications and skills

- Engineers / engineers authorized for the works included - certificates valid at the time of submission of the tender in the following areas: "Civil engineering", "Electrical installations and networks".

General professional experience

- Minimum 5 years.

Specific professional experience

- Experience as a certified works supervisor at least 3 years
- Minimum 2 letters of recommendation in the past three years

All experts must be independent and free from conflicts of interest in the responsibilities they take on.

### **6.1.2. Non-key experts**

CVs for non-key experts should not be submitted in the tender but the tenderer will have to demonstrate in their offer that they have access to experts with the required profiles.

The contractor must select and hire other experts as required according to the profiles identified in the organisation & methodology and these terms of reference. It must clearly indicate the experts' profile so that the applicable daily fee rate in the budget breakdown is clear. All experts must be independent and free from conflicts of interest in the responsibilities they take on.

The selection procedures used by the contractor to select these other experts must be transparent, and must be based on pre-defined criteria, including professional qualifications, language skills and work experience. The findings of the selection panel must be recorded. The selected experts must be subject to approval by the contracting authority before the start of their implementation of tasks.

### **6.1.3. Support staff & backstopping**

Backstopping and support staff costs must be included in the fee rates.

## **6.2. Office accommodation**

Office accommodation of a reasonable standard and of approximately 10 square per expert metres for writing reports should be provided by the contractor.

## **6.3. Facilities to be provided by the contractor**

The contractor must ensure that experts are adequately supported and equipped. In particular, it must ensure that there is sufficient administrative, secretarial and interpreting provision to enable experts to concentrate on their primary responsibilities. It must also transfer funds as necessary to support their work under the contract and to ensure that its employees are paid regularly and in a timely fashion.

## **6.4. Equipment**

No equipment is to be purchased on behalf of the contracting authority / partner country as part of this service contract or transferred to the contracting authority / partner country at the end of this contract. Any equipment related to this contract that is to be acquired by the partner country must be purchased by means of a separate supply tender procedure.

# **7. REPORTS**

## **7.1. Reporting requirements**

The Contractor will submit the following reports in Romanian:

- **Monthly progress reports** to be produced, as well as other reports at the request of the Contracting Authority, in which will describe the realised services, the progress of the works and problems encountered during implementation of the works. Each Invoice will be accompanied by a minute of service delivery with a progress report .
- **Final report** will be submitted at the finish of the works for each lot, based on the minutes of preliminary reception and final reception of the works, the contractor will describe what are the difficulties for final reception of the works and next steps for the beneficiary.

## **7.2. Submission and approval of reports**

The report referred to above must be submitted to the Project Coordinator identified in the contract. The Project Coordinator is responsible for approving the reports.

## **8. MONITORING AND EVALUATION**

### **8.1. Definition of indicators**

Specific performance measures chosen because they provide valid, useful, practical and comparable measures of progress towards achieving expected results. Can be quantitative: measures of quantity, including statistical statements; or qualitative: judgements and perception derived from subjective analysis.

### **8.2. Special requirements**

none

# DRAFT CONTRACT

## SERVICE CONTRACT FOR EUROPEAN UNION EXTERNAL ACTIONS

No <Contract number>

FINANCED FROM THE EU GENERAL BUDGET

The Customs Service of the Republic of Moldova, 30, N. Starostenco street, Chişinău, MD-2065  
(‘the contracting authority’),

of the one part,

and

<Full official name of the 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:

**The Large Infrastructure Project** „Rehabilitation and modernization of the customs offices from the Romanian/Moldavian border, respectively the public finances and fiscal-fiscal responsibility customs offices of Albiţa - Leuşeni, Sculeni – Sculeni and Giurgiuleşti – Giurgiuleşti”, financed by the European Union through the Joint Operational Programme Romania – Republic of Moldova 2014 – 2020, according the Grant Contract nr. 81701 /27.06.2019.

### CONTRACT TITLE

#### Site Supervision Services- Giurgiuleşti BCP

Identification number RMCO 81701 /27.06.2019 – 3.3 Site supervision-

#### (1) Subject

- 1.1 The subject of this contract is Site Supervision Services, done at the Customs Service of the Republic of Moldova with identification number 3.3 Site supervision (‘the services’)- Giurgiuleşti BCP.
- 1.2 The contractor shall execute the tasks assigned to him in accordance with the terms of reference annexed to the contract (Annexe II)

#### (2) Contract value

This Contract, established **in MDL**, is a **fee-based contract**. Based on the maximum fees, incidental expenditure and provision made for expenditure verification set out in Annex V, the maximum contract value is \_\_\_\_\_ MDL.

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

<sup>2</sup> Where applicable. For individuals, mention their ID card, passport or equivalent document number.

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

**(3) Order of precedence of contract documents**

The following documents shall be deemed to form and be read and construed as part of this contract, in the following order of precedence:

- the contract agreement;
- the special conditions
- the general conditions (Annex I);
- the terms of reference (Annex II)
- the organisation and methodology (Annex III);
- Key experts (Annex IV);
- Breakdown (Annex V);
- other relevant documents (Annex VI);

**These above listed documents make up the contract. They 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.**

**(4) Language of the contract**

The language of the contract shall be English and of all written communications between the contractor and the contracting authority and/or the project manager shall be in Romanian.

**(5) Other specific conditions applying to the Contract**

Done in English in three originals, 2 originals for the Contracting Authority, one original for the Contractor.

**For the Contractor**

Name:

Title:

Signature:

Date:

Banking Details:

**For the Contracting Authority**

Name:

Title:

Signature:

Date:

Banking Details:

## **SPECIAL CONDITIONS**

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. Exceptionally, and with the approval of the competent European Commission departments, other clauses can be indicated to cover particular situations.

### **Article 2 Communications**

#### 2.1 Contact persons:

- Customs Service of the Republic of Moldova, 30, N. Starostenco street, MD 2065, Chisinau, Republic of Moldova.; **Emilia Cainarean**, Coordinator Project; Tel.: 022 574 226, email: [rmco-project@customs.gov.md](mailto:rmco-project@customs.gov.md)

- \_\_\_\_\_  
\_\_\_\_\_

- #### 2.2
- 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. With regard to interim and final reports, if they are required according to Article 26 or to the terms of reference, the contractor will be expected to use the forms in the electronic system for encoding and submitting the reports.

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 19 below, 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 19 Implementation of the tasks and delays**

- #### 19.1
- The start date for implementation shall be the date of signature of the contract by both parties.

*The signing of contracts will be carried out for each lot separately before the start of works.*

- #### 19.2
- The period for implementing the tasks is during the execution of the construction and final reception of the works.

### **Article 26 Interim and final reports**

The contractor shall submit progress reports as specified in the terms of reference and RM legislation in the field of construction.

### **Article 27 Approval of reports and documents**

- #### 27.5
- The contracting authority shall, within 45 days of receipt, notify the contractor of its decision concerning the documents or reports received by it, giving reasons should it reject the reports or documents, or request amendments. If the contracting authority does not give any comments on the documents or reports within the time limit, the contractor may request written acceptance of them. The documents or reports shall be deemed to have been approved by the contracting authority if it does not expressly inform the contractor of any comments within 45 days of the receipt of the documents or report.

## **Article 29 Payment and interest on late payment**

29.1 Payments will be made in accordance with the following the option:

<b>Month</b>		<b>EUR</b>
<b>After every month of service contract implementation</b>	Interim payment	According to monthly report
<b>After completion of services – signing of the final reception of works</b>	Forecast balance	10% of the contract value
	<b>Total</b>	

The amounts payable will vary. They will be based on the Contractor's invoice accompanied by minutes of service provision and monthly report of the project implementation, and are subject to approval of the reports in accordance with Article 27 of the General Conditions.

The interim invoices must be paid such that the sum of the payments does not exceed 90 % of the maximum contract value stated in Article 3 of the Contract. Payment of the balance of the final value of the contract, subject to the maximum contract value stated in Article (2) of the Contract, is made after deduction of the amounts already paid, within 60 days of the Contracting Authority receiving an invoice accompanied by the final progress report and a final expenditure verification report, the incidental expenditure and expenditure verification actually incurred during the period, subject to approval of those reports.

29. 3 By derogation from Article 29.3 of the General Conditions, once the deadline set in Article 29.1 has expired, the Contractor will, upon demand, be entitled to late-payment interest at the rate and for the period mentioned in the General Conditions submitted. The demand must be submitted within two months of receiving late payment.

29.5 Payments will be made in MDL, in accordance with Articles 29.6 of the General Conditions into the bank account notified by the Contractor to the Contracting Authority.

## **Article 30 Financial guarantee**

30.1 By derogation from article 30 of the General Conditions no pre-financing guarantee is required.

## **Article 40 Settlement of disputes**

40.4 Any disputes arising out of or relating to this contract which cannot be settled otherwise shall be referred to the exclusive jurisdiction of the Chisinau Court of Republic of Moldova in accordance with the national legislation of the state of the Contracting Authority.

## **Article 42 Data Protection**

Not applicable.



## **ANNEX III: ORGANISATION & METHODOLOGY**

### **To be completed by the tenderer**

Please provide the following information:

#### **1. RATIONALE**

- Any comments you have on the terms of reference for the successful execution of activities, in particular regarding the objectives and expected results, thus demonstrating the degree of understanding of the contract. Your opinion on the key issues related to the achievement of the contract objectives and expected results.
- An explanation of the risks and assumptions affecting the execution of the contract.

#### **2. STRATEGY**

- An outline of the approach proposed for contract implementation.
- A list of the proposed tasks you consider necessary to achieve the contract objectives.
- Inputs and outputs.

#### **3. BACKSTOPPING, SUBCONTRACTING AND CAPACITY PROVIDING ENTITIES**

- A description of the support facilities (back-stopping) that the contractor will provide to the team of experts during execution of the contract. The back-up function will be assessed in the evaluation and should be carefully explained in the organisation and methodology, including the list of staff, units, capacity of permanent staff regularly intervening as experts on similar projects, provision of expertise in the region/country or origin as well as partner countries, organisational structure, etc. which are supposed to ensure that function, as well as the available quality systems and knowledge capitalisation methods and tools, within the respective members of the consortium.
- A description of any subcontracting arrangements and arrangements with capacity providers (if such were identified during the shortlisting stage) with a clear indication of the tasks that will be entrusted to subcontractors and to capacity providers and a statement by the tenderer guaranteeing the eligibility of subcontractors.

#### **4. COMMUNICATION METHODS AND REPORTING.**

#### **5. TIMETABLE OF WORK**

- The timing, sequence and duration of the proposed tasks, taking into account travel time.
- The identification and timing of major milestones in executing the contract, including an indication of how the achievement of these would be reflected in any reports, particularly those stipulated in the terms of reference.
- The methodologies contained in the offer should include a work plan indicating the envisaged resources to be mobilised.
- The expected number of working days required from each category of expert each month during the period of execution of the contract (using the Excel spreadsheet linked to the Budget breakdown).

Guidance notes on expert inputs:

The tenderer is expected to take into account the implementation period of the contract and propose the number of expert days which will accomplish the tasks described in the Terms of Reference.

