



## Tender Specifications Enabel

Public works contract for Fablab Transformation Works and Furniture Supply in Schools in East Jerusalem

Country: East Jerusalem

Navision code: PZA170421T-10036

Tenderer:

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# 1 Administrative and contractual provisions

## 1.1 General remarks

### 1.1.1 Derogations from the Royal Decree of 14 January 2013

§1 The chapter 'Specific contractual and administrative conditions' of these Tender Specifications (CSC/Cahier Spécial des Charges) holds the specific administrative and contractual provisions that apply to this public contract by way of derogation from the Royal Decree of 14 January 2013 or as a complement or an elaboration thereof.

§2 These Tender Specifications derogate Articles 25. §2 and 26 of the General Implementing Rules – GIR (Royal Decree of 14 January 2013).

### 1.1.2 Contracting authority

§3 The contracting authority of this public contract is Enabel, the Belgian development agency, public-law company with social purposes, with its registered office at Rue Haute 147, 1000 Brussels in Belgium (enterprise number 0264.814.354, RPM/RPR Brussels). Enabel has the exclusive competence for the execution, in Belgium and abroad, of public service tasks of direct bilateral cooperation with partner countries. Moreover, it may also perform other development cooperation tasks at the request of public interest organisations, and it can develop its own activities to contribute towards realisation of its objectives.

§4 For this public contract Enabel is represented by Ms. Christelle Jocquet, Resident Representative of Enabel in Palestine, who is mandated under the mandate structure to award the public contract (and hence to sign the 'reasoned decision' on the basis of an evaluation report and to sign the notification letters).

### 1.1.3 Institutional framework of Enabel

§5 The general framework of reference in which Enabel operates is:

- The Belgian Law on Development Cooperation of 19 March 2013<sup>1</sup>;
- The Belgian Law of 21 December 1998 establishing the Belgian Technical Cooperation as a public-law company<sup>2</sup>;
- The Belgian Law of 23 November 2017 changing the name of the Belgian Technical Cooperation and defining the missions and functioning of Enabel, the Belgian development agency, published in the Belgian Official Gazette on 11 December 2017.

§6 The following initiatives are also guiding Enabel in its operations and are given as main examples:

- In the field of international cooperation: the United Nations Sustainable Development Goals and the Paris Declaration on the harmonisation and alignment of aid;
- In the field of the fight against corruption: the Law of 8 May 2007 approving the United Nations Convention against Corruption, adopted in New York on 31 October 2003<sup>3</sup>, as well as the Law of 10 February 1999 on the Suppression of Corruption transposing the

<sup>1</sup> Belgian Official Gazette of 30 December 1998, of 17 November 2001, of 6 July 2012, of 15 January 2013 and of 26 March 2013.

<sup>2</sup> Belgian Official Gazette of 1 July 1999.

<sup>3</sup> Belgian Official Gazette of 18 November 2008.

Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;

- In the field of Human Rights: the United Nations' Universal Declaration of Human Rights (1948) as well as the 8 basic conventions of the International Labour Organization<sup>4</sup> on Freedom of Association (C. n°87), on the Right to Organise and Collective Bargaining (C. n°98), on Forced Labour (C. n°29 and 105), on Equal Remuneration and on Discrimination in Respect of Employment (C. n°100 and 111), on Minimum Age for Admission to Employment (C. n°138), on the Prohibition of the Worst Forms of Child Labour (C. n°182);
- In the field of environmental protection: The Climate Change Framework Convention of Paris, of 12 December 2015;
- The first Management Contract contracting Enabel and the Belgian federal State (approved by the Royal Decree of 17 December 2017, Belgian Official Gazette of 22 December 2017) that sets out the rules and the special conditions for the execution of public service tasks by Enabel on behalf of the Belgian State.
- Enabel's Code of Conduct of January 2019, Enabel's Policy regarding sexual exploitation and abuse of June 2019 and Enabel's Policy regarding fraud and corruption risk management of June 2019;

#### **1.1.4 Rules governing the public contract**

§7 The following, among other things, apply to this public contract:

- The Law of 17 June 2016 on public procurement<sup>5</sup>
- The Law of 17 June 2013 on justifications, notification and legal remedies for public contracts and certain contracts for works, supplies and services<sup>6</sup>
- The Royal Decree of 18 April 2017 on the awarding of public contracts in the classic sectors<sup>5</sup>
- The Royal Decree of 14 January 2013 establishing the General Implementing Rules for public procurement<sup>5</sup>
- Circulars of the Prime Minister with regards to public procurement<sup>5</sup>.
- Enabel's Policy regarding sexual exploitation and abuse – June 2019
- Enabel's Policy regarding fraud and corruption risk management – June 2019
- Palestinian Labor Law No. 7 of 2000 and Resolution No. 2 of 2013
- Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation, hereinafter referred to as 'the GDPR'), and repealing Directive 95/46/EC;
- Law of 30 July 2018 on the protection of natural persons with regard to the processing of personal data.

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<sup>4</sup> <https://www.ilo.org/global/standards/lang--en/index.htm>

<sup>5</sup> A consolidated version of this document can be consulted on [www.publicprocurement.be](http://www.publicprocurement.be).

<sup>6</sup> Belgian Official Gazette of 21 June 2013.

§8 All Belgian regulations on public contracts can be consulted on [www.publicprocurement.be](http://www.publicprocurement.be); Enabel's Code of Conduct and the policies mentioned above can be consulted on Enabel's website via <https://www.enabel.be/content/integrity-desk>.

### 1.1.5 Definitions

§9 The following definitions apply to this contract:

- The tenderer: The natural person (m/f) or legal entity that submits a tender;
- The contractor / building contractor: The tenderer to whom the public contract is awarded;
- The contracting authority: Enabel, represented by the Resident Representative of Enabel in Palestine;
- The tender: The commitment of the tenderer to perform the public contract under the conditions that (s)he has submitted; Days: In the absence of any indication in this regard in the Tender Specifications and the applicable regulations, all days should be interpreted as calendar days;
- Procurement documents: Contract notice and Tender Specifications including the annexes and the documents they refer to;
- Technical specifications: A specification in a document defining the characteristics of a product or a service, such as the quality levels, the environmental and climate performance levels, the design for all needs, including accessibility for people with disabilities, and the evaluation of conformity, of product performance, of the use of the product, safety or dimensions, as well as requirements applicable to the product as regards the name by which it is sold, terminology, symbols, testing and test methods, packaging, marking or labelling, instructions for use, the production processes and methods at every stage in the life cycle of the supply or service, as well as the evaluation and conformity procedures;
- Variant: An alternative method for the design or the performance that is introduced either at the demand of the contracting authority, or at the initiative of the tenderer;
- Option: A minor and not strictly necessary element for the performance of the contract, which is introduced either at the demand of the contracting authority, or at the initiative of the tenderer;
- Summary bill of quantities: The procurement document, in a public works contract, which splits up the performance in different items and specifies the quantity or the method to determine the price for each of them;
- General Implementing Rules (GIR): Rules laid down in the Royal Decree of 14 January 2013 establishing the General Implementing Rules for public procurement and for concessions for public works;
- The Tender Specifications (Cahier spécial des charges/CSC): This document and its annexes and the documents it refers to;
- Corrupt practices: The offer of a bribe, gift, gratuity or commission to a person as an inducement or reward for performing or refraining from an act relating to the award of a contract or performance of a contract already concluded with the contracting authority;

- Litigation: Court action.
- Subcontractor in the meaning of public procurement regulations: The economic operator proposed by a tenderer or contractor to perform part of the contract.
- Controller in the meaning of the GDPR: the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data.
- Processor (subcontractor) in the meaning of the GDPR: a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller
- Recipient in the meaning of the GDPR: a natural or legal person, public authority, agency or another body, to which the personal data are disclosed, whether a third party or not.
- Personal data: any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

## 1.2 Confidentiality

### 1.2.1 Processing of personal data

§10 The contracting authority undertakes to process the personal data that are communicated to it under the framework of this procedure with the greatest care, in accordance with legislation on the protection of personal data (General Data Protection Regulation, GDPR). Where the Belgian law of 30 July 2018 on the protection of natural persons with regard to the processing of personal data contains stricter provisions, the contracting authority will act in accordance with said law.

### 1.2.2 Confidentiality

§11 The tenderer or contractor and Enabel are bound to secrecy vis-à-vis third parties with regards to any confidential information obtained within the framework of this public contract and will only divulge such information to third parties after receiving the prior written consent of the other party. They will disclose this confidential information only among appointed parties involved in the assignment. They guarantee that said appointed parties will be adequately informed of their obligations in respect of the confidential nature of the information and that they shall comply therewith.

§12 Privacy Notice Of Enabel: Enabel takes your privacy serious. We undertake to protect and process your personal data with due care, transparently and in strict compliance with privacy protection legislation.

► See also: <https://www.enabel.be/gdpr-privacy-notice/>

### 1.2.3 Deontological obligations

§13 Any failure to comply with one or more of the deontological clauses may lead to the exclusion of the candidate, tenderer or contractor from other public contracts for Enabel.

§14 For the duration of the contract, the contractor and his staff respect human rights and undertake not to go against political, cultural or religious customs of the beneficiary

country. The tenderer or contractor is bound to respect fundamental labour standards, which are internationally agreed upon by the International Labour Organization (ILO), namely the conventions on union freedom and collective bargaining, on the elimination of forced and obligatory labour, on the elimination of employment and professional discrimination and on the abolition of child labour.

- §15 In accordance with Enabel's Policy regarding sexual exploitation and abuse, the contractor and his staff have the duty to behave in an irreproachable manner towards the beneficiaries of the projects and towards the local population in general. They must abstain from any acts that could be considered a form of sexual exploitation or abuse and they must abide by the basic principles and guidelines laid down in this policy.
- §16 Any attempt of a candidate or a tenderer to obtain confidential information, to proceed to illicit arrangements with competitors or to influence the evaluation committee or the contracting authority during the investigation, clarification, evaluation and comparison of tenders and candidates procedure will lead to the rejection of the application or the tender.
- §17 Moreover, in order to avoid any impression of risk of partiality or connivance in the follow-up and control of the performance of the public contract, it is strictly forbidden to the contractor to offer, directly or indirectly, gifts, meals or any other material or immaterial advantage, of whatever value, to appointees of the contracting authority who are concerned, directly or indirectly, by the follow-up and/or control of the performance of the contract, regardless of their hierarchical rank.
- §18 The public contractor commits to supply, upon the demand of the contracting authority, any supporting documents related to the performance conditions of the contract. The contracting authority will be allowed to proceed to any desk review or on-the-spot check which it considers necessary to collect evidence to support the presumption of unusual commercial expenditure. Depending on the gravity of the facts observed, the contractor having paid unusual commercial expenditure is liable to have his contract cancelled or to be permanently excluded.
- §19 In accordance with Enabel's Policy regarding sexual exploitation and abuse of June 2019 and Enabel's Policy regarding fraud and corruption risk management complaints relating to issues of integrity (fraud, corruption, etc.) must be sent to the Integrity desk through the <https://www.enabelintegrity.be> website.

#### **1.2.4 Applicable law and competent courts**

- §20 The contract must be performed and interpreted according to Belgian law.
- §21 The parties commit to sincerely perform their engagements to ensure the good performance of the public contract.
- §22 In case of litigation or divergence of opinion between the contracting authority and the contractor, the parties will consult each other to find a solution.
- §23 If agreement is lacking, the Brussels courts are the only courts competent to resolve the matter.



## 1.3 Subject-matter and scope of the public contract

### 1.3.1 Type of contract

§24 This contract is a public works contract, having as its subject-matter the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority which exercises decisive influence on its nature or design.

### 1.3.2 Subject-matter of the public contract

§25 This public works contract consists in “Transformation Works and Furniture Supply in seven Schools in East Jerusalem”, in conformity with the conditions of these Tender Specifications.

### 1.3.3 Lots

§26 The public contract has two lots, each of which is indivisible. The tenderer may submit a tender for one lot or the two lots. A tender for part of a lot is inadmissible.

§27 The lots are:

Lot 1:

- Al-Aqsa Secondary Girls' school, situated in Al-Ram.
- Asheikh Sa'ad Secondary Girls' School, situated in Sheikh Sa'ad.
- Asheikh Sa'ad Secondary Boys' School, situated in Sheikh Sa'ad.

Lot 2:

- Al-Hasan Athany Basic Boys' School, situated in Wadi Al-Joz.
- Al-Shabbat Al-Shameleh Secondary school, situated in Wadi Al-Joz.
- Annethamiah Secondary Girls' School, situated in Beit Hanina.
- Othman Ibn Affan Basic Girls' School, situated in Surbaher.

§28 The description of each lot is included in 2.1 Description of the works of these Tender Specifications and its annexes.

§29 When tendering for several lots, the tenderer may not offer **discounts or better conditions** in his tender in case these lots were to be awarded to him.

§30 In case the two lots are awarded to the same contractor, both lots will have to be performed in parallel and at the same time.

§31 The tenderer indicates in his tenders for several lots his **order of preference** for the awarding of these lots. (see Form 4: Awarding Preferences)

### 1.3.4 Items

§32 Each lot of this contract consists of the items mentionned in Annex 1: Bill of quantities.

§33 These items are pooled in lots, each of which form one single contract. It is not possible to tender for one or several items and the tenderer must submit price quotations for all items of a same lot.

### 1.3.5 Duration of the public contract

§34 For each of the lots starts upon award notification and expires on final acceptance.

► See: 1.7.20.2 Acceptance of the works performed (Art. 64-65 and 91-92), p.34 and § 279

### **1.3.6 Variants**

§35 Variants are forbidden.

### **1.3.7 Options**

§36 No options are foreseen in the framework of this contract. No options permitted.

### **1.3.8 Quantities**

§37 This is a schedule-of-price contract.

