



Tender Specifications

Public service contract for:

**‘Restoration of PFMU’s tree
plantations in Eastern Province
of Rwanda’ for TREPA project.**

RWA19010-10001

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January 2023

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1 General remarks

1.1 Derogations from the General Implementing Rules

Section 4, ‘*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 14.01.2013 or as a complement or an elaboration thereof.

These Tender Specifications do not derogate from Art. 25-33 (see point 4.7 “Performance guarantee”) of the General Implementing Rules – GIR (Royal Decree of 14.01.2013).

1.2 Contracting authority

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.

For this contract, Enabel is represented by Mr. Dirk DEPREZ, Resident Representative of Enabel representation in Rwanda, who will sign the award letter and who is mandated to represent the company towards third parties.

1.3 Institutional framework of Enabel

The general framework of reference in which Enabel operates is:

- The Belgian Law on Development Cooperation of 19 March 2013¹;
- The Belgian Law of 21 December 1998 establishing the Belgian Technical Cooperation as a public-law company²;
- 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.

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 2003³, as well as the Law of 10 February 1999 on the Suppression of Corruption transposing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;

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

² Belgian Official Gazette of 1 July 1999.

³ Belgian Official Gazette of 18 November 2008.

- 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 Organization⁴ 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, 12 December 2015;
- The first Management Contract contracting Enabel and the Belgian federal State (approved by the Royal Decree of 17.12.2017, Belgian Official Gazette 22.12.2017) 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;

1.4 Rules governing the public contract

- The following, among other things, apply to this public contract:
- The Law of 17 June 2016 on public procurement⁵;
- The Law of 17 June 2013 on justifications, notification and legal remedies for public contracts and certain contracts for works, supplies and services⁶;
- The Royal Decree of 18 April 2017 on the awarding of public contracts in the classic sectors⁷;
- The Royal Decree of 14 January 2013 establishing the General Implementing Rules for public procurement and for concessions for public works⁸;
- Circulars of the Prime Minister with regards to public procurement.
- Enabel's Policy regarding sexual exploitation and abuse – June 2019;
- Enabel's Policy regarding fraud and corruption risk management – June 2019;
- local legislation with regards to sexual harassment at the workplace or equivalent
- 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'), 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. ;

All Belgian regulations on public contracts can be consulted on 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>.

⁴ <http://www.ilo.org/ilolex/french/convdisp1.htm>.

⁵ Belgian Official Gazette 14 July 2016.

⁶ Belgian Official Gazette of 21 June 2013.

⁷ Belgian Official Gazette 9 May 2017.

⁸ Belgian Official Gazette 27 June 2017.

1.5 Definitions

The following definitions apply to this contract:

The tenderer: An economic operator submitting a tender;

The contractor/ service provider: The tenderer to whom the public contract is awarded;

The contracting authority: Enabel, represented by the Resident Representative of Enabel in RWANDA.

The tender: Commitment of the tenderer to perform the public contract under the conditions that 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: 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;

Inventory: The procurement document 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;

BDA: Belgian Public Tender bulletin;

OJEU: Official Journal of the European Union;

OECD: Organisation for Economic Cooperation and Development;

E-tendering: Through the E-tendering platform tenderers can submit and open electronic tenders/requests to participate;

Corrupt practices: The offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or 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. The subcontractor is understood as the economic operator with the capacity which the applicant or tenderer relies upon or to whom he entrusts all or part of his engagements.

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.

Sub-contractor or processor 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.

1.6 Processing of personal data by the contracting authority and confidentiality

1.6.1 Processing of personal data by the contracting authority

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.

1.6.2 Confidentiality

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.

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/content/privacy-notice-enabel>

1.7 Deontological obligations

1.7. 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 procurement for Enabel.

1.7.2. 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 Organisation (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.

1.7.3. 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.

1.7.4. 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.

1.7.5. 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.

1.7.6. 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.

1.7.7. 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.

1.8 Applicable law and competent courts

The contract must be performed and interpreted according to Belgian law.

The parties commit to sincerely perform their engagements to ensure the good performance of this contract. 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.

If agreement is lacking, the Brussels courts are the only courts competent to resolve the matter.

2 Subject-matter and scope of the public contract

2.1 Type of contract

This contract is a framework public service contract.

2.2 Subject-matter of the public contract

This framework public service contract consists in the performance of “**The restoration of PFMU’s tree plantation in Eastern Province of Rwanda**”, in conformity with the conditions of these Tender Specifications.

2.3 Lots⁹

(Articles 2, 52° and 58 of the Law and Articles 49 and 50 of the Royal Decree on Awarding.)

The contract **has three (3)** lots, each of which is indivisible. The tenderer may submit a tender for all the lots. A tender for part of a lot is inadmissible.

The description of each lot is included in Part 5 of these Tender Specifications (see Terms of Reference in chap 5 for more details). The 3 Lots are:

- Lot 1: restoration of PFMU’s tree plantations in Nyagatare and Gatsibo Districts;
- Lot 2: restoration of PFMU’s tree plantations in Rwamagana and Kayanza Districts;
- Lot 3: restoration of PFMU’s tree plantations in Kirehe, Ngoma and Bugesera Districts;

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.

The tenderer indicates in his tenders for several lots his order of preference for the awarding of these lots.

The contracting authority limits the number of lots that may be awarded to a single tenderer to maximum 2 Lots per tenderer (with the condition of having different team members per lot).

The minimum annual turnover that economic operators are required to generate for groups of lots, in the event that the chosen tenderer is awarded several lots to be performed at the same time **is at least the value of the 2 (Lots) first choices (1st & 2nd choice)** → Article 67 §5 Royal Decree of 18/04/2017)

If for all the 3 lots, only the same single tenderer is qualified, the qualified tenderer can be awarded these 3 lots, under the condition that the minimum annual turnover that economic operators are required to generate is at least the value of the 3 Lots and the proposed team members are different for each of the lot.

2.4 Items

Each lot of this contract consists of the following items (see details in Terms of References in chapt. 5)

⁹ For contracts of a value equal to or greater than EUR 135 000 excl. VAT, the contracting authority is obliged to consider dividing the contract into lots unless a valid reason is given in the procurement documents.

- 1) **Item 1:** PFMU site preparation, seedling preparation and tree planting
- 2) **Item 2:** Stump uprooting (extraction)
- 3) **Item 3:** Stump debarking
- 4) **Item 4:** Anti-erosive ditches establishment
- 5) **Item 5:** Firebreak establishment
- 6) **Item 6:** 1st weeding-maintenance of the planted PFMUs

These items are pooled and form one single lot. 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.

2.5 Duration of the public contract¹⁰

Initial term and renewal

For each of the lots, the contract starts upon reception of the final notification letter and initially lasts for 12 months, covering one seasonal campaigns of planting.

After this initial term, this contract may be renewed every year by the contracting authority by registered letter sent at least one month prior to the contract renewal date. Depending on the budget and PFMU's land availability, the renewal can be done 3 times consecutively at the maxima.

Every renewal is conditioned by the success of the works ordered the previous year, where at least 75% of the target ordered quantities are achieved (all items considered).

The renewal will be made as per the terms and conditions of the initial Tender Specifications. Should the contract not be renewed, the contractor cannot claim damages.

2.6 Variants

Variants are not permitted.

Each tenderer may submit only one tender. Variants are forbidden.

2.7 Option

Options are not permitted.

2.8 Quantity

(Art. 57 of the Law)

Quantities will be determined in order forms. The presumed quantities below are given per lot for information purposes only. Maximum quantities for the whole duration of the contract are estimated in the below table.

Presume quantities for lot 1:

¹⁰ Please note: duration of the contract not to be confused with period of performance.

	UNIT	Quantity 1st order (year 1)	Presume Quantity 2nd order (year 2) if renewal	Presume Quantity 3rd order (year 3) if renewal	Presume Quantity 4th order (year 4) if renewal	Total 4 years
Item 1: Site preparation and tree planting	Set of 2000 seedlings	400	500	300	0	1.200
Item 2: Uprooting (stump extraction)	Set of 10 stumps	400	500	300	0	1.200
Item 3: Stump debarking	Set of 100 stumps	1.600	2.000	1.200	0	4.800
Item 4: Anti-erosive ditches	Section of 50 m	600	750	450	0	1.800
Item 5: firebreak	section of 50 m		160	200	120	480
Item 6 : Weeding-maintenance (ha)	Ha		400	500	300	1.200

*: Condition for annual renewal is the achievement of 75% of quantity ordered the previous year. Exceptionally less than 75% may be accepted if the low achievement is duly justified (report approved by authorities) by exceptional circumstance out of the control of the contractor (such as exceptional drought occurring during planting season, pandemic's lock down, or any other justifiable reason).

**: quantity of orders other than the 1st one will depend on available budget and PFMU's lands and will be notified yearly via new service order.

Presume quantities for lot 2:

	UNIT	Quantity 1st order (year 1)	Presume Quantity 2nd order (year 2) if renewal	Presume Quantity 3rd order (year 3) if renewal	Presume Quantity 4th order (year 4) if renewal	Total 4 years
Item 1: Site preparation and tree planting	Set of 2000 seedlings	400	500	300	0	1.200
Item 2: Uprooting (stump extraction)	Set of 10 stumps	400	500	300	0	1.200
Item 3: Stump debarking	Set of 100 stumps	1.600	2.000	1.200	0	4.800
Item 4: Anti-erosive ditches	Section of 50 m	600	750	450	0	1.800
Item 5: firebreak	section of 50 m		160	200	120	480
Item 6 : Weeding-maintenance (ha)	Ha		400	500	300	1.200

Presume quantities for lot 3:

	UNIT	Quantity 1st order (year 1)	Presume Quantity 2nd order (year 2) if renewal	Presume Quantity 3rd order (year 3) if renewal	Presume Quantity 4th order (year 4) if renewal	Total 4 years
Item 1: Site preparation and tree planting	Set of 2000 seedlings	510	690	510	0	1.710
Item 2: Uprooting (stump extraction)	Set of 10 stumps	510	690	510	0	1.710
Item 3: Stump debarking	Set of 100 stumps	2.040	2.760	2.040	0	6.840
Item 4: Anti-erosive ditches	Section of 50 m	765	1.035	765	0	2.565
Item 5: firebreak	section of 50 m		204	276	204	684
Item 6 : Weeding-maintenance (ha)	Ha		510	690	510	1.710

See Performance Modalities If, for all or part of the services to be provided, the procurement documents provide for one or more partial orders, performance under the contract will be dependent upon notification of each of these orders.

3 Subject-matter and scope of the public contract

3.1 Award procedure

This contract is awarded in accordance with Article 36 of the Law of 17 June 2016 via an open procedure.

3.2 Publication

3.2.1 Official notification

This contract is officially advertised in the Belgian Public Tender bulletin and in the Official Journal of the European Union.

3.2.2 Enabel publication

This contract is furthermore published on the Enabel website (www.enabel.be) from **09/01/2023** to **20th/02/2023**, as well in the Local newspapers: Job In Rwanda and NEWTIMES.

3.3 Information

The awarding of this contract is coordinated by **Mrs. Françoise MUSHIMIYIMANA, National Expert in Contracting and Administration at Enabel Rwanda** – francoise.mushimiyimana@enabel.be. 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.

Until **5th February 2023** inclusive, candidate-tenderers may ask questions about these Tender Specifications and the contract.

Questions will be in writing to

Ms Françoise MUSHIMIYIMANA, (francoise.mushimiyimana@enabel.be),

with copy to

Jacques PEETERTS (jacques.peeters@enabel.be)

And

Evariste SIBOMANA, (evariste.sibomana@enabel.be)

and they will be answered in the order received. The complete overview of questions asked will be available at the address mentioned above at the latest 10 days before the deadline for submission of bids.

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

The procurement documents can be consulted free of charge at the following internet address: www.enabel.be To be able to submit a tender in full knowledge of the facts, the tenderer may visit the website. www.enabel.be .

The tenderer is to submit his tender after reading and taking into account any corrections made to the Tender Specifications that are published on the Enabel website 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 he gives his coordinates to the public procurement administrator mentioned above and requests information on any modifications or additional information.

The tenderer is required to report immediately any gap, error or omission in the procurement documents that precludes him from establishing his price or compare tenders, within ten days at the latest before the deadline for receipt of tenders.

3.4 Tender

3.4.1 Data to be included in the tender

Tenderers are advised to consult the general principles set out under Heading 1 of the Law of 17 June 2016, which are applicable to this award procedure.

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

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

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.

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.

3.4.2 Period the tender is valid

The tenderers are bound by their tender for a period of 120 calendar days from the reception deadline date.

3.4.3 Determination of prices

All prices given in the tender form must obligatorily be quoted in EUROS (Including VAT and the applicable WHT).

This procurement 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 mentioned in the inventory to the quantities actually performed.

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.

3.4.3.1 Elements included in the price

(Art. 32 §3 Royal Decree 18.04.2017)

The tenderer is to include in his unit and global prices any charges and taxes generally applied to services, including VAT¹¹.

The following are in particular included in the prices:

- **Expert cost including:** fees, the per diems, accommodation costs, local transport costs, insurance costs, security costs, communication costs (including the internet), administrative and secretariat costs, photocopy and printing costs, costs for

¹¹ For international bidders, the reverse VAT of 18% will be applicable (art.12 of the law 37/2012 of 09/11/2012)

documentation of the services that can be required by the contracting authority, the production and delivery of documents or records linked to the performance of the services, the customs and excise duties for materials and products used, the packaging costs, the acceptance costs, all costs, staff and material expenses needed to perform the present contract, the copyright fees, the purchase or leasing of third party services needed for the performance of the contract, Training required for operation, travel and Transport outside Kigali and the applicable **Withholding taxes**. Where applicable, the measures imposed by occupational safety and worker health legislation; Customs and excise duties for equipment and products used; acceptance costs; any staff, equipment, logistics, office, IT items, seeds and inputs required for the service achievement.

- Reimbursable (paid based upon presentation of justification documents, up to the maximum budget set and accepted in financial proposal): **only international travel costs and visa costs (if any)**,
- International travel days are not reimbursed by Enabel.

3.4.4 How to submit tenders?

(Article 54 et seq. and Art. 83-84 of the Royal Decree of 14 April 2017)

Without prejudice to any variants, the tenderer may only submit one tender per lot.