Implementation of the contract (and therefore payment) is based solely on the working days. The Contractor will only be paid for days actually worked on the basis of the daily fee rate contained in

## Organisation & methodology

the budget breakdown (Annex V). Tenderers must annex the 'Estimated number of working days' worksheet contained in the spreadsheet for Annex V to the Organisation and Methodology to demonstrate the correspondence between the proposed methodology and the expert inputs. Please note that the budget breakdown should not be attached to the Organisation and Methodology as no financial offer should be disclosed in the technical offer.

During the technical evaluation, assessment will be made if the number of working days estimated for each month for each type of expert proposed in the Organisation and Methodology are sufficient for the requirements of the Terms of Reference to be achieved. This is judged on the basis of the profiles identified in the Terms of Reference and the Organisation and Methodology.

The tenderer is expected to include the holiday provision for the experts. The annual leave entitlement of the experts employed by the Contractor is determined by their employment contract with the Contractor and not by the service contract between the Contracting Authority and the Contractor. However, the Contracting Authority can decide when experts take their annual leave since this is subject to approval by the Project Manager, who will assess any such request according to the needs of the project while the contract is in progress. For obvious reasons, a day of annual leave is not considered to be a working day. Please see the General Conditions, Articles 21 and 22

The fee rates for all experts must include the remuneration paid to the experts, all the administrative costs of employing the relevant experts, such as equipment, relocation and repatriation expenses [including flights to and from the partner country upon mobilisation and demobilisation as well as leave], accommodation, expatriation allowances, leave, medical insurance and any other employment benefits given to the experts by the Contractor. It shall also include any security arrangement except when this is exceptionally included under the incidental expenditure. Furthermore the fees shall also include the margin, overheads, profit and backstopping facilities.

A fee-based/technical assistance contract is, by definition, one in which the actual days worked each month for each category of experts may differ from the number of working days estimated for each month in the work plan in Annex V. The actual input required for the tasks specified in the Terms of Reference and Organisation and Methodology will only be known once the contract starts. The Project Manager will use the work plan when monitoring the actual number of working days submitted in each invoice to check that the contract is progressing within budget. The Contractor may update the estimate during implementation of the project in accordance with article 20 of the General Conditions.

## ANNEX IV: KEY EXPERTS

<b>Name of expert</b>	<b>Proposed position</b>	<b>Years of experience</b>	<b>Age</b>	<b>Educational background</b>	<b>Specialist areas of knowledge</b>	<b>Experience in partner country</b>	<b>Languages and degree of fluency (VG, G, W)</b>

## CURRICULUM VITAE

**Proposed role in the project:**

Family name:

First names:

Date of birth:

Nationality:

Civil status:

Education:

Institution (Date from - Date to)	Degree(s) or Diploma(s) obtained:

**Language skills:** Indicate competence on a scale of 1 to 5 (1 - excellent; 5 - basic)

Language	Reading	Speaking	Writing

Membership of professional bodies:

**Other skills:** (e.g. Computer literacy, etc.)

Present position:

Years within the firm:

**Key qualifications:** (Relevant to the project)

Specific experience in the region:

Country	Date from - Date to

Professional experience

Date from - Date to	Location	Company & reference person <sup>1</sup> (name & contact details)	Position	Description

Other relevant information (e.g., Publications)

<sup>1</sup> The Contracting Authority reserves the right to contact the reference persons. If you can not provide a reference, please provide a justification.

Notes	Estimated number of working days	Fee rate [MDL] per working day	Amount, MDL
<i>FEES (including overheads and all related costs):</i>			
<i>Key experts</i>			
Key expert/engineer .....	0,00		0,00
Key expert/engineer .....	0,00		0,00
Key expert/engineer .....	0,00		0,00
Key expert/engineer .....	0,00		0,00
<b>MAXIMUM CONTRACT VALUE</b>			<b>0,00</b>
			VAT=0

	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12	Year 1
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*Number of full working days*

Key experts													0
Key expert/engineer .....													0
Key expert/engineer .....													0
Key expert/engineer .....													0
Key expert/engineer .....													0
#BEZUG!	0	0	0	0	0	0	0	0	0	0	0	0	0

Cumulative total	Month 13	Month 14	Month 15	Month 16	Month 17	Month 18	Month 19	Month 20	Month 21	Month 22	Month 23	Month 24	<b>Year 2</b>	Cumulative total	
0														0	0
0														0	0
0														0	0
0														0	0
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0



# SERVICE TENDER SUBMISSION FORM

**Ref:** RMCO 81701 /27.06.2019 – 3.3. Site supervision

**Contract title:** Site supervision services for Giurgiulești BCP

**Please supply one signed** tender submission form (including signed statements of exclusivity and availability from all key experts proposed, if applicable, a completed financial identification form and a completed legal entity file (only for the Leader) and declarations from the Leader and all members (if you are in a consortium), together with three copies. The attachments to this submission form (i.e. declarations, statements, proofs) may be in original or copy. If copies are submitted, the originals must be dispatched to the Contracting Authority upon request. For economical and ecological reasons, we strongly recommend that you submit your files on paper (no plastic folders or dividers). We also suggest you use double-sided printing wherever possible. **All data included in this application must concern only the legal entity or entities making the tender.**

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

An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. With regard to technical and professional criteria, an economic operator may only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required. If they do, they must prove to the contracting authority that they have the resources needed to perform the contract, for example by producing a commitment from those entities to place resources at their disposal. Such entities, for instance the parent company of the economic operator, must respect the same rules of eligibility and nationality as the economic operator, as well as the relevant selection criteria.

## 1. SUBMITTED by (i.e. the identity of the Tenderer)

	Name(s) and address(es) of legal entity or entities submitting this tender
<b>Leader<sup>1</sup></b>	
<b>Member</b>	
<b>Etc. ...</b>	

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<sup>1</sup> Add/delete additional lines for consortium members as appropriate. **Note that subcontractors are not considered to be consortium members.** If this tender is being submitted by an individual legal entity, the name of that legal entity should be entered as 'Leader' (and all other lines should be deleted). Any change in the identity of the Leader and/or any consortium members between the deadline for receipt of tenders set in the Instructions to tenderers and the award of the contract is not permitted without the prior approval in writing of the Contracting Authority.

## 2. CONTACT PERSON (for this tender)

<b>Name</b>	
<b>Organisation</b>	
<b>Address</b>	
<b>Telephone</b>	
<b>Fax</b>	
<b>e-mail</b>	

## 3. ECONOMIC AND FINANCIAL CAPACITY<sup>i</sup>

Please complete the following table of financial data<sup>ii</sup> based on your annual accounts and your latest projections. If annual accounts are not yet available for the current year or past year, please provide your latest estimates in the columns marked with \*\*. Figures in all columns must be calculated on the same basis to allow a direct, year-on-year comparison to be made (or, if the basis has changed, please provide an explanation of the change as a footnote to the table). When the current ratio is set as selection criterion, for non-for-profit organisations the ratio has to be calculated without taking into account within the current liabilities the pre-financing received from donors for ongoing projects. Any other clarification or explanation which is judged necessary may also be provided. If the tenderer is a public body, please provide equivalent information.

<b>Financial data</b> Data requested in this table must be consistent with the selection criteria set in the contract notice	<b>2 years before last year<sup>iii</sup></b> <specify> EUR	<b>Year before last year<sup>5</sup></b> <specify> EUR	<b>Last year<sup>5</sup></b> <specify> EUR	<b>Average<sup>iv</sup></b> EUR	<b>[Past-year</b> EUR]**	<b>[Current year</b> EUR]**
Annual turnover <sup>v</sup> , excluding this contract						
Current Assets <sup>vi</sup>						
Current Liabilities <sup>vii</sup>						
[Current ratio (current assets/current liabilities)]	Not applicable	Not applicable		Not applicable	Not applicable	Not applicable

#### 4. STAFF

Please provide the following statistics on staff for the current year and the two previous years.<sup>viii</sup>

Annual Manpower	Year before past year		Past year		Current year		Period average	
	Overall	Relevant fields <sup>11</sup>	Overall	Relevant fields <sup>11</sup>	Overall	Relevant fields <sup>11</sup>	Overall	Relevant fields <sup>11</sup>
Permanent staff <sup>12</sup>								
Other staff <sup>13</sup>								
Total								
Permanent staff as a proportion of total staff (%)	%	%	%	%	%	%	%	%

#### 5. AREAS OF SPECIALISATION

Please fill in the table below to indicate any areas of specialist knowledge related to this contract for each legal entity making this tender. State the type of area of specialisation as the row heading and use the name of the legal entity as the column headings. Indicate the areas of specialist knowledge each legal entity has by placing a tick (✓) in the box corresponding to the specialisation in which it has significant experience. **Maximum 10 specialisations.**

	Leader	Member 2	Member 3
Relevant specialisation 1			
Relevant specialisation 2			
Etc. <sup>ix</sup>			

#### 6. EXPERIENCE

Please fill in the table below to summarise the main projects related to this contract carried out over the past years<sup>x</sup> by the legal entity or entities making this tender. The number of references to be provided must not exceed 15 for the entire tender.

Ref no (maximum 15)	Project title						
Name of legal entity	Country	Overall contract value (EUR) <sup>xi</sup>	Proportion carried out by legal entity (%) <sup>i8</sup>	No of staff provided	Name of client	Origin of funding	I (sta
...	...	...	...	...	...	...	...
Detailed description of project						Type and	
...						...	

## 7. DECLARATION(S)

As part of their tender, each legal entity identified under point 1 of this tender, including every consortium member, must submit a signed declaration using the attached format. The declaration may be in original or in copy. If copies are submitted, the originals must be sent to the Contracting Authority upon request.

Moreover, each legal entity identified under point 1 of this application, including every consortium member, and each capacity-providing entity (if any) must submit a signed declaration of honour on exclusion and selection criteria (form A14 available at the following link: <http://ec.europa.eu/europeaid/prag/annexes.do?chapterTitleCode=A> ).

## 8. STATEMENT

I, the undersigned, being the authorised signatory of the above tenderer (for consortiums, this must include all consortium members), hereby declare that we have examined and accept without reserve or restriction the entire contents of the tender dossier for the tender procedure referred to above. We offer to provide the services requested in the tender dossier on the basis of the following documents, which comprise our Technical offer, and our Financial offer, which is submitted in a separate, sealed envelope:

- Organisation & Methodology
- Key experts (comprising a list of the key experts and their CVs), if required
- Tenderer's declaration (for a consortium, this must include one from every consortium member)
- Statements of exclusivity and availability signed by each of the key experts, if required
- Completed financial identification form (see Annex VI to the draft contract) providing details of the bank account into which payments under the proposed contract should be made in the event that we are awarded the contract (or the financial identification number or a copy of the financial identification form provided to the Contracting Authority on an earlier occasion, unless it has changed in the meantime)
- Completed legal entity file (or the legal entity number allocated. Alternatively a copy of the legal entity file provided to the Contracting Authority on an earlier occasion, unless the legal status has changed in the meantime)
- Duly authorised signature: an official document (statutes, power of attorney, notary statement, etc.) proving that the person who signs on behalf of the company/joint venture/consortium is duly authorised to do so.
- Documentary proof or statements required under the law of the country where we are effectively established (or each of the companies in case of a consortium), to show that we do not fall into any of the exclusion situations listed in Section 2.3.3 of the Practical Guide. This evidence or these

documents or statements must carry a date, which is not more than one year before the date of submission of the tender. In addition, a statement is furnished stating that the situations described in these documents have not changed since then.