§38 Quantities are described in the Terms of Reference. The quantities will be paid according to the real implemented quantities as measured on site and supported by measurement sheets.

§39 The presumed quantities mentioned in (Annex 1: Bill of quantities) are for information purposes only.

## **1.4 Procedure**

### **1.4.1 Award procedure**

§40 This contract is awarded in accordance with Article 41 of the Law of 17 June 2016 via a Direct Negotiated Procedure with Prior Publication.

### **1.4.2 Publication**

#### **1.4.2.1 Official publication**

§41 This contract is officially advertised in the Belgian Public Tender bulletin.

#### **1.4.2.2 Further notification**

§42 These Tender Specifications are posted on the website of Enabel ([www.enabel.be](http://www.enabel.be)).

§43 This contract is officially advertised on the OECD website.

- The contract notice was advertised through “Jobs.ps” portal in Palestine (<https://www.jobs.ps>)

### **1.4.3 Information**

§44 The awarding of this contract is coordinated by Mr. Mohammed Dahlan (Expert in Contracting and Administration). Throughout this procedure all contacts between the contracting authority and the (prospective) tenderers about this contract will exclusively pass through this service / this person. (Prospective) tenderers are prohibited to contact the contracting authority in any other way with regards to this contract, unless otherwise stipulated in these Tender Specifications.

§45 Until the notification of the award decision no information will be given about the evolution of the procedure.

§46 The procurement documents can be consulted free of charge at the following internet address: <https://www.enabel.be/public-procurement/>

#### 1.4.3.1 Site visit

§47 To be able to submit a tender in full knowledge of the facts, the tenderer is encouraged to attend a guided site visit arranged by Enabel, details of the site visit are as follows:

Date	Time	Location	Location	GPS location
<b>19<sup>th</sup> December 2022</b>	10:00 AM	Al-Shabbat Al-Shameleh Secondary school	Wadi Al Joz	31.78949, 35.24053

§48 Tenderers may also organize visits to other schools by requesting coordination focal point contact information, requests shall be sent to **Mr Mohammed Dahlan** ([mohammed.dahlan@enabel.be](mailto:mohammed.dahlan@enabel.be)).

#### 1.4.3.2 Information meeting

§49 One information meeting for all lots will be held online, on **20<sup>th</sup> December 2022**, at **10:00 AM** (EET = Palestinian time). Interested tenderers are invited to join using the following details:

► [Click here to join the meeting](#)

► Meeting ID: 334 769 631 34      Passcode: SLmfTX

§50 Question and clarification related to both lot 1 and lot 2 will be discussed in the same information meeting mentioned above. Questions raised by tenderers during information meeting will be written down and answered collectively to all interested bidders and published at the address mentioned in §52.

#### 1.4.3.3 Questions and answers

§51 Until **21<sup>st</sup> December 2022**, prospective tenderers may ask questions about the Tender Specifications and the contract. Questions will be in writing to **Mr Mohammed Dahlan** ([mohammed.dahlan@enabel.be](mailto:mohammed.dahlan@enabel.be)) and they will be answered in the order received.

§52 The complete overview of questions asked will be available no later than 7 days before the deadline for submission of tenders. At the following address : <https://www.enabel.be/public-procurement/>

§53 The tenderer is to submit his tender after reading and taking into account any corrections made to the tender notice or Tender Specifications that are published on the Enabel website or in the Belgian Public Tender bulletin or that are sent to him by e-mail. To do so, when the tenderer has downloaded the Tender Specifications, it is strongly advised that (s)he gives his coordinates to the public procurement administrator mentioned above and requests information on any modifications or additional information.

§54 In accordance with Article 81 of the Royal Decree of 18 April 2017, the tenderer is required to report immediately any gap, error or omission in the procurement documents that precludes the establishment of his price or the comparison of tenders, within ten days at the latest before the deadline for receipt of tenders.

### 1.4.4 Tender

#### 1.4.4.1 Data to be included in the tender

§55 The tenderer must use the tender form in annex. In case (s)he does not use this form, (s)he is fully responsible for the perfect concordance between the documents (s)he has used and the form.

- §56 The tender and the annexes to the tender form are drawn up in English.
- §57 By submitting a tender, the tenderer automatically renounces to his own general or specific sales conditions, even if these are mentioned in any of the annexes to his tender.
- §58 The tenderer clearly designates in his tender which information is confidential and/or relates to technical or business secrets and may therefore not be divulged by the contracting authority.

#### **1.4.4.2 Period the tender is valid**

- §59 The tenderers remain bound by their tender for a period of 90 calendar days from the tender reception deadline date.
- §60 The validity of the tender will be negotiated, if the deadline stated above is overrun.

#### **1.4.4.3 Determination of prices**

- §61 All prices given in the tender form must obligatorily be quoted in euro.
- §62 This public contract is a price-schedule contract, i.e. a contract in which only the unit prices are lump-sum prices. The price to be paid will be obtained by applying the unit prices given in the inventory to the quantities actually performed.
- §63 In accordance with Article 37 of the Royal Decree of 18 April 2017, the contracting authority may for the purpose of verifying the prices carry out an audit of any and all accounting documents and perform on-the-spot checks with a view of verifying the correctness of the indications supplied.

#### **1.4.4.4 Elements included in the price**

- §64 The tenderer is to include in his unit and global prices any charges and taxes generally applied to works, with the exception of the value-added tax.
- §65 In the unit and global prices for the contract for works any costs, measures and charges applied to the performance of the contract, namely:
- 1° Where applicable, the measures imposed by occupational safety and worker health legislation;
  - 2° All the works and supplies, such as bracing, sheet piling and drainage, necessary to prevent landslips and other damage and to remedy these if necessary;
  - 3° The perfect preservation, possible shift and redeployment of cables and pipes which might be encountered during excavation, earthworks and dredging, provided that these achievements are not the legal responsibility of the owners of such cables and pipes;
  - 4° Removal, within the confines of the excavations, earthworks and dredging which may be necessary for construction of the structure, of:
    - a) earth, mud and gravel, stones, rubble, riprap of any kind, masonry remains, turf, plants, bushes, stumps, roots, coppices, debris and waste materials;
    - b) any rock regardless of size where the procurement documents state that the earthworks, excavation and dredging are to be carried out in land known to be rocky, and in the absence of this statement, any rock and any blocks of masonry or concrete the individual volume of which does not exceed half a cubic metre;
  - 5° The transportation and removal demolition material, either away from the property of the contracting authority, or to locations within the sites for re-use,

or to designated dumping sites, in accordance with the requirements of the procurement documents;

- 6° All costs related to repairing, replacing and/or reinstalling any built or equipment element that was damaged or made dysfunctional because of the works;
- 7° All overheads, incidental expenses and maintenance costs during contractual performance and the warranty period;
- 8° Customs and excise duties.

§66 All the works which, by their nature, depend on or are associated with those described in the procurement documents are also included in the contract price.

## **1.4.5 The right to submit tenders and opening of tenders**

### **1.4.5.1 The right to submit a tender and how to submit tenders**

§67 The tenderer may only submit one tender per lot.

§68 The tender submitted must comprise the following:

- **One** original hard copy of the completed tender document (the present document):
  - This document must be first filled electronically, then printed, signed and stamped on A4 paper.
  - For filling in the pdf forms, we recommend using the free software Adobe Acrobat Reader, which can be downloaded here: <https://get.adobe.com/uk/reader/>
  - Printing in black and white and on both sides of paper is encouraged.
  - Do not use sophisticated spiral binding or plastic covers: simply staple it in the upper-left corner or use a binder clip.
  - None of the forms shall be filled by hand.
  - The tenderer must use the tender forms provided in 3. Forms, p.39. In case (s)he does not use these forms, (s)he is fully responsible for the perfect concordance between the documents (s)he has used and the form.
- **One** original copy of the completed Annex 1: Bill of quantities considering the following:
  - This document must be filled electronically, then printed, signed and stamped on A4 paper.
  - Printing in black and white and on both sides of paper is encouraged.
  - Do not use sophisticated spiral binding or plastic covers: simply staple it in the upper-left corner or use a binder clip.
  - None of the sheets shall be filled by hand.
  - The prices are given in euros and rounded off to two figures after the decimal point. If necessary, they may be rounded off to four figures after the decimal point.
  - The totals for each lot in Annex 1 – (BoQ) must be reported accurately in the Tender Document, in Form 3: Prices.
- **One** original copy of the other appendixes requested in 3.5. Selection . . p. 44 and summarized in 3.8.1 Form 9: checklist of documents to be joined to the tender, P.58. These documents shall be printed in A4 paper, signed and stamped.
- One electronic copy of the following documents, on a CD or DVD:
  - The filled tender document in pdf format as filled,
  - A scanned copy of the tender document and its annexes,
  - The filled Annex 1: Bill of quantities in .xls or compatible spreadsheet format,
  - Annex 2: Set of plans (architectural, electrical, and mechanical),

- Annex 3: Technical specifications.

The CD/DVD shall be labelled with the reference number of the Lot(s), the name of the tenderer and be signed and stamped. Alternatively, the above-mentioned documents may be printed on paper in a suitable format, signed and stamped, but this is not encouraged.

- The printed documents and the CD/DVD must be submitted in a properly sealed and stamped envelope mentioning: “Fablab Transformation Works and Furniture Supply in Schools in East Jerusalem” and the following references:
  - For Lot 1: **“PZA170421T-10036 (Lot 1)”**
  - For Lot 2: **“PZA170421T-10036 (Lot 2)”**
  - For applying to two lots: **“PZA170421T-10036 (Lots 1 & 2)”**
- The printed documents and the CD/DVD must be submitted in ONE single properly sealed and stamped envelope. Only the references relative to the lots for which the tenderer is submitting an offer shall be mentioned.

§69 The tender and all accompanying documents have to be numbered and signed (original hand-written signature) by the tenderer or his representative. The same applies to any alteration, deletion or note made to this document. This also applies to erasures and alterations, additions or changes made by means of a correction ribbon or correcting fluid.

§70 The representative must clearly state that (s)he is authorised to commit the tenderer.

§71 If the tenderer is a company / association without legal body status, formed by separate natural or legal persons (temporary group or temporary partnership), the tender must be signed by each of these persons.

§72 When applying for several lots, the tenderer will submit only one tender with one single tender document, one **Annex 1: Bill of quantities** per lot and one single CD/DVD in a single envelope, mentioning on it only the references of the lots for which (s)he is applying.

#### **1.4.5.2 Dates and location(s) of submission:**

§73 The tenderer may submit his tender as follows:

- a) By mail (standard mail or registered mail)

In this case, the sealed envelope is put in a second closed envelope addressed to:

► Enabel, Belgian Development Agency, Consulate General of Belgium, 5 Baibars Street, Sheikh Jarrah, 9711769 Jerusalem.

- b) Delivered by hand with acknowledgement of receipt to one of the following addresses:

► Enabel, Belgian Development Agency, Consulate General of Belgium, 5 Baibars Street, Sheikh Jarrah, Jerusalem  
GPS: 31.7943, 35.2309

► Enabel - Belgian Development Agency, Royal Center, 7th Floor, Al Balou', Mecca Street, Ramallah - Al Bireh  
GPS: 35.2186, 31.9235

§74 The service can be reached on working days during office hours: from 9 am to 3 pm

§75 The tenders must be in the possession of the contracting authority before **4<sup>th</sup> January 2023 at 1:00 PM.**

§76 Any request for participation or tender must arrive before the final submission date and time. Requests for participation or tenders that arrive late will not be accepted. (Article 83 of the Royal Decree on Awarding)

#### **1.4.5.3 Change or withdrawal of a tender that has already been submitted**

§77 When a tenderer wants to change or withdraw a tender already sent or submitted this must be done in accordance with the provisions of Articles 43 and 85 of the Royal Decree of 18 April 2017.

§78 To change or withdraw a tender already sent or submitted a written statement is required, which will be correctly signed by the tenderer or his representative. The subject-matter and the scope of the changes must be indicated in detail. Any withdrawal must be unconditional.

§79 The withdrawal may also be communicated by fax or electronic means, provided that it is confirmed by registered letter deposited at the post office or against acknowledgement of receipt at the latest the day before the tender acceptance deadline.

§80 When the tender is submitted via e-tendering, the tender is modified or withdrawn in accordance with Article 43, §2 of the Royal Decree of 18 April 2017.

§81 Thus, modifying or withdrawing a tender after the submission report has been signed requires a new submission report to be signed in accordance with paragraph 1.

§82 The subject-matter and the scope of the changes must be indicated in detail.

§83 The withdrawal must be pure and simple.

§84 Where the submission report issued following modification or withdrawal as referred to is not signed as referred to in paragraph 1, the modification or withdrawal is automatically void. This nullity applies only to the modifications or withdrawal, not to the tender itself.

#### **1.4.5.4 Opening of Tenders**

§85 The tenders will be opened behind closed doors.

### **1.4.6 Selection of tenderers**

#### **1.4.6.1 Exclusion grounds**

§86 The obligatory and facultative grounds for exclusion are given in attachment to these Tender Specifications.

§87 By submitting this tender, the tenderer certifies that (s)he is not in any of the cases of exclusion listed in the Articles 67 to 69 of the Law of 17 June 2016 and the Articles 61 to 64 of the Royal Decree of 18 April 2017.

§88 The contracting authority will verify the accuracy of this Declaration on honour for the tenderer with the best tender.

§89 For that purpose, the contracting authority will ask the tenderer concerned to provide information or documents allowing the contracting authority to verify the tenderer's personal situation by the fastest means and within the term set by the contracting authority.

§90 The contracting authority will itself ask for information or documents that it can obtain free of charge by digital means from the instances that manage the information or documents.



#### 1.4.6.2 Selection criteria

§91 Moreover, by means of the documents requested in the ‘Selection file’, the tenderer must prove that (s)he is sufficiently capable, from an economic and financial as well as from a technical viewpoint, to successfully perform this public contract.