The tenderer submits his tender as follows:

- **The tender will be drawn up in 3 copies (per lot), one of them being the original and two copies.**
- **A soft Copies (exactly identical to the hard copy) must be submitted in one or more PDF files on a USB stick. Bidders who do not submit the required copies (hard and the soft copies), might be rejected.**

It is submitted in a properly sealed envelope bearing the following information: Tender **RWA19010-10001**_Opening of tenders on **20th February 2023 at 10:00 AM** Kigali Time. It must be sent to:

The Attention of Françoise MUSHIMIYIMANA
National ECA - Enabel Rwanda
Belgian development agency
KN 67 Street, plot N° 10
SORAS Towers, Wing A, 6th Floor
Opposite St Michel Catholic Church
B.P. 6089 KIYOVU

It may be submitted:

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

In this case, the sealed envelope is put in a second closed envelope. The delivery record makes proof of compliance with the time-limit for receipt.

- b) Or delivered by hand directly to the contracting authority against a signed and dated receipt: In this case, the acknowledgment of receipt makes proof of compliance with the time-limit for receipt.

The service can be reached on working days during office hours: from 8:30 am to 12:30 pm and from 1:30 pm to 5 pm (Rwanda time)

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 accepted¹².

3.4.5 Change or withdrawal of a tender that has already been submitted

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.

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.

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.

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.

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.

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

The withdrawal must be pure and simple.

Where the submission report issued following modification or withdrawal as referred to in paragraph 1 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.

3.4.6 Opening of Tenders

Article 83-84 of the Royal Decree of 14 April 2017

The tenders must be in the possession of the contracting authority before **20th February 2023** at 10:00 AM. The tender opening is open to the public.

The tender opening session will take place at the address given above for the submission of tenders on **20th February 2023 at 10h30 AM**.

3.4.7 Selection of tenderers

Article 66 – 80 of the Law; Articles 59 to 74 of the Royal Decree on Awarding

3.4.7.1 Exclusion grounds

Articles 52 and 69 of the Law; Article 51 of the Royal Decree of 18 April 2017

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

By submitting this tender, and by signing **the Declaration on honour – exclusion criteria**, which is annexed to this tender document (6.3); the tenderer certifies that he is not in any of the

Art. 83 of the Royal Decree Award

cases of exclusion listed in the Articles 67 to 70 of the Law of 17 June 2016 and the Articles 61 to 64 of the Royal Decree of 18 April 2017.

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

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.

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.

The contracting authority will ask the tenderer, if necessary, at any time during the procedure, to provide all or part of the supporting documents, if necessary to ensure the smooth proceeding of the procedure. The tenderer is not required to submit any supporting documents or other evidence if and to the extent that the contracting authority has the possibility to directly obtain certificates or relevant information by accessing a free national database in a Member State.

With the exception of the exclusion grounds relating to tax and social security, the tenderer that is in one of the mandatory or optional exclusion situations can prove on his own initiative that he has paid or undertaken to pay compensation for any prejudice caused by the criminal offence or the fault, clarified totally the facts and circumstances by collaborating actively with the authorities in charge of the enquiry and taken concrete specific technical, organisational and personnel measures to prevent a new criminal offence or a new fault.

3.4.7.2 Selection criteria

Article 71 of the Law and Articles 65 -74 of the Royal Decree of 18 April 2017

Moreover, by means of the documents requested below, the tenderer must prove that he is sufficiently capable, from an economic and financial as well as from a technical point of view, to successfully perform this public contract.

The minimum required profile of the company/consulting firm and for the minimum required profile for key staff will also be analysed at the selection stage.

The bidders who will not meet the minimum requirements will not be selected for the award stage.

Only tenders from tenderers who meet the selection criteria are taken into consideration in order to participate in the comparison of tenders on the basis of the award criteria set out below, **subject to the regularity** of these tenders.

3.4.7.3 Modalities relating to tender examination and regularity of the tenders

Art. 75-76 of the Royal Decree of 18 April 2017

Before starting the evaluation and comparison of the tenders, the contracting authority examines their regularity.

The tenders must be drawn up in such a way that the contracting authority can make a selection without starting negotiations with the tenderer. For this reason, and in order to be able to assess the tenders fairly, it is essential that the tenders be completely in conformity with the provisions of the Tender Specifications, both formally and materially.

The substantially irregular tenders are excluded.

A substantial irregularity is such as to give a discriminatory advantage to the tenderer, to distort competition, to prevent the evaluation of the tenderer's tender or its comparison with the other tenders, or to render non-existent, incomplete or uncertain the commitment of the tenderer to perform the contract under the conditions laid down.

The following irregularities are deemed substantial:

1° failure to comply with environmental, social or labour law, provided that such non-compliance is punishable by law;

2° failure to comply with the requirements of Articles 38, 42, 43, § 1, 44, 48, § 2, clause 1, 54, § 2, 55, 83 and 92 of the Royal Decree of 18 April 2017 and of Article 14 of the Law, insofar as they contain obligations vis-à-vis the tenderers;

3° failure to comply with the minimum requirements and the requirements that are indicated as substantial in the procurement documents;

4° tenders that do not bear an original handwritten signature on the tender form.

The contracting authority will also declare void any tender that is affected by several non-substantial irregularities which, by reason of their accumulation or combination, are capable of having the same effect as described above (in accordance with Article 76 of the Royal Decree of 18 April 2017).

Conflicts of interest - Revolving door (Art. 51 Royal Decree 18/04/2017).

Without prejudice to Articles 6 and 69, clause 1, 5° of the Law a conflict of interest is considered any situation in which a natural person who has worked for a contracting authority as an internal staff member, whether in a hierarchy relation or not, as a concerned civil servant, public officer or any other person linked whatsoever to the contracting authority, would later intervene under a public contract awarded by this contracting authority and where a relation exists between the former activities that the above person conducted for the contracting authority and the activities he or she conducts under the contract.

The application of above-mentioned provision is limited however to a two-year term from the resignation of said person or any other type of termination of the former activities.

3.4.7.4 Award criteria

The contracting authority selects the regular bid that it finds to be most advantageous, taking into account of the following criteria:

a) Technical proposal (see table of criteria and score below): 70%

Criteria N°	Criteria for methodology evaluation	Maximum score
1	Relevance of detailed method, technical norms and details planning of sub-activities (for the whole contract duration) proposed for each main activities	20
2	Justification and accuracy of method of calculation per activity of required quantity of manpower and of estimation of the unit cost.	20
3	Relevance of team composition (number of proposed staff and	5

	complementarity of tasks and skills)	
4	Relevance of method of recruitment and method of payment of man-powers and employees, and pertinence of proposed minimum salary scale (compare with local context and legislation)	5
5	Relevance of quality control and field works supervision methods	10
6	Relevance of the Participatory /collaboration with local actors approach	5
7	Gender approach consideration in the staff recruitment	5
	TOTAL	70

Only the bid who get a minimum technical score of 50/70 will be qualified for the award of the tender.

b) Price: 30%

The total price considered in the evaluation is the sum of the unit prices provided for each item (item 1 to 6) of the financial proposal. The lowest price will get the maximum point. With regards to the 'price' criterion, the following formula will be used:

$$\text{Score of Bid A} = \frac{\text{amount of lowest bid price} \times 30}{\text{Bid price A}}$$

Bid price A

3.4.7.5 Final score

The scores for the award criteria will be added up. For each lot, 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 control shows that the Declaration on honour corresponds with reality. If the same tenderer applies for several or every lot, rules defined in chapter 2.3 will apply.

3.4.7.6 Awarding the public contract

Article 36 and 81-82 of the Law of 17 June 2016

The lots of the contract will be awarded to the tenderers who have submitted the most economically advantageous tender (higher final score), considering the rules defined in chapter 2.3.

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.

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 certain lot(s) and to decide that the other lots will be the subject matter of one or more new contracts, if necessary according to another award procedure in accordance with Article 58 §1, third paragraph.

3.4.8 Concluding the public contract

Art. 88 of the Royal Decree on Awarding

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.

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

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.

In an objective of transparency, Enabel undertakes to publish each year a list of recipients of its contracts. By introducing his tender, the successful tenderer declares that he agrees with the publication of the title of the contract, the nature and object of the contract, its name and location, and the amount of the contract.

4 Specific contractual and administrative conditions

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.

These Tender Specifications do not derogate from Art. 25-33 of the General Implementing Rules.

4.1 Definitions (Art. 2)

- Contract manager: The official or any other person who manages and controls the performance of the contract;
- Performance bond: Financial guarantee given by the successful tenderer to cover its obligations until final and good performance of the contract;
- Acceptance: Observation by the contracting authority that the performance 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;
- Progress payment: Payment of an instalment under the contract after service delivery is accepted;
- Advance: Payment of part of the contract before service delivery (if accepted);
- Amendment: Agreement established between the contracting parties during contract performance in view of changing documents applicable to the contract.

4.2 Managing official (Art. 11)

The managing official is **Mr. Vincent NSABUWERA**, Enabel TREPA program manager, T:+250 788 313 833, e-mail: vincent.nsabuvera@enabel.be.

Once the contract is concluded, the managing official is the main contact point for the service provider. Any correspondence or any questions with regards to the performance of the contract will be addressed to him, unless explicitly mentioned otherwise in these Tender Specifications.

The managing official is responsible for the follow-up of the performance of the contract.

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.

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 The contracting authority.

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

4.3 Subcontractors (Art. 12 to 15)

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.

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

The service provider undertakes to have 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.**

Art. 12/3 § 2 of the Royal Decree of 14 January 2013:

3° when this involves a service contract in a sector susceptible to fraud, the subcontracting chain may only have two levels at most, namely the contractor's direct subcontractor and the second level subcontractor.

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.

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.

4.4 Confidentiality (art. 18)

The knowledge and information gathered by the tenderer under the framework of this public contract is strictly confidential.

Under no circumstances can the information collected, regardless of its origin and nature, be transferred to third parties in any form.

The tenderer is therefore bound by the duty of discretion.

In accordance with Article 18 of the Royal Decree of 14 January 2013 establishing the general rules for public procurement, the tenderer 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 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.

Therefore, 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, if necessary, to carry out this public

contract (particularly in accordance with 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.

4.5 Protection of personal data

4.5.1 Processing of personal data by the contracting authority

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.

4.5.2 PROCESSING OF PERSONAL DATA BY A SUBCONTRACTOR

During contract performance, the contractor may process 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.

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.

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

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.

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.

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).

To this end, the tenderer must fill out, sign and submit to the contracting authority the subcontracting agreement given in Annex 16.

4.6 Intellectual property (Art. 19 to 23)

The contracting authority acquires the intellectual property rights created, developed or used during performance of the contract.

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.

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.

When 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.

The contracting authority lists the exploitation modes for which it intends to obtain a licence in the procurement documents.

4.7 Performance bond (Art. 25 to 33)

The performance bond is set at 5% of the total value, excluding VAT, of procurement. The value thus obtained is rounded up to the nearest 10 euros.

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.

The performance bond may also take the form of a surety bond issued by a credit institution (BANK GUARANTEE) meeting the requirements of the law on the statute and control of credit institutions.

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 contractor shall mention the name and address of this institution in the tender.

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.

The contractor must, within 30 calendar days from the day of contract conclusion, furnish proof that 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 (PDF, 1.34 Mo), and forward it by e-mail to 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.

This proof must be provided as applicable 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

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.

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.

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.

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

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

1° For the provisional acceptance: This is equal to a request to release the first half of the performance bond

2° For the 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.

4.8 Conformity of performance (Art. 34)

The services 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.

4.9 Zero tolerance Sexual exploitation and abuse

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.

4.10 Changes to the public contract (Art. 37 to 38/19)

4.10.1 Replacement of the contractor (Art. 38/3)

Provided that 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).

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 and services already delivered, the new contractor's contact details and the documents and certificates which the contracting authority cannot access free of charge.

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.

4.10.2 Revision of prices (Art. 38/7)

For this contract, price revisions are not permitted.

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

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

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.

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.

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.

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.

4.10.4 Unforeseen circumstances

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.

A decision of the Belgian State or of the third-party donor (Green Climate Fund/IUCN/TREPA steering committee) 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.

4.11 Preliminary technical acceptance (Art. 42)

The contracting authority reserves the right to request an activity report at any time of the assignment from the service provider (meetings held, persons met, institutions visited, summary of results, problems encountered and unresolved issues, deviations from the planning and deviations from the ToR...)

4.12 Performance modalities (Art. 146 et seq.)

4.12.1 Deadlines and terms (Art. 147)

For the first year (initial quantities), the services must be performed within 360 calendar days as from the day after the date on which the service provider received the final contract conclusion notification letter. The closure of the service provider's business for annual holidays is included in this calculation.

For the subsequent orders, the services regarding each specific order, must be performed within 360 calendar days as of the second working day following the date of dispatch of the order form. The closure of the service provider's business for annual holidays is included in this calculation.

The acceptance terms and modalities per items and per annual order are detailed in Term of Reference in chapter 5.

The order form is addressed to the service provider either by registered letter, or by fax, or by any other means through which the date of dispatch can be determined unambiguously.

Any further correspondence pertaining to the order form (and to the performance of the services) follows the same rules as those for the dispatch of the order form when a party wants to establish proof of its intervention.

In the event the acknowledgement of receipt of the order form is received after the period of two working days, upon written demand and justification of the service provider, the performance period may be extended pro rata of the delay of the acknowledgement of receipt of the order form. When the service that placed the order, upon examination of the written demand of the service provider, estimates that the demand is founded or partially founded, it will inform the service provider in writing of which extension of the period is accepted.

When the order form is clearly incorrect or incomplete and implementation of the order becomes impossible, the service provider immediately notifies the service that placed the order about this in writing in order to find a solution to allow for normal implementation of the order. If necessary, the service provider shall ask for an extended service performance period under the same conditions as those foreseen in case of late reception of the order form.

In any event, complaints about the order form are not admissible any more if they are not submitted within 15 calendar days from the day following the date on which the service provider has received the order form.

4.12.2 Place where the services must be performed and formalities (Art. 149)

The services will be performed at the following address:

In the Private Forest Management Unit (PFMU) of the Eastern Province, especially in the District mentioned in the lot description (see chapter 2.3)

4.13 Inspection of the services (Art. 150)

If during contract performance irregularities are found, the contractor will be notified about this immediately by fax or e-mail, which will be confirmed consequently by registered letter. The contractor is bound to perform the non-complying services again.

The service provider advises the managing official by registered post or e-mail showing the exact date of dispatch, at which date the services can be controlled.

4.14 Liability of the service provider (Art. 152-153)

The service provider takes the full responsibility for mistakes and deficiencies in the services provided.