- ❑ Documentary evidence of the financial and economic capacity as well as the technical and professional capacity according to the selection criteria specified in the contract notice.

We understand that our tender may be rejected if we propose key experts who have been involved in preparing this project or hire such staff as advisers in the preparation of our tender and that we may also be subject to exclusion from other tender procedures and contracts funded by the EU/EDF.

We are fully aware that, for a consortium, the composition of the consortium cannot be changed in the course of the tender procedure, unless the Contracting Authority gives its prior approval in writing. We are also aware that the consortium members would have joint and several liability towards the Contracting Authority concerning participation in both the above tender procedure and any contract awarded to us as a result of it.

This tender is subject to acceptance within the validity period stipulated in clause 6 of the Instructions to tenderers. Signed on behalf of the tenderer:

<b>Name</b>	
<b>Signature</b>	
<b>Date</b>	

## FORMAT OF THE DECLARATION REFERRED TO IN POINT 4 OF THE TENDER SUBMISSION FORM

To be submitted on the headed notepaper of the legal entity concerned

<Date>

Customs Service of the Republic of Moldova

Your ref: < RMC0 81701 /27.06.2019 – 3.3. Site supervision

Dear Sir/Madam

### TENDERER'S DECLARATION

In response to your letter of invitation to tender for the above contract, we <Name(s) of legal entity or entities> hereby declare that we:

- are submitting this tender [on an individual basis] \* [as member of the consortium led by < name of the leader> [ourselves]] \* for this contract. We confirm that we are not participating in any other tender for the same contract in any form (as a member — including leader — in a consortium or as an individual Candidate);
- agree to abide by the ethics clauses in Section 13 of the Instructions to Tenderers and have no professional conflicting interests and/or any relation with other short-listed candidates or other parties in the tender procedure or behaviour which may distort competition at the time of submitting this tender according to Section 2.3.6 of the Practical Guide;
- [ have attached a current list of the enterprises in the same group or network as ourselves] [ are not part of a group or network] \*;
- will inform the Contracting Authority immediately if there is any change in the above circumstances at any stage during the tender procedure or during implementation of the tasks;
- fully understand and accept that if the above-mentioned persons participate in spite of being in any of the situations listed in Section 2.3.3.1. 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 representing 2 % 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 conditions set in Section 2.3.4 of the Practical Guide;
- 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 European Court of Auditors, to the Financial Irregularities Panel or to the European Anti-Fraud Office.

We understand that our tender and the expert may be excluded if we propose the same key expert as another tenderer or if we propose a key expert who is engaged in an EU/EDF financed project if the input from his/her position in that contract could be required on the same dates as his/her work under this contract.

We understand that if we fail to respond within the delay after receiving the notification of award, or if the information provided is proved false, the award may be considered null and void.

Yours faithfully,

<Signature of authorised representative of the legal entity >

< Name and position of authorised representative of the legal entity >

Insert form A14. **DECLARATION OF HONOUR ON EXCLUSION AND SELECTION CRITERIA**

## STATEMENT OF EXCLUSIVITY AND AVAILABILITY<sup>2</sup>

### PUBLICATION REF: RMCO 81701 /27.06.2019 – 3.3. SITE SUPERVISION

I, the undersigned, hereby declare that I agree to participate exclusively with the tenderer < tenderer name > in the above-mentioned service tender procedure. This includes that I will not be proposed as a replacement expert in this tender procedure. I declare that I am able and willing to work for the period(s) set for the position for which my CV has been included if this tender is successful, namely:

From	To	Availability
< start of period 1 >	< end of period 1 >	[full time] [part time]
< start of period 2 >	< end of period 2 >	[full time] [part time]
< etc. >		

I confirm that I do not have a confirmed engagement<sup>3</sup> as key expert in another EU/EDF-funded project, or any other professional activity, incompatible in terms of capacity and timing with the above engagements.

By making this declaration, I understand that I am not allowed to offer my services as an expert to any other tenderer participating in this tender procedure. I am fully aware that if I do so, I will be excluded from this tender procedure, the tenders will be rejected, and I may also be subject to exclusion from other tender procedures and contracts funded by the EU/EDF.

I also declare that I am not in a situation of conflict of interest or unavailability and commit to inform the tenderer(s) of any change in my situation.

I acknowledge that I have no contractual relations with the Contracting Authority and in case of dispute concerning my contract with the Contractor I shall address myself to the latter and/or to the competent jurisdictions.

[For information, I have signed a Statement of Exclusivity and Availability for the following tender(s):

Tender reference	Submission deadline for the tender	Tendered engagement
< tender reference >	< date >	[full time] [part time]
< tender reference >	< date >	[full time] [part time]
< etc. >		

Should I receive a confirmed engagement I declare that I will accept the first engagement offered to me chronologically. Furthermore I will notify the tenderer immediately of my unavailability. ]

<b>Name</b>	
<b>Signature</b>	
<b>Date</b>	

<sup>2</sup> To be completed by all key experts.

<sup>3</sup> The engagement of an expert is confirmed if the expert is committed to work as a key expert under a signed contract financed by the EU general budget or the EDF or if he/she is a key expert in a tender which has received a notification of award. The date of confirmation of the engagement in the latter case is that of the notification of award to the Contractor.

- 
- i Natural persons must prove their capacity in accordance with the selection criteria and by the appropriate means.
  - ii If this application is submitted by a consortium, the data in the table must be the sum of the data in the corresponding tables in the declarations provided by the consortium members — see point 7 of this application form. Consolidated data are not requested for financial ratios.
  - iii Last year = last accounting year for which the entity's accounts have been closed.
  - iv Amounts entered in the 'Average' column must be the mathematical average of the amounts entered in the three preceding columns of the same row.
  - v The gross inflow of economic benefits (cash, receivables, other assets) generated from the ordinary operating activities of the enterprise (such as sales of goods, sales of services, interest, royalties, and dividends) during the year.
  - vi A balance sheet account that represents the value of all assets that are reasonably expected to be converted into cash within one year in the normal course of business. Current assets include cash, accounts receivable, inventory, marketable securities, prepaid expenses and other liquid assets that can be readily converted to cash.
  - vii A company's debts or obligations that are due within one year. Current liabilities appear on the company's balance sheet and include short term debt, accounts payable, accrued liabilities and other debts.
  - viii If this application is submitted by a consortium, the data in the table above must be the sum of the data in the corresponding tables in the declarations provided by the consortium members — see point 7 of this application form.
  - ix Add / delete additional lines and/or rows as appropriate. If this application is submitted by an individual legal entity, the name of the legal entity should be entered as 'Leader' (and all other columns should be deleted).
  - x For framework contracts, only specific contracts corresponding to assignments implemented under such framework contracts shall be considered.
  - xi The effect of inflation will not be taken into account.
  - xii If the reference contract is only partially completed, please quote the percentage and value which has been completed.
  - xiii When supporting documents are to be issued by contracting authorities after the date of publication of PRAG 2014, please also indicate the function of key experts provided, whether belonging or not to permanent staff, and the number of months each of them worked on the project.



## 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’)

### I – SITUATION 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 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 law of the country in which it is established, with those of the country in which the contracting authority is located or those of the country of the performance of the contract;	<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 selection criteria or in the performance of a contract;	<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 the following:		

(i) fraud, within the meaning of 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 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of EU Member States, drawn up by the Council Act of 26 May 1997, and in Article 2(1) of Council Framework Decision 2003/568/JHA, as well as corruption as defined in the legal provisions of the country where the contracting authority is located, the country in which the person is established or the country of the performance of the contract;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
(v) terrorist-related 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 forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
(e) the person has shown significant deficiencies in complying with the main obligations in the performance of a contract financed by the Union's budget, which has led to its early termination or to the application of liquidated damages or other contractual penalties, or which has been discovered following checks, audits or investigations by an Authorising Officer, OLAF or the Court of Auditors;	<input type="checkbox"/>	<input type="checkbox"/>
(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) for the situations of grave professional misconduct, fraud, corruption, other criminal offences, significant deficiencies in the performance of the contract or irregularity, the applicant is subject to: i.facts established in the context of audits or investigations carried out by the Court of Auditors, OLAF or internal audit, 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; ii.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; iii.decisions of the ECB, the EIB, the European Investment Fund or international organisations; iv.decisions of the Commission relating to the infringement of the Union's competition rules or of a national competent authority relating to the infringement of Union or national competition law; or v.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 PERSONS WITH POWER OF REPRESENTATION, DECISION-MAKING OR CONTROL OVER THE LEGAL PERSON**

***Not applicable to natural persons, Member States and local authorities***

(2) declares that a natural 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 regard to the above-mentioned legal person (this covers company directors, members of management or supervisory bodies, and cases where one natural person holds a majority of shares) is in one of the following situations:	YES	NO	N/A
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"/>

**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:	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
(h) has distorted competition by being previously involved in the preparation of procurement documents for this procurement procedure.	<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. 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 the persons that are members of the administrative, management or supervisory body. It must also provide the following evidence concerning the person itself and concerning the natural or legal persons which assume unlimited liability for the debt of the person:

For situations described in (a), (c), (d) or (f), 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 (a) or (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 procurement procedure. 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

(5) declares that the above-mentioned person complies with the selection criteria applicable to it individually as provided in the tender specifications:	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 21.2. of the tender specifications; (contract notice)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) It fulfills the applicable economic and financial criteria indicated in section 21.1. of the tender specifications; (contract notice)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) It fulfills the applicable technical and professional criteria indicated in section 21.3. of the tender specifications. (contract notice)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

***The contracting authority must adapt the table above to the criteria indicated in the tender specifications (i.e. insert extra rows for each criterion or delete irrelevant rows).***

(6) if the above-mentioned person is the <b>sole tenderer</b> or the <b>leader in case of joint tender</b> , declares that:	YES	NO	N/A
-----------------------------------------------------------------------------------------------------------------------------	-----	----	-----

(d) the tenderer, including all members of the group in case of joint tender and including subcontractors if applicable, complies with all the selection criteria for which a consolidated assessment will be made as provided in the tender specifications.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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**VII – 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 specifications 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. 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 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

## ADMINISTRATIVE COMPLIANCE GRID

<b>Contract title:</b>	<b>Publication reference:</b>
------------------------	-------------------------------

Tender envelope number	Tenderer name	Tender submission form duly completed? (Yes/No)	Tenderer's declaration (signed by each consortium member, if appropriate)? (Yes/No)	Language as required?	Organisation & methodology exists?	Key experts (list + CV)? (For contracts requiring key experts)	Key experts are present in only one tender as key experts? (For contracts requiring key experts)	All key experts have signed statements of exclusivity & ..availability? (For contracts requiring key experts)	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											

<b>Chairperson's name</b>	
<b>Chairperson's signature</b>	
<b>Date</b>	

## EVALUATION GRID

	<b>Maximum</b>
<b>Organisation and methodology</b>	
Rationale	10
Strategy	20
Back-up function	5
Communication and reporting	5
Timetable of activities,	10
<b>Total score for Organisation and methodology</b>	<b>50</b>
<b>Key experts</b>	
CV and corresponding studies in the required field (Bachelor's degree, master's degree, etc.)	<b>10</b>
Work experience as a certified Site Supervision	20
Supervision of projects with similar works	20
<b>Total score for Key experts</b>	<b>50</b>
<b>Overall total score</b>	<b>100</b>

<b>Strengths</b>	
<b>Weaknesses</b>	

NB: Only tenders with average scores of at least 75 points qualify for the financial evaluation.