§92 The selection will be done on a fail/pass basis using the following 4 criteria:

- Financial and economic capacity:
  - Selection Criterion 1: Average annual turnover (see p.45)
  - Selection Criterion 2: Financial resources (see p.45)
- Technical capacity:
  - Selection Criterion 3: specific experience (see p.46)
  - Selection criterion 4: Personnel (see p.51)

#### 1.4.6.3 Overview of the procedure

§93 In a first phase, the tenders submitted by the selected tenderers will be evaluated as to formal and material regularity.

§94 The contracting authority reserves the right to have the irregularities in the tenderers’ tender regularised during the negotiations.

§95 In a second phase, the formally and materially regular tenders will be evaluated as to content by an evaluation commission. The contracting authority will restrict the number of tenders to be negotiated by applying the award criterion stated in the procurement documents. This evaluation will be conducted on the basis of the award criterion ‘price/cost’ given in these Tender Specifications and aims to setting a shortlist of tenderers with whom negotiations will be conducted. three tenderers may be included in the shortlist.

§96 Then, the negotiation phase follows. With a view of improving the contents of the tenders, the contracting authority may negotiate with tenderers the initial tenders and all subsequent tenders that they have submitted, except final tenders. The minimum requirements and the award criteria are not negotiable. However, the contracting authority may also decide not to negotiate. In this case, the initial tender is the final tender.

§97 When the contracting authority intends to conclude the negotiations, it will so advise the remaining tenderers and will set a common deadline for the submission of any BAFOs. Once negotiations are closed, the BAFO will be compared with the exclusion, selection and ‘price/cost’ award criteria. The tenderer whose regular BAFO is the best value for money will be appointed the contractor for this contract.

§98 The BAFOs of the tenderers with whom negotiations have been conducted will be evaluated as to their regularity. Irregular BAFOs will be excluded.

§99 Only the regular BAFOs will be considered and assessed against the award criteria.

§100 The contracting authority reserves the right to review the procedure set out above in line with the principle of processing equality and transparency.

#### 1.4.6.4 Award criteria

§101 The contracting authority will choose the regular BAFO that it finds to be most advantageous, on the basis of the **price** using the following criteria:

$$\blacktriangleright \text{Points tender A} = \frac{(\text{Amount of lowest Tender} \times 100)}{\text{Amount of Tender A}}$$



#### **1.4.6.5 Final score**

§102 The scores for the award criteria will be added up. The contract will be awarded to the tenderer with the highest final score, after the contracting authority has verified the accuracy of the Declaration on honour of this tenderer and provided the check shows that the Declaration on honour corresponds with reality.

#### **1.4.7 Awarding the public contract**

§103 The lot(s) of the contract will be awarded to the tenderer(s) who have submitted the most economically advantageous tender for the lot.

§104 Notice though that, in accordance with Art. 85 of the Law of 17 June 2016, there is no obligation for the contracting authority to award the contract.

§105 The contracting authority may either decide not to award the contract, either redo the procedure, if necessary, through another award procedure.

The contracting authority also reserves the right to award only a certain lot or certain lots.

#### **1.4.8 Concluding the public contract**

§106 In accordance with Art. 88 of the Royal Decree of 18 April 2017, the contract occurs through the notification to the selected tenderer of the approval of his tender.

§107 Notification is via digital platforms, e-mail or fax and, on the same day, by registered post.

§108 So, the full contract consists of a contract awarded by Enabel to the chosen tenderer in accordance with:

- These Tender Specifications and its annexes;
- The approved BAFO of the contractor and all of its annexes;
- The registered letter of notification of the award decision;
- Any later documents that are accepted and signed by both parties, as appropriate.

§109 In view of transparency, Enabel undertakes to annually publish the list of contractors of its public contracts. By submitting tender, the contractor of the public contract declares agreeing with the publication of the contract title, the nature and subject-matter of the contract, his name and location as well as the value of the contract.

### **1.5 Specific contractual and administrative conditions**

§110 This chapter of these Tender Specifications holds the specific provisions that apply to this public contract by way of derogation from the 'General Implementing Rules for public procurement and for concessions for public works' of the Royal Decree of 14 January 2013, hereinafter referred to as 'GIR' or as a complement or an elaboration thereof. The numbering of the articles below (between brackets) follows the numbering of the GIR articles. Unless indicated, the relevant provisions of the General Implementing Rules (GIR) apply in full.

§111 These Tender Specifications derogate Articles 25. §2 and 26 of the General Implementing Rules – GIR (Royal Decree of 14 January 2013).

#### **1.5.1 Definitions (Art. 2)**

§112 The following definitions apply to this contract:

- Progress payment: Payment of an instalment under the contract after acceptance of performance;
- Advance: Payment of part of the contract before acceptance of performance;
- Amendment: Agreement established between the contracting parties during contract performance in view of changing documents applicable to the contract;

- Performance bond: Financial collateral given by the contractor to ensure (s)he will fulfil his obligations until final and good performance of the contract;
- Managing official: The official or any other person who manages and controls the performance of the public contract;
- Acceptance: Observation by the contracting authority that the performance by the contractor of all or part of the works, supplies or services is in compliance with good practice and with the terms and conditions of the contract;

### 1.5.2 Usage of digital means (Art. 10)

§113 The usage of digital means for the purpose of exchanging during the performance of the contract is allowed unless where indicated otherwise in these Tender Specifications.

§114 In the latter cases, notifications of the contracting authority are sent to the domicile or the registered office mentioned in the tender.

### 1.5.3 Managing official (Art. 11)

§115 The management and control of contract performance are entrusted to **Mr. Alexis Doucet**, assisted by **Mr. Walid Aboudi**.

§116 Once the contract is concluded the managing official is the main contact point for the building contractor. Any correspondence or any questions with regards to the performance of the contract will be addressed to him or her, unless explicitly mentioned otherwise in these Tender Specifications (see namely, 'Payments' below).

§117 The managing official is fully competent for the follow-up of the satisfactory performance of the contract, including issuing service orders, drawing up reports and states of affairs, approving the services, progress reports and reviews. He or she may order any modifications to the contract with regards to its subject-matter provided that they remain within its scope.

§118 However, the signing of amendments or any other decision or agreement implying derogation from the essential terms and conditions of the contract are not part of the competence of the managing official. For such decisions the contracting authority is represented as stipulated under Contracting authority.

§119 Under no circumstances is the managing official allowed to modify modalities (e.g. performance period) of the contract, even if the financial impact is nil or negative. Any commitment, change or agreement derogating the conditions in the Tender Specifications and that has not been notified by the contracting authority, will be considered null and void.

### 1.5.4 Subcontractors (Art. 12 to 15)

§120 The fact that the contractor entrusts all or part of his commitments to subcontractors does not relieve him of liability to the contracting authority. The latter does not recognise any contractual relation with third parties.

§121 The contractor remains, in any case, solely liable to the contracting authority.

§122 The building contractor undertakes to having the contract performed by the persons indicated in the tender, except for force majeure. The persons mentioned or their replacements are all deemed to effectively be involved in the performance of the contract. Any replacements must be approved by the contracting authority.

§123 The contractor may not sub-contract, sub-lease, delegate or transfer in any way the whole of the works.

- §124 When the contractor uses a subcontractor to carry out specific processing activities on behalf of the contracting authority, the same data protection obligations as those of the contractor are imposed on that subcontractor by contract or any other legal act.
- §125 In the same way, the contractor will respect and enforce to his subcontractors, the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation, GDPR). The contracting authority may conduct an audit of the processing carried out in order to validate compliance with this legislation.

## **1.6 Confidentiality (Art. 18)**

- §126 Knowledge and information obtained by the contractor, including any persons responsible for the mission and any other person involved in this public contract, are strictly confidential.
- §127 Under no circumstances can the information collected, regardless of its origin and nature, be transferred to third parties in any form.
- §128 All parties directly or indirectly involved are therefore bound by the duty of discretion.
- §129 In accordance with Article 18 of the Royal Decree of 14 January 2013 establishing the general rules for public procurement, the tenderer or contractor undertakes to consider and process in a strictly confidential manner any information, all facts, any documents and/or any data, whatever their nature and support, which have been communicated to him, in any form and by any means, or to which (s)he has access, directly or indirectly, in the context or on the occasion of this public contract. Confidential information covers, in particular, the very existence of this public contract, without this list being limited.
- §130 Therefore, (s)he undertakes to:
- Respect and enforce the strict confidentiality of these elements and to take all necessary precautions in order to preserve their secrecy (these precautions cannot in any case be inferior to those taken by the tenderer for the protection of his own confidential information);
  - Consult, use and/or exploit, directly or indirectly, all of the above elements only to the extent strictly necessary to prepare and, where applicable, to carry out this public contract (particularly regarding the privacy legislation with respect to personal data processing);
  - Not reproduce, distribute, disclose, transmit or otherwise make available to third parties the above elements, in whole or in part, and in any form, unless having obtained prior and written consent of the contracting authority;
  - Return, at the first request of the contracting authority, the above elements;
  - In general, not disclose directly or indirectly to third parties, whether for advertising or any other reason, the content of this public contract, or the fact that the tenderer or contractor performs this public contract for the contracting authority, or, where applicable, the results obtained in this context, unless having obtained prior and written consent of the contracting authority.

## 1.7 Personal data protection

### 1.7.1 Processing of personal data by the contracting authority

*§131* The contracting authority undertakes to process the personal data that are communicated to it in response to the Call for Tenders with the greatest care, in accordance with legislation on the protection of personal data (General Data Protection Regulation, GDPR). Where the Belgian law of 30 July 2018 on the protection of natural persons with regard to the processing of personal data contains stricter provisions, the contracting authority will act in accordance with said law.

### 1.7.2 Processing of personal data by the contractor

*§132* Where during contract performance, the contractor processes personal data of the contracting authority exclusively in the name and on behalf of the contracting authority, for the sole purpose of performing the services in accordance with the provisions of the Tender Specifications or in execution of a legal obligation.

*§133* For any processing of personal data carried out in connection with this public contract, the contractor is required to comply with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR) and the Belgian law of 30 July 2018 on the protection of natural persons with regard to the processing of personal data.

*§134* By simply participating in the contracting process, the tenderer certifies that (s)he will strictly comply with the obligations of the GDPR for any processing of personal data conducted in connection with that public contract.

*§135* The personal data that will be processed are confidential. The contractor will therefore limit access to data to the strictly necessary personnel for the performance, management and monitoring of the public contract.

*§136* For the performance of the public contract, the contracting authority will determine the purposes and means of processing personal data. In this case, the contracting authority will be responsible for the processing and the contractor will be its processor, within the meaning of Article 28 of the GDPR.

*§137* Processing carried out on behalf of a controller must be governed by a contract or other legal act that is binding on the processor with regard to the personal data controller and that sets out that the subcontractor acts only on the instruction of the person in charge of the processing and that the confidentiality and security obligations regarding the processing of personal data are also the responsibility of the subcontractor (Article 28 §3 of the GDPR).

### 1.7.3 Intellectual property (Art. 19 to 23)

*§138* The contracting authority does not acquire the intellectual property rights created, developed or used during performance of the public contract.

*§139* Without prejudice to clause 1 and unless otherwise stipulated in the procurement documents, when the subject-matter of the public contract consists of the creation, manufacture or the development of designs or of logos, the contracting authority acquires the intellectual property thereof, as well as the right to trademark them, to have them registered and to have them protected.

- §140 For domain names created under the contract, the contracting authority also acquires the right to register and protect them, unless otherwise stipulated in the procurement documents.
- §141 Where the contracting authority does not acquire the intellectual property rights, it obtains a patent licence of the results protected by intellectual property law for the exploitation modes that are mentioned in the procurement documents.
- §142 The contracting authority lists the exploitation modes for which it intends to obtain a licence in the procurement documents.

#### **1.7.4 Insurance (Art. 24)**

- §143 The contractor takes out insurance policies covering his liability for occupational accidents and his third party liability for the performance of the contract.
- §144 The contractor also takes out any other insurance policy imposed by the procurement documents.
- §145 Within thirty days from contract conclusion the contractor provides evidence that (s)he has taken out these insurance policies through a certificate stating the extent of the liability covered required by the procurement documents.
- §146 At any time during contract performance, the contractor provides such certificate within fifteen days following the reception of such a request from the contracting authority.

#### **1.7.5 Performance bond (Art. 25 to 33)**

- §147 By way of derogation from Article 25 §2, the performance bond is set at 10% of the total value, excluding VAT, of procurement. The value thus obtained is rounded up to the nearest 10 euros.
- §148 In accordance with the legal and regulatory provisions, the performance bond may be constituted either of cash or of public funds or may take the form of a joint performance bond.
- §149 The performance bond may also take the form of a surety bond issued by a credit institution meeting the requirements of the law on the statute and control of credit institutions, or by an insurance company meeting the requirements of the law on control of insurance companies and approved for branch 15 (bonds).
- §150 By way of derogation from Article 26 the performance bond may be posted through an establishment that has its registered office in one of the countries of destination of the services. The contracting authority reserves the right to accept or refuse the posting of the bond through that institution. The tenderer mentions the name and address of this institution in the tender.
- §151 This derogation is founded on the idea of providing possible local tenderers with an opportunity to submit a tender. This measure is made essential by the specific requirements of the contract.
- §152 The contractor must, within 30 calendar days from the day of contract conclusion, furnish proof that (s)he or a third party has posted the bond in one of the ways set out below:
- 1° in the case of cash, by transfer of the amount to the bpost bank account number of the Deposit and Consignment Office. Complete the following form as well as possible: [https://finances.belgium.be/sites/default/files/01\\_marche\\_public.pdf](https://finances.belgium.be/sites/default/files/01_marche_public.pdf) (PDF, 1.34 Mo), and forward it by e-mail to [info.cdcdck@minfin.fed.be](mailto:info.cdcdck@minfin.fed.be)
  - 2° in the case of public funds, by depositing such funds, for the account of the Deposit and Consignment Office, with the State Cashier at the head office of the National Bank

in Brussels or at one of its provincial agencies or with a public institution with an equivalent function

- 3° in the case of a joint surety, by deposit via an institution that lawfully carries out this activity of a deed of joint surety with the Deposit and Consignment Office or with a public institution with an equivalent function
- 4° in the case of a guaranty, by the deed of undertaking of the credit institution or the insurance company.