Moreover, the service provider indemnifies the contracting authority against damages for which it is liable towards third parties due to late performance of the services or due to failure of the service provider.

4.15 Means of action of the contracting authority (Art. 44-51 and 154-155)

The service provider's default is not solely related to services as such but also to the whole of the service provider's obligations.

In order to avoid any impression of risk of partiality or connivance in the follow-up and control of the performance of the contract, it is strictly forbidden to the service provider to offer, directly or indirectly, gifts, meals or any other material or immaterial advantage, of whatever value, to the employees 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.

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

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.

4.15.1 Failure of performance (Art. 44)

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

1° when the delivery is not carried out in accordance with the conditions specified in the procurement documents;

2° at any time, when the delivery has not progressed in such a way that it can be fully completed on the due dates;

3° when he does not observe written orders, which have been given in due form by the contracting authority.

§2 Any failure to comply with the provisions of the 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.

The contractor must repair the defects without any delay. He may assert his right of defence by registered letter 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 as acknowledgement of the reported facts.

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, 154 and 155.

4.15.2 Fines for delay (Art. 46 and 154)

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.

The fines for delay are calculated at the rate of 0.1 percent per day late, the maximum being set at seven and a half percent (7.5%) of the value of the contract (tax included).

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.

4.15.3 Measures as of right (Art. 47 and 155)

§1 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.

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.

§2 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 regime 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.

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.

4.16 End of the public contract

4.16.1 Acceptance of the services performed (Art. 64-65 and 156)

The managing official will closely follow up the services during performance.

The services will not be accepted until after fulfilling audit checks, technical acceptance and prescribed tests. The provisional and final acceptance modalities are described in the Terms of

Reference in chapter 5.

The contracting authority disposes of a verification term of thirty days starting on the final or partial end date of the services, 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. This term commences provided that the contracting authority possesses, at the same time, the list of services delivered or the invoice. Upon expiry of the thirty-day term following the date stipulated for completion of the entirety of the services, depending on the case, an acceptance report or a refusal of acceptance report will be drawn up.

Where the services are completed before or after this date, it is the responsibility of the service provider to notify the managing official by registered letter, and at the same time to ask for the acceptance procedure to be carried out. Within thirty days after the date of receipt of the service provider's request, an acceptance or a refusal of acceptance report will be drawn up, depending on the case.

The acceptance specified above is final.

4.16.2 Acceptance costs

Travel costs and costs for the stay of the managing official will be borne by the service provider.

When drawing up his tender, the tenderer shall take into account the following acceptance costs: service provider staff, equipment and transport costs to participate to the joint provisional and final acceptance measurement (inventory/counting, as per modalities defined in ToRs in chapter 5).

4.16.3 Invoicing and payment of services (Art. 66 to 72 – 160)

The contractor sends (one copy only of) the invoices and the contract acceptance report (original copy) to the following address:

**To the Attention of
Mr Vincent NSABUWERA
ENABEL - Belgian Development Agency
KN 67 Street, plot N° 10
SORAS Towers, Wing A, 6th Floor
Opposite St Michel Catholic Church
B.P. 6089 KIYOVU
KIGALI- RWANDA**

Only service delivery that has been performed correctly may be invoiced.

The contracting authority disposes of a verification term of thirty days starting on the end date for the services, set in conformity with the modalities in the procurement documents, to carry out the technical acceptance and provisional acceptance formalities and to notify the result to the service provider.

The amount owed to the service provider must be paid within thirty days with effect from the expiry of the verification term or with effect from the day after the last day of the verification term, if this is less than thirty days. And provided that the contracting authority possesses, at the same time, the duly established invoice and other documents required for each instalment payment (as described in ToRs in chapter 5).

The invoice must be in EUROS.

No advance may be asked by the contractor and the payment is made after acceptance of the related deliverable.

The invoice will mention:

- **“Enabel, 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)”;**
- **the name of the contract: “Restoration of PFMU’s tree plantations in Eastern Province of Rwanda ‘, for TREPA project”.**
- **the reference of the tender documents: « RWA19010-10001»**
- **the Navision code and the lot number: “RWA1901011”.**
- **the name of the Managing Official: “Vincent NSABUWERA”.**

Payment will be made in instalments (progress payment) accordingly to ToRs (chapter 5), upon submission of a compliant invoice and Electronic Billing Machine (EBM) ticket.

The instalments of payment are as follow (based on annual order):

- **Installment n°1, upon reception and approval by 15th June of progress report on nursery establishment, showing that all required nursery are well established with required seed beds (for item 1 only):**
 - i. of 10% of the total tree planting budget for the concerned year (season). Total budget = quantity in order for item 1 x unit cost of item 1;
- **Installment n°2 (for items 2, item 3 and item 4): upon the presentation and acceptance of the works (before planting – tentatively by September) of stumps extraction (uprooting), stump debarking and digging anti-erosive ditches:**
 - i. On reception of the related invoice and of the approved final acceptance report of these planned works.
 - ii. Amount = (UC x QRA), where:
 - UC = unit cost of concerned item works set in financial proposal;
 - QRA = quantity of works truly realized for the concerned item in the field and duly accepted (up to a maximum not exceeding the planned quantity).
- **Installment n°3 (for item 1 only): upon presentation and provisional acceptance of the tree seedlings production** (in the nurseries, before transportation to the plantation sites, approximatively in September/ October)
 - i. On reception of the **approved acceptance report** of these seedling production with the related invoice;
 - ii. Amount = (15% x UC x100/130 x QRA), where:
 - UC = unit cost of item 1 in financial proposal;
 - QRA = quantity of seedling (respecting standard) truly produced in the nursery and duly accepted, up to a maximum not exceeding the planned quantity. The planned quantity is equal to the horizontal areas of the PFMUs targeted in the annual order, multiplied by the

expected tree density, multiplied by 1.3 (30 % addition for mortality compensation needs);

- **Installment n°4 (for item 1 only): upon the provisional acceptance of first planting works** (just after planting, approximatively in the period of October-December)
 - i. On reception of the approved provisional acceptance report of these planting works with the related invoice;
 - ii. Amount = $(25\% \times UC \times QRA)$, where:
 - UC = unit cost of item 1 set in financial proposal;
 - QRA = quantity of surviving seedling respecting standard truly planted in the field and duly accepted, up to a maximum not exceeding the planned quantity. The planned quantity is equal to the horizontal areas of the PFMUs targeted in the annual order multiplied by the expected tree density,
- **Installment n°5: upon the final acceptance of planting works (after beating-up operation, approximatively in March-April)**
 - i. On reception of the approved final acceptance report of these planting works with the related invoice;
 - ii. Amount = $(UC \times QRA) - \text{Instal 1} - \text{Instal 3} - \text{Instal 4}$, where:
 - UC = unit cost of item 1 set in financial proposal;
 - QRA = quantity of surviving seedling respecting standard truly planted in the field and duly accepted, up to a maximum not exceeding the planned quantity. The planned quantity is equal to the horizontal areas of the PFMUs targeted in the annual order multiplied by the expected tree density,
 - Instal 1 is the amount already paid for installment 1 for the concerned area, Instal 3 is the amount already paid for installment 3 for the concerned area, etc.
- **Installment n°6 (for item 5 and item 6 only): upon the acceptance of maintenance activities (cleaning/wedding of new-planted sites) and/or of firebreak establishment following the plantation or at any other time if specified by the contracting authorities)**
 - i. On reception of the approved acceptance report of these maintenance activities with the related invoice;
 - ii. Amount = $(UC \times QRA)$, where:
 - UC = unit cost of concerned item works set in financial proposal;
 - QRA = quantity of works of concerned item truly realized in the field and duly accepted (up to a maximum not exceeding the planned quantity fixed in the annual order);

In general, if quantities of works actually realized in the field (QR) exceed the forecasted quantities of works (QP), the exceeding quantities will not be considered as accepted (not accounted in the QRA aggregation) and will not be paid to the contractor.

For item 1, for the provisional (intermediate) acceptance of plantation (done just after planting for instalment 4) and for the final acceptance (for instalment 5), quantity (QR) of **PFMU where the achievement rate¹³ is below 90% will not be considered as accepted** and will not be accounted in the invoice of respective instalments (n° 4 and n°5).

For each of the items 2 to 6, at the final acceptance of works, quantity (QR) of **PFMU where the achievement rate is below 95% (for the concerned item) will not be considered** as accepted and will not be accounted in the invoice of respective instalments 2 and 6.

The installment payment modalities described in this chapter will apply for each new yearly order if the contract is renewed.

4.17 Modifications to the contract (Art. 37-38 and 151)

The contracting authority has the right to change the initial tender unilaterally, if the following conditions are respected:

- 1° the scope of the contract remains unaltered.
- 2° the modification is limited to 10 % of the initial awarded amount.

The essential terms and conditions can only be modified with reasons, to be mentioned in an amendment.

4.18 Litigation (Art. 73)

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.

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.

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

Enabel, public-law company

Legal unit of the Logistics and Acquisitions service (L&A)

To the attention of Ms Inge Janssens

rue Haute 147

1000 Brussels

Belgium

¹³ (=Quantity of surviving seedlings truly planted/ Quantity of planned seedlings)

5 Terms of reference

“Restorariion of PFMU’s tree plantation in the Eastern Province of Rwanda”

Acronyms

ASP	Annual Seasonal Plan
ENABEL	Belgium Cooperation Agency
DFMP	District Forest Management Plan
RFA	Rwanda Forestry Authority
TREPA project	“Transforming Eastern Province through Adaptation” project, financed by GCF (2022-2027).
PFMU	Private Forest Management Unit (smallholder woodlots gathered into an economic entity sustainably managed by the cooperative of land owners)
FSP	Forest Service Provider
FSSP	Forestry Sector Strategic Plan
NFP	National Forest Policy
SFMP	Simplified Forest Management Plan
TSC	Tree Seed Centre (under RFA)

5.1 Context

The Government of Rwanda, through its National Strategy for Transformation (NST1) and its Green Growth and Climate Resilience Strategy (GGCRS) want to support the sustainable management and high productivity of tree plantations, especially on smallholder private lands (as per the 2017-2022 Forestry Sector Strategic Plan -FSSP) most exposed to degradation and not anymore delivering their forest ecosystem services which are essential to build the resilience to climate change.

The TREPA project (“Transforming Eastern Province through Adaptation”, 2022-2027), financed by the Green Climate Fund (GCF) through the accreditation of IUCN, has to scale-up forest landscape restoration with development of related products values chains in the Eastern Province of Rwanda, in order to build and sustain the adaptation of ecosystems and communities to climate change. Rwanda Forestry Authority (RFA, under Ministry of Environment), IUCN and ENABEL are co-executing entities of this project, in collaboration with implementing partners such as ICRAF, CORDAID and World Vision.

In this context, an executing agreement (2022-2027) has been signed in December 2022 between IUCN and Enabel. Under activity 1.2.3 and in collaboration with RFA, Enabel has to support the establishment of 6545 ha of Private Forest Management Units (PFMUs), from which 4000 ha of restoration and planting are under Enabel budget and responsibility. The restoration of these PFMUs has to be conducted through participatory community approach, where PFMU cooperative members have to be capacitated to be the committed actors and beneficiaries of the restoration of their forest landscapes.

This is in this context that ENABEL/TREPA project want to hire a local forest operator company (based in Rwanda) in order to support targeted PFMU’s cooperatives in implementing restoration and planting activities works in their own PFMUs.

5.2 Objectives, tasks and methodology

5.2.1. General overview of the lots:

The tender consists of 3 lots:

- **Lot 1:** restoration of PFMU’s tree plantations in **Nyagatare and Gatsibo** Districts;
- **Lot 2:** restoration of PFMU’s tree plantations in **Rwamagana and Kayonza** Districts;
- **Lot 3:** restoration of PFMU’s tree plantations in **Kirehe, Ngoma and Bugesera** Districts;

5.2.2. Objectives and items overview

For each lot, the TREPA project team lead by Enabel will identify and map the foreseen PFMUs across the concerned districts, and will organise smallholder land owners into cooperatives. Each PFMU consist in a block of 25-100 ha gathering 50-200 parcels of smallholder degraded woodlots, to be restored in collaboration with land owners communities and put under sustainable management plan to increase their tree cover and productivity while rehabilitating their ecosystem services.

The Contractor will be in charge of following items, with following presume quantities:

Presume quantities for lot 1 for Nyagatare and Gatsibo Districts:

	UNIT	Quantity 1st order (year 1)	Presume Quantity 2nd order (year 2) if renewal	Presume Quantity 3rd order (year 3) if renewal	Presume Quantity 4th order (year 4) if renewal	Total 4 years
Item 1: Site preparation and tree planting	Set of 2000 seedlings	400	500	300	0	1.200
Item 2: Uprooting (stump extraction)	Set of 10 stumps	400	500	300	0	1.200
Item 3: Stump debarking	Set of 100 stumps	1.600	2.000	1.200	0	4.800
Item 4: Anti-erosive ditches	Section of 50 m	600	750	450	0	1.800
Item 5: firebreak	section of 50 m		160	200	120	480
Item 6 : Weeding-maintenance (ha)	Ha		400	500	300	1.200

*: Condition for annual renewal is the achievement of 75% of quantity ordered the previous year. Exceptionally less than 75% may be accepted if the low achievement is duly justified (report approved by authorities) by exceptional circumstance out of the control of the contractor (such as exceptional drought occurring during planting season, pandemic's lock down, or any other justifiable reason).

**: quantity of orders other than the 1st one will depend on available budget and PFMU's lands and will be notified yearly via new service order.