## EVALUATION GRID

### How to use this evaluation grid:

- The categories to be used to assess the Organisation and Methodology (i.e. Rationale, Strategy, Back-up function, Involvement of the consortium members and Timetable of activities including the number of expert days proposed) and each of the key experts (ie, Qualifications and skills, General professional experience & Specific professional experience) may be modified as required and the division of scores must be adapted according to the requirements of the specific tender procedure.
- The number of key experts must correspond to the number of key expert profiles identified in the Terms of reference and must not exceed 4 key experts. The total scores of the key experts shall be comprised between 40% and 60%.
- The overall total score should remain 100.
- The strengths and weaknesses in this evaluation grid must reflect the commonly agreed by the Committee amongst all those pointed out by the evaluators in their individual grids.
- The Evaluation Committee must evaluate tenders on the basis of this evaluation grid, which includes maximum scores. Those maximum scores cannot be modified after the deadline for informing potential tenderers of any clarifications.
- **Please delete the highlighted text.**





## FINANCIAL IDENTIFICATION

PRIVACY STATEMENT

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/financial\\_id/financial\\_id\\_en.cfm#en](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.

<b><u>BANKING DETAILS</u></b> ①	
ACCOUNT NAME ②	<input type="text"/>
IBAN/ACCOUNT NUMBER ③	<input type="text"/>
CURRENCY	<input type="text"/>
BIC/SWIFT CODE	<input type="text"/>
BRANCH CODE ④	<input type="text"/>
BANK NAME	<input type="text"/>
<b>ADDRESS OF BANK BRANCH</b>	
STREET & NUMBER	<input type="text"/>
TOWN/CITY	<input type="text"/>
POSTCODE	<input type="text"/>
COUNTRY	<input type="text"/>
<b><u>ACCOUNT HOLDER'S DATA</u></b> AS DECLARED TO THE BANK	
ACCOUNT HOLDER	<input type="text"/>
STREET & NUMBER	<input type="text"/>
TOWN/CITY	<input type="text"/>
POSTCODE	<input type="text"/>
COUNTRY	<input type="text"/>
REMARK	<input type="text"/>
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.

## ANNEX VI: PRE-FINANCING GUARANTEE FORM

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 a surety, on behalf of <name and address of the Contractor>, hereinafter referred to as “the Contractor”, the payment to the Contracting Authority of < amount of the pre-financing > corresponding to the pre-financing as mentioned in Article 29 of the General 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 inform you in writing as soon as payment has been made.

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 Article 30 of the General Conditions [and in any case at the latest on (at the expiry of 18 months after the period of implementation of the tasks)]<sup>1</sup>.

[Any request to pay under the terms of the guarantee must be countersigned by the Head of Delegation of the European Union or his designated empowered deputy as per 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 whole paragraph should be deleted when the Contracting Authority is the European Commission)]

The law applicable to this guarantee shall be that of [If the Contracting Authority is the European Union: Belgium] [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: Belgium] [If the Contracting Authority is an authority in the partner country: <the country in which the financial institution issuing the guarantee is established>].

This guarantee will come into force and will take effect on receipt of the pre-financing payment in the account designated by the Contractor to receive payments.

Name: .....  
Position: .....  
Signature<sup>2</sup>: .....  
Date: <Date>

Name: .....  
Position: .....  
Signature<sup>2</sup>: .....  
Date: <Date>

<sup>1</sup> 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.

<sup>2</sup> The name(s) and position(s) of the persons signing on behalf of the guarantor must be shown in printed characters.



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](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     
DD MM YYYY

PLACE OF BIRTH  COUNTRY OF BIRTH   
(CITY, VILLAGE)

#### TYPE OF IDENTITY DOCUMENT

IDENTITY CARD  PASSPORT  DRIVING LICENCE ②  OTHER ③

ISSUING COUNTRY

IDENTITY DOCUMENT NUMBER

PERSONAL IDENTIFICATION NUMBER ④

PERMANENT PRIVATE ADDRESS

POSTCODE  P.O. BOX  CITY

REGION ⑤  COUNTRY

PRIVATE PHONE

PRIVATE E-MAIL

#### II. BUSINESS DATA

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

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

BUSINESS NAME   
(if applicable)

VAT NUMBER

REGISTRATION NUMBER

PLACE OF REGISTRATION: CITY

COUNTRY

DATE

SIGNATURE

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](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

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

DATE

STAMP

SIGNATURE OF AUTHORISED REPRESENTATIVE

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

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



## LEGAL ENTITY

PRIVACY STATEMENT

[http://ec.europa.eu/budget/library/contracts\\_grants/info\\_contracts/privacy\\_statement\\_en.pdf](http://ec.europa.eu/budget/library/contracts_grants/info_contracts/privacy_statement_en.pdf)

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

### **PUBLIC LAW BODY** ①

<b>OFFICIAL NAME</b> ②	<input type="text"/>		
	<input type="text"/>		
	<input type="text"/>		
<b>ABBREVIATION</b>	<input type="text"/>		
<b>MAIN REGISTRATION NUMBER</b> ③	<input type="text"/>		
<b>SECONDARY REGISTRATION NUMBER</b> (if applicable)	<input type="text"/>		
<b>PLACE OF MAIN REGISTRATION</b>	<b>CITY</b> <input type="text"/>	<b>COUNTRY</b>	<input type="text"/>
<b>DATE OF MAIN REGISTRATION</b>	<input type="text"/> DD	<input type="text"/> MM	<input type="text"/> YYYY
<b>VAT NUMBER</b>	<input type="text"/>		
<b>OFFICIAL ADDRESS</b>	<input type="text"/>		
	<input type="text"/>		
<b>POSTCODE</b>	<input type="text"/>	<b>P.O. BOX</b>	<input type="text"/>
		<b>CITY</b>	<input type="text"/>
<b>COUNTRY</b>	<input type="text"/>	<b>PHONE</b>	<input type="text"/>
<b>E-MAIL</b>	<input type="text"/>		

<b>DATE</b>	<input type="text"/>
-------------	----------------------

<b>STAMP</b>	<input type="text"/>
--------------	----------------------

<b>SIGNATURE OF AUTHORISED REPRESENTATIVE</b>	<input type="text"/>
-----------------------------------------------	----------------------

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

- ① Public law body WITH LEGAL PERSONALITY, meaning a public entity being able to represent itself and act in its own name, i.e. being capable of suing or being sued, acquiring and disposing of property, entering into contracts. This legal status is confirmed by the official legal act establishing the entity (a law, a decree, etc.).
- ② National denomination and its translation in EN or FR if existing.
- ③ Registration number in the national register of the entity.



## ANNEX I:

# GENERAL CONDITIONS FOR SERVICE CONTRACTS FOR EXTERNAL ACTIONS FINANCED BY THE EUROPEAN UNION OR BY THE EUROPEAN DEVELOPMENT FUND

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# PRELIMINARY PROVISIONS

## ARTICLE 1. DEFINITIONS

- 1.1. 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.
- 1.2. 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.
- 1.3. The word "country" shall be deemed to include State or Territory.
- 1.4. Words designating persons or parties shall include firms and companies and any organisation having legal capacity.
- 1.5. 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 the contract.

## ARTICLE 2. COMMUNICATIONS

- 2.1. Unless otherwise specified in the Special Conditions, any written communication relating to this contract between the Contracting Authority or the Project Manager, and the Contractor 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 the Parties for that purpose in the Special Conditions.
- 2.2. 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.
- 2.3. 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.
- 2.4. Any oral instructions or orders shall be confirmed in writing.

## ARTICLE 3. ASSIGNMENT

- 3.1. 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.
- 3.2. 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.
- 3.3. For the purpose of article 3.2, 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.

- 3.4. If the Contractor has assigned the contract without authorisation, the Contracting Authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Articles 34 and 36.
- 3.5. Assignees shall satisfy the eligibility criteria applicable for the award of the contract and they shall not fall under the exclusion criteria described in the tender dossier.

#### **ARTICLE 4. SUBCONTRACTING**

- 4.1. 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.
- 4.2. The Contractor shall request to the Contracting Authority the authorization to subcontract. The request must indicate the elements of the contract to be subcontracted and the identity of the subcontractors. The Contracting Authority shall notify the Contractor of its decision, within 30 days of receipt of the request, stating reasons should it withhold such authorization.
- 4.3. No subcontract creates contractual relations between any subcontractor and the Contracting Authority.
- 4.4. The Contractor shall be responsible for the acts, defaults and negligence of its subcontractors and its experts, agents or employees, as if they were the acts, defaults or negligence of the Contractor, its experts, agents or employees. The approval by the Contracting Authority of the subcontracting of any part of the contract or of the subcontractor to perform any part of the services shall not relieve the Contractor of any of its obligations under the contract.
- 4.5. If a subcontractor is found by the Contracting Authority or the Project Manager to be incompetent in discharging its duties, the Contracting Authority or the Project Manager may request the Contractor forthwith, 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.
- 4.6. Subcontractors shall satisfy the eligibility criteria applicable to the award of the contract and they shall not fall under the exclusion criteria described in the tender dossier.
- 4.7. Those services entrusted to a subcontractor by the Contractor shall not be entrusted to third parties by the subcontractor, unless otherwise agreed by the Contracting Authority.
- 4.8. 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 Articles 34 and 36.

### **OBLIGATIONS OF THE CONTRACTING AUTHORITY**

#### **ARTICLE 5. SUPPLY OF INFORMATION**

- 5.1. The Contracting Authority shall supply the Contractor promptly with any information and/or documentation at its disposal which may be relevant to the performance of the contract. Such documents shall be returned to the Contracting Authority at the end of the period of implementation of the tasks.
- 5.2. The Contracting Authority shall co-operate with the Contractor to provide information that the latter may reasonably request in order to perform the contract.
- 5.3. The Contracting Authority shall give notification to the Contractor of the name and address of the Project Manager.

#### **ARTICLE 6. ASSISTANCE WITH LOCAL REGULATIONS**

- 6.1. 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 services are to be performed, 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.

- 6.2. Subject to the provisions of the laws and regulations on foreign labour of the country in which the services have to be rendered, 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 services are rendered, including work and residence permits, for the staff whose services the Contractor and the Contracting Authority consider necessary, as well as residence permits for their families.