§153 Proof is provided, as appropriate, by submission to the contracting authority of:

- 1° the deposit receipt of the Deposit and Consignment Office or of a public institution with an equivalent function or
- 2° a debit notice issued by the credit institution or the insurance company or
- 3° the deposit certificate issued by the State Cashier or public institution with an equivalent function or
- 4° the original copy of the deed of joint surety stamped by the Depot and Consignment Office or by a public institution with an equivalent function or
- 5° the original copy of the deed of undertaking issued by the credit institution or the insurance company granting a guaranty.

§154 These documents, signed by the depositor, must state why the performance bond was posted and its precise usage, consisting of a concise indication of the subject-matter of the contract and a reference to the procurement documents, as well as the name, first names and full address of the contractor and, where relevant, that of the third party that made the deposit on the contractor's account, bearing the statement "lender" or "mandatary" as appropriate.

§155 The period of 30 calendar days specified above is suspended during the period of closure of the contractor's business for paid annual holidays and the days off in lieu stipulated by regulation or by a collective binding labour agreement.

§156 Proof that the required performance bond has been posted must be sent to the address that will be mentioned in the contract conclusion notification.

§157 Request by the contractor for the acceptance procedure to be carried out:

- 6° For provisional acceptance: This is equal to a request to release the first half of the performance bond
- 7° For final acceptance: This is equal to a request to release the second half of the performance bond, or, in case no provisional acceptance applied, to release the whole of the performance bond.

#### **1.7.6 Conformity of performance (Art. 34)**

§158 The works must comply in all respects with the procurement documents. Even in the absence of technical specifications in the procurement documents, the works, supplies and services must comply in all aspects with good practice.

#### **1.7.7 Plans, documents and objects prepared by the contracting authority (Art. 35)**

§159 At the request of the contractor, the contractor receives free of charge and where possible in digital form:

§160 A complete set of copies of the plans on which contract awarding was based. The contracting authority is liable for the conformity of these copies with the original plans.



§161 The contractor preserves all the documents and correspondence relating to the award and performance of the contract and keeps these available to the contracting authority until final acceptance.

#### **1.7.8 Detailed plans and work plans prepared by the contractor (Art. 36)**

§162 The contractor prepares at its own expense all the detailed plans and work plans (s)he requires for successful performance of the contract.

§163 The procurement documents specify which plans require approval by the contracting authority, which has 30 days to approve or reject the plans starting from the date on which they are submitted to it.

§164 Any corrected documents are resubmitted for approval to the contracting authority, which has 15 days to approve them, provided that the corrections requested are not the result of new demands made by the contracting authority.

##### **1.7.8.1 Construction planning**

§165 How the planning is submitted is to be discussed with the managing official.

§166 The first planning is to be introduced within 15 calendar days following tender award notification and it is to be updated every month during construction.

§167 This draft construction planning provides, in addition to deadlines for the 'on-site' works as such, the timing for the different preliminary achievements such as the establishment of documents prescribed by the technical provisions, implementation plans and detailed plans, calculation notes, selection of equipment and materials, including the approval of related documents, the supplies, workshop or factory work, preliminary tests and conformity tests, etc.

§168 After it has been studied and remarks have been made and following approval of the contracting authority, the planning becomes contractually binding.

##### **1.7.8.2 Master plan**

§169 The building contractor undertakes to deliver a master plan to be approved by the contracting authority and its advisors within 15 calendar days following notification of contract conclusion.

§170 This plan must sufficiently anticipate situations to allow the contracting authority to take decisions or provide answers or supply the documents that are incumbent upon it.

§171 The master plan will be updated at least every month and must be consistent with the construction planning. It will be aligned with the construction planning and will be based on the same document.

§172 The contractor will be sole manager of the planning of all activities required to perform this contract.

§173 In particular (s)he plans:

- Set dates for delivering implementation plans that (s)he needs,
  - The placing of orders to his suppliers and subcontractors,
  - The presentation in due time of samples and technical forms of products submitted for preliminary technical acceptance,
  - Measuring the works and the workshop manufacture period,
  - Indication of deadline dates for decisions to be taken by the contracting authority,
  - Indication of deadline dates for the conclusion of modifications to orders being elaborated,
  - Indication of deadline dates for the achievement of works performed by other enterprises,

- Registration, in due time, of the measurements of the works,
- etc.

#### **1.7.8.3 Performance documents**

§174 These plans take into account the Tender Specifications and technical provisions, the design drawings of the project developer and general architecture plans, stability plans and special techniques plans annexed to these Tender Specifications.

§175 All implementation plans and detail plans are to be submitted for approval to the contracting authority along with calculation notes, technical approvals and technical forms and in particular those related to the works and the equipment listed below (non-exhaustive list):

- Demolishing works
- Finishing of rooms (Doors, walls, floors and ceilings)
- Furniture based on tender documents (cabinets, workstations, chairs)
  - Plan of electrical works (sockets, retractable extension cords)

§176 The managing official may refuse technical forms which are partial, incomplete or too commercial and do not provide the technical information required for assessment and approval.

§177 Samples of ironware, heating, electricity or plumbing fixtures or any similar pieces will be submitted for approval to the managing official and for advice to the project developer's and the approved model will remain on the construction site until the placement of the last piece of its kind.

§178 At the request of the contracting authority, the building contractor shall also provide the following documents during the performance period:

- Samples of materials proposed corresponding to the technical forms;
- Colour shade cards to determine the choice of colours;
- Test reports, technical manuals, technical approvals, technical forms, etc.;
- Products or equipment used for this contract.

#### **1.7.8.4 Establishment of "As Built" plans**

§179 During performance, the building contractor shall revise and update the plans to the last detail in order to accurately reproduce the works and installations and their specifics as built.

§180 When the works are completed and in view of provisional acceptance of the works, the building contractor is to submit the complete plans and diagrams of the works and installations as built.

§181 When the works are completed and in view of provisional acceptance, the building contractor is to submit technical files including:

- 1° technical specifications with brands names, types, origin of the equipment installed,
- 2° users manuals, explaining the functioning of all equipment,
- 3° maintenance manuals, explaining everything that needs to be done for the maintenance and care of the equipment (regular control and maintenance, list and codes of spare parts...),
- 4° and test reports, tuning and adjustment reports.



### 1.7.9 Changes to the public contract (Art. 37 to 38/ 19 and 80)

#### 1.7.9.1 Replacement of the contractor (Art. 38/3)

§182 Provided that (s)he meets the selection and exclusion criteria set out in this document, a new contractor may replace the contractor with whom the initial contract was agreed in cases other than those provided for in Art. 38/3 of the General Implementing Rules (GIR).

§183 The contractor submits his request as quickly as possible by registered post, stating the reasons for this replacement and providing a detailed inventory of the state of the supplies already delivered, the new contractor's contact details and the documents and certificates which the contracting authority cannot access free of charge.

§184 The replacement will be recorded in an amendment dated and signed by all three parties. The initial contractor remains liable to the contracting authority for the performance of the remainder of the contract.

#### 1.7.9.2 Revision of prices (Art. 38/7)

§185 Due to the limited duration of the works, this public contract does not provides for a price revision.

#### 1.7.9.3 Indemnities following the suspensions ordered by the contracting authority during performance (Art. 38/12)

§186 **The contracting authority** reserves the right to suspend the performance of the contract for a given period, mainly when it considers that the contract cannot be performed without inconvenience at that time.

§187 The performance period is extended by the period of delay caused by this suspension, provided that the contractual performance period has not expired. If it has expired, the return of fines for late performance will be agreed.

§188 When activities are suspended, based on this clause, the contractor is required to take all necessary precautions, at his expense, to protect the services already performed and the materials from potential damage caused by unfavourable weather conditions, theft or other malicious acts.

§189 **The contractor** has a right to damages for suspensions ordered by the contracting authority when:

- The suspension lasts in total longer than one twentieth of the performance period and at least ten working days or two calendar weeks, depending on whether the performance period is expressed in working days or calendar days;
- The suspension is not owing to unfavourable weather conditions;
- The suspension occurred during the contract performance period.

§190 Within thirty days of their occurrence or the date on which the contractor or the contracting authority would normally have become aware of them, the contractor reports the facts or circumstances succinctly to the contracting authority and describes precisely their impact on the progress and cost of the contract.

§191 As a reminder, in accordance with Article 80 of the Royal Decree of 14 January 2013, the building contractor is required to continue the works without interruption, notwithstanding any disputes which might result from the determination of the new prices.

§192 Any order amending the contract during performance of the contract is issued in writing. However, minor amendments need only be entered in the works logbook.

§193 The orders or entries shall specify the changes to be made to the initial terms of the contract and to the plans.

#### **1.7.9.4 Setting unit or global prices – Calculation of the price**

*§194* The unit or global prices of changed works, which the building contractor is bound to carry out, are determined in the following order of priority:

- 1° In accordance with the unit or global prices of the approved tender;
- 2° By default, in accordance with the unit or global prices inferred from the approved tender;
- 3° By default, in accordance with the unit or global prices from another contract of Enabel;
- 4° By default, in accordance with the unit or global prices to be agreed upon on the occasion.

*§195* In the latter case, the building contractor shall justify the new unit price by detailing the supplies, person-hours, equipment hours and general costs as well as profits.

#### **1.7.9.5 Setting unit or global prices – Procedure to follow**

*§196* The building contractor submits his proposal for the execution of the complementary achievements or his new prices within 10 calendar days from the request of the managing official (unless the latter has specified a shorter deadline) and before executing the works considered. This proposal is submitted on the basis of a standard form that will be provided by the managing official and will come with all necessary annexes and justifications.

*§197* This form for agreed prices is established on the basis of a format from Enabel. The building contractor will attach at least the following annexes and documents to it:

- The amending order from the contracting authority and more in general the justification of the modification of the works;
- The calculation of new unit or global prices;
- The quantities to be implemented for the existing items and for any new items;
- If appropriate, the tenders of subcontractors or suppliers consulted;
- Any other documents (s)he or she deems pertinent.

*§198* After executing the works and at the latest upon establishment of the final settlement of account, the building contractor shall transfer the invoices that have been sent to him by subcontractors and suppliers to the managing official. He shall certify on these invoices not having received any credit note or compensation from the supplier or subcontractor for the invoice.

*§199* When the building contractor defaults on providing an acceptable new price proposal or when the contracting authority deems the proposal made unacceptable, the contracting authority will set the new unit or global price as of right, all rights of the building contractor being preserved.

#### **1.7.9.6 Unforeseeable circumstances**

*§200* As a rule, the contractor is not entitled to any modification of the contractual terms due to circumstances of which the contracting authority was unaware.

*§201* A decision of the Belgian State to suspend cooperation with a partner country is deemed to be unforeseeable circumstances within the meaning of this article. Should the Belgian State break off or cease activities which implies therefore the financing of this public contract, Enabel will do everything reasonable to agree a maximum compensation figure.

## **1.7.10 Control and supervision of the public contract**

### **1.7.10.1 Scope of the control and supervision (Art. 39)**

§202 The contracting authority may have the preparation and the performance of the delivery supervised or controlled at any location by all appropriate means.

§203 The contractor is required to provide the representatives of the contracting authority with all the information and facilities needed for carrying out their task.

§204 The fact that such supervision or control has been carried out by the contracting authority does not release the contractor of its liability should delivery eventually be rejected due to defects of any kind.

### **1.7.10.2 Technical acceptance procedures (Art. 41)**

§205 Concerning technical acceptance, it is necessary to distinguish between:

- 1° Preliminary technical acceptance within the meaning of Article 42;
- 2° Ex post technical acceptance within the meaning of Article 43.

§206 The contracting authority may waive all or part of the technical acceptance procedures where the contractor can prove that the products have been controlled by an independent body during their production, in accordance with the specifications of the procurement documents. In this respect, any other certification procedure in force in a Member State of the European Union is regarded as comparable to the Belgian conformity certification procedure and deemed equivalent.

### **1.7.10.3 Preliminary technical acceptance (Art. 42)**

§207 As a general rule, products may not be used if they have not been accepted by the managing official or his or her representative.

§208 All equipment proposed must be approved by the contracting authority. This approval is obtained on the basis of the preliminary technical forms that have been elaborated by the building contractor and are submitted to the managing official.

§209 The technical forms give a general overview of the equipment and give specifications and choices made for the project.

§210 The contracting authority refuses technical forms which are partial or incomplete and which do not provide the technical information required for examination and approval.

§211 Once the comments made are in the possession of the building contractor, (s)he will take them into account and will complete the technical form in order to have it approved.

§212 Technical acceptance may be carried out at various stages of production.

§213 Products that at a given stage do not satisfy the technical acceptance tests imposed will be declared unfit for technical acceptance.

§214 The contractor is responsible for storing and conserving his products in view of any risks run by his company and this until provisional acceptance of the works.

§215 Except for approved products, the costs pertaining to the preliminary technical acceptance are borne by the building contractor.

§216 In any case, the costs include:

- Costs pertaining to tasks of the acceptance experts, including travel and accommodation costs of acceptance experts.
- Costs pertaining to collecting, packaging, and transporting samples, regardless where or whereto,

- Costs pertaining to tests (preparation, manufacture of testing tools, the tests as such (in this respect, the circular letters pertaining to setting rates for tests apply)),
- Costs pertaining to the replacement of products that are faulty or damaged.