Presume quantities for lot 2:

	UNIT	Quantity 1st order (year 1)	Presume Quantity 2nd order (year 2) if renewal	Presume Quantity 3rd order (year 3) if renewal	Presume Quantity 4th order (year 4) if renewal	Total 4 years
Item 1: Site preparation and tree planting	Set of 2000 seedlings	400	500	300	0	1.200
Item 2: Uprooting (stump extraction)	Set of 10 stumps	400	500	300	0	1.200
Item 3: Stump debarking	Set of 100 stumps	1.600	2.000	1.200	0	4.800
Item 4: Anti-erosive ditches	Section of 50 m	600	750	450	0	1.800
Item 5: firebreak	section of 50 m		160	200	120	480
Item 6 : Weeding-maintenance (ha)	Ha		400	500	300	1.200

Presume quantities for lot 3:

	UNIT	Quantity 1st order (year 1)	Presume Quantity 2nd order (year 2) if renewal	Presume Quantity 3rd order (year 3) if renewal	Presume Quantity 4th order (year 4) if renewal	Total 4 years
Item 1: Site preparation and tree planting	Set of 2000 seedlings	510	690	510	0	1.710
Item 2: Uprooting (stump extraction)	Set of 10 stumps	510	690	510	0	1.710
Item 3: Stump debarking	Set of 100 stumps	2.040	2.760	2.040	0	6.840
Item 4: Anti-erosive ditches	Section of 50 m	765	1.035	765	0	2.565
Item 5: firebreak	section of 50 m		204	276	204	684
Item 6 : Weeding-maintenance (ha)	Ha		510	690	510	1.710

In addition to the quantity, the Contracting Authority will provide with annual order the details for each targeted PFMUs (the location map, expected quantity of each items, foreseen tree species, expected tree density, other technical specification where required)

The contractor has to check, **within 1 month from the reception** of the order, the technical feasibility of proposed afforestation/reforestation activities. In case of significant risk identified, the contractor should write in the above-mentioned deadline to the Contracting Authority, providing documentation, justifying the risk and providing alternative solutions. The Contracting Authority and the contractor (in collaboration with RFA and District) will agree, no later than 25th April of each season, on most feasible solutions and will provide updated order, approved through the duly signed minutes of related approval meeting. In case of no provision of objection/risk by the contractor within the above provided deadline, the order will be considered as accepted by the contractor.

5.2.3. Context of reforestation support on small-holder private lands (PFMU approach)

According to National Forest Inventory of 2015, more than 60% of productive plantation are scattered across the country and are owned by a high number of small-holder privates, with an average stock less than 20 m³/ha (standard should be between 100-200) and a productivity 2-3 times less than the one that could be reached by used of good silviculture practices. This leads to an important under-production/supply of wood, with decrease of benefits, but as well to a consecutive forest and land degradation, losing the ecosystem services that should be ensure by forests and reducing drastically the capacity to adapt to climate change. Among the main drivers of the mismanagement of these private forest lands are the very small size of woodlots owned and managed individually by these small holders and their lack of both technical and financial/investment capacities.

In order to mitigate this important issue, the strategy to support these small holders is as follow:

- Gathering their woodlot lands into Private Forest Management Units (PFMUs), on which a Simplified Forest Management Plan (SFMP) integrating adequate silviculture practices can be designed and implemented in order to ensure a good tree coverage and the sustainable management of these woodlots while ensuring better profitability and productivity;
- Organising these small land owners into cooperatives (1 per PFMU), in order to coordinate the good management of the PFMU (according to the SFMP), with establishment of saving groups to enhance their capacity of investment and access to finance, the increase of negotiation power with third party, the balanced sharing of benefits, etc.;
- Support and train cooperatives in converting their no-productive woodlots into new productive tree plantation using high genetic quality tree seeds, according to SFMP prescriptions;
- Where required, support and train cooperatives in establishing anti-erosive ditches to fight against erosion and increase the overall forest ecosystem services.

By 15st March of each year/planting season, the Contracting Authority, in collaboration with RFA and District authorities, will identify and map targeted PFMUs and establish related targeted groups/cooperatives of private small-holders, where the contractor will conduct and support restoration and tree planting activities in collaboration with PFMU's cooperatives according to items detailed in chapter below.

For each PFMU identified, the TREPA project team will support the preparation of an MoU to be signed between small private land owner's groups (further cooperatives) and District Authorities before planting activities. This MoU will define the responsibilities of each actor and the modalities for implementation of the planned restoration and planting.

The MoU will stipulate conditionality of this support in reforestation, such as the commitment to participate in restoration works, to respect the SFMP prescriptions in term of tree maintenance/protection, harvesting and replanting. In case of failure from some of the land owners in respect of the SFMP prescriptions, penalties will apply and any responsible for forest degradation will be prosecuted and will have to restore the forest.

Ideally **each PFMU area will be sub-divided into 3 restoration blocks** to allow for progressive capacity building and active involvement/commitment from PFMU cooperative members:

- Restoration block 1 (50% of the initial PFMU area), to be restored in year 1 season: the contractor will recruit and train PFMU community members and will supervise and guide them in the proper implementation of restoration works (anti-erosive ditches, land preparation, stump debarking/up-rooting, hole digging, tree planting, beating-up, maintenance, etc);
- Restoration block 2 (40% of the initial PFMU area) to be restored in year 2 season: taking advantage of technical capacity for restoration work build in year 1, and of having PFMU cooperative created and capacitated during year 1 by the TREPA project under component 2 (organisational and financial management skill lead by Cordaid and World Vision), the contractor will sign a sub-contract with the cooperative to undertake the year 2 restoration work on their own PFMU, with payment done based on quantity (number of meter of ditches, number of surviving seedling, etc) duly realized. Pre-assessment of the cooperative will be done before sub-contracting to confirm their organisational and technical capacity to operate. The contractor, who will supervise and continue to guide the cooperatives, will remain full responsible for the quality delivery of the restoration works.
- Restoration block 3 (10% of initial PFMU area + 30% extension to neighbouring areas) : for PFMU who succeeded well in year 1 and 2, and depending of their level of financial capacity and of organisation:
 - The PFMU cooperative may be contracted directly by the project to undertake the restoration work on their own land (single source procedure may be required)
 - Or the PFMU cooperative continue to work under sub-contract of the contractor to restore their own PFMU area.

5.2.4. Responsibilities of the contractor.

5.2.4.1. General management responsibility and respect of prescription

The contractor is entirely responsible for the planning, organisation and execution of all the necessary tasks to complete the requested results for which they are being contracted, in accordance with the quantities specified for each items 1 to 6 in the annual order. The contractor will be obliged to accomplish this work according (first) to the present terms of reference, (secondly) to his own technical proposition and (thirdly) to any complementary standard work reference.

Logistical and administrative aspects also come under the responsibility and budget of the Contractor, i.e.:

- Renting and maintenance of a functional/equipped working place during the execution of the tender;
- Recruitment, remuneration (including salaries, field transportation and allowances, communication, etc.) and managing of the necessary staff, technicians and local community/cooperatives man-power;
- The acquisition of all material and equipment required for the implementation of all activities (including nursery and transportation means, field material, etc.).
- Provide all required activity reports as provided in these ToRs;

The contractor is fully responsible for the provision in due time of all necessary logistic and humans means (office, vehicle, phone, materials, etc.) required for the right coordination, supervision and implementation of all activities. The contractor is also required to collaborate actively with district & sectors while recruiting community manpower, contracting beneficiaries cooperatives, and for payment and controlling the quality of works.

5.2.4.2. Staff recruitment, payment and minimum salary

The contractor has to ensure the recruitment, management and payment in due time of all required technicians and workers respecting the national regulations and the recommended salary level. The labour **has to be recruited in priority among the PFMU's land owner communities (individual recruitment or sub-contracting local beneficiary cooperatives groups when they have the sufficient capacity to deliver in quality and time, according to respective restoration block as describe above in 5.2.3)**, based on price and modalities fixed between the contractor and PFMU cooperative representative, in presence of the local authorities and of the Enable TREPA team. In case the communities cannot provide sufficient man-powers, additional labours may be recruited in the region.

For the daily man-power the minimum is fixed at **1800 RWF net per day of 8 hours of work**, without any discrimination between man and women. All workers must be paid (within a maximum period of 1 month from the time when work has been realized) ideally through banks or micro-finance institutions such as SACCOs or equivalent.

Before any instalment payment (except instalment 1), the contractor has to provide with its invoices proofs of payment approved by concerned District Authority, for all the man-power used for the work concerned by the invoices. Proofs are document such as copy of detailed bank transfers statements and /or receipt of checks/cash duly signed by beneficiaries, accompanied with joined list of working man-power indicating name, gender, id-card, job, amount and number of man-day for which they are paid.

5.2.4.3. Gender consideration in employment

At least 30% of man-power and employees should be female. Before any instalment payment, the contractor has to provide with its invoice an activity report including an annexed table recording numbers of person-days for every staff /man-power that has been employed during the concerned period, per gender, per position and per main type of work. **If this 30% condition is not respected, related report will not be approved.** This % of female is calculated by dividing the total number of person-days being female per the total number of person-days of both genders.

5.2.4.4. Tax and social security payment

The contractor has to ensure the payment in due time and amount of any taxes and social security fees to be paid according Rwandan regulations. The amount directly paid to the contractor by ENABEL will be 18% VAT inclusive, and the contractor will be responsible to pay these VAT to RRA in due time. Any RRA or RSSB penalties due to delays or failure will be on the charge of the contractor and cannot be invoiced to the contracting authority. In case of failure by the contractor, the Contracting Authority will deal the issue with the concerned authorities.

5.2.4.5. Provision of high genetic quality tree seed and their monitoring

The contractor is responsible for the purchasing of high-quality tree seeds (and/or clones) to be used for all foreseen plantations. By 1st April of each year/season, the Contracting Authorities, in collaboration with the national Tree Seed Centre and ICRAF, will recommend the source and providers of selected high genetic quality seeds to be purchased and used by the contractor.

As well, in order to support the capacity development of existing local nursery cooperatives and /or to use the nursery already supported by other component of the TREPA and COMBIO project (synergy), the TREPA project will inform the contractor on existing nurseries located in the planting area they have to collaborate with to produce tree seedlings. **The contractor is remaining responsible to ensure the quality of seedling and will undertake technical supervision and on the job training of these collaborating local nurseries staff.**

In each nursery, the different origin of seed should be separated in different band and cannot be mixed at any moment. **Each band of the nursery should specify on well-designed placard: origin and lot of the seeds, date of sawing, date of transplanting in pot, etc.** Each lot of seedlings produced with a specific origin of seed cannot be mixed with seedlings produced from other source of seeds. Each lot of seedling should be planted in well separated area of planted site, allowing the monitoring of performance of each lot according to their seed origin. **Traceability system should be established from the sawing until the planting in forest.** A nursery log should be established for each nursery, and a planting log has to be established for each planted site. Template of these logs will be provided by the TREPA project team (Enabel in collaboration with RFA/TSC).

At nursery level, the contractor has to produce at least 30% more seedlings than the expected number to be planted, to allow the selection in nursery of the best quality seedling for planting (lower quality seedling, with lower size, not well-developed roots or any wrong shape will be rejected) and for beating-up.

5.2.4.6. Choice of tree species to be planted

The Contracting Authority will specify in annual works order the tree species to be planted in each of the targeted PFMUs, indicating as well the recommended tree density (nbr/ha).

As the PFMUs are essentially targeting smallholder's lands where old, degraded Eucalyptus woodlots have to be replaced by productive plantations, the farmer expected preferred species will be Eucalyptus spp. (*E. microchorys*, *E. camaldulensis*, *E. saligna* essentially).

However, for tree and wood product/incomes diversification purpose, other species such as *Maesopsis eminii*, *Cedrella odorata*, *Markhamia lutea*, etc. will be promoted as well as possible.

The expected mixed should be around 95% Eucalyptus and 5% others species. The unit price provided by the contractor for the item 1 of each lot is considering this species sharing average.

5.2.4.7. Specific tasks of the contractor for restoration of PFMUs

For each beneficiary PFMU group cooperative, in accordance with prescriptions given in the MoU signed by these groups with local authorities, the service provider will establish a MoU for community workforce recruitment or will sign a work service sub-contract (for the case of most well organised cooperative showing required capacity, based on fixed price per realise quantity unit) for the implementation of the below presented restoration works (site cleaning, stump up-rooting/debarking, hole digging, tree planting and beating-up, anti-erosive ditches and/or firebreak establishment, land cleaning);

Regarding the specific items, the service provider is full responsible for:

- 1) **Item 1:** PFMU site preparation, seedling preparation and tree planting
 - a) Participate (technical guidance and advice from private actor perspective) in training/sensitization sessions organized by the TREPA project for targeted small lands owner cooperative members;
 - b) Organize and realize (March to October each year) on suitable sites, in collaboration with existing local nursery, the production of the sufficient quantity of quality seedlings required

for PFMU's planting (including 30% more for best seedling selection in nursery, and replacement of died seedlings). The service provider is responsible for the proper contracting of identified existing nursery, for the capacity building (on the job training) of their staff, for their technical guidance, for the provision of required specific inputs, and for the quality control of seedling produced. The service provider remain full responsible for the production in time, quantity and quality of expected seedlings;

- c) Provide any equipment and logistic required for the achievement of works in due time.
- d) Transport the quality seedling (selection of best quality in nursery) from the nursery to the planting site, ensuring their delivering in good condition on sites;
- e) Coordination, supervision and technical support (on-the-job training, technical guidance) of the community workforces/cooperative members during implementation of all activities related to site preparation (clearing, whole digging, etc), to the planting activities (from October to December) and all necessary beating-up (February to March) in order to compensate for mortality.
- f) Collection and removal from the site of the utilized plastic tubes after the planting operation
- g) Participate in the monitoring and evaluation of works, as well in their provisional and final acceptance (and sign works reception minutes).

2) **Item 2:** Stump uprooting (extraction)

- a) Coordination, supervision and technical support (on-the-job training, technical guidance) of the community workforces/cooperative members during implementation of all activities related to stump uprooting.
- b) Provide any equipment and logistic required for the achievement of works in due time.
- c) Participate in the monitoring and evaluation of works, as well in their provisional and final acceptance (and sign works reception minutes).

2) **Item 3:** Stump debarking

- a) Coordination, supervision and technical support (on-the-job training, technical guidance) of the community workforces/cooperative members during implementation of all activities related to stump debarking.
- b) Provide any equipment and logistic required for the achievement of works in due time.
- c) Participate in the monitoring and evaluation of works, as well in their provisional and final acceptance (and sign works reception minutes).

2) **Item 4:** Anti-erosive ditches establishment

- a) Coordination, supervision and technical support (on-the-job training, technical guidance) of the community workforces/cooperative members during implementation of all activities related to anti-erosive ditches digging.
- b) Provide any equipment and logistic required for the achievement of works in due time.
- c) Participate in the monitoring and evaluation of works, as well in their provisional and final acceptance (and sign works reception minutes).

3) **Item 5:** Firebreak establishment

- a) Coordination, supervision and technical support (on-the-job training, technical guidance) of the community workforces/cooperative members during implementation of all activities related to firebreak establishment.
- b) Provide any equipment and logistic required for the achievement of works in due time.
- c) Participate in the monitoring and evaluation of works, as well in their provisional and final acceptance (and sign works reception minutes).