## **OBLIGATIONS OF THE CONTRACTOR**

### **ARTICLE 7. GENERAL OBLIGATIONS**

- 7.1. The Contractor shall execute the contract with due care, efficiency and diligence in accordance with the best professional practice.
- 7.2. The Contractor shall comply with any administrative orders given by the Project Manager. Where the Contractor considers that the requirements of an administrative order go beyond the authority of the Project Manager or of the scope of the contract he shall give notice, with reasons, to the Project Manager. If the Contractor fails to notify within the 30 day period after receipt thereof, he shall be barred from so doing. Execution of administrative order should not be suspended because of this notice.
- 7.3. The Contractor shall supply, without delay, any information and documents to the Contracting Authority and the European Commission upon request, regarding the conditions in which the contract is being executed.
- 7.4. The Contractor shall respect and abide by all laws and regulations in force in the partner country and shall ensure that its staff, 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.
- 7.5. Should any unforeseen event, action or omission directly or indirectly hamper performance of the contract, either partially or totally, the Contractor shall immediately and at its own initiative record it and report it to the Contracting Authority. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with its obligations under the contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.
- 7.6. Subject to Article 7.8, 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.
- 7.7. If the Contractor is a joint venture or a 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 the contract shall have the authority to bind the consortium and is the sole interlocutor for all contractual and financial aspects. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the Contracting Authority. Any alteration of the composition of the consortium without the prior consent of the Contracting Authority may result in the termination of the contract.
- 7.8. 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.

- 7.9. Any records shall be kept for a 7-year period after the final payment made under the contract as laid down in Article 24. These documents comprise any documentation concerning income and expenditure and any inventory, necessary for the checking of supporting documents, including timesheets, plane and transport tickets, pay slips or invoices for the remuneration paid to the experts and invoices or receipts for incidental expenditure. In case of failure to maintain such records the Contracting Authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Articles 34 and 36.

## **ARTICLE 8. CODE OF CONDUCT**

- 8.1. The Contractor shall at all-time act impartially and as a faithful adviser in accordance with the code of conduct of its profession as well as with appropriate discretion. It shall refrain from making any public statements concerning the project or the services without the prior approval of the Contracting Authority. It shall not commit the Contracting Authority in any way whatsoever without its prior consent, and shall make this obligation clear to third parties.
- 8.2. The Contractor and its staff shall respect human rights and undertake not to offend the political, cultural and religious practices prevailing in the country where the services have to be rendered.
- 8.3. The Contractor shall respect environmental legislation applicable in the country where the services have to be rendered and internationally agreed core labour standards, e.g. 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.
- 8.4. The Contractor or any of its subcontractors, agents or staff shall not abuse of its entrusted power for private gain. The Contractor or any of its subcontractors, agents or staff 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.
- 8.5. 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.
- 8.6. 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 Contracting Authority and the European Commission may carry out documentary or on-the-spot checks they deems necessary to find evidence in case of suspected unusual commercial expenses.

## **ARTICLE 9. CONFLICT OF INTEREST**

- 9.1. 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 could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which may arise during performance of the contract shall 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.

- 9.2. 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 obligations 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.
- 9.3. The Contractor shall refrain from any contact which would compromise its independence or that of its staff.
- 9.4. The Contractor shall limit its role in connection with the project to the provision of the services described in the contract.
- 9.5. 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, the Contractor may participate after approval of the Contracting Authority if the Contractor is able to prove that its involvement in previous stages of the project does not constitute unfair competition.
- 9.6. Civil servants and other staff of the public administration of the country where the services have to be rendered, regardless of their administrative situation, shall not be recruited as experts unless the prior approval has been granted by the European Commission.

#### **ARTICLE 10. ADMINISTRATIVE SANCTIONS**

- 10.1. 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, upon the Contractor who, in particular,
  - a) is guilty of grave professional misconduct, has committed irregularities or has been found in serious breach of its contractual obligations. 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.
- 10.2. In the situations mentioned in Article 10.1, in addition or in alternative to the sanction of exclusion, the Contractor may also be subject to financial penalties representing 2-10% of the total value of the contract.
- 10.3. 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.
- 10.4. The decision to impose administrative sanctions may be published on a dedicated internet-site, explicitly naming the Contractor.
- 10.5. The above administrative sanctions may also be imposed on persons who are members of the administrative, management or supervisory body of the Contractor, on persons having powers of representation, decision or control with regard to the Contractor, on persons jointly and severally liable for the performance of the contract and on subcontractors.

#### **ARTICLE 11. SPECIFICATIONS AND DESIGNS**

- 11.1. The Contractor shall prepare all specifications and designs using accepted and generally recognised systems acceptable to the Contracting Authority and taking into account the latest design criteria.

- 11.2. The Contractor shall ensure that the specifications and designs and all documentation relating to procurement of goods and services for the project are prepared on an impartial basis so as to promote competitive tendering.

## **ARTICLE 12. LIABILITIES**

### 12.1. Liability for damage to services

Without prejudice to Article 30 (financial guarantee) and Article 38 (force majeure), the Contractor shall assume (i) full responsibility for maintaining the integrity of services and (ii) the risk of loss and damage, whatever their cause, until the completion of the implementation of the tasks and approval of reports and documents under Articles 26 and 27.

After the completion of the implementation of the tasks, the Contractor shall be responsible for and shall indemnify the Contracting Authority for any damage caused to the services by the Contractor, its staff, its subcontractors and any person for which the Contractor is answerable, during any operation performed to complete any work left, as the case may be, pending or to comply with its obligations under Articles 26 and 27, particularly if the contract is performed in phases.

Compensation for damage to the services resulting from the Contractor's liability in respect of the Contracting Authority is capped at 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.

The Contractor shall remain responsible for any breach of its obligations under the contract for such period after the services have been performed as may be determined by the law governing the contract, even after approval of the reports and documents, or by default for a period of 10 years.

### 12.2. 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 services, 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.

### 12.3. Contractor's liability in respect of third parties

Without prejudice to Article 14.9, 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 services, including any violation of any legal provisions, or rights of third parties, in respect of patents, trademarks and other forms of intellectual property such as copyrights.

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 defense 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.

- 12.4. The Contractor shall treat all claims in close consultation with the Contracting Authority
- 12.5. Any settlement or agreement settling a claim requires the prior express written consent of the Contracting Authority and the Contractor.

### **ARTICLE 13. MEDICAL, INSURANCE AND SECURITY ARRANGEMENTS**

#### 13.1. Medical arrangement

The Contracting Authority may condition the performance of the services to the production, by the Contractor, of a recent medical certificate attesting that the Contractor itself, its staff, its subcontractors and/or any person for which the Contractor is answerable, are fit to implement the services required under this contract.

#### 13.2. Insurance – general issues

- a) At the latest together with the return of the countersigned contract, and for the period of implementation of the 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.
- b) At the latest together with the return of the countersigned contract, the Contractor shall provide the Contracting Authority 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 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.

- c) Whenever possible, the Contractor shall ensure that the subscribed insurance contracts contain a waiver of recourse in favor of the Contracting Authority, its agents and employees.
- d) The purchase of adequate insurances by the Contractor shall in no case exempt it from its statutory and/or contractual liabilities.
- e) The Contractor shall fully bear the consequences of a total or partial lack of coverage, and to the full discharge of the Contracting Authority.
- f) The Contractor shall ensure that its staff, its subcontractors and any person for whom 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 from all consequences resulting therefrom.
- g) 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 services are to be performed. It shall also ensure that all possible statutory obligations applying to the coverage are complied with.



- h) The Contracting Authority shall not bear any liability for the assessment and adequacy of insurance policies taken out by the Contractor with its contractual and/or statutory obligations.
- i) In any event, the Contractor shall take out the insurance referred to below.

### 13.3. Insurance – Specific issues

- a) The Contractor shall take out all insurance necessary to cover its liability, both with regard to its professional liability and its liability as provided under Article 12.
- b) The contractor shall ensure that itself, its staff, its subcontractors and any person for which the Contractor is answerable, are covered by an insurance policy covering, in addition to the possible intervention of any statutory insurance:
  - i. all medical expenses, including hospital expenses;
  - ii. the full cost of repatriation in case of illness, accident, or in the event of death by disease or accident;
  - iii. accidental death or permanent disability resulting from bodily injury incurred in connection with the contract.

In the absence of adequate insurance, the Contracting Authority may bear such costs to the benefit of the Contractor itself, its staff, its subcontractors and any person for which the Contractor is answerable. This bearing of the costs by the Contracting Authority shall be subsidiary and may be claimed against the Contractor, its subcontractors and any person who should have taken out this insurance, without prejudice to the compensation of the Contracting Authority's possibly resulting damage.

- c) 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.
- d) The Contractor shall also insure the personal effects of its employees, experts and their families located in the partner country against loss or damage.

### 13.4. Security arrangements

The Contractor shall put in place security measures for its employees, experts and their families located in the partner country commensurate with the physical danger (possibly) facing them.

The Contractor shall also be responsible for monitoring the level of physical risk to which its employees, experts and their families located in the partner country 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 its employees, experts or their families, 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 Project Manager and this may lead to suspension of the contract in accordance with Article 35.

## **ARTICLE 14. INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS**

- 14.1. A "result" shall be any outcome of the implementation of the contract and provided as such by the Contractor.
- 14.2. The ownership of all the results or rights thereon as listed in the tender specification and the tender attached to the contract, including copyright and other intellectual or industrial property rights, and

all technological solutions and information embodied therein, obtained in performance of the contract, shall be irrevocably and fully vested to the Contracting Authority from the moment these results or rights are delivered to it and accepted by it. The Contracting Authority may use them as it sees fit and in particular may store, modify, translate, display, reproduce, publish or communicate by any medium, as well as, assign, transfer them as it sees fit.

- 14.3. For the avoidance of doubt and where applicable, any such vesting of rights is also deemed to constitute an effective transfer of the rights from the Contractor to the Contracting Authority.
- 14.4. The above vesting of rights in the Contracting Authority under this contract covers all territories worldwide and is valid for the whole duration of intellectual or industrial property rights protection, unless stipulated otherwise by the Contracting Authority and the Contractor.
- 14.5. The Contractor shall ensure that delivered results are free of rights or claims from third parties including in relation to pre-existing rights, for any use envisaged by the Contracting Authority. If the Contracting Authority so requires, the Contractor shall provide exhaustive proof of ownership or rights to use all necessary rights, as well as, of all relevant agreements of the creator(s).
- 14.6. All reports and data such as maps, diagrams, drawings, specifications, plans, statistics, computations, databases format and data, software and any supporting records or materials acquired, compiled or prepared by the Contractor in the performance of the contract, as well as, any outcome of the implementation of the contract, shall be the absolute property of the Contracting Authority unless otherwise specified. The Contractor shall, upon completion of the contract, deliver all such documents and data to the Contracting Authority. The Contractor must not retain copies of such documents and data and must not use them for purposes unrelated to the contract without the prior consent of the Contracting Authority.
- 14.7. The Contractor shall not publish articles relating to the services or refer to them when carrying out any services for others, or divulge information obtained by the Contractor in the course of the contract for purposes other than its performance, without the prior consent of the Contracting Authority.
- 14.8. By delivering the results the Contractor warrants that the above transfer of rights does not violate any law or infringe any rights of others and that it possesses the relevant rights or powers to execute the transfer. It also warrants that it has paid or has verified payment of all fees including fees to collecting societies, related to the final results.
- 14.9. The Contractor shall indemnify and hold the Contracting Authority harmless for all damages and cost incurred due to any claim brought by any third party including creators and intermediaries for any alleged breach of any intellectual, industrial or other property right based on the Contracting Authority's use as specified in the contract of patents, licenses, drawings, designs, models, or brand or trade-marks, except where such infringement results from compliance with the design or specification provided by the Contracting Authority.