#### **1.7.10.4 Ex post technical acceptance (Art. 43)**

§217 Ex post technical acceptance will obligatorily be carried out for any defects to works or equipment components that would have remained hidden after completion of the works.

#### **1.7.11 Performance period (Art. 76)**

§218 The building contractor is to complete the works within a period of **60 calendar days** as of the date set in the written service order to commence the works.

#### **1.7.12 Provision of land (Art. 77)**

§219 The building contractor shall bear all costs pertaining to land that is needed for the installation of his construction sites, storing supplies, preparing and handling materials as well as land needed for storing soil, excavated soil that is known to be unsuitable for reuse as landfill, material from demolition, general waste of any kind and excess earth.

§220 He is liable, vis-à-vis adjoining landowners, for any damage to private property while achieving the works or storing the materials.

§221 The enclosing hoardings may not be used for advertising.

§222 No advertising is allowed on the sites used, except for 'Construction site information'.

#### **1.7.13 Labour conditions (Art. 78)**

§223 All the legal, regulatory and contractual provisions relating to the general conditions of work and health and safety in the workplace will apply to all personnel on the contractor's site.

§224 The building contractor, all persons acting as a subcontractor at any stage and all persons providing personnel, shall be required to pay their respective personnel salaries, bonuses and allowances at the rates established by law, by collective agreements concluded by company agreements.

§225 The building contractor shall keep available to the contracting authority at all times, at a location designated by the latter, a list, updated on a daily basis, of all the personnel it employs on the site.

§226 This list contains at least the following personal information:

§227 the name; the first name; actual occupation per day on the construction site; the date of birth; the job title; qualifications;

§228 The contact person appointed by the building contractor for the performance of this contract with the contracting authority will have to master the following languages: English and Arabic.

#### **1.7.14 Organisation of the construction site (Art. 79)**

§229 The building contractor shall comply with the local legal and regulatory provisions governing building works, road works, health and safety in the workplace as well as the provisions of collective, national, regional, local and company agreements.

§230 During the performance of the works, the building contractor shall be required to maintain the security of the site for the duration of the works and, in the interests of his

appointees and the representatives of the contracting authority and third parties, to take all necessary measures to ensure their safety.

§231 The building contractor shall, under his sole responsibility and at his own expense, take all necessary measures to ensure the protection, preservation and integrity of existing buildings and works. He shall also take all the precautions required by best building practices and any special circumstances to protect neighbouring properties and to prevent any disturbance to them through his fault.

§232 (S)he is to protect and maintain the existing borders of the area (steel angles). In case they are moved or removed, because of the contractor usage of his equipment or any other reason, the contractor is return these angles to their correct position as per the instructions provided by the Managing Official. The contractor is to cover and protect the works from the climatic conditions or misuse or negligence, etc., by providing a proper fence, nets and covers according to the Managing Official's approval. The contractor, at his own expenses, shall repair any damages to the works caused by his negligence.

§233 As the schools will be operating during the period of the works, the contractor shall ensure:

- a total protection of the worksite from the intrusion of students (temporary doors and fences),
- a total protection against accidental falls of objects from the worksite to any places accessible by students, using safety nets or other techniques,
- the minimizing of noise and other disturbances during the school opening hours,
- that deliveries take place outside of school opening hours.

§234 The building contractor shall bear all costs of and implement all necessary measures to signal in daylight, at night as well as in fog, the construction sites and storage sites that are located where vehicles and pedestrians circulate. He is to completely enclose his sites along temporary or permanent sidewalks as well as along temporary or permanent traffic arteries. Such enclosing and hoarding will also ensure the protection of the construction site during the construction period against any outside intrusion.

§235 The building contractor shall supply a purpose-made notification billboard for this construction site with dimensions and following the model offered by the contracting authority prior to starting the works.

§236 This informative panel will be put in place when construction work starts along the public road in a place that is to be defined by the contracting authority.

#### **1.7.15 Means of control (Art. 82)**

§237 The building contractor shall notify the contracting authority of the precise location of works in progress on its site, in his workshops and factories and on the premises of his subcontractors and suppliers.

§238 Without prejudice to the technical acceptance operations to be carried out on site, the building contractor shall at all times grant to the managing official and other agents appointed by the contracting authority free access to the sites of production, for the purposes of monitoring strict application of the contract, in particular concerning the origin and quality of the products.

§239 If the building contractor uses products that have not been accepted or that do not meet the demands of the Tender Specifications, the managing official or his/her representative may forbid the further pursuit of the works concerned, until these refused products are replaced by others that meet the contract's conditions, without this decision generating an

extension of the performance period or any entitlement to compensation. The building contractor is notified about the decision by means of a written report.

#### **1.7.16 Works logbook (Art. 83)**

§240 Upon contract conclusion notification, the building contractor makes the necessary Works logbooks available to Enabel.

§241 Once the works have started, the building contractor shall supply 2 copies with all necessary information for establishing the Works logbooks on a daily basis to the contracting authority's representatives. This concerns:

- Weather conditions;
- Interruptions to works caused by adverse weather conditions;
- Accidents at work;
- The number and capacity of workers employed on the site;
- Materials supplied;
- Equipment actually used and equipment out of service;
- Unforeseen events;
- Amending orders of minor impact;
- The attachments and quantities performed for each item and in each zone of the construction site. The attachments constituting the true and detailed representation of all works performed, in quantity, dimensions and weights.

§242 Delay in providing the above documents may result in the application of penalties.

§243 When the building contractor does not formulate any remarks in due form and within above-mentioned deadlines, (s)he is deemed to be in agreement with the annotations made in the logbooks or detailed attachments.

§244 When these observations are not deemed justified, the building contractor will be notified accordingly by registered letter.

#### **1.7.17 Liability of the building contractor (Art. 84)**

§245 The building contractor shall be held liable in respect of all works performed by him or his subcontractors until final acceptance of all works.

§246 During the warranty period, the building contractor shall carry out on the work, as required, all the works and repairs necessary to restore it to a good state of operation, and maintain it in this state.

§247 Any repairs to shortcomings are performed in compliance with the instructions of the contracting authority.

#### **1.7.18 Zero tolerance Sexual exploitation and abuse**

§248 In application of Enabel's Policy regarding sexual exploitation and abuse of June 2019 there will be zero tolerance towards any misconduct that could impact the professional credibility of the tenderer.

#### **1.7.19 Means of action of the contracting authority (Art. 44-51 and 85-88)**

§249 The building contractor's default is not solely related to the works as such but also to the whole of the building contractor's obligations.

§250 In order to avoid any impression of risk of partiality or connivance in the follow-up and control of the performance of the public contract, it is strictly forbidden to the building contractor to offer, directly or indirectly, gifts, meals or any other material or immaterial advantage, of whatever value, to appointees of the contracting authority who are



concerned, directly or indirectly, by the follow-up and/or control of the performance of the contract, regardless of their hierarchical rank.

§251 In case of violation, the contracting authority may impose a lump-sum fine to him for each violation, which can be up to three times the amount obtained by adding up the (estimated) values of the advantage offered to the appointee and of the advantage that the contractor hoped to obtain by offering the advantage to the appointee. The contracting authority will decide independently about the application and the amount of this fine.

§252 Moreover, in case of suspicion of fraud or of bad workmanship during performance, the building contractor may be required to demolish the whole or part of the works executed and to rebuild them. The costs of demolition and reconstruction will be borne by the building contractor or the contracting authority, according to whether the suspicion is found to be justified or not.

§253 This clause is without prejudice to the possible application of other measures as of right provided in the GIR, namely the unilateral termination of the contract and/or the exclusion from procurement by the contracting authority for a determined duration.

#### **1.7.19.1 Failure of performance (Art. 44)**

§254 The contractor is considered to be in failure of performance under the public contract:

- 1° when performance is not carried out in accordance with the conditions specified in the procurement documents;
- 2° at any time, when performance has not progressed in such a way that it can be fully completed on the due dates;
- 3° when (s)he does not observe written orders, which have been given in due form by the contracting authority.

§255 Any failure to comply with the provisions of the public contract, including the non-observance of orders of the contracting authority, is recorded in a report ('process verbal'), a copy of which will be sent immediately to the contractor by registered mail or equivalent.

§256 The contractor must repair the defects without any delay. He may assert his right of defence by registered letter or equivalent addressed to the contracting authority within fifteen days from the date of dispatch of the report (process verbal). Silence on his part after this period shall be deemed acknowledgement of the reported facts.

§257 Any defects detected that can be attributed to the contractor render him liable to one or more of the measures provided for in Articles 45 to 49, 86 and 87.

#### **1.7.19.2 Special Penalties (Art. 45)**

§258 Because of the significance of the works, are burdened, without the need for notice and by the breach only, with a daily penalty of EUR 250 for every calendar day of non-performance:

- Non-delivery of administrative and technical documents: because not having delivered the documents listed by the time set during construction site meetings or by administrative order.
- Absence from construction site meetings or coordination meetings: For every absence a penalty will be imposed to the building contractor who has not attended or has not been validly represented at meetings which (s)he was supposed to attend.
- Delay in executing observations or administrative orders of the contracting authority's via the managing official: Where the lists of observations result from construction site visits, in particular for painting orders, or upon acceptance, have not been fulfilled by the time set by the managing official, the contractor will be penalised per calendar day of delay until performance is effectively carried out.

- Change of one of the key staff members without prior agreement of the contracting authority: A lump sum penalty is applied per day of default, ending when, either the managing official obtains the approval of the contracting authority for the new member's being put in place, or the replaced member is re-established in its duties, or both parties agree about a new person as a replacement that is jointly accepted. When the penalties are applied, these may in no case be recuperated retrospectively, even where agreement is found.

§259 If a shortcoming to one of the stipulations mentioned above is found in accordance with Article 44 §2 of the Royal Decree of 14 January 2013, the contracting authority may allow a period to the building contractor to repair the shortcoming and to inform it about this reparation by registered mail. In this case, the contractor is notified of the deadline along with the failure of performance report mentioned in Art. 44 §2 of the Royal Decree of 14 January 2013.

§260 If no term is indicated in the registered letter the contractor is to repair the shortcomings without any further delay.

### 1.7.19.3 Fines for delay (Art. 46 et seq. and 86)

§261 The fines for delay differ from the penalties referred to in Article 45. They are due, without the need for notice, by the mere lapse of the performance period without the issuing of a report and they are automatically applied for the total number of days of delay.

§262 Fines are calculated following the formula given in Article 86 §1.

§263 Regardless of the application of any fines for delay, the contractor indemnifies the contracting authority against damages for which it is liable towards third parties due to late performance of the contract.

§264 In case the works being the subject-matter of these Tender Specifications were not completed within the period set in point 1.7.11 Performance period (Art. 76), p.28, the following fine will be applied as of right for every working day of delay without the need for notice, simply by the expiry of the period in question:

$$\blacktriangleright R = 0.45 \times \frac{(M \times n^2)}{N^2}$$

where,

R = the sum of the fines to be applied for a delay of n working days;

M = the initial value of procurement;

N = the number of working days initially specified for performance of the contract;

n = the number of working days of delay.

However, if the factor M does not exceed EUR 75 000 and, at the same time, N does not exceed 150 working days, the denominator N<sup>2</sup> will be replaced by 150 × N.

If the contract includes several parts or several stages, each of which has its own period N and value M, each of them will be deemed a distinct contract for the application of fines.

§265 If, without setting parts or stages, the Tender Specifications stipulate that partial periods apply, failure to observe these will be penalised by special fines provided for in the Tender Specifications, or, in the absence of such a provision, by fines calculated in accordance with the formula referred to in Art. 86 §1 of the Royal Decree of 14 January 2013, in which the factors M and N refer to the total contract. However, the maximum sum of fines associated with each partial period of P working days will be:

$$\blacktriangleright R_{par} = \frac{M}{20} \times \frac{P}{N}$$



#### 1.7.19.4 Measures as of right (Art. 47 and 87)

§266 When, upon expiry of the term given in Article 44, §2, the contractor has not taken action or has presented means deemed unjustified by the contracting authority, the contracting authority may apply the measures as of right described in paragraph 2.

§267 However, the contracting authority may apply measures as of right without waiting for the expiry of the term given in Article 44, §2, when the contractor has explicitly recognised the defects detected.

§268 The measures as of right are:

- 1° Unilateral termination of the contract. In this case the entire performance bond, or if no bond has been posted an equivalent amount, is acquired as of right by the contracting authority as lump sum damages. This measure excludes the application of any fine for delay in performance in respect of the terminated part;
- 2° Performance under regie of all or part of the non-performed contract;
- 3° Conclusion of one or more replacement contracts with one or more third parties for all or part of the contract remaining to be performed.

§269 The measures referred to in 1°, 2° and 3° will be taken at the expense and risk of the defaulting contractor. However, any fines or penalties imposed during the performance of a replacement contract will be borne by the new contractor.

#### 1.7.19.5 Other sanctions (Art. 48)

§270 Without prejudice to the sanctions provided in these Tender Specifications, the contractor defaulting on performance may be excluded by the contracting authority from its public contracts for a three-year period. The contractor in question will be given the opportunity to present a defence and the reasoned decision will be notified to him.

### 1.7.20 Acceptance, guarantee and end of the public contract (Art. 64-65 and 91-92)

#### 1.7.20.1 Entry and exit inventory of fixtures and state of property

§271 Immediately after awarding but before the beginning of the implementation of any works, the Contractor shall carry out an inspection visit and draw a **joint entry inventory** of fixtures and state of property. This inspection by the contractor shall be carried out in the presence of the school principal (or a representative of the Directorate of Education of Jerusalem), and the consultants in charge of the supervision of the works (and/or a representative of the Contracting Authority). In the report of the inventory, the Contractor shall mention any pre-existing defects in the school building and equipment, which are not related to the works. The report shall be dated and signed by the three parties and accompanied by a CD/DVD containing pictures (and/or videos) of all the rooms and spaces related to the works, including spaces where no works are planned to take place but which will be needed for passage of personnel or goods.