- 4) **Item 6:** 1st weeding-maintenance of the planted PFMUs
- a) Coordination, supervision and technical support (on-the-job training, technical guidance) of the community workforces/cooperative members during implementation of all activities related to 1st weeding/maintenance of PFMUs planted in previous season (in September/October, 10 months after planting).
 - b) Provide any equipment and logistic required for the achievement of works in due time.
 - c) Participate in the monitoring and evaluation of works, as well in their provisional and final acceptance (and sign works reception minutes).

5.2.5. Task and responsibilities of PFMU's small private forest owners

- a. To be organized in association or cooperative with the objective of ensuring the sustainable management of their PFMU constituted by the aggregation of the forest lands of each member;
- b. Signatory of the MoU with District Authority regarding the sustainable management of their PFMU according to approved well designed SFMP, including modalities and conditionality for the support in the conversion of their lands into high productive forests;
- c. Ensure cutting/harvesting of existing old trees and their removal from the parcel before intervention of the contractor (by June of each year/season);
- d. As well as possible, avail labour to the contractor to participate in restoration works;
- e. As well and as soon as possible, through their capacitated cooperative, signed a sub-contract with the Service Provider for the workforce recruitment for the implementation of the restoration works (stump up-rooting/debarking, site preparation, hole digging, tree planting and beating-up, anti-erosive ditches and/or firebreak establishment, land cleaning);
- f. Organize and ensure permanent guarding of the forest sites from the seedling plantation.
- g. Participate in the provisional and final acceptance the restoration work done on their PFMUs
- h. Nominate cooperative members to participate in SFMP design and any training organised by the TREPA project.

5.2.6. Task and responsibilities of the Contracting Authority (in collaboration with RWFA and Districts Authority).

- a. Provide by 30st March of each year the annual order specifying the quantity of each items to be implemented with detailed maps and specifications (horizontal ha of each PFMU, expected tree density, tree species, number of stems, etc);
- b. Provide by 1st April of each year/season the recommend source and providers of selected high genetic quality seeds to be purchased and used by the contractor;
- c. Provide the list of existing local nurseries to collaborate with for seedling production;
- d. Provide at any time when required technical advice/guidance to the contractor in order to ensure quality delivery of works;

- e. Ensure, in collaboration with RFA and Districts, regular controlling, monitoring and evaluation of activities implemented by the contractor;
- f. Organize and conduct provisional and final acceptance of works and ensure payment in due time according provision and instalment described in chapter 5.3 below;
- g. Facilitate where possible the contractor in any required administrative procedures at central or District level;
- h. Ensure establishment of private owner's association/cooperatives, organize training/sensitization session targeting them, design of their PFMU's SFMPs and prepare and made signed MoUs for their related forest conversion.

5.3. Contractor reporting obligation

- a. Before any instalment payment, the contractor will provide the Contracting Authority with an activity reports including:
 - i. Narrative summary description of implemented activity (relating the works for which the invoice is submitted)
 - ii. Narrative description of mains constraints encountered, of main solutions applied and recommendations for further activities;
 - iii. Report of acceptance of concerned works, duly signed by: representatives of the contractor, Enabel TREPA, RFA, District and representatives of PFMU's cooperatives. This report should clearly detail per site the progress/achievement, expressing the truly quantity realized in the field (QR) and the quantity realized and accepted (QRA) compare to the objective planned in annual order;
 - iv. The list of technicians and daily workers employed for the invoiced works (giving name, id card, number of man-days worked, task/job, gender);
 - v. Prove of payment of the above employees approved by concerned District Authority. Prove are document such as copy of detailed bank transfers statements and /or receipt of checks/cash duly signed by beneficiaries;
 - vi. Summary table presenting number of person-days employed for concerned works, expressed per gender, per position and per main activity;
- b. For last instalment payment of each seasonal year, the contractor should provide in addition to the above report, a final activities report of the season, including:
 - i. Narrative summary description of overall implemented activities;
 - ii. Narrative description of mains constraints encountered, of main solutions applied and recommendations for further activities;
 - iii. Summary table presenting overall achieved activities compare to planned targets of the year;
 - iv. Summary table presenting number of person-days employed for the overall realized works, expressed per gender, per position and per main activity.

The contractor has to submit to the Contracting Authority for prior approval the templates to be used for above-mentioned reports.

5.4. Modalities for work acceptance on the field

Work acceptance will be conducted in the field before any instalment payment. Methodology for estimation/calculation of quantities and acceptance or not-acceptance of works realized in the field is presented in annex 1¹⁴.

Works should be realized according technical prescription set in following documents: (first) the present terms of reference, (secondly) the contractor technical proposal and (thirdly) any complementary standard work reference documentation agreed by the Contracting Authority.

5.5. Unit cost grid per lot

The financial offer of bidder consists in table of unite price given for each of the 6 items, as presented in the table below. These unit cost are the one that will be applied on accepted quantities for the invoice amount calculation.

	UNIT	Unit Cost (Euros), VAT excluded	Unit Cost (Euros), VAT included
Item 1: Site preparation and tree planting	Set of 2000 seedlings		
Item 2: Uprooting (stump extraction)	Set of 10 stumps		
Item 3: Stump debarking	Set of 100 stumps		
Item 4: Anti-erosive ditches	Section of 50 m		
Item 5: firebreak	section of 50 m		
Item 6 : Weeding-maintenance	Ha		

5.6. Important elements to be provided in the technical and financial proposal by bidders

For each of the item, bidder has to provide the unit cost in the table of the financial offer.

In order to properly justify these unit costs, bidders should present in their technical proposal, **separately for each of item 1 to 6:**

- Proposed detailed method and technical norms they would implement;
- Details planning (schedule per 2 week) of sub-activities for 1 year;
- Details calculation of number of man-power and employees to be foreseen per unit of each item;
- **Details calculation method of the unit cost (this one will be analyzed in detail and its relevance will weight significantly the technical evaluation);**
- Method for training and supervising of their staff and man-power on the field;

¹⁴ The methodology of work reception set in annex 1 is subject to any change/improvement based on request of any party, but only if these changes are approved by the Contracting Authority.

- Method for their intern quality control;
- Gender sensitive measures they will apply.

Bidders have to present also in their technical proposal, for the overall works, the following elements:

- Detail organigram of team composition, that will be involved in these works, with description of task and responsibility for each key position (the contractor is free to choose the number of technicians/employees required for these works but have to justify it);
- The provisional detailed calendar intervention (and estimate of number of man-days) for each proposed key positions (team leader, zone supervisor, field team leaders, nursery managers, etc.)
- The CV for each of the above mention key positions (meeting the minimum required profile), accompanied by certificate of good completion;
- Explanation on the Participatory community approach they will apply for afforestation on private lands;
- Details on Method of recruitment and method of payment of man-powers and employees, indicating minimum salary scale they will apply.

5.7. Minimum required profile for Company/firm & for the proposed Expert/ key staff

5.7.1. Company profile:

The company should have following profile:

- Having at least 5 years' experience in performing forest restoration and tree planting activities
- Having at least 1 similar (in scope and nature) experience proved by duly signed certificate of completion in last 8 years in completing services of works in forest restoration and tree planting with at least 600.000 seedlings planted in one year,

5.7.2. Key expert profiles per lot:

The key experts required for this mission per lot are:

- **1 team leader per lot**, coordinating all the overall operations, ensuring quality control and reporting in due time, etc.
- **1 zone supervisor per lot**: forest technician, available during the entire period of field activities, being the technical focal point located in the field ensuring activities coordination, on-job training, technical advice, supervision, control, etc.).

For the remaining staff, the bidder is free to choose the number of technicians/employees required for these works and will justify it in the methodological note.

The minimum profile required for the team leader per lot is:

Mandatory:	
Master's degree in forestry/ agroforestry / agronomy/ environment management, or equivalent	
Minimum Experience in forestry or agroforestry	5 years

Minimum Experience in afforestation works in Rwanda or similar ecological country	At least 1 similar experience in the last 5 years
Reporting and communication skills in English	Excellent
As an asset:	
Experience in works with local communities of farmers/ private land owners	
Experience in anti-erosive ditches establishment	
Experience in fire-breaks establishment	
Good mastering of Kinyarwanda	
Good oral communication skill in French	

The profile required for Zone Supervisor per lot is:

Mandatory:	
National technicians	
At least A2 degree in forestry/agroforestry/environmental science or equivalent with at least 5 years' experience in forestry domain;	5 years' experience (for A2 Holder)
Experience in leading afforestation works in Rwanda	At least 1 similar experience in last 5 years
Reporting and communication skills in English	At least Good
Communication skills in Kinyarwanda	Excellent
As an asset:	
Experience in works with local communities of farmers/ private land owners	
Experience in anti-erosive ditches establishment	
Experience in fire-breaks establishment	
Good oral communication skill in French	

Annex 1: METHODOLOGICAL NOTE **ON THE ASSESSEMENT/ACCEPTANCE OF THE FOREST PLANTATION** **ACTIVITIES**

Note: team responsible for acceptance of works on the field are composed by:

- One representative of the RFA;
- One representative of the District;
- One representative of the Enabel TREPA project;
- One representative of the company in charge of works;
- One representative of private beneficiaries (PFMU cooperative)

Works should be realized according technical prescription set in following documents: (first) the tendered terms of reference, (secondly) the contractor technical proposal and

(thirdly) any complementary standard work reference documentation agreed by the Contracting Authority.

1. Assessment/Acceptance of SEEDLINGS PRODUCTION

In order to allow the Forest Service Provider (FSP) (contracted for planting activities) to benefit of an intermediate instalment payment and to ensure properly the remuneration in due time of man-power, it is highly recommended to proceed with an acceptance of seedlings production in nursery.

It is expected that the Forest Service Provider (FSP) must produce sufficient good quality seedlings equal to the number of surviving tree to be planted defined in the contract, plus a provision of 30 % of extra additional seedlings in order to allow:

- Best seedling selection in nursery;
- Compensation of seedling mortality during first planting operations of October-December (transport, transplanting, first weeks growing);
- beating-up (feeling-up) after first dry season (February-April) just after first planting, in order to compensate mortality due to dry season, eventual grazing, termites, etc.

The exact percentage of additional seedlings to be produced (30%) must be defined in the contract and will depend of resistance of the concerned species and of the local context and consecutive risk of seedling mortality (intensity of dry/rain season, soil quality, existence of termites, risk of grazing, risk of fire, etc.).

Each year, nursery must be prepared from March and sawing must be ensure in due time (depending of the species) in order to have tree seedling ready to be planted in the field in October. So the acceptance of seedlings production must be organized at the latest end of September.

In order to allow an easy evaluation of the quantity/quality of plants, the contractor should ensure the systematic arrangement of the seedlings in the nursery flat bands:

- by species;
- separate in different flat bands:
 - good seedling ready for planting: acceptable seedlings should be placed one next to each other in rows and complete columns (do not mix pots of different sizes), in order to facilitate counting;
 - good seedling but not yet ready (still growing phase)
 - and seedlings in bad condition;

Likely to be considered as acceptable to be planted seedlings must be:

- ✓ Young enough potential for a better rate of recovery and rapid growth;
- ✓ Having a height greater than or equal to 15 cm and not exceeding 30 cm or 2 times the length of the pot (shoot/root ratio: 2:1);
- ✓ Healthy, vigorous (freshness), not puny, well balanced with stem non-bifurcated and injury free;
- ✓ The treatment of hardening-off ("endurcissement") has been applied (reduction of shading, gradually exposed to the Sun, cut of the roots protruding pots).

For each species, for each nursery, the total number of seedlings is counted and completed in a table as follows:

Nursery name:			Date of counting on field:			
Species	Foreseen nbr of seedlings QP Inclu 30% extra (A)	Healthy acceptable nbr of seedlings trulu produced, ht>15cm QR (B)	Healthy non acceptable seedlings, ht<15cm	Nbr of Bad quality seedlings	% seedling production success rate (=B/A*100)	Recommendation
Assessment team:						
Name			Institution / Position		Signatory	

2. Assessment/Acceptance of SITES PREPARATION & MAINTENANCE

Some site preparation activities (stump extracting, stump debarking, anti-erosive ditches digging, fire break) are very costly and often should be made in the field long time before final acceptance of plantation activities. So, in order to allow the FSP to benefit of an intermediate instalment payment and to properly ensure the remuneration in due time of man-power, it is highly recommended to proceed with a separate acceptance of these costly site preparation activities.

Stump extracting: it concerns roots extracting/ total removal.

Stump Debarking: it concerns removal of bark on every stumps, to be repeated until the stump died.

For each site, estimation can be done as follow:

- full counting if the site is small and/or the number of stump is not so high (<1000)
- by sampling if the number of stump is higher:
 - o plots of 30mx30m must be distributed randomly across the area (**A in ha**) of the site in the way to be the most representative;
 - o the number of plots (**np**) must be estimated in order to sample at least 10 % of total number of stumps;
 - o number of stump truly and adequately treated must be counted in every plot (**ns**);

- total number of stumps really and adequately treated for the entire site (QR in nbr of stump) is estimated as follow:

$$QR = A \times (\text{sum of ns}) / (np \times 0.09)$$

Creation of anti-erosive ditches: ditches must be systematically arranged in staggered (quinconce) according to the level curves of standard sizes (40-50 cm wide, 60 cm deep and 2.5 m to 4 m in length).

Creation of fire-break: fire-break should be established as set in ToRs (10m wide cleared, all grass and inflammable biomass removed). The disposition and space between firebreak will depend on each site context and will be discussed and agreed with Contracting Authority before establishment. The estimation/measurement of quantity of firebreak (in m) truly and adequately realized in the field (QR) will be done according best method agreed by assessment team in the field in function of site and works configuration.

For each site and for each above type of preparation works, QR is compare with QP (quantity planned for the site) in order to determine the final quantity that has to be considered as accepted (**QRA**):

- If $QR > QP$, **QRA = QP**;
- If $QR < QP$, **QRA = QR**.

The following table can be completed:

Site name	Stump extraction (number of stumps)			Debarking (number of stumps)			Ditches (m)			Fire Breaks (m)		
	QP	QR	QRA	QP	QR	QRA	QP	QR	QRA	QP	QR	QRA

For the **maintenance activities (wedding/cleaning)**, the planned quantity QP (in ha) to be maintained is estimated for each site in the ASP. The quantity truly and adequately realized in the field (**QR** in ha) is estimated for each site as follow: **QRA = R% x QP**, where R% is the percentage of the to be wed area of the site that has been really wed and cleaned. Depending of site and works configuration, assessment team will decide on the best method to estimate R%. R% cannot exceed 100%.