## **NATURE OF THE SERVICES**

### **ARTICLE 15. THE SCOPE OF THE SERVICES**

- 15.1. The scope of the services is specified in Annex II and Annex III.
- 15.2. Where the contract is for an advisory function for the benefit of the Contracting Authority and/or Project Manager in respect of all the technical aspects of the project which may arise out of its implementation, the Contractor shall not have decision-making responsibility.
- 15.3. Where the contract is for management of the implementation of the project, the Contractor shall assume all the duties of management inherent in supervising the implementation of a project, subject to the Project Manager's authority.
- 15.4. If the Contractor is required to prepare a tender dossier, the dossier shall contain all documents necessary for consulting suitable Contractors, manufacturers and suppliers, and for preparing tender procedures with a view to carrying out the works or providing the supplies or services

covered by an invitation to tender. The Contracting Authority shall provide the Contractor with the information necessary for drawing up the administrative part of the tender dossier.

#### **ARTICLE 16. STAFF**

- 16.1. For fee-based contracts, the Contractor must inform the Contracting Authority of all staff which the Contractor intends to use for the implementation of the tasks, other than the key experts whose CVs are included in Annex IV. Annex II and/or Annex III shall specify the minimum level of training, qualifications and experience of the staff and, where appropriate, the specialisation required. The Contracting Authority shall have the right to oppose the Contractor's choice of staff.
- 16.2. All those working on the project with the approval of the Contracting Authority shall commence their duties on the date or within the period laid down in Annex II and/or Annex III, or, failing this, on the date or within the periods notified to the Contractor by the Contracting Authority or the Project Manager.
- 16.3. Save as otherwise provided in the contract, those working on the contract shall reside close to their normal place of posting. Where part of the services is to be performed outside the partner country, the Contractor shall keep the Project Manager informed of the names and qualifications of staff assigned to that part of the services.
- 16.4. The Contractor shall:
  - (a) forward to the Project Manager within 30 days of the signature of the contract by both parties, the timetable proposed for placement of the staff;
  - (b) inform the Project Manager of the date of arrival and departure of each member of staff;
  - (c) submit to the Project Manager for its approval a timely request for the appointment of any non-key experts.
- 16.5. The Contractor shall provide its staff with all financial and technical means needed to enable them to carry out their tasks described under this contract efficiently.
- 16.6. No recruitment of an expert by the Contractor can create contractual relations between the expert and the Contracting Authority.

#### **ARTICLE 17. REPLACEMENT OF STAFF**

- 17.1. The Contractor shall not make changes to the agreed staff without the prior approval of the Contracting Authority. The Contractor must on its own initiative propose a replacement in the following cases:
  - (a) In the event of death, in the event of illness or in the event of accident of an agreed staff;
  - (b) If it becomes necessary to replace an agreed staff for any other reasons beyond the Contractor's control (e.g. resignation, etc.).
- 17.2. Moreover, in the course of performance, and on the basis of a written and justified request to which the Contractor shall provide its own and the agreed staff's observations, the Contracting Authority can order an agreed staff to be replaced.
- 17.3. Where an agreed staff must be replaced, the replacement must possess at least equivalent qualifications and experience, and the remuneration to be paid to the replacement cannot exceed that received by the agreed staff who has been replaced. Where the Contractor is unable to provide a replacement with equivalent qualifications and/or experience, the Contracting Authority may either decide to terminate the contract, if the proper performance of it is jeopardised, or, if it considers that this is not the case, accept the replacement, provided that the fees of the latter are renegotiated to reflect the appropriate remuneration level.
- 17.4. Additional costs incurred by the replacement of an agreed staff are the responsibility of the Contractor. The Contracting Authority makes no payment for the period when the agreed staff to be replaced is absent. The replacement of any agreed staff, whose name is listed in Annex IV of the contract, must be proposed by the Contractor within 15 calendar days from the first day of the

agreed staff's absence. If after this period the Contractor fails to propose a replacement in accordance with Article 17.3 above, the Contracting Authority may apply liquidated damages up to 10% of the remaining fees of that expert to be replaced. The Contracting Authority must approve or reject the proposed replacement within 30 days.

- 17.5. The partner country may be notified of the identity of the agreed staff proposed to be added or replaced in the contract to obtain its approval. The partner country must not withhold its approval unless it submits duly substantiated and justified objections to the proposed experts in writing to the Contracting Authority within 15 days of the date of the request for approval.

## **ARTICLE 18. TRAINEES**

- 18.1. If required in the terms of reference, the Contractor shall provide training for the period of implementation of the tasks for trainees assigned to it by the Contracting Authority under the terms of the contract.
- 18.2. Instruction by the Contractor of such trainees shall not confer on them the status of employees of the Contractor. However, they must comply with the Contractor's instructions, and with the provisions of article 8, as if they were employees of the Contractor. The Contractor may on reasoned request in writing obtain the replacement of any trainee whose work or conduct is unsatisfactory.
- 18.3. Unless otherwise provided in the contract, allowance for trainees covering notably travel, accommodation and all other expenses incurred by the trainees, shall be borne by the Contracting Authority.
- 18.4. The Contractor shall report at quarterly intervals to the Contracting Authority on the training assignment. Immediately prior to the end of the period of implementation of the tasks, the Contractor shall draw up a report on the result of the training and an assessment of the qualifications obtained by the trainees with a view to their future employment. The form of such reports and the procedure for presenting them shall be as laid down in the terms of reference.

## **PERFORMANCE OF THE CONTRACT**

### **ARTICLE 19. IMPLEMENTATION OF THE TASKS AND DELAYS**

- 19.1. The Special Conditions fix the date on which implementation of the tasks is to commence.
- 19.2. The period of implementation of tasks shall commence on the date fixed in accordance with Article 19.1 and shall be as laid down in the Special Conditions, without prejudice to extensions of the period which may be granted.
- 19.3. If the Contractor fails to perform the services within the period of implementation of the tasks 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 which shall elapse between the end of the period of implementation of the tasks specified in the contract and the actual date of completion of these tasks.
- 19.4. The daily rate for liquidated damages is calculated by dividing the contract value by the number of days of the period of implementation of the tasks, up to a maximum of 15% of the total value of the contract.
- 19.5. If the Contracting Authority has become entitled to claim 15% of the contract value, it may, after giving notice to the Contractor:
- (a) terminate the contract, and;
  - (b) enter into a contract with a third party to complete the services, at the Contractor's cost.

## ARTICLE 20. AMENDMENT TO THE CONTRACT

20.1. Any amendment to the contract affecting its object or scope, such as amendment to the total contract amount, replacement of an agreed staff the Curriculum Vitae of which is part of the contract and change of the period of implementation shall be formalised by means of an addendum. Both parties may request an addendum for amendment to the contract according to the following principles:

- (a) An addendum for amendment may be requested only during the period of execution of the contract;
- (b) Any request for an addendum shall be submitted in writing to the other party at least thirty days before the date on which the intended addendum is required to enter into force. In case of special circumstances duly substantiated by the Contractor, the Contracting Authority may accept a different notice period.

The requested party shall notify the requesting party of its decision concerning the request within 30 days from its receipt. There is no automatic amendment without written confirmation by the requested party.

20.2. Additionally, the Project Manager has the power to issue administrative orders requesting an amendment to the contract not affecting its object or scope, including on request of the Contractor, according to the following principles:

- a) The requested contract amendment may take the form of additions, omissions, substitutions, changes in quality, quantity, specified sequence, method or timetable of implementation of the services;
- b) Prior to the issuance of any administrative order, the Project Manager shall notify the Contractor of the nature and the form of the proposed amendment.

The Contractor shall then, without delay, submit to the Project Manager a written proposal containing:

- (i) all measures required to comply with the requested amendment,
- (ii) an updated timetable for implementation of the tasks, and,
- (iii) if necessary, a proposed financial adjustment to the contract, using the contractual fee rates when the tasks are similar. When the tasks are not similar, the contractual fee rates shall be applied when reasonable.

Following receipt of the Contractor's proposal, the Project Manager shall decide as soon as possible whether or not the amendment shall be carried out.

If the Project Manager decides that the amendment shall be carried out, 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 proposal or as modified by the Project Manager in agreement with the Contractor.

- c) On receipt of the administrative order, the Contractor shall carry out the amendments detailed in that administrative order as if such amendments were stated in the contract.
- d) For fee based contracts, administrative orders that have an impact on the contractual budget are limited to transfers within the fees, or transfers from the fees to the Incidental Expenditures, within the limits of Article 20.3.
- e) For global price contracts, administrative orders cannot have an impact on the contractual budget.

20.3. No amendment either by means of addendum or through administrative order shall lead to decreasing the amount within the contractual budget allocated to expenditure verification, or change the award conditions prevailing at the time the contract was awarded.

- 20.4. Any amendment carried out by the Contractor without an administrative order or without an addendum to the contract is not allowed and made at the Contractor's own financial risk.
- 20.5. 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.
- 20.6. The Contractor shall notify the Contracting Authority of any change of address and bank account using the form in Annex VI to notify any change in its bank account. The Contracting Authority shall have the right to oppose the Contractor's change of bank account. The Contractor shall notify the Contracting Authority of any change of auditor which the Contracting Authority needs to approve.

#### **ARTICLE 21. WORKING HOURS**

- 21.1. The days and hours of work of the Contractor or the Contractor's staff shall respect the laws, regulations and customs of the country where the services have to be rendered and the requirements of the services.

#### **ARTICLE 22. LEAVE ENTITLEMENT**

- 22.1. For fee-based contracts, the annual leave to be taken during the period of implementation of the tasks shall be at a time approved by the Project Manager.
- 22.2. For fee-based contracts, the fee rates are deemed to take into account the annual leave of up to 2 months for the Contractor's staff during the period of implementation of the tasks. Consequently, days taken as annual leave shall not be considered to be working days.
- 22.3. The Contractor shall only be paid for the days actually worked. Any cost related to sick or casual leave shall be covered by the Contractor. The Contractor shall inform the Project Manager of any impact of such leave on the period of implementation of the tasks.