§272 Immediately before the Contracting Authority takes possession of the building parts where the works have taken place (which may take place before or after the provisional acceptance of the works – cf. below), an **exit inventory** shall be drawn up by the same parties as the entry inventory.

§273 Any damage or defect to the neighbouring spaces and any missing, damaged or dysfunctional piece of equipment shall be considered as not having existed before the works and as being the responsibility of the contractor, unless it is specifically mentioned in the entry inventory or documented on one of the pictures/videos annexed to it. The same applies in case the contractor fails to carry out these inventories.

#### 1.7.20.2 Acceptance of the works performed (Art. 64-65 and 91-92)

- §274 The managing official will closely follow up the works during performance. The services will not be accepted until after fulfilling audit checks, technical acceptance and prescribed tests.
- §275 Provisional acceptance is provided upon the completion of performance of the works forming the subject-matter of the contract and, on expiry of a warranty period, a final acceptance marking full completion of the contract.
- §276 The total or partial taking of possession of the work by the contracting authority does not constitute provisional acceptance.
- §277 The contracting authority disposes of a verification term of thirty days starting on the final or partial end date of the works, set in conformity with the modalities in the procurement documents, to carry out the acceptance formalities and to notify the result to the service provider.
- §278 When the work is completed on the date set for its completion, and provided that the results of the technical acceptance inspections and prescribed tests are known, a report confirming provisional acceptance or refusing acceptance will be drawn up.
- §279 When the work is terminated before or after this date, the building contractor notifies the managing official thereof, by registered letter or e-mail showing the exact date of dispatch, and requests, on that occasion, to proceed to provisional acceptance. Within 15 days after the date of receipt of the building contractor's request, and provided that the results of the technical acceptance inspections and prescribed tests are known, a report confirming provisional acceptance or refusing acceptance will be drawn up.
- §280 The warranty period commences on the date on which provisional acceptance is given and lasts for **one year**.
- §281 **Within 15 days** preceding the date of expiry of the warranty period, a report confirming final acceptance or refusing acceptance shall be drawn up.
- §282 The building contractor shall be held liable in respect of all works performed by him or his subcontractors until final acceptance of all works.
- §283 During the warranty period, the building contractor shall carry out on the work, as required, all the works and repairs necessary to restore it to a good state of operation, and maintain it in this state.
- §284 However, after provisional acceptance, the building contractor will not be liable for damage the causes of which are not attributable to him.
- §285 The contractor who, during the warranty period, does certain works or partial works, shall restore the adjacent parts (such as paint, wallpaper, parquet floor...) if these have been damaged because of the repairs undertaken.
- §286 In buildings or other property that are being occupied the contractor may not hinder or endanger said occupation in any way for the performance of his works. The contractor shall bear all costs for the measures needed for that purpose.
- §287 During the warranty period, the building contractor shall carry out on the work, as required, all the works and repairs necessary to restore it to a good state of operation, and maintain it in this state.
- §288 From the time of provisional acceptance and without prejudice to the provisions of paragraph 1 relating to its obligations during the warranty period, the building contractor

shall be responsible for the solidity of the work and the proper execution of the works in accordance with Articles 1792 and 2270 of the Civil Code.

§289 Any breach of the contractor's obligations during the warranty period will be reported ('procès-verbal') and lead to measures as of right, in accordance with Article 44 of the GIR.

#### 1.7.21 Price of the public contract in case of late performance (Art. 94)

§290 The price of the works performed during a period of delay attributable to the building contractor will be calculated in accordance with whichever of the following procedures proves the more advantageous to the contracting authority:

- by assigning to the constituent elements of the prices contractually specified for revision the values applicable during the period of delay in question; or
- by assigning to each of these elements an average value (E) established as follows:

$$\blacktriangleright E = \frac{e_1 \times t_1 + e_2 \times t_2 + \dots + e_n \times t_n}{t_1 + t_2 + \dots + t_n}$$

where,

e1, e2, ... en, represent the successive values of the element in question during the contractual period, which may be extended insofar as the delay is not attributable to the building contractor;

t1, t2, ... tn, represent the corresponding periods for applying these values, expressed in months of 30 days, each fraction of a month being ignored and the periods of suspension of performance of the contract not being taken into consideration.

The value of E is calculated to the second decimal place.

#### 1.7.22 Invoicing and payment of the works (Art. 66 et seq and 95)

§291 Payment requests shall be made by lot as per the following:

- The invoice shall cover the total of the accomplished works for all schools of the same lot (not one invoice per school).
- In case more than one lot is awarded to the same tenderer, each lot shall be invoiced separately.

§292 A maximum of two payments will be made: one progress payment on the basis of accomplishing a minimum of works representing at least 50% of the value of the lot and one final payment after completion of 100% of the works, in addition to submission of monthly progress reports that are established by the building contractor and approved by the managing official after inspection and partial provisional acceptance.

§293 Payment will be made within 30 days after submission and approval of the invoice.

§294 In case several lots are awarded to the same tenderer, separate invoices shall be issued for each lot.

§295 The invoice shows the full details of the works that justify the payment. The invoice will be signed and dated, and will include the statement: 'Certified true and sincere for the amount of EUR .... (amount in words).' and the **reference PZA170421T-10036 (Lot 1) or PZA170421T-10036 (Lot 2)** as well as the name of the managing official (**Mr. Alexis Doucet**). The invoice that does not include this reference cannot be paid.

§296 The invoice address is: Enabel, Belgian Consulate General, Baibars Street 5, Jerusalem.

§297 For each item, the progress report includes:

- Total quantities to be achieved in accordance with departure measurements;
- The quantities already achieved and registered in the progress report of the preceding month;

- The quantities achieved during the month;
- Total quantities achieved by the end of the month;
- The unit prices of the order;
- The total prices of the quantities achieved during the month for each of the items;
- The total price of the invoice of the month.

§298 It should be understood that **no advance payments may be requested** and payment will be made only after performance and acceptance.

§299 Payment will be by bank transfer only.

### 1.7.23 Litigation (Art. 73)

§300 The competent courts of Brussels have exclusive jurisdiction over any dispute arising from the performance of this public contract. French or Dutch are the languages of proceedings.

§301 The contracting authority will in no case be held liable for any damage caused to persons or property as a direct or indirect consequence of the activities required for the performance of this contract. The contractor indemnifies the contracting authority against any claims for compensation by third parties in this respect.

§302 In case of 'litigation', i.e. court action, correspondence must (also) be sent to the following address:

Enabel  
 Legal unit of the Logistics and Acquisitions service (L&A)  
 To the attention of Ms Inge Janssens  
 rue Haute 147  
 1000 Brussels  
 Belgium

## 2 Terms of reference

### 2.1 Description of the works

- §303 Lot 1 works consist of creating three fablabs distributed in three schools of which two are in Al-Sheikh Saad village and a third in Ar Ram Neighbourhood.
- §304 Lot 2 works consist of creating four fablabs distributed in four schools of which two are in Wadi Al Joz neighbourhood, a third in Beit Hanina neighbourhood, and a fourth in Sur Baher neighbourhood.
- §305 Al-Hasan Al-Thany Basic Boys' School located in Wadi Al Joz, as well as Sheikh Saad Secondary Girls' and Boys' Schools located in Sheikh Saad village were previously rehabilitated as part of RiSE project, and works in general included creating an extension building at Sheikh Saad Boys' School – where the fablab is located.
- §306 This stage of work will consider the fablab spaces (i.e. rooms) that has been allocated by the Jerusalem Directorate of Education (JDoE) and includes but not limited to, implementation of vinyl flooring, installation of electrical/network sockets, minor demolishing works, installation of wooden cabinets, supply of workstations and other furniture.

### 2.2 Schools list and location

§307 The schools part of the scope of this tender are:

No	School Name	Lot No	Location	GPS Location
1	Al-Aqsa Secondary Girls' school	1	Ar Ram	31.8473, 35.2358
2	Asheikh Sa'ad Secondary Girls' School		Sheikh Saad	31.7391, 35.2562
3	Asheikh Sa'ad Secondary Boys' School			31.7344, 35.2575
4	Al-Hasan Athany Basic Boys' School	2	Wadi Al Joz	31.7868, 35.2360
5	Al-Shabbat Al-Shameleh Secondary school			31.78949, 35.24053
7	Annethamiah Secondary Girls' School		Beit Hanina	31.8254, 35.2277
8	Othman Ibn Affan Basic Girls' School		Sur Baher	31.7367, 35.2274

- §308 Lot 1 fablabs are situated on the East side of the barrier, in Area B, and don't need specific permits.
- §309 Lot 2 fablabs are located in East Jerusalem, on the West side of the West Bank barrier and all staff need to have access to Jerusalem (I.D. or permit).
- §310 All schools are public schools managed by the Awqaf.

### 2.3 Constraints

- §311 All works entailed in this tender are transformation and rehabilitation works of existing classrooms within school buildings. These 7 fablab classrooms are currently being used during the academic year by School Management as regular classrooms. Therefore, coordination and relocation of existing furniture will be required.
- §312 The commencement of the works is planned to coincide with the ongoing academic year of 2022-2023. Therefore, all safety measures should be taken into consideration, such as a safety corridor for the students, hauling away of material from site, storing of equipment and construction material, isolation of the work site and protection of areas situated below works from falling objects. See also: 1.7.14 §233, p.29

## 2.4 Annexes to the terms of reference

### 2.4.1 Annex 1: Bill of quantities

### 2.4.2 Annex 2: Set of plans and details (architectural, electrical, and furniture)

§313 Annex 1 is subdivided per lot.

§314 Annex 2 is a complete package for all fablab spaces.

§315 All annexes can be downloaded at the following address:

► <https://www.enabel.be/public-procurement/>

Selecting the country “Palestine”.

## 3 Forms

§316 There are 9 forms to be filled, other forms are to be signed:

- Form 1: Tenderer Identification form, p.40
- Form 2: Subcontracting, p.41
- Form 3: Prices, p.42
- Form 4: Awarding Preferences, p.43
- Form 5: Historical Financial Performance, p.44
- Form 6: Access to financial resources, p. 46
- Form 7: Experience table, p.48
- Form 8A: Proposed personnel for lot N°1, p. 52
- Form 8B: Proposed personnel for lot N°2, p.53

§317 For instructions on how to fill forms and submit a tender, please see 1.4.5 The right to submit a tender and how to submit tenders, p 13.

### 3.1 Instructions for compiling the tender

§318 The tenderer must use the tender forms in annex. In case (s)he does not use this form, (s)he is fully responsible for the perfect concordance between the documents (s)he has used and the form.

§319 The tender and the annexes to the tender form are drawn up in English.

§320 The tender forms must be submitted in two copies, one of which mentions 'original' and the other mentions 'duplicata' or 'copy'. The original must be a paper copy. The duplicate may be a simple photocopy, but it may also be submitted in the form of one or several files on a CD-ROM and/or USB stick.

§321 The different parts and annexes of the tender must be numbered.

§322 The prices are given in euros and rounded off to two figures after the decimal point. If necessary, they may be rounded off to four figures after the decimal point.

§323 Erasures and alterations, additions or changes in the tender forms must be accompanied by a signature next to the erasure and alteration, addition or change concerned.

§324 This also applies to erasures and alterations, additions or changes made by means of a correction ribbon or correcting fluid.

§325 The tender must bear the **original hand-written signature** of the tenderer or of his representative.

§326 If the tenderer is a company / association without legal body status, formed by separate natural or legal persons (temporary group or temporary partnership), the tender must be signed by each of these persons.

## 3.2 Identification forms

### 3.2.1 Form 1: Tenderer Identification from

Name of the company and legal form			
Nationality of the tenderer and of staff (if different)			
Domicile / registered office <b>complete</b> address	Street name		
	House number		
	Zip code or neighbourhood		
	City or village		
	Country or territory		
Telephone number (with country code)			
National Social Security Office registration number or equivalent			
Enterprise number			
Represented by the undersigned	Full Name		
	Function		
Contact person	Full Name		
	Title / function		
	Phone		
	E-mail		
If different: Project manager	Full Name		
	Phone		
	E-mail		
Bank account for payments	IBAN		
	BIC/SWIFT		
	Financial institution		
	Account holder name		
First name:	FN	Place:	PL
Last name:	LN	Date:	DT
Duly authorised to sign this tender on behalf of:	TEN	Signature and stamp:	



### 3.2.2 Form 2: Subcontracting

§327 The tenderer indicates the part of the contract which the building contractor intends possibly to **subcontract**.

Name and legal form	Address / Registered office	Object	Amount [EUR]
F8-NAME-1	F8-AD-1	F8-OBJ-1	F8-EUR-1
F8-NAME-2	F8-AD-2	F8-OBJ-2	F8-EUR-2
F8-NAME-3	F8-AD-3	F8-OBJ-3	F8-EUR-3
F8-NAME-4	F8-AD-4	F8-OBJ-4	F8-EUR-4
F8-NAME-5	F8-AD-5	F8-OBJ-5	F8-EUR-5

First name:	FN	Place:	PL
Last name:	LN	Date:	DT
Duly authorised to sign this tender on behalf of:	TEN	Signature and stamp:	

### 3.3 Form 3: Prices

§328 By submitting this tender the tenderer commits to performing this public contract in conformity with the provisions of the Tender Specifications and all of their annexes and explicitly declares accepting all conditions listed in the Tender Specifications and their annexes and renounces any derogatory provisions such as his own general sales conditions.

§329 Before filling this form, the tenderer shall fill his unit prices in Appendix 1 – Bill of Quantities. The totals for each lot in Appendix 1 must be reported accurately here below.

§330 The unit prices and the global prices for each item in the inventory are established relative to the value of these items in relation to the total value of the tender. All general and financial costs as well as the profits are distributed between the various items in proportion to their weight.