For the **additional guarding** of already planted accepted site, the planned quantity of guarding (expressed in ha-months) is provided for each site in the ASP by multiplying the area of the planted site per the quantity of month of guarding period (**QP = Area x nbr months**). For each site, the quantity realized and accepted (QRA) will be calculated as follow:

QRA = A x RM x S%, where:

- **A** = area of the planted site in ha;
- **RM** = the number of months of the real guarding period (from final acceptance of planting to final acceptance of this additional guarding);
- **S%** = the surviving rate in % estimated as follow:
 - If by quick assessment the site is still in good condition, with apparent

good tree density and did not present significant sign of seedlings removal or mortality, then $S = 100 \%$;

- If by quick assessment signs of seedlings removal or mortality are saw or suspected, then the assessment team has to proceed with the estimation of real quantity of surviving seedlings existing at the time of additional guarding acceptance, using the same sampling method than the one used for final acceptance of seedling plantation (see below). Then $S\% = \text{QSG}/\text{QSP} * 100$, where QSG is the quantity of surviving seedlings at the time of this additional guarding acceptance and QSP is the quantity of surviving seedlings at the time of final planting acceptance.

The following table can be completed:

Site name	Harvesting (m3)			Maintenance (ha)			Guarding (ha-month)			
	QP	R%	QRA	QP	R%	QRA	QP	RM	S%	QRA

3. Assessment/Acceptance of PLANTING ACTIVITIES

The acceptance of the planting activities should be done at two strategic times:

- Intermediate acceptance In December/January, just after the first planting of October- December
- Final acceptance In April-May, just after beating-up of February-April.

The acceptance must be done accordingly to the afforestation data collection procedures defined in the FMES (Forestry sector Monitoring and Evaluation System), that has been newly established (2015) by the RWFA/DFNC. The objective of acceptance is to get the accurate estimation of the total number of surviving seedlings (**QR**) properly planted (in accordance with technical prescription), in every afforested/reforested site.

The minimum dimensions of the planting holes will be 40 cm x 40 cm x 40 cm.

3.1. **Assessment/Acceptance of plantation in polygon shape area**

The acceptance of plantation (full site plantation or agroforestry) made in a site having a polygon shape (not recti-linear shape such as for road/river side plantation) must be made accordingly to the methodology describe in the procedure n° “16B AFFORESTED AREA – POLYGON SHAPE” of the FMES, as presented below.

FMES PROCEDURE 16B -AFFORESTED AREA – POLYGON SHAPE

Last update: 11/01/2016

2. COLLECTION PROCEDURE

This procedure concern data field measurement/collection for afforested sites having a polygon shape.

1.1. Sampling design

For next measurements to be realized in the field (see points below) it is recommend to use random sampling method. For this issue, sample points (sample unit) must be randomly distributed in the entire area of the site, covering the site in order to be representative. Each sample point consists in the starting point of measurements to be done in each sample unit.

If the map of the site can be available before these measurement operations by sampling, the GIS officer can ensure from the office the random distribution of the sample points in the map, and provide for each point the GPS coordinates. In the field, the operator can find every sample point using GPS to start measurements.

If the map is not available before measurement, the DFO will choose directly in the field the location of every sample point, keeping in mind that these samples must be representative of the site.

- Number of sample points (**NSP**) to be sampled:
 - For site where area is < 0.5 ha: between 1 and 2 sample points
 - For site where 0.5 ha < area < 2 ha: between 3 and 10 sample points
 - For site where area is > 2 ha: between 10 and 20 sample points
 - For site where area is >20 ha: 30 to 50

1.2. Estimation of plantation tree density (Td)

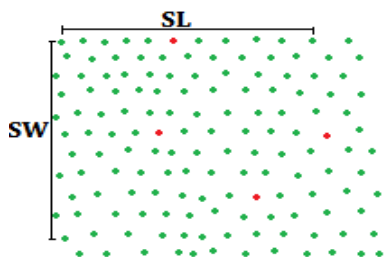
1.2.1. **SWm** and **SLm** measurements by sampling

- **SWm** and **SLm** measurements In forest plantation (full plantation)

From each sample point:

- Measurement of the total distance between the 1st and the 11th theoretical trees in the same line, equivalent to 10 tree spacing on the line (**SL, [meter]**).
- Measurement of the total distance between the 1st and the 11th theoretical parallel lines, equivalent to 10 spacing between adjacent lines (**SW, [meter]**)
- Ensure reporting of the measured data from each sample point in the table of the annex3 of the **Template PROC16b&41**

Note: Died trees or no planted holes must be taken into account. Here below is a representation of a sample (green: living plants; red : missing/dead plants).



1.2.2. Theoretical plantation tree density (Td) calculation (nbr of theoretical plants or holes/ha) :

After **SW** and **SL** measurement in every sample point, the average of spacing between trees in line (**SLm**, [meter]) and the average of spacing between trees of parallel lines (**SWm**, [meter]) are calculated (see formula in annex 3 of the Template PROC16b&41). The plantation tree density (**Td**) is calculated as follows:

$$\text{Td} = 10\,000 / ((\text{SLm}) \times (\text{SWm})) \quad [\text{trees/ha}]$$

1.3. Survival rate (SR) estimation [% of surviving trees /theoretical number of tree considering plantation tree density].

The method consists in **sampling of approximately 10% of theoretical number of trees to be planted** and recording their state/condition (good condition/dead/missing/poor condition). For this issue, each sample points defined in chapter 1.2 will be used as the starting point of each sample unit.

Npt = Number of theoretical trees/holes to be sampled per sample point (per sample unit)

$$\text{NbST} = \text{ThNT} / (10 \times \text{NSP}) \quad \text{with:}$$

- ThNT= Total theoretical number of trees to be planted in the total area of the site
- NSP= number of sample points to be done in the site (see 1.2)

From each sample point, every theoretical tree or hole (from 1 to Npt) is controlled, following 2-4 lines in a given direction.

For each sample point, the total number of theoretical plants (**Npt**) actually controlled is recorded as well as the total number of surviving plants (**Nps**). The measurement should be made by using a mechanical counter in order to facilitate the recordings. Recorded data from each sample point must be registered in the paper form (see annex 3 of the template PROC16b&41).

The average survival rate is calculated as follows: **SR = Nps/Npt x 100 [%]**

1.4. Species proportion (Sp%) estimation

In case of plantation of 2 different species in separated but joined areas, each area containing one only specie must be considered and recorded as one separate site. GPS recording must be done separately for each of the area (GPS waypoint names must made clear distinction between 2 joined areas) and data must be recorded in a separate field form. In this case species proportion for the only species of each site is

100%.

In case of plantation of 2 or 3 species randomly mixed in the same area, it is not possible to separate area covered by each species. In this case the proportion of each species must be estimated. For this issue, data in the field must be recorded as follow:

- for full site plantations and radical terraces: during the process of survival rate estimation (see 1.4), when team are registering the total number of surviving plant in the field (Nps), this data is recorded making distinction between the 2-3 concerned species (see paper form in annex 3 of the template PROC16b&41).

Based on these records, **species proportion (Sp%)** can be calculated as follow:

- $Sp\% \text{ for species 1} = Nsp1/Nps * 100$
- $Sp\% \text{ for species 2} = Nsp2/Nps * 100$
- $Sp\% \text{ for species 3} = Nsp3/Nps * 100$

With Nsp1= number for sp1, Nsp2= number for sp2.....etc.

ATTENTION:

- Only following species are registered in the system: Eucalyptus spp, Pinus spp, Callitris, Cypress, Grevillea, Jacaranda, Alnus acuminate, Black wattle, Acacia melanoxylon, Maesopsis, "Mixed"(of species above), or "Others".
- In case of plantation with more than 3 of the species listed above, the 2 first dominant species are registered with their species name in the 2 first registration colons, but the others are gathered and registered as "mixed" in the last 3rd colon.
- In case of plantation with more than 3 species, 1 or 2 listed above and others not listed above, the 1 or 2 listed species are registered with their species name in the 2 first registration colons, but the others are gathered and registered as "other" in the last 3rd colon.

6 Forms

5.8. Identification forms

5.8.1. Natural person

To fill the form, please click here :

[https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:e15a7f59-9a3c-4072-89ac-deb89f513e1c\[lien\]](https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:e15a7f59-9a3c-4072-89ac-deb89f513e1c[lien])

I. PERSONAL DATA			
FAMILY NAME(S)①			
FIRST NAME(S)①			
DATE OF BIRTH			
JJ	MM	YYYY	
PLACE OF BIRTH (CITY, VILLAGE)	COUNTRY	OF	BIRTH
TYPE OF IDENTITY DOCUMENT			
IDENTITY CARD	PASSPORT	DRIVING LICENCE②	OTHER③
ISSUING COUNTRY			
IDENTITY DOCUMENT NUMBER			
PERSONAL IDENTIFICATION NUMBER④			
PERMANENT PRIVATE ADDRESS			
POSTCODE	P.O. BOX	CITY	
REGION ⑤	COUNTRY		
PRIVATE PHONE			
PRIVATE E-MAIL			
II. BUSINESS DATA		If YES, please provide business data and attach copies of official supporting documents	
Do you run your own business without a separate legal personality (e.g. sole traders, self-employed etc.) and you provide as such services to the Commission, other Institutions, Agencies and EU-Bodies ?	BUSINESS (if applicable) NAME VAT NUMBER REGISTRATION NUMBER PLACE OF REGISTRATION CITY COUNTRY		
YES NO			
DATE	SIGNATURE		

① As indicated on the official document.

- ② Accepted only for Great Britain, Ireland, Denmark, Sweden, Finland, Norway, Iceland, Canada, United States and Australia.
- ③ Failing other identity documents: residence permit or diplomatic passport.
- ④ See table with corresponding denominations by country.
- ⑤ To be completed with Region, State or Province by non EU countries only, excluding EFTA and candidate countries.

5.8.2. Legal person entity private/public legal body

To fill the form, please click here:

<https://acrobat.adobe.com/link/track?uri=urn:aaid:scds:US:911554eb-a56f-4ee0-bb21-8926a3cbd6dd>

OFFICIAL		NAME		②
ABREVIATION				
MAIN REGISTRATION NUMBER③				
SECONDARY (if applicable)		REGISTRATION		NUMBER
PLACE OF MAIN REGISTRATION		CITY	COUNTRY	
DATE	OF	DD	MAIN MM	REGISTRATION YYYY
VAT NUMBER				
OFFICIAL		ADDRESS		
POSTCODE	P.O. BOX	CITY		
COUNTRY	PHONE			
E-MAIL				
DATE		STAMP		
SIGNATURE OF AUTHORISED REPRESENTATIVE				

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

5.8.3. Public law entity

To fill the form, please click here:

[https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:911554eb-a56f-4ee0-bb21-8926a3cbd6dd\[lien\]](https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:911554eb-a56f-4ee0-bb21-8926a3cbd6dd[lien])

OFFICIAL				NAME^①	
BUSINESS (if different)				NAME	
ABBREVIATION					
LEGAL FORM					
ORGANISATION TYPE		FOR PROFIT			
		NOT FOR PROFIT			
		NGO^②		YES	NO
MAIN REGISTRATION NUMBER^③					
SECONDARY (if applicable)		REGISTRATION			NUMBER
PLACE OF MAIN REGISTRATION		CITY		COUNTRY	
DATE	OF	MAIN			REGISTRATION
		DD	MM	YYYY	
VAT NUMBER					
ADDRESS HEAD OFFICE					OF
POSTCODE		P.O. BOX		CITY	
COUNTRY		PHONE			
E-MAIL					
DATE		STAMP			
SIGNATURE OF AUTHORISED REPRESENTATIVE					

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

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

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

5.8.4. Subcontractors

Name and legal form	Address / Registered office	Object

5.9. Tender Forms – prices (per LOT)

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

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.

The value added tax is dealt with on a separate line in the summary bill of quantities or the inventory, to be added to the tender's value.

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

	UNIT	Unit Cost (Euros), VAT excluded	Unit Cost (Euros), VAT included	Presume Quantity 4 years	Presume total cost Euros (VAT included)
Item 1: Site preparation and tree planting	Set of 2000 seedlings			1200	
Item 2: Uprooting (stump extraction)	Set of 10 stumps			1200	
Item 3: Stump debarking	Set of 100 stumps			4800	
Item 4: Anti-erosive ditches	Section of 50 m			1800	
Item 5: firebreak	section of 50 m			480	
Item 6 : Weeding-maintenance	Ha			1200	

EUR ...

VAT percentage:%.

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

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

In annex, the tenderer attachesto his tender.

Certified true and sincere,

Handwritten original signature(s):

5.10. Financial identification

<u>BANKING DETAILS</u>	
ACCOUNT NAME ¹⁵	
IBAN/ACCOUNT NUMBER ¹⁶	
CURRENCY	
BIC/SWIFT CODE	
BANK NAME	

ADDRESS OF BANK BRANCH		
STREET & NUMBER		
TOWN/CITY	POST CODE	
COUNTRY		

<u>ACCOUNT HOLDER'S DATA</u>		
AS DECLARED TO THE BANK		
ACCOUNT HOLDER		
STREET & NUMBER		
TOWN/CITY	POST CODE	
COUNTRY		

SIGNATURE OF ACCOUNT HOLDER (Obligatory)	DATE (Obligatory)

¹⁵ This does not refer to the type of account. The account name is usually the one of the account holder. However, the account holder may have chosen a different name to its bank account.

¹⁶ Fill in the IBAN Code (International Bank Account Number) if it exists in the country where your bank is established.

5.11. Declaration on honour – exclusion criteria

Hereby, I / we, acting as legal representative(s) of above-mentioned tenderer, declare that the tenderer does not find himself in one of the following situations :

- 1) The tenderer or one of its ‘directors[1]’ was found guilty following a conviction by final judgement for one of the following offences:
 - 1° involvement in a criminal organisation
 - 2° corruption
 - 3° fraud
 - 4° terrorist offences, offences linked related to terrorist activities or incitement to commit such offence, collusion or attempt to commit such an offence
 - 5° money laundering or terrorist financing
 - 6° child labour and other trafficking in human beings
 - 7° employment of foreign citizens under illegal status
 - 8° creating a shell company.
- 2) The counterparty 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 counterparty 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 he is late in paying outstanding tax or social charges.
- 3) The counterparty who 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) When Enabel can demonstrate by any appropriate means that the counterparty or any of its directors has committed serious professional misconduct which calls into question his integrity.