#### **ARTICLE 23. INFORMATION**

- 23.1. The Contractor shall provide any information relating to the services and the project to the Project Manager, the European Commission, the European Court of Auditors or any person authorised by the Contracting Authority.
- 23.2. The Contractor shall allow the Project Manager or any person authorised by the Contracting Authority or the Contracting Authority itself to inspect or audit the records and accounts relating to the services and to make copies thereof both during and after provision of the services.

#### **ARTICLE 24. RECORDS**

- 24.1. The Contractor shall keep full accurate and systematic records and accounts in respect of the services in such form and detail as is sufficient to establish accurately that the number of working days and the actual incidental expenditure identified in the Contractor's invoice(s) have been duly incurred for the performance of the services.
- 24.2. For fee-based contracts, timesheets recording the days or hours worked by the Contractor's staff shall be maintained by the Contractor. The timesheets filled in by the experts shall be confirmed on a monthly basis by the Contractor and shall be approved by the Project Manager or any person authorised by the Contracting Authority or the Contracting authority itself. The amounts invoiced by the Contractor must correspond to these timesheets. Time spent travelling exclusively and necessarily for the purpose of the implementation of the contract, by the most direct route, may be included in the numbers of days or hours, as appropriate, recorded in these timesheets. Travel undertaken by the expert for mobilisation and demobilisation as well as for leave purposes shall not be considered as working days. A minimum of 7 hours worked are deemed to be equivalent to one day worked. For all experts, their time input shall be rounded to the nearest whole number of days worked for the purposes of invoicing.
- 24.3. Any records must be kept for a seven year period after the final payment made under the contract. These documents comprise any documentation concerning income and expenditure and any

inventory, necessary for the checking of supporting documents, including timesheets, plane and transport tickets, pay slips for the remuneration paid to the experts and invoices or receipts for incidental expenditure. In case of failure to maintain such records the Contracting Authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Articles 34 and 36.

## **ARTICLE 25. VERIFICATIONS, CHECKS AND AUDITS BY EUROPEAN UNION BODIES**

- 25.1. The Contractor shall 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, European Union 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 contract. 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 contract. 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 seven years after the final payment.
- 25.2. Furthermore, the Contractor shall 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.
- 25.3. 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 shall be easily accessible and filed so as to facilitate their examination. The Contractor shall inform the Contracting Authority of their precise location.
- 25.4. 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 shall be equally applicable, under the same conditions and according to the same rules as those set out in this Article, to any subcontractor or any other party benefiting from EU budget/EDF funds.
- 25.5. Failure to comply with the obligations set forth in Article 25.1 to 25.4 constitutes a case of serious breach of contract.

## **ARTICLE 26. INTERIM AND FINAL REPORTS**

- 26.1. Unless otherwise provided in the Terms of Reference, the Contractor shall draw up interim reports and a final report during the period of implementation of the tasks. These reports shall consist of a narrative section and a financial section. The format of such reports is as notified to the Contractor by the Project Manager during the period of implementation of the tasks.
- 26.2. All invoices must be accompanied by an interim or final report. All invoices for fee-based contracts must also be accompanied by an up to date financial report and an invoice for the actual costs of the expenditure verification. The structure of the interim or final financial report shall be the same as that of the contractually approved budget (Annex V). This financial report shall indicate, at a minimum, the expenditure of the reporting period, the cumulative expenditure and the balance available.

- 26.3. Immediately prior to the end of the period of implementation of the tasks, the Contractor shall draw up a final progress report together which must include, if appropriate, a critical study of any major problems which may have arisen during the performance of the contract.
- 26.4. This final progress report shall be forwarded to the Project Manager not later than 60 days after the end of the period of implementation of the tasks. Such report shall not bind the Contracting Authority.
- 26.5. Where the contract is performed in phases, the implementation of each phase shall give rise to the preparation of a final progress report by the Contractor.
- 26.6. Interim and final progress reports are covered by the provisions of Article 14.

#### **ARTICLE 27. APPROVAL OF REPORTS AND DOCUMENTS**

- 27.1. The approval by the Contracting Authority of reports and documents drawn up and forwarded by the Contractor shall certify that they comply with the terms of the contract.
- 27.2. Where a report or document is approved by the Contracting Authority subject to amendments to be made by the Contractor, the Contracting Authority shall prescribe a period for making the amendments requested.
- 27.3. Where the final progress report is not approved, the dispute settlement procedure is automatically invoked.
- 27.4. Where the contract is performed in phases, the implementation of each phase shall be subject to the approval, by the Contracting Authority, of the preceding phase except where the phases are carried out concurrently.
- 27.5. The Contracting Authority's time limit for accepting reports or documents shall be considered included in the time limit for payments indicated in Article 29, unless otherwise specified in the Special Conditions.

### **PAYMENTS & DEBT RECOVERY**

#### **ARTICLE 28. EXPENDITURE VERIFICATION**

- 28.1. No expenditure verification report is required for global price contracts.
- 28.2. Before payments are made for fee-based contracts an external auditor must examine and verify the invoices and the financial reports sent by the Contractor to the Contracting Authority. The auditor shall meet the requirements set out in the Terms of Reference for expenditure verification and shall be approved by the Contracting Authority.
- 28.3. The auditor must satisfy itself that relevant, reliable and sufficient evidence exists that:
  - (a) the experts employed by the Contractor for the contract have been working as evidenced on the contract (as corroborated by independent, third-party evidence, where available) for the number of days claimed in the Contractor's invoices and in the financial reporting spreadsheet submitted with the interim progress reports; and
  - (b) the amounts claimed as incidental expenditure have actually and necessarily been incurred by the Contractor in accordance with the requirements of the terms of reference of the contract.

On the basis of its verification, the auditor submits to the Contractor an expenditure verification report in accordance with the model in Annex VII.
- 28.4. The Contractor grants the auditor all access rights mentioned in Article 25.
- 28.5. The Contracting Authority reserves the right to require that the auditor be replaced if considerations which were unknown when the contract was signed cast doubt on the auditor's independence or professional standards.



## ARTICLE 29. PAYMENT AND INTEREST ON LATE PAYMENT

- 29.1. Payments will be made in accordance with one of the options below, as identified in the Special Conditions.

### Option 1: Fee-based contract:

The Contracting Authority will make payments to the Contractor in the following manner:

1. A first payment of pre-financing, if requested by the Contractor, of an amount up to maximum 20% of the maximum contract value stated in point 2 of the contract, within 30 days of receipt by the Contracting Authority of an invoice, of the contract signed by both parties, and of a financial guarantee if requested, as defined in Article 30.
2. Six-monthly further interim payments, as indicated in the Special Conditions, within 60 days of the Contracting Authority receiving an invoice accompanied by an interim progress report and an expenditure verification report, subject to approval of those reports in accordance with Article 27. Such interim payments shall be of an amount equivalent to the costs incurred on the basis of the expenditure verification reports. When 80 % of the maximum contract value stated in point 2 of the contract has been paid (pre-financing and interim payments) the amounts due to the contractor shall be deducted from the pre-financing payment until it is completely reimbursed before any additional payment is made.
3. The invoices must be paid such that the sum of payments does not exceed 90% of the maximum contract value stated in point 2 of the contract; the 10% being the minimum final payment.
4. The balance of the final value of the contract after verification, subject to the maximum contract value stated in point 2 of the contract, after deduction of the amounts already paid, within 90 days of the Contracting Authority receiving a final invoice accompanied by the final progress report and a final expenditure verification report, subject to approval of those reports in accordance with Article 27.

### Option 2: Global price contract:

If the contract is not divided between different outputs that the Contracting Authority can approve independently, or has a duration of less than two years, the Contracting Authority will make payments to the Contractor in the following manner:

1. a pre-financing payment if requested by the Contractor, of an amount up to 40% of the contract value stated in point 2 of the contract within 30 days of receipt by the Contracting Authority of an invoice, of the contract signed by both parties, and of a financial guarantee if requested, as defined in Article 30;
2. the balance of the contract value stated in point 2 of the contract within 90 days of the Contracting Authority receiving a final invoice accompanied by the final progress report, subject to approval of that report in accordance with Article 27.

If the contract has a duration of at least two years and if the budget is divided between different outputs that the Contracting Authority can approve independently, the Contracting Authority will make payments to the Contractor in the following manner:

1. a pre-financing payment if requested by the Contractor, of an amount up to 40% of the contract value stated in point 2 of the contract within 30 days of receipt by the Contracting Authority of an invoice, of the contract signed by both parties, and of a financial guarantee if requested, as defined in Article 30;
2. one interim payment at the end of each 12 months of implementation of the contract, of an amount corresponding to the outputs delivered, within 60 days of the

Contracting Authority receiving an invoice accompanied by an interim progress report, subject to approval of this report in accordance with Article 27;

3. The invoices must be paid such that the sum of payments does not exceed 90% of the maximum contract value stated in point 2 of the contract; the 10% being the minimum final payment.
4. the balance of the contract value stated in point 2 of the contract within 90 days of the Contracting Authority receiving a final invoice accompanied by the final progress report, subject to approval of that report in accordance with Article 27.

29.2. The date of payment shall be the date on which the paying account is debited. The invoice shall not be admissible if one or more essential requirements are not met. Without prejudice to Article 36.2, the Contracting Authority may halt the countdown towards this deadline for any part of the invoiced amount disputed by the Project Manager by notifying the Contractor that part of the invoice is inadmissible, either because the amount in question is not due or because the relevant report cannot be approved and the Contracting Authority thinks it necessary to conduct further checks. In such cases, the Contracting Authority shall not unreasonably withhold any undisputed part of the invoiced amount but may request clarification, alteration or additional information, which shall be produced within 30 days of the request. The countdown towards the deadline shall resume on the date on which a correctly formulated invoice is received by the Contracting Authority. If part of the invoice is disputed, the undisputed amount of the invoice shall not be withheld and must be paid according to the payment schedule set in Article 29.1.

29.3. Once the deadline referred to above has expired, the Contractor - unless it is a government department or public body in an EU Member State - shall, within two months of receiving late payment, receive default interest:

- 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,
- 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,

on the first day of the month in which the time-limit expired, plus eight percentage points. The interest be payable for the time elapses between the expiry of the payment deadline (exclusive) and the date on which the Contracting Authority's account is debited (inclusive).

By way of exception, 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.

29.4. Payments due by the Contracting Authority shall be made into the bank account mentioned on the financial identification form completed by the Contractor. A new financial identification form must be used to report any change of bank account and must be attached to the invoice.

29.5. Payments shall be made in euro or in the 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. Where payment is in euro, for the purposes of the Provision for incidental expenditure, actual expenditure shall be converted into euro at the rate published on the Infor-Euro on the first working day of the month in which the invoice is dated. Where payment is in the national currency, it shall be converted into the national currency at the rate published on the Infor-Euro on the first working day of the month in which the payment is made.

29.6. For fee-based contracts, invoices shall be accompanied by copies of, or extracts from, the corresponding approved timesheets referred to in Article 24.2 to verify the amount invoiced for the time input of the experts. A minimum of 7 hours worked are deemed to be equivalent to one day

worked. For all experts, their time input must be rounded to the nearest whole number of days worked for the purposes of invoicing.