§331 The tenderer commits to performing the public contract in accordance with the provisions of the Tender Specifications for the following prices, given in euros:

	Price offer (without V.A.T)									
<b>Lot 1</b>	€		,				,			.
<b>Lot 2</b>	€		,				,			.
		Millions		Thousands			Units			Cents

§332 Should this tender be approved, the performance bond will be constituted under the conditions and deadlines stipulated in the Tender Specifications.

§333 The confidential information and/or the information relating to technical or business secrets is indicated clearly in the tender.

§334 In order to correctly compare the tenders, the duly signed documents mentioned under The right to submit tenders and opening of tenders , must be attached to the tender.

First name:	FN	Place:	PL
Last name:	LN	Date:	DT
Duly authorised to sign this tender on behalf of:	TEN	Signature and stamp:	

**This contract is subject to applicable withholding tax. Contractors registered in the Palestinian Territory are exempted from V.A.T. Contractors registered in Israel will charge V.A.T. on top of the above-mentioned prices.**

3.4 Form 4: Awarding Preferences

§335 The tenderer who wishes to submit a tender for several lots but be awarded a lesser amount of lots specifies here below the number of lots they wishes to be awarded and their order of preference in case they wins more lots than can be awarded according to their capacity.

The tenderer wishes to be awarded  Lots.

In case the tenderer is selected to be awarded more lots than their capacity allows, their order of preference is:

Most preferable	Least preferable
F10-1	F10-2

Certified true and sincere,

First name:	FN	Place:	PL
Last name:	LN	Date:	DT
Duly authorised to sign this tender on behalf of:	TEN	Signature and stamp:	

### 3.5 Selection file

§337 In view of the qualitative selection of the tenderers, the information or documents mentioned below must be attached to the tender:

#### 3.5.1 Incorporation certificate

§338 The tenderer shall include in his tender the incorporation certificate<sup>7</sup> from the competent authority (for local tenderers: Israeli or Palestinian Registration Certificate).

#### 3.5.2 Economic and financial capacity

##### 3.5.2.1 Form 5: Historical Financial Performance

§339 The tenderer shall include in his tender (Appendix 2 – Audited balance sheets and optional proofs of additional financial resources) audited balance sheets for the **last three years** (2019-2021) to demonstrate the current soundness of the tenderer's financial position and its prospective long term profitability. If these are not yet available for the year 2021, (s)he shall declare them on honour and will have to provide the audited documents as soon as possible. Inaccurate declarations will be a cause of ending the contract, if awarded.

§340 The tenderer must also complete the following table of financial data based on his annual accounts, using the annual exchange rates mentioned below:

Financial data	2019 [€]	2020 [€]	2021 [€]
Annual turnover, excluding this public contract <sup>8</sup>	F4T2019	F4T2020	F4T2021
Current Assets <sup>9</sup>	F4A2019	F4A2020	F4A2021
Current Liabilities <sup>10</sup>	F4L2019	F4L2020	F4L2021
Average annual exchange rates	1 ILS = 0.258 EUR	1 ILS = 0.255 EUR	1 ILS 0.262 EUR
	1 USD = 0.893 EUR	1 USD = 0.877 EUR	1 USD = 0.848 EUR

First name:	FN	Place:	PL
Last name:	LN	Date:	DT
Duly authorised to sign this tender on behalf of:	TEN	Signature and stamp:	

§341 (S)he shall include in his tender a statement on the total turnovers achieved over the last three years, unless total turnover is mentioned in the approved Financial Statements that can be consulted via the digital portal (i.e. Financial Statements deposited with the

<sup>7</sup> In case of a consortium or a temporary association, the certificate must be submitted for all members of the tendering party.

<sup>8</sup> Last accounting year for which the entity's accounts have been closed.

<sup>9</sup> The gross inflow of economic benefits (cash, receivables, other assets) arising from the ordinary operating activities of the enterprise (such as sales of goods, sales of services, interest, royalties, and dividends) during the year.

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.

<sup>10</sup> 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.

National Bank of Belgium, in a full or shortened accounting scheme in which the option of turnover achieved has been filled out).

### 3.5.2.2 Selection Criterion 1: Average annual turnover

§342 In one of the past three financial years the tenderer must have achieved a total **turnover** of at least:

For participating in:	Minimum annual turnover
Lot 1 only	€ 100,000
Lot 2 only	€ 130,000
For the two lots	€ 230,000

### 3.5.2.3 Selection Criterion 2: Financial resources

§343 The tenderer must also provide evidence of his financial solvability.

§344 This financial capacity will be evaluated on the basis of the approved Financial Statements of the last three years if they were deposited with the National Bank of Belgium. Tenderers who have deposited their approved Financial Statements with the National Bank of Belgium do not have to include them in their tender since the contracting authority can consult them via the digital portal of the federal authority.

§345 Tenderers who have not deposited their approved Financial Statements with the National Bank of Belgium for the last three financial years shall include them in their tender. This obligation also applies for recently approved Financial Statements that have not yet been deposited with the National Bank of Belgium because the legal deposit deadline has not yet expired. For individual undertakings it suffices to draw up a document that lists all assets and liabilities by an IEC/IAB accountant or a registered auditor. This document must be certified true by an IEC/IAB accountant or by the registered auditor, as appropriate. The document must present recent financial conditions (dated 6 months maximum from the tender opening date). In case the enterprise has not yet published its Financial Statements, an interim balance certified true by the IEC/IAB accountant or the registered auditor will do.

§346 Non-Belgian enterprises must also attach to their tender their approved Financial Statements for the last three financial years or a document listing all assets and liabilities of the enterprise. In case the enterprise has not yet published its Financial Statements, an interim balance certified true by an accountant or by a registered auditor or by the person or body with this function in the country concerned will do.

§347 Note: Belgian public procurement law does not authorize advance payments for this contract. The first progress payment may be submitted one month after the commencement of the works and may take one month to be processed. The successful tenderer can therefore expect to have to advance an amount at least equivalent to the first two months of the works' worth.

§348 The tenderer must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet:

1° the following requirement:

For participating in:	Minimum financial resources
Lot 1 only	€ 30,000.00
Lot 2 only	€ 40,000.00

Both lots	€ 70,000.00
-----------	-------------

2° The overall financial resources requirements for this contract and its concurrent commitments.

§349 As all lots have to be implemented in parallel, in case of participation in more than one lot, the tenderer must demonstrate access to, or availability of, financial resources equal to the total of the amounts mentioned above for each of the lots (s)he would be awarded.

§350 The financial resources will initially be evaluated through the calculation of the working capital (current assets minus current liabilities) of the last year of accounting (2020). Should the tenderer show a lesser than required amount of working capital for the lot (s)he is being evaluated for, or should (s)he want to show access to additional financial resources to be able to be awarded more lots, (s)he must complete the table below and join proof thereof (e.g. letter from a financial institution promising a loan, etc.) as part of Appendix 2 – Audited balance sheets.

#### 3.5.2.4 Form 6: Access to financial resources

Description		Amount [€]
Working capital 2021 (= current Assets – current Liabilities) ( From Form 5: Historical Financial Performance)		F5WC
Other additional financial resources (specify)	F5D1	F5A1
	F5D2	F5A2
	F5D3	F5A3
Total financial resources		F5T

§351 A tenderer may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which (s)he has with these entities. In that case, the following rules apply:

§352 Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing a commitment by those entities to that effect.

§353 The contracting authority shall verify whether the entities on whose capacity the economic operator intends to rely fulfil the relevant selection criteria and whether there are grounds for exclusion.

### 3.5.3 Technical aptitude

#### 3.5.3.1 Selection Criterion 3: specific experience

§354 The tenderer must prove experience, as contractor, management contractor, or subcontractor, **within the last five years, in a number of contracts as specified in the table below**, that have been successfully and substantially completed and that are similar to the proposed works. The similarity shall be based on the kind (building rehabilitation/extension/construction works), physical size, complexity, methods/technology or other characteristics.

For participating in:	Min. number of contracts:	Each with a minimum value of:	With a minimum combined value of:
1 lot	5	€ 50,000	€ 300,000
both 2 lots	5	€ 50,000	€500,000

*§355* The tenderer includes in his tender a list with the main works that have been executed over the past five years including the amount and date as well as the public or private recipients.

*§356* Contracts which have been entirely (100%) subcontracted by the tenderer to another entity will not be considered as experience and shall not be listed.

*§357* For contracts implemented in consortium with other entities, only the amount of works really implemented by the tenderer shall be mentioned and will be considered as experience.



### 3.5.3.2 Form 7: Experience table

§358 List below the experience under contracts in the role of contractor, subcontractor, or management contractor for at least the last five (5) years prior to the applications submission deadline (2018-present). Start with the most recent. Completion certificates for the listed contracts need to be attached.

Description of the main works performed	Role (Contractor/subcontractor)	Final contract value	Currency	Start date	End date (provisional acceptance)	Contracting authority and contact	Select (mark “x”) the most relevant for lot:	
							1	2
F6-W-1	F6-R-1	F6-V-1	F6-C1	F6-S-1	F6-E-1	F6-A-1	F6-L1-1	F6-L2-1
F6-W-2	F6-R-2	F6-V-2	F6-C1	F6-S-2	F6-E-2	F6-A-2	F6-L1-2	F6-L2-2
F6-W-3	F6-R-3	F6-V-3	F6-C1	F6-S-3	F6-E-3	F6-A-3	F6-L1-3	F6-L2-3
F6-W-4	F6-R-4	F6-V-4	F6-C1	F6-S-4	F6-E-4	F6-A-4	F6-L1-4	F6-L2-4
F6-W-5	F6-R-5	F6-V-5	F6-C1	F6-S-5	F6-E-5	F6-A-5	F6-L1-5	F6-L2-5
F6-W-6	F6-R-6	F6-V-6	F6-C1	F6-S-6	F6-E-6	F6-A-6	F6-L1-6	F6-L2-6
F6-W-7	F6-R-7	F6-V-7	F6-C1	F6-S-7	F6-E-7	F6-A-7	F6-L1-7	F6-L2-7

Description of the main works performed	Role (Contractor/subcontractor)	Final contract value	Currency	Start date	End date (provisional acceptance)	Contracting authority and contact	Select (mark “x”) the most relevant for lot:	
							1	2
F6-W-8	F6-R-8	F6-V-8	F6-C1	F6-S-8	F6-E-8	F6-A-8	F6-L1-8	F6-L2-8
F6-W-9	F6-R-9	F6-V-9	F6-C1	F6-S-9	F6-E-9	F6-A-9	F6-L1-9	F6-L2-9
F6-W-10	F6-R-10	F6-V-10	F6-C1	F6-S-10	F6-E-10	F6-A-10	F6-L1-10	F6-L2-10
F6-W-11	F6-R-11	F6-V-11	F6-C1	F6-S-11	F6-E-11	F6-A-11	F6-L1-11	F6-L2-11
F6-W-12	F6-R-12	F6-V-12	F6-C1	F6-S-12	F6-E-12	F6-A-12	F6-L1-12	F6-L2-12
F6-W-13	F6-R-13	F6-V-13	F6-C1	F6-S-13	F6-E-13	F6-A-13	F6-L1-13	F6-L2-13
F6-W-14	F6-R-14	F6-V-14	F6-C1	F6-S-14	F6-E-14	F6-A-14	F6-L1-14	F6-L2-14
F6-W-15	F6-R-15	F6-V-15	F6-C1	F6-S-15	F6-E-15	F6-A-15	F6-L1-15	F6-L2-15

Description of the main works performed	Role (Contractor/subcontractor)	Final contract value	Currency	Start date	End date (provisional acceptance)	Contracting authority and contact	Select (mark “x”) the most relevant for lot:	
							1	2
F6-W-16	F6-R-16	F6-V-16	F6-C1	F6-S-16	F6-E-16	F6-A-16	F6-L1-16	F6-L2-16
F6-W-17	F6-R-17	F6-V-17	F6-C1	F6-S-17	F6-E-17	F6-A-17	F6-L1-17	F6-L2-17
F6-W-18	F6-R-18	F6-V-18	F6-C1	F6-S-18	F6-E-18	F6-A-18	F6-L1-18	F6-L2-18
F6-W-19	F6-R-19	F6-V-19	F6-C1	F6-S-19	F6-E-19	F6-A-19	F6-L1-19	F6-L2-19
F6-W-20	F6-R-20	F6-V-20	F6-C1	F6-S-20	F6-E-20	F6-A-20	F6-L1-20	F6-L2-20

§359 The tenderer shall attach to his tender the completion certificates of the mentioned contracts.

First name:	FN	Place:	PL
Last name:	LN	Date:	DT
Duly authorised to sign this tender on behalf of:	TEN	Signature and stamp:	

### 3.5.3.3 Selection criterion 4: Personnel

§360 The tenderer shall dispose of staff that can perform the contract properly and meet the following requirements:

No.	Position	Minimum educational degree required	Minimum post-graduate <sup>11</sup> work experience (years)	Minimum number of staff required for being awarded:	
				1 lot	2 lots
1	Project Manager	B.Sc in Civil or Architectural Engineering	10	1	1
2	Site Engineer	B.Sc in Civil Engineering	7	2	4
3	Foreman	School Certificate	8	2	4
4	Electrical Eng	B.Sc in Electrical Engineering	7	0.5	1
Note: Manpower quantities expressed above are to be considered as fractions of a full time: 0.5 is one person part-time 50%, 1 is one person full-time, etc.					

§361 The tenderer shall include in his tender an overview of staff that will be used for the performance of the contract, using the table on next page. The tenderer shall list the staff members' degrees (education) as well as their professional experience (number of years of post-graduate work experience in the construction sector), and their access to Jerusalem (for Lot 2). Each staff proposed, including the foreman, shall be **supported with a complete and up-to-date CV** showing experience until present.