Are also considered such serious professional misconduct:

- a. A breach of Enabel’s Policy regarding sexual exploitation and abuse – June 2019
- b. A breach of Enabel’s Policy regarding fraud and corruption risk management – June 2019
- c. A breach of a regulatory provision in applicable local legislation regarding sexual harassment in the workplace
- d. The counterparty 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
- e. Where Enabel has sufficient plausible evidence to conclude that the counterparty has committed acts, entered into agreements or entered into arrangements to distort competition

The presence of this counterparty on one of Enabel’s exclusion lists as a result of such an act/agreement/arrangement is considered to be sufficiently plausible an element.

- 5) When a conflict of interest cannot be remedied by other, less intrusive measures;
- 6) When significant or persistent failures by the counterparty were detected during the execution of an essential obligation incumbent on him in the framework of a previous contract, a previous contract placed with another contracting authority, when these failures have given rise to measures as of right, damages or another comparable sanction.

Also failures to respect applicable obligations regarding environmental, social and labour rights, national law, labour agreements or international provisions on environmental, social and labour rights are considered 'significant'.

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

- 7) Restrictive measures have been taken vis-à-vis the counterparty 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.

The counterparty or one of its directors are on the lists of persons, groups or entities submitted by the United Nations, the European Union and Belgium for 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_en

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_generales/tr%C3%A9sorerie/contr%C3%B4le-des-instruments-1-2

- 8) If Enabel executes a project for another funder or donor, other grounds for exclusion may be added.

Certified true and sincere,

Handwritten original signature(s):

5.12. Integrity statement for the tenderers

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 and anti-corruption included in the Tender Documents (see 1.7.), as well as *Enabel's Policy regarding sexual exploitation and abuse* of June 2019 and *Enabel's Policy regarding fraud and corruption risk management* of June 2019 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 public 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 be considered as a serious professional misconduct which will lead to the exclusion of the contractor from this and other public contracts for Enabel.
- 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 control, on paperwork or on site, which it considers necessary to collect evidence to support the presumption of unusual commercial expenditure.

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:

.....

Place, date

5.13. Selection file – economic and financial capacity

Economic and financial capacity – See Art. 67 of the Royal Decree of 18 April 2017	
In one of the past three financial years the tenderer must have achieved a total turnover of at least the value of the Lot (s) on which the bid (s) was submitted. He shall include in his tender a statement on turnover during the three past financial 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 National Bank of Belgium, in a full or shortened accounting scheme in which the option of turnover achieved has been filled out).	The statement on the total turnovers achieved during the past three financial years The minimum required turnover is “the value of the Lot(s) on which the bid(s) was submitted
The tenderer must also provide evidence of his financial solvability. This financial capacity will be evaluated on the basis of the approved Financial Statements of the last three years. 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. 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.	Provisions of the Financial Statements documents approved by the competent organ/Authority, for the last 3 years

5.14. Selection file – technical aptitude

Technical aptitude: See Art. 68 of the Royal Decree of 18.04.2017	
The tenderer shall dispose of staff that can perform the contract properly. The tenderer shall include in his tender an overview of staff that will be used for the performance of the contract. In this document the tenderer lists the staff members' degrees as well as their professional qualifications and experience.	PROVIDE an overview of staff that will be used for the performance of the contract with their documents (CV, Certificates proving their qualification and previous experience). (Please refer to the minimum requirement- for the key staff in the ToRs – point 5.8.2)
The tenderer must present his previous experience with the following minimum requirements. • Having at least 5 years' experience in performing forest restoration and tree planting activities • Having at least 1 similar (in scope and nature) experience proved by duly signed certificate of completion in last 5 years in completing services of works in forest restoration and tree planting • with at least 600.000 seedlings planted in one year The tenderer includes in his tender a list with the main services that have been delivered over the past three years including the amount and date as well as the public or private recipients. Service delivery is demonstrated by certificates drawn up or approved by the competent authority or, where the client was a private purchaser, by certification of the private purchaser, or by default, by a simple statement of the service provider.	• Having at least 5 years' experience in performing forest restoration and tree planting activities • Having at least 1 similar (in scope and nature) experience proved by duly signed certificate of completion in last 5 years in completing services of works in forest restoration and tree planting • with at least 600.000 seedlings planted in one year (Refer to point 5.8.1 of the TD – minimum required profile for the company/firm)
An indication of the proportion of the contract which the service provider intends possibly to subcontract.	If sub-contracting is applicable – to be indicated
<<where the services to be supplied are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authorities or on their behalf by a competent official body of the country in which the service provider is established, subject to that body's agreement, on the technical capacity of the service provider and, where necessary, on the means of study and research which are available to it and the quality control measures it will operate;	
<<an indication of the proportion of the contract which the service provider intends possibly to subcontract.	

5.15. Overview of the documents to be submitted – to be completed exhaustively

6.1 Power of attorney

The Bidder shall include in his tender the **power of attorney empowering the person signing the bid** on behalf of the company, joint venture or consortium.

In case of a **consortium** or a **temporary association**, the joint bid must specify the role of each member of the consortium. A group leader must be designated, and the power of attorney must be completed accordingly.

5.16. Incorporation certificate

The Bidder shall include in his tender the **incorporation certificate/trading license**¹⁷ from the competent authority.

5.17. VAT Registration certificate

5.18. Non-Bankruptcy certificate

5.19. Certification of clearance with regards to the payments of social security contributions

At the latest before award, the Bidder must provide a certification¹⁷ from the competent authority stating that he is **in order with its obligations with regards to the payments of social security contributions** that apply by law in the country of establishment. The Bidder registered in Belgium must be in order for the **3rd term of 2022**

5.20. Certification of clearance with regards to the payments of applicable taxes

At the latest before award, the bidder must provide a **recent certification**¹⁷ (up to 6 months) from the competent authority stating that the bidder is **in order with the payment of applicable taxes** that apply by law in the country of establishment.

5.21. List of the similar assignments

Bidder must provide in his bid the list of the **main similar services (min. 1) performed in the last 8 years (in Business development services /solutions targeting micro and small enterprises)** with at least one with 600.000 seedlings planted in one year, including the amount involved and the relevant dates, and the public or private bodies on behalf of which they were carried out showing that the Bidder has experience in delivering those supplies.

And at least 1 track record of working experience in Rwanda

Description of the main similar services performed	Delivery places	Amount involved	Relevant dates in the last 8 years	Name of the Client

¹⁷ In case of a consortium or a temporary association, the required certificates must be submitted for all members of the consortium.

5.22. Certificates of completion

For each of the listed projects (minimum 1), the Bidder must provide in his offer **the related certificates of good completion** (statement or certificate without major reservation) approved by the entity which awarded the contract.

5.23. Annexes

5.23.1. GDPR clauses (in case of contractor who will process personal data)

This annex is to be used if the tenderer is a sub-contractor in the sens of GDPR regulations, a natural or legal entity that processes personal data on behalf of Enabel.

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. AGREEMENT on the Processing of personal data (GDPR)

BETWEEN:

The contracting authority: Enabel, the Belgian development agency, public-law company with social purposes, with its registered office at Rue Haute 147, 1000 Brussels, Belgium (enterprise number 0264.814.354, RPM/RPR Brussels).

Represented by: [.....],

Hereinafter referred to as 'the contracting authority' or 'personal data controller'.

AND:

The contractor: [.....], with its registered office at [.....], and which is registered with the Crossroad Bank for Enterprises under number [.....],

Represented by: [.....],
in accordance with Article [.....] of the statutes of the company,

Hereinafter referred to as 'the contractor' or 'processor'.

The contracting authority and the contractor are referred to separately as a 'Party' and are jointly referred to as the 'Parties'.

Preamble

By decision of the [.....], the contractor was awarded a public contract in accordance with Tender Specifications no. [.....].

The needs of this public contract involve the processing of personal data within the meaning of the Belgian law on the protection of natural persons with regard to the processing of personal data and of European Regulation 2016/679 (GDPR).

The purpose of this amendment is to comply with the requirements of Article 28 of the GDPR.

The public contract conditions are not otherwise derogated, particularly in terms of the time frame and value of the public contract awarded.

Article 1: Definitions

- 1.1. Terms such as ‘process’/‘processing’, ‘personal data,’ ‘personal data controller’, ‘processor’ and ‘personal data breach’ must be interpreted in light of data protection legislation. ‘Data protection legislation’ refers to any regulation of the European Union and/or its Member States, including, without being limited to laws, directives and regulations for the protection of personal data, in particular European Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and 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.

Article 2: Subject-matter of the Agreement

- 2.1. During performance of the public contract, the contracting authority entrusts the contractor with the processing of personal data. The contractor undertakes to process personal data in the name of and on behalf of the contracting authority.
- 2.2. The contractor performs the public contract in accordance with the provisions of this Agreement.
- 2.3. Both Parties explicitly undertake to comply with the provisions of applicable data protection laws and to do nothing or fail to cause the other Party to violate relevant and applicable data protection laws.
- 2.4. The elements included in the processing are further included and clarified in Annex 1 of this Agreement. The following are particularly included in said Annex:
 - a) Personal data processing activities;
 - b) The categories of personal data processed;
 - c) The categories of stakeholders to which the personal data of the contracting authority’s relate;
 - d) The purpose of the processing.
- 2.5. Only the personal data mentioned in Annex 1 of this Agreement may and must be processed by the contractor. In addition, personal data will only be processed in light of the purposes set out by the Parties in Annex 1 of this Agreement.
- 2.6. Both Parties undertake to take appropriate measures to ensure that personal data are not misused or acquired by an unauthorized third party.
- 2.7. In the event of a conflict between the provisions of this Agreement and those of the Tender Specifications, the provisions of this Agreement will prevail.

Article 3: Instructions of the contracting authority

- 3.1. The contractor undertakes to process personal data only on the documented instructions of the contracting authority and in accordance with agreed processing activities as defined in Annex 1 of this Agreement. The contractor will not process the personal data subject to this Agreement in a manner inconsistent with the instructions and provisions of this Agreement.
- 3.2. The contractor undertakes to process personal data in accordance with the documented instructions of the personal data controller, including for transfers of personal data to third countries or to international organisations, unless it is required under EU or Member State law. In this case, the processor informs the personal data controller of this legal obligation prior to processing unless the relevant law prohibits such information for important public interest reasons.
- 3.3. The contracting authority may unilaterally make limited changes to the instructions. The contracting authority undertakes to consult with the contractor before making significant changes to the instructions. Changes affecting the content of this Agreement must be agreed by the Parties.
- 3.4. The contractor undertakes to immediately notify the contracting authority if it considers that the instructions received (in whole or in part) constitute a violation of the Regulations or other provisions of EU law or Member State data protection law.

Article 4: Assistance to the contracting authority

- 4.1. **Legal conformity** The contractor assists the contracting authority in accordance with its obligations under the Regulation, taking into account the nature of the processing and the information available to the contractor.
- 4.2. **Personal data breach** In the case of a personal data breach in relation to processing under this Agreement, the contractor must without undue delay after having become aware of it notify the personal data breach to the contracting authority.

At the very least, this notification should include the following information:

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

The contractor is required to remedy the negative consequences of a data breach as quickly as possible or to minimise other potential consequences. The contractor will immediately implement all remedies requested by the contracting authority or the relevant authorities to remedy any data breach or other non-compliance and/or mitigate the risks associated with these events. The contractor will have to cooperate at all times with the contracting authority

and observe its instructions in order to enable it to carry out an appropriate investigation into the data breach, formulate a correct response and then take appropriate action.

- 4.3. **Data protection impact assessment** Where applicable and where requested by the contracting authority, the contractor assists the contracting authority in carrying out the data protection impact assessment in accordance with Article 35 of the Regulation.

Article 5: Obligations of the contractor/processor

- 5.1. The contractor will deal with all reasonable requests from the contracting authority for the processing of personal data related to this Agreement, immediately or within a reasonable period of time (based on the legal obligations set out in the Regulation) and in an appropriate manner.
- 5.2. The contractor guarantees that there is no obligation arising from any applicable legislation that makes it impossible to comply with the obligations of this Agreement.
- 5.3. The contractor maintains complete documentation, in accordance with the law or regulations applicable to the processing of personal data carried out for the contracting authority. In particular, the contractor must keep a record of all categories of processing activities carried out on behalf of the contracting authority in accordance with Article 30 of the GDPR.
- 5.4. The contractor undertakes not to process personal data for any purpose other than the performance of the public contract and the fulfilment of the responsibilities of this Agreement in accordance with the documented instructions of the contracting authority; if the contractor, for whatever reason, cannot comply with this requirement, he will notify the contracting authority without delay.
- 5.5. The contractor will immediately inform the contracting authority, if he believes that an instruction by the contracting authority violates applicable data protection legislation.
- 5.6. The contractor will ensure that personal data are disclosed only to those who need it to perform the public contract in accordance with the principle of proportionality and the principle of "need to know" (i.e. data are provided only to persons who need personal data to perform the public contract as determined in the relevant Tender Specifications and this Agreement).
- 5.7. The contractor undertakes not to disclose personal data to persons other than contracting authority personnel who require personal data to comply with the obligations of this Agreement and ensures that identified staff have accepted appropriate legal and contractual confidentiality obligations.
- 5.8. If the contractor is in breach of this public contract and the GDPR by determining the purposes and means of processing, he should be considered a personal data controller in the context of such processing.

Article 6: Obligations of the contracting authority/controller

- 6.1. The contracting authority will provide all necessary assistance and cooperate in good faith with the contractor to ensure that any processing of personal data is in accordance with the requirements of the Regulation, including the principles relating to the processing of personal data.
- 6.2. The contracting authority will agree with the contractor on the appropriate channels of communication to ensure that instructions, guidance and other communications

regarding personal data that are processed by the contractor on behalf of the contracting authority are well received between the Parties. The contracting authority notifies the contractor of the identity of the single point of contact of the awarding authority that the contractor is required to contact under this Agreement. Unwritten instructions (e.g. oral instructions by telephone or in person) must always be confirmed in writing.

The point of contact of the contracting authority is: dpo@enabel.be

- 6.3. The contracting authority guarantees that it will not issue any instructions, guidance or requests to the contractor who does not comply with the provisions of the Regulation.
- 6.4. The contracting authority provides the necessary assistance to the contractor and/or his or her subsequent subcontractors to comply with a request, order, investigation or subpoena addressed to the contractor or his subsequent subcontractor(s) by a competent government or judicial authority.
- 6.5. The contracting authority guarantees that it will not instruct, guide or ask the contractor to compel the contractor and/or his subsequent subcontractor(s) to violate any obligation imposed by the applicable mandatory national legislation to which the contractor and/or his subcontractor(s) are subject.
- 6.6. The contracting authority ensures that it will cooperate in good faith with the contractor in order to mitigate the negative effects of a security incident affecting the personal data processed by the contractor and/or his subsequent contractor(s) on behalf of the contracting authority.