- 29.7. Payment of the final balance shall be subject to performance by the Contractor of all its obligations relating to the implementation of all phases or parts of the services and to the approval by the Contracting Authority of the final phase or part of the services. Final payment shall be made only after the final progress report and a final statement, identified as such, shall have been submitted by the Contractor and approved as satisfactory by the Contracting Authority.
- 29.8. The payment obligations of the European Commission under the contract shall cease at most 18 months after the end of the period of implementation of the tasks, unless the contract is terminated in accordance with these General Conditions.
- 29.9. Prior to, or instead of, terminating the contract as provided for in Article 36, the Contracting Authority may suspend payments as a precautionary measure without prior notice.
- 29.10. Where the award procedure or the performance of the contract proves to have been subject to substantial errors, 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 35.2 and terminate the contract as provided for in Article 36, refuse to make payments and/or recover amounts already paid, in proportion to the seriousness of the errors irregularities or fraud.
- 29.11. If the contract is terminated for any reason whatsoever, the guarantee 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.

#### **ARTICLE 30. FINANCIAL GUARANTEE**

- 30.1. Unless otherwise provided for in the Special Conditions, the Contractor shall provide a financial guarantee for the full amount of the pre-financing payment. The financial 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 financial 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. This financial guarantee shall remain valid until it is released by the Contracting Authority in accordance with Article 30.5 or Article 30.6, as appropriate. Where the Contractor is a public body the obligation for a financial guarantee may be waived depending on a risk assessment made.
- 30.2. The financial guarantee shall be provided on the letterhead of the financial institution using the template provided in Annex VI.
- 30.3. Should the financial 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 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.
- 30.4. If the contract is terminated for any reason whatsoever, the financial guarantee may be invoked forthwith in order to repay any balance still owed to the Contracting Authority by the Contractor, and the guarantor shall not delay payment or raise objection for any reason whatsoever.
- 30.5. For fee-based contracts, the financial guarantee shall be released when the prefinancing is reimbursed in accordance with Article 29.1.
- 30.6. For global price contracts, (i) if the contract is not divided between different outputs that the Contracting Authority can approve independently, or has a duration of less than two years, the financial guarantee shall remain in force until the final payment has been made, and (ii) if the contract has a duration of at least two years and if the budget is divided between different outputs

that the Contracting Authority can approve independently, the financial guarantee shall be released when the prefinancing is reimbursed in accordance with Article 29.1.

### **ARTICLE 31. RECOVERY OF DEBTS FROM THE CONTRACTOR**

- 31.1. The Contractor undertakes to repay any amounts paid in excess of the final amount due to the Contracting Authority before the deadline indicated in the debit note which is 45 days from the issuing of that note.
- 31.2. 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 an EU Member State) increase the amounts due by adding interest:
- (a) 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,
  - (b) 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 eight 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 the payment is actually made. Any partial payments shall first cover the interest thus established.
- 31.3. 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 party's right to agree on payment in installments.
- 31.4. Bank charges arising from the repayment of amounts due to the Contracting Authority shall be borne entirely by the Contractor.
- 31.5. Without prejudice to the prerogative of the Contracting Authority, if necessary, the European Union may as a donor proceed itself to the recovery by any means.

### **ARTICLE 32. REVISION OF PRICES**

- 32.1. The contract shall be at fixed prices, which shall not be revised.

### **ARTICLE 33. PAYMENT TO THIRD PARTIES**

- 33.1. Orders for payments to third parties may be carried out only after an assignment made in accordance with Article 3. The assignment shall be notified to the Contracting Authority.
- 33.2. Notification of beneficiaries of the assignment shall be the sole responsibility of the Contractor.
- 33.3. 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 29, the Contracting Authority shall have 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.

## **BREACH OF CONTRACT, SUSPENSION AND TERMINATION**

### **ARTICLE 34. BREACH OF CONTRACT**

- 34.1. Either party commits a breach of contract where it fails to perform its obligations in accordance with the provisions of the contract.
- 34.2. 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.
- 34.3. Damages may be either:
- a) general damages; or
  - b) liquidated damages.
- 34.4. 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 34.2, 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.
- 34.5. 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.
- 34.6. The Contracting Authority shall be entitled to compensation for any damage which comes to light after the contract is completed in accordance with the law governing the contract.

### **ARTICLE 35. SUSPENSION OF THE CONTRACT**

- 35.1. The Contractor shall, on the order of the Contracting Authority, suspend the execution of the contract or any part thereof for such time or times and in such manner as the Contracting Authority 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.
- 35.2. Suspension of the contract in the event of presumed substantial errors or irregularities or fraud: The contract may be suspended in order to verify whether presumed substantial errors 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.
- 35.3. During the period of suspension, the Contractor shall take such protective measures as may be necessary.
- 35.4. 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) the presumed substantial errors or irregularities or fraud mentioned in article 35.2 are confirmed and attributable to the Contractor.
- 35.5. The Contractor shall only be entitled to such additions to the contract price if it notifies the Project Manager, within 30 days after receipt of the order to suspend execution of the contract, of its intention to claim them.
- 35.6. The Contracting Authority, after consulting the Contractor, shall determine such additions to the contract price and/or extension of the period of performance to be granted to the Contractor in respect of such claim as shall, in the opinion of the Contracting Authority be fair and reasonable.
- 35.7. 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. If the period of suspension exceeds 90 days and the suspension is not due to the Contractor's breach or default, the Contractor may, by notice to the Contracting Authority, request to proceed with the contract within 30 days, or terminate the contract.

### **ARTICLE 36. TERMINATION BY THE CONTRACTING AUTHORITY**

- 36.1. The Contracting Authority may, at any time and with immediate effect, subject to Article 36.8, terminate the contract, except as provided for under Article 36.2.

36.2. Subject to any other provision of these General Conditions the Contracting Authority may, by giving seven days' notice to the Contractor, terminate the contract 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 Project Manager 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 services;
- (c) the Contractor refuses or neglects to carry out any administrative orders given by the Project Manager;
- (d) the Contractor assigns the contract or subcontracts 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 regulations 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 has committed an irregularity;
- (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 substantial errors, 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 substantial errors, 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 8 and Article 9;
- (o) the Contractor is unable to provide a suitable replacement to an expert, the absence of which affects the proper performance of the contract.

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) and (n) may refer also to subcontractors.

- 36.3. 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 services 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.
- 36.4. Upon termination of the contract or when it has received notice thereof, the Contractor shall take immediate steps to bring the services to a close in a prompt and orderly manner and to reduce expenditure to a minimum.
- 36.5. The Project Manager shall, as soon as possible after termination, certify the value of the services and all sums due to the Contractor as at the date of termination.
- 36.6. The Contracting Authority shall not be obliged to make any further payments to the Contractor until the services are completed. After the services are completed, the Contracting Authority shall recover from the Contractor the extra costs, if any, of completing the services, or shall pay any balance still due to the Contractor.
- 36.7. If the Contracting Authority terminates the contract pursuant to Article 36.2, it shall, in addition to the extra costs for completion of the contract and without prejudice to its other remedies under the contract, be entitled to recover from the Contractor any loss it has suffered up to the value of the services which have not been satisfactorily completed unless otherwise provided for in the Special Conditions.
- 36.8. 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.
- 36.9. 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 37. TERMINATION BY THE CONTRACTOR**

- 37.1. The Contractor may, after 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 after the expiry of the time limit stated in Article 29; or
  - b) consistently fails to meet its obligations after repeated reminders; or
  - c) suspends the progress of the services or any part thereof for more than 90 days for reasons not specified in the contract, or not attributable to the Contractor's breach or default.
- 37.2. Such termination shall be without prejudice to any other rights of the Contracting Authority or the Contractor acquired under the contract.
- 37.3. In the event of such termination, the Contracting Authority shall pay the Contractor for any loss or damage the Contractor may have suffered. Such additional payment must not be such that the total payments exceed the amount specified in Article 2 of the contract.

#### **ARTICLE 38. FORCE MAJEURE**

- 38.1. 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 arise after the date of notification of award or the date when the contract becomes effective.
- 38.2. 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 the contract.

- 38.3. Notwithstanding the provisions of Article 19 and Article 36, the Contractor shall not be liable for liquidated damages or termination for breach or 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 Article 29 and Article 37, for payment of interest on delayed payments, for non-performance or for termination by the Contractor for breach or 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*.
- 38.4. 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 Project Manager giving details of the nature, the probable duration and the likely effect of the circumstances. Unless otherwise directed by the Project Manager 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 Project Manager.
- 38.5. For a fee-based contract, if the Contractor incurs additional costs in complying with the Project Manager's directions or using alternative means under Article 38.4 the amount thereof shall be certified by the Project Manager.
- 38.6. 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 contract 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 the situation of *force majeure* persists, the contract shall be terminated and, in consequence thereof under the law governing the contract, the parties shall be released from further performance of the contract.

#### **ARTICLE 39. DECEASE**

- 39.1. If 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 its heirs or beneficiaries if they have notified their wish to continue the contract.
- 39.2. Where the Contractor consists of a number of natural persons and one or more of them die, a report shall be agreed between the parties on the progress of the contract 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.
- 39.3. In the cases provided for in Articles 39.1 and 39.2, persons offering to continue to implement the contract shall notify the Contracting Authority thereof within 15 days of the date of decease. The decision of the Contracting Authority shall be notified to those concerned within 30 days of receipt of such a proposal
- 39.4. Such persons shall be jointly and severally liable for the proper implementation 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 40. SETTLEMENT OF DISPUTES**

- 40.1. The parties shall make every effort to settle amicably any dispute relating to the contract which may arise between them.



- 40.2. 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.
- 40.3. 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.
- 40.4. 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 41. APPLICABLE LAW**

- 41.1. 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 European Union law supplemented as appropriate by Belgian law.

### **DATA PROTECTION**

#### **ARTICLE 42. DATA PROTECTION**

- 42.1. Any personal data included in the contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. The data shall be processed solely for the purposes of the performance, management and monitoring of the contract by the Contracting Authority without prejudice to possible transmission to the bodies charged with monitoring or inspection in application of EU law. The Contractor shall have the right to access his/her personal data and to rectify any such data. Should the Contractor have any queries concerning the processing of his/her personal data, s/he shall address them to the Contracting Authority. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.
- 42.2. Where the contract requires processing personal data, the Contractor may act only under the supervision of the data controller, in particular with regard to the purposes of processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.
- 42.3. The data shall be confidential within the meaning of Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data. The Contractor shall limit access to the data to staff strictly needed to perform, manage and monitor the contract.
- 42.4. The Contractor undertakes to adopt technical and organisational security measures to address the risks inherent in processing and in the nature of the personal data concerned in order to:
  - a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:

- aa) unauthorised reading, copying, alteration or removal of storage media;
- ab) unauthorised data input, unauthorised disclosure, alteration or erasure of stored personal data;
- ac) unauthorised persons from using data-processing systems by means of data transmission facilities;
- b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- c) record which personal data have been communicated, when and to whom;
- d) ensure that personal data processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
- e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- f) design its organisational structure in such a way that it meets data protection requirements.

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