§362 The Contracting Authority reserves its right to request, during the works implementation, proofs of legal employment from relevant authorities of the different staff proposed in the tender.

<sup>11</sup> For the foreman: Minimum total work experience in construction sector (years)

### 3.5.3.4 Form 8A: Proposed personnel for lot N°1

Position		Full name	Total work projects (years)	Educational degree	Place of residence
Project Manager		F7A-PM-N	F7A-PM-Y	F7A-PM-E	F7A-PM-R
Site Engineer 1		F7A-SE1-N	F7A-SE1-Y	F7A-SE1-E	F7A-SE1-R
Site Engineer 2		F7A-SE2-N	F7A-SE2-Y	F7A-SE2-E	F7A-SE2-R
Foreman 1		F7A-F1-N	F7A-F1-Y	F7A-F1-E	F7A-F1-R
Foreman 2		F7A-F2-N	F7A-F2-Y	F7A-F2-E	F7A-F2-R
Electrical Eng.		F7A-E-N	F7A-E-Y	F7A-E-E	F7A-E-R
Other (specify)	F7A-O1	F7A-O1-N	F7A-O1-Y	F7A-O1-E	F7A-O1-R
	F7A-O2	F7A-O2-N	F7A-O2-Y	F7A-O2-E	F7A-O2-R
	F7A-O3	F7A-O3-N	F7A-O3-Y	F7A-O3-E	F7A-O3-R

§363 The tenderer shall attached to his tender the CVs of all mentioned personnel.

First name:	FN	Place:	PL
Last name:	LN	Date:	DT
Duly authorised to sign this tender on behalf of:	TEN	Signature and stamp:	

### 3.5.3.5 Form 8B: Proposed personnel for lot N°2

Position		Full name	Total work projects (years)	Educational degree	Place of residence	Access to Jerusalem (ID, permission certificate)
Project Manager		F7B-PM-N	F7B-PM-Y	F7B-PM-E	F7B-PM-R	F7B-PM-A
Site Engineer 1		F7B-SE1-N	F7B-SE1-Y	F7B-SE1-E	F7B-SE1-R	F7B-SE1-A
Site Engineer 2		F7B-SE2-N	F7B-SE2-Y	F7B-SE2-E	F7B-SE2-R	F7B-SE2-A
Foreman 1		F7B-F1-N	F7B-F1-Y	F7B-F1-E	F7B-F1-R	F7B-F1-A
Foreman 2		F7B-F2-N	F7B-F2-Y	F7B-F2-E	F7B-F2-R	F7B-F2-A
Electrical Eng.		F7B-E-N	F7B-E-Y	F7B-E-E	F7B-E-R	F7B-E-A
Other (specify)	F7B-O1	F7B-O1-N	F7B-O1-Y	F7B-O1-E	F7B-O1-R	F7B-O1-A
	F7B-O2	F7B-O2-N	F7B-O2-Y	F7B-O2-E	F7B-O2-R	F7B-O2-A
	F7B-O3	F7B-O3-N	F7B-O3-Y	F7B-O3-E	F7B-O3-R	F7B-O3-A

§364 The tenderer shall attached to his tender the CVs of all mentioned personnel.

First name:	FN	Place:	PL
Last name:	LN	Date:	DT
Duly authorised to sign this tender on behalf of:	TEN	Signature and stamp:	

#### **3.5.3.6 Note on technical aptitude**

*§365* A tenderer may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which (s)he has with these entities. In that case, the following rules apply:

- 1° Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing a commitment by those entities to that effect.
- 2° The contracting authority shall verify whether the entities on whose capacity the economic operator intends to rely fulfil the relevant selection criteria and whether there are grounds for exclusion.
- 3° With regard to criteria relating to the educational and professional qualifications, or to the relevant professional experience, economic operators may however only rely on the capacities of other entities where the latter will actually perform the works for which these capacities are required.

*§366* Under the same conditions, a group of candidates or tenderers may submit the capacities of the group's participants or of other entities.



### 3.6 Declaration on honour – Exclusion grounds

§367 Hereby, I / we, acting as legal representative(s) of above-mentioned tenderer declare that the tenderer is not in any of the following cases of exclusion:

1. The tenderer nor any of its directors was found guilty following an indefeasible judgement for one of the following offences:
  - 1° involvement in a criminal organisation
  - 2° corruption
  - 3° fraud
  - 4° terrorist offence, offence linked to terrorist activities or incitement to commit such offence, collusion or attempt to commit such an offence
  - 5° money laundering or financing of terrorism
  - 6° child labour and other trafficking in human beings
  - 7° employment of foreign citizens under illegal status
  - 8° establishment or creation of a shell company.
  - 9° The exclusions on the basis of this criterion apply for a 5-year term from the date of judgement.
2. The tenderer which fails to fulfil his obligations relating to the payment of taxes or social security contributions for an amount in excess of EUR 3 000, except if the tenderer can demonstrate that a contracting authority owes him one or more unquestionable and due debts which are free of all foreseeable liabilities. These debts are at least of an amount equal to the one for which (s)he is late in paying outstanding tax or social charges;
3. when the tenderer is in a state of bankruptcy, liquidation, cessation of activities, judicial reorganisation, or has admitted bankruptcy, or is the subject of a liquidation procedure or judicial reorganisation, or in any similar situation resulting from a procedure of the same kind existing under other national regulations;
4. The tenderer or one of its directors has committed serious professional misconduct which calls into question their integrity.
5. The following are considered serious professional misconduct, among others:
  - 1° A breach of Enabel's Policy regarding sexual exploitation and abuse – June 2019
  - 2° A breach of Enabel's Policy regarding fraud and corruption risk management – June 2019; <https://www.enabel.be/app/uploads/2022/08/Enabels-policy-on-fraud.pdf>
  - 3° A breach of a regulatory provision in applicable local legislation regarding sexual harassment in the workplace
  - 4° The tenderer was seriously guilty of misrepresentation or false documents when providing the information required for verification of the absence of grounds for exclusion or the satisfaction of the selection criteria, or concealed this information;
  - 5° Where Enabel has sufficient plausible evidence to conclude that the tenderer has committed acts, entered into agreements or entered into arrangements to distort competition.

The presence of this tenderer on one of Enabel's exclusion lists as a result of such an act/agreement/arrangement is considered to be sufficiently plausible an element.
6. When a conflict of interest within the meaning of Article 6 of the Law cannot be remedied by other, less intrusive measures;
7. When significant or persistent failures by the tenderer were detected during the execution of an essential obligation incumbent on him in the framework of a previous public

contract, a previous contract placed with a contracting authority, when these failures have given rise to measures as of right, damages or another comparable sanction;. Failures to respect applicable obligations regarding environmental, social and labour rights under European Union law, national law, labour agreements or international provisions on environmental, social and labour rights are considered 'significant'.

The presence of the tenderer on the exclusion list of Enabel because of such a failure serves as evidence.

8. Restrictive measures have been taken vis-à-vis the contractor with a view of ending violations of international peace and security such as terrorism, human-rights violations, the destabilisation of sovereign states and de proliferation of weapons of mass destruction.
9. The tenderer or one of its directors are on the lists of persons, groups or entities subject to United Nations, European Union or Belgian financial sanctions:

For the United Nations, the lists can be consulted at the following address:  
<https://finances.belgium.be/fr/tresorerie/sanctions-financieres/sanctions-internationales-nations-unies>

For the European Union, the lists can be consulted at the following address:  
<https://finances.belgium.be/fr/tresorerie/sanctions-financieres/sanctions-europ%C3%A9ennes-ue>

<https://eeas.europa.eu/headquarters/headquarters-homepage/8442/consolidated-list-sanctions>

[https://eeas.europa.eu/sites/eeas/files/restrictive\\_measures-2017-01-17-clean.pdf](https://eeas.europa.eu/sites/eeas/files/restrictive_measures-2017-01-17-clean.pdf)

For Belgium:

[https://finances.belgium.be/fr/sur\\_le\\_spf/structure\\_et\\_services/administrations\\_gerales/tr%C3%A9sorier/contr%C3%B4le-des-instruments-1-2](https://finances.belgium.be/fr/sur_le_spf/structure_et_services/administrations_gerales/tr%C3%A9sorier/contr%C3%B4le-des-instruments-1-2)

§368 The tenderer formally declares being able, when asked and without delay, to provide the relevant certificates and other kinds of supporting documents, except if:

- 1° Enabel can directly obtain the supporting documents concerned by consulting a national database in a Member State that is accessible for free, provided the tenderer has given the required information (website address, responsible authority for providing the information, specific reference of the documents) so Enabel can obtain these, with concomitant permission to access them;

- 2° Enabel already has said documents.

§369 The tenderer formally agrees with Enabel accessing the supporting documents substantiating the information provided in this document.

First name:	FN	Place:	PL
Last name:	LN	Date:	DT
Duly authorised to sign this tender on behalf of:	TEN	Signature and stamp:	

### 3.7 Integrity Statement of the tenderer

Hereby, I / we, acting as legal representative(s) of above-mentioned tenderer, declare the following:

- Neither members of administration or employees, or any person or legal person with whom the tenderer has concluded an agreement in view of performing the public contract, may obtain or accept from a third party, for themselves or for any other person or legal person, an advantage appreciable in cash (for instance, gifts, bonuses or any other kind of benefits), directly or indirectly related to the activities of the person concerned for the account of Enabel.
- The board members, staff members or their partners have no financial or other interests in the businesses, organisations, etc. that have a direct or indirect link with Enabel (which could, for instance, bring about a conflict of interests).
- I have / we have read and understood the articles about deontology of this public contract (see 1.7.) as well as Enabel's Policy regarding sexual exploitation and abuse and Enabel's Policy regarding fraud and corruption risk management and I / we declare fully endorsing and respecting these articles.

If above-mentioned public contract is awarded to the tenderer, I / we declare, moreover, agreeing with the following provisions:

- In order to avoid any impression of risk of partiality or connivance in the follow-up and control of the performance of the public contract, it is strictly forbidden to the public contractor (i.e. members of the administration and workers) to offer, directly or indirectly, gifts, meals or any other material or immaterial advantage, of whatever value, to the employees of Enabel who are concerned, directly or indirectly, by the follow-up and/or control of the performance of the contract, regardless of their hierarchical rank.
- Any (public) contract will be terminated, once it appears that contract awarding or contract performance would have involved the obtaining or the offering of the above-mentioned advantages appreciable in cash.
- Any failure to comply with one or more of the deontological clauses will lead to the exclusion of the contractor from this and other public contracts for Enabel.

Finally, the tenderer takes cognisance of the fact that Enabel reserves the right to lodge a complaint with the competent legal instances for all facts going against this statement and that all administrative and other costs resulting are borne by the tenderer.

Signature preceded by 'read and approved', in writing, and indication of name and function of the person signing:

First name:	FN	Place:	PL
Last name:	LN	Date:	DT
Duly authorised to sign this tender on behalf of:	TEN	Signature and stamp:	

## 3.8 Documents to be submitted – exhaustive list

### 3.8.1 Form 9: checklist of documents to be joined to the tender

§370 Please refer to 1.4.5.1 The right to submit a tender and how to submit tenders, for complete instructions on how to fill the forms of the present tender document.

§371 The following documents need to be provided as part of the tender:

	Document	Joined?
Tender document	<p>One original copy of the completed tender document (the present document) filled electronically (not by hand), then printed, signed, and stamped.</p> <p>The following forms need to be completed:</p> <ul style="list-style-type: none"> <li>• <u>Form 1: Tenderer Identification form, p.40</u></li> <li>• <u>Form 2: Subcontracting, p.41</u></li> <li>• <u>Form 3: Prices, p.42</u></li> <li>• <u>Form 4: Awarding Preferences, p.43</u></li> <li>• <u>Form 5: Historical Financial Performance, p.44</u></li> <li>• <u>Form 6: Access to financial resources, p. 46</u></li> <li>• <u>Form 7: Experience table, p.48</u></li> <li>• <u>Form 8A: Proposed personnel for lot N°1, p. 52</u></li> <li>• <u>Form 8B: Proposed personnel for lot N°2, p.53</u></li> <li>• <u>Form 9: checklist of documents to be joined to the tender, p.58</u></li> </ul> <p>The following forms need to be signed:</p> <ul style="list-style-type: none"> <li>• <u>Integrity Statement of the tenderer, p57</u></li> <li>• <u>Declaration on honour – Exclusion grounds, p55</u></li> </ul>	
Appendix 1	One original printed copy of the completed <u>Annex 1: Bill of quantities</u>	
Appendix 2	Audited balance sheets (or if not required by the law of the tender's country, other financial statements acceptable to the Contracting Authority) for the last four years (2017-2020) (see <u>Economic and financial capacity, p. 44</u> ) and optional proofs of additional financial resources	
Appendix 3	Completion certificates drawn up or approved by the competent authority (see <u>Form 7: Experience table, p.48</u> )	
Appendix 4	CVs of all mentioned personnel (see <u>Selection criterion 4: Personnel, p.51</u> )	
Appendix 5	Incorporation certificate from the competent authority (see <u>3.5.1 Incorporation certificate, p.44</u> )	
Appendix 6	Power of attorney empowering the person signing the tender on behalf of the company, joint venture or consortium, signed by the person(s) mentioned in the incorporation certificate (only needed if the person signing the tender is different).	
Appendix 7	In case of a consortium or a temporary association, a copy of the joint venture agreement.	
CD/DVD	One CD or DVD with the electronic copy of the documents mentioned in <u>1.4.5 The right to submit tenders and opening of tenders, p.13</u> .	
	The printed documents and the CD/DVD must be submitted in a properly sealed and stamped envelope.	

### **3.9 Annexes**

**3.9.1 Annex 1: Bill of quantities**

**3.9.2 Annex 2: Set of plans and details (architectural, electrical, and furniture)**