Article 7: Use of subsequent subcontractors/processors

- 7.1. In accordance with the Tender Specifications, the contractor may use the capacity of a third party to tender for the public contract, which constitutes further subcontracting within the meaning of Article 28 of the GDPR¹⁸.
- 7.2. The contractor may engage another subcontractor (hereinafter, the ‘subsequent subcontractor’) for carrying out specific processing activities. In this case, he informs the contracting authority in advance and in writing of any change considered with regards to adding or replacing other subcontractors. This information must clearly indicate the processing activities that are subcontracted, the identity and contact details of the subcontractor and the dates of the subcontracting contract. The contracting authority disposes of a minimum period of [...] from the date of reception of said information to voice any objections. Such subsequent subcontracting may only be carried out if the contracting authority has not voiced any objection during said period.
- 7.3. The contractor will use only subsequent subcontractors who provide sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of this public contract, of Belgian legislation and of the GPDR and assures the rights of the data subject concerned.
- 7.4. When the contractor uses another subcontractor to carry out specific processing activities in the name of the contracting authority, obligations in any respect identical

¹⁸ To be adapted in accordance with Tender Specifications.

to those provided for in this Agreement will have to be imposed on this subsequent subcontractor; the latter in particular must provide the same sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the Regulation.

Agreements with the subsequent subcontractor are written down. Upon request, the contractor will be required to provide the contracting authority with a copy of this contract or these contracts.

- 7.5. Where the subsequent subcontractor fails to fulfil his data protection obligations, the contractor shall remain fully liable to the contracting authority for the performance of the subsequent subcontractor's obligations.
- 7.6. The contractor must pass on the specific objectives and instructions issued by the contracting authority in a precise and timely manner to the subsequent subcontractor(s) when and where these objectives and instructions relate to the part of the processing in which the subsequent subcontractor(s) is or are involved.

Article 8: Rights of the data subject concerned

- 8.1. Where possible, taking into account the nature of the processing and through appropriate technical and organisational measures, the contractor undertakes to assist the contracting authority in fulfilling its obligation to respond to requests of exercise of data subject rights in accordance with Chapter III of the Regulation.
- 8.2. With respect to any request from the data subjects concerned in connection with their rights regarding the processing of personal data concerning them by the contracting authority and/or his subsequent subcontractor(s), the following conditions apply:
 - The contractor will immediately inform the contracting authority of any request made by a data subject concerned relating to personal data that the contractor and/or his subsequent subcontractor(s) are processing on behalf of the contracting authority;
 - The contractor will comply promptly and require his subsequent subcontractor(s) to promptly comply with any request from the contracting authority to comply with a request by the data subject concerned to exercise one of their rights;
 - The contractor will ensure that he and his subsequent subcontractor(s) have the technical and organisational capabilities to block access to personal data and to physically destroy the data without the possibility of recovery if and when such a request is made by the contracting authority. Without prejudice to the above, the contractor retains the opportunity to consider whether the request of the contracting authority does not constitute a violation of the Regulation.
- 8.3. The contractor must, at the request of the contracting authority, provide all necessary assistance and provide all necessary information for the contracting authority to defend its interests in any proceeding - judicial, arbitral or otherwise - brought against the contracting authority or its staff for any violation of the fundamental rights to privacy and the protection of the personal data of the data subjects concerned.

Article 9: Security measures

- 9.1. Throughout the duration of this Agreement, the contractor must have appropriate technical and organisational measures in place to ensure that the processing meets the requirements of the Regulation and ensures the protection of the rights of the data subject concerned.
- 9.2. The contractor undertakes to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, in accordance with Article 32 of the Regulation.
- 9.3. In assessing the appropriate level of security account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed.
- 9.4. The parties recognise that security requirements are continually evolving and that effective security requires frequent assessment and regular improvement of outdated security measures. The contractor will therefore have to continually assess and strengthen, complete or improve the measures implemented with a view to the continued compliance of his obligations.
- 9.5. The contractor provides the contracting authority with a complete and clear description, in a transparent and understandable manner, of how he handles its personal data (Annex 3).
- 9.6. In the event that the contractor changes the security measures applied, the contractor undertakes to notify so immediately to the contracting authority.
- 9.7. The contracting authority reserves the right to suspend and/or terminate the public contract, where the contractor can no longer provide appropriate technical and organisational measures regarding processing risks.

Article 10: Audit

- 10.1. The contractor acknowledges that the contracting authority is under the supervision of one Supervisory Authority or several Supervisory Authorities. The contractor acknowledges that the contracting authority and any Supervisory Authority concerned will have the right to conduct an audit at any time, and at least during the contracting authority's regular office hours, during the term of this Agreement in order to assess whether the contractor complies with the Regulation and the provisions of this Agreement. The contractor provides the necessary cooperation.
- 10.2. This auditing right may not be used more than once in a calendar year, unless the contracting authority and/or the Supervisory Authority has reasonable grounds to assume that the contractor is acting in conflict with this Agreement and/or the provisions of the Regulation. The restriction of the right of control does not apply to the Supervisory Authority.
- 10.3. At the written request of the contracting authority, the contractor will provide the contracting authority or the relevant Supervisory Authority with access to the relevant parts of the contractor's administration and to all places and information of interest to the contractor (as well as, applicable to those of its agents, subsidiaries and subsequent subcontractors) to determine whether the contractor complies with the Regulation and provisions of this Agreement. At the request of the contractor, the parties concerned agree to a confidentiality agreement.

- 10.4. The contracting authority must take all appropriate measures to minimise any obstruction caused by the audit on the day-to-day functioning of the contractor or the services performed by the contractor.
- 10.5. If there is agreement between the contractor and the contracting authority on a significant breach in compliance with the Regulation and/or the Agreement, as reported in the audit, the contractor will remedy this breach as soon as possible. Parties may agree to put in place a plan, including a timetable for implementing the plan, to address the gaps revealed by the audit.
- 10.6. The contracting authority will cover the costs of any audit carried out within the meaning of this article. Without prejudice to the above, the contractor will bear the costs of his employees. However, where the audit has revealed that the contractor is clearly not in compliance with the Regulation and/or provisions of this Agreement, the contractor bears the costs of said audit. The costs of re-compliance with the Regulation and/or the provisions of this Agreement are borne by the contractor.

Article 11: Transfers to third parties

- 11.1. The transmission of personal data to third parties in any way is in principle prohibited, unless required by law or if the contractor has obtained explicit authorisation from the contracting authority to do so.
- 11.2. In the event that a legal obligation applies to the transfer of personal data, which is the subject of this Agreement, to third parties, the contractor shall inform the contracting authority before the transfer.

Article 12: Transfer outside the EEA

- 12.1. The contractor will process personal data from the contracting authority only in a location in the EEA.
- 12.2. The contractor shall not process or transfer the personal data of the contracting authority, or process them himself or through third parties, outside the European Union, unless after express and explicit prior authorisation from the contracting authority.

The contractor will have to ensure that no access to the personal data of the contracting authority by a third party in any way leads to the transfer of these data outside the European Union.

Article 13: Behaviour towards national government and judicial authorities

- 13.1. The contractor will immediately notify the contracting authority of any request, injunction, investigation or subpoena of a competent national government or judicial authority addressed to the contractor or its subsequent subcontractor(s) that involves the disclosure of personal data processed by the contractor or a subsequent subcontractor for and on behalf of the contracting authority or any data and/or information relating to that processing.

Article 14: Intellectual property rights

- 14.1. All intellectual property rights relating to personal data and databases containing such personal data are reserved for the contracting authority, unless otherwise agreed between the Parties.

Article 15: Confidentiality

- 15.1. The contractor undertakes to guarantee the confidentiality and processing of personal data.
- 15.2. The contractor ensures that employees or subsequent subcontractors authorised to process personal data have committed to conducting the processing confidentially and are also bound by a contractual obligation of confidentiality.

Article 16: Liability

- 16.1. Without prejudice to the public contract, the contractor is only liable for the damage caused by the processing if he has not complied with the obligations of the Regulation specifically for subcontractors or if he acted outside or contrary to the legal instructions of the contracting authority.
- 16.2. The contractor is liable for the payment of administrative fines resulting from a violation of the Regulation.
- 16.3. The contractor will be exempt from liability only if he can prove that he is not responsible for the event that caused a violation of the Regulation.
- 16.4. If it appears that the contracting authority and the contractor are responsible for the damage caused by the processing of personal data, both Parties will be liable and will pay damages, in accordance with their individual share of liability for the damage caused by the processing.

Article 17: End of contract

- 17.1. This Agreement applies as long as the contractor processes personal data in the name and on behalf of the contracting authority under this public contract. If the public contract ends, this Agreement will also end.
- 17.2. In the event of a serious breach of this Agreement or the applicable provisions of the Regulation, the contracting authority may order the contractor to terminate the processing of personal data with immediate effect.
- 17.3. In the event of termination of the Agreement, or if the personal data are no longer relevant to the provision of services, the contractor will, by decision of the contracting authority, remove all personal data or return them to the contracting authority and delete personal data and other copies. The contractor will provide proof in writing, unless applicable legislation requires the storage of personal data. Personal data will be returned to the contracting authority free of charge, unless otherwise agreed upon.

Article 18: Mediation and competence

- 18.1. The contractor agrees that if the data subject concerned alleges claims for damages under this Agreement, the contractor will accept the decision of the data subject concerned:
 - To refer the dispute to mediation with an independent person
 - To refer the dispute to the courts of the place of establishment of the contracting authority
- 18.2. The Parties agree that the choice made by the data subject concerned will not infringe on the substantial or procedural rights of the data subject concerned to seek redress in accordance with other provisions of applicable national or international law.

- 19.1. Any dispute between the Parties over the terms of this Agreement must be brought before the appropriate courts, as determined in the main agreement.

Thus, agreed on the [.....] and established in two copies of which each Party acknowledges having received a signed copy.

FOR THE CONTRACTING AUTHORITY

FOR THE CONTRACTOR

Name: [.....]

Name: [.....]

Function: [.....]

Function: [.....]

Annex 1: Description of personal data processing activities by the contractor¹⁹

1. Processing activities carried out by the subcontractor

Subject matter of processing:

Nature of processing: *[For instance, organisation, consultation, storage and collection, etc.]*

Duration of the processing:

Purpose of the processing:

2. The categories of personal data that the subcontractor will process on behalf of the controller (where applicable (* indicate as appropriate)).

- ☐ Personal identification data (e.g. name, address and telephone, etc.)
- ☐ Electronic identification data (e.g. e-mail address, ID Facebook, ID Twitter, user names, passwords or other connection data, etc.)
- ☐ Electronic location data (e.g. IP addresses, mobile phone, GPS, connection points, etc.)
- ☐ Biometric identification data (e.g. fingerprints, iris scan, etc.)

¹⁹ To be filled out by the contracting authority and the contractor.

- ☐ Copies of identity documents
- ☐ Financial identification data (e.g. account numbers (bank), credit card numbers, salary and payment information, etc.)
- ☐ Personal characteristics (e.g. gender, age, date of birth, marital status, nationality, etc.)
- ☐ Physical data (e.g. height, weight, etc.)
- ☐ Habits of life
- ☐ Psychological data (e.g. personality, character, etc.)
- ☐ Family composition
- ☐ Leisure and interests
- ☐ Memberships
- ☐ Consumption habits
- ☐ Education and training
- ☐ Career and occupation (e.g. function, title, etc.)
- ☐ Images/photos
- ☐ Sound recordings
- ☐ National Social Security Register Number/Identification Number
- ☐ Details of the contract (e.g. contractual relationship, order history, order numbers, invoicing and payment, etc.)
- ☐ Other categories of data, <Describe>

3. The special categories of personal data that the subcontractor will process on behalf of the controller (where applicable) (indicate as appropriate)

- ☐ Special categories of personal data (Art. 9 GDPR)
 - Data revealing racial or ethnic origin
 - Data concerning sexual orientation
 - Political opinions
 - Trade union membership
 - Religious or philosophical beliefs
- ☐ Data concerning health (Art. 9 DGPR)
 - Physical health
 - Mental health
 - Risk situations and risk behaviours
 - Genetic data

- Healthcare data
- ☐ Judicial data (Article 10 of the general data protection law)
 - Suspicions and indictments
 - Convictions and sentences
 - Judicial measures
 - Administrative sanctions
 - DNA data

4. The categories of data subjects concerned (*indicate as appropriate)

- ☐ (Potential)/(former) clients

If yes, <describe>

- ☐ Applicants and (former) employees, interns, etc.

If yes, <describe>

- ☐ (Potential)/(former) suppliers

If yes, <describe>

- ☐ (Potential)/(former) (business) partners

If yes, <describe>

- ☐ Other category

If yes, <describe>

5. Extent of processing (number of records/number of data subject concerned)

<Describe>

6. Period of use and period for which the (various categories of) personal data are stored:

<Describe>

7. Processing place

<Describe>

If processing is outside the EEA, please specify the appropriate guarantees that are put in place

<Describe>

8. Use of subsequent subcontractors/processors:

<Describe>

9. Contact details of the responsible contact person at the controller's

Name:	
Title:	
Telephone number:	
E-mail:	
Name: ²⁰	
Title:	
Telephone number:	
E-mail:	

10. Contact details of the responsible contact person at the processor's:

Name:	
Title:	
Telephone number:	
E-mail:	
Name:	
Title:	
Telephone number:	
E-mail:	

²⁰ Identify the person responsible of the project/department/other as appropriate

Annexe 2: Security of processing²¹

The controller should use only processors providing sufficient guarantees, in particular in terms of expert knowledge, reliability and resources, to implement technical and organisational measures which will meet the requirements of this Regulation (in particular Article 32 of the GDPR), including for the security of processing.²²

In order to ensure a level of security adapted to the risk, given the state of knowledge and the nature, scope, context and purposes of the processing, as well as the risks, of varying degree of probability and severity, of processing for the rights and freedoms of natural persons, the contractor implements appropriate technical and organisational measures.

These security measures comprise the following, among others:

- [Describe]

²¹ To be filled out by contractor

²² Consideration 81 of the GDPR