



## **Tender Specifications**

**RWA20001-10001 of November 2023**

**Public service contract to  
“PROVIDE BUSINESS DEVELOPMENT  
SERVICES SUPPORT TO SMEs IN THE  
FISHERIES, AQUACULTURE AND  
HORTICULTURE VALUE CHAINS”.**

**Open procedure**

**Navision code: RWA2000111**

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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 documents do not derogate from Art. 25-33 of the General Implementing Rules (see point 4.7 “Performance guarantee”).

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

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

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

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

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

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

- In the field of Human Rights: the United Nations' Universal Declaration of Human Rights (1948) as well as the 8 basic conventions of the International Labour Organization<sup>4</sup> on Freedom of Association (C. n°87), on the Right to Organise and Collective Bargaining (C. n°98), on Forced Labour (C. n°29 and 105), on Equal Remuneration and on Discrimination in Respect of Employment (C. n°100 and 111), on Minimum Age for Admission to Employment (C. n°138), on the Prohibition of the Worst Forms of Child Labour (C. n°182);
- In the field of environmental protection: The Climate Change Framework Convention of Paris, 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 procurement<sup>5</sup>;
- The Law of 17 June 2013 on justifications, notification and legal remedies for public contracts and certain contracts for works, supplies and services<sup>6</sup>;
- The Royal Decree of 18 April 2017 on the awarding of public contracts in the classic sectors<sup>7</sup>;
- The Royal Decree of 14 January 2013 establishing the General Implementing Rules for public procurement and for concessions for public works<sup>8</sup>;
- 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;

<sup>4</sup> <http://www.ilo.org/ilolex/french/convdsp1.htm>.

<sup>5</sup> Belgian Official Gazette 14 July 2016.

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

<sup>7</sup> Belgian Official Gazette 9 May 2017.

<sup>8</sup> Belgian Official Gazette 27 June 2017.

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

## 1.5 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**

1.7.1. 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 public service contract.

### 2.2 Subject-matter of the public contract

This public service contract consists in the performance of the assignment to **“Provide Business Development Services Support to SMEs in the fisheries , aquaculture and horticulture value chains\_ RWA20001-10001”**, in conformity with the conditions of these Tender Specifications.

### 2.3 Lots<sup>9</sup>

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

The contract has **1 lot** which is indivisible. A tender for part of a lot is inadmissible.

### 2.4 Items

This contract consists of One item (1) with tasks described in ToRs below (See also point 5 of the tender specification):

These tasks are pooled and form one single procurement contract.

### 2.5 Duration of the public contract<sup>10</sup>

Fixed term

The contract starts upon award notification and lasts for 18 months (one and a half year).

### 2.6 Variants

Required and authorised variants may not be introduced.

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 are determined in the ToRs (see point 5 of the tender specifications – maximum person days)

<sup>9</sup> 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.

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

## 3 Procedures for 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](http://www.enabel.be)) from **8<sup>th</sup> November 2023 to Thursday 21<sup>st</sup> December/2023.**

**This contract is also published on the Rwandan local newspaper – New times & Job In Rwanda.**

### 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](mailto: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 **3<sup>rd</sup>/12/2023** inclusive (18 days before the deadline for submission of bids), tenderers may ask questions about these Tender Specifications and the contract.

Questions will be in writing to

Ms Françoise MUSHIMIYIMANA, ([francoise.mushimiyimana@enabel.be](mailto:francoise.mushimiyimana@enabel.be)),

with copy to

Augustin SEBAKAMBWE ([augustin.sebakambwe@enabel.be](mailto:augustin.sebakambwe@enabel.be))

and

Evariste SIBOMANA, ([evariste.sibomana@enabel.be](mailto: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 as from **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](http://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](http://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.

The validity of the tender will be negotiated, if the deadline stated above is overrun.

### 3.4.3 Determination of prices

All prices given in the tender form must obligatorily be quoted in EUROS all taxes inclusive. **(Including VAT and the applicable WHT<sup>11,12</sup>).**

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 value-added tax<sup>13</sup>**

<sup>11</sup> Refer to article 63 of the law N° 027/2022 of 20/10/2022, establishing taxes on income in Rwanda (a tax of fifteen percent (15%) shall be withheld on public tenders if the recipient is not registered with the Tax Administration or is registered but does not have his/her previous income tax declaration)

<sup>12</sup> Mind double taxation – refer to the RRA Link:

[https://www.rra.gov.rw/en/publications?tx\\_news\\_pi1%5Baction%5D=detail&tx\\_news\\_pi1%5Bcontroller%5D=News&tx\\_news\\_pi1%5Bnews%5D=1105&cHash=f71e9bc7ede752e64679f8c39e73871c](https://www.rra.gov.rw/en/publications?tx_news_pi1%5Baction%5D=detail&tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Bnews%5D=1105&cHash=f71e9bc7ede752e64679f8c39e73871c)

<sup>13</sup> For international bidders, the reverse VAT of 18% will be applicable, to be paid by the Client (art.14 of the LAW N° 049/2023 OF 05/09/2023)

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 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, Transport outside Kigali and the applicable **Withholding taxes**<sup>14,15</sup>. Where applicable, the measures imposed by occupational safety and worker health legislation; Customs and excise duties for equipment and products used;
- 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 / contract.

The tenderer submits his tender as follows:

- **The tender will be drawn up in 3 copies, 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 **RWA20001-10001\_Opening of tenders on 21<sup>st</sup> December 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, 6<sup>th</sup> 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.

<sup>14</sup> Refer to article 63 of the law N° 027/2022 of 20/10/2022, establishing taxes on income in Rwanda (a tax of fifteen percent (15%) shall be withheld on public tenders if the recipient is not registered with the Tax Administration or is registered but does not have his/her previous income tax declaration)

<sup>15</sup> Mind double taxation – refer to the RRA Link:

[https://www.rra.gov.rw/en/publications?tx\\_news\\_pi1%5Baction%5D=detail&tx\\_news\\_pi1%5Bcontroller%5D=News&tx\\_news\\_pi1%5Bnews%5D=1105&cHash=f71e9bc7ede752e64679f8c39e73871c](https://www.rra.gov.rw/en/publications?tx_news_pi1%5Baction%5D=detail&tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Bnews%5D=1105&cHash=f71e9bc7ede752e64679f8c39e73871c)

- 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 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 accepted<sup>16</sup>.

### **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 **21<sup>st</sup> December 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 **21<sup>st</sup> December 2023 at 10:30 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.

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Art. 83 of the Royal Decree Award



**By submitting this tender and by signing the Declaration on honour – exclusion criteria, which is annexed to this tender document (6.4), the tenderer certifies that he is not in any of the 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 **IN THE SELECTION FILE**, 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 as well as 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

##### *Article 81-82 of the Law of 17 June 2016*

The contracting authority will choose the regular tender that it finds being most economically advantageous, taking account of the following criteria:

#### **a) Technical Proposal -60%**

The tenderer presents the detailed methodology to perform the requested services showing the suitability with Terms of Reference and comments made on it, activity schedule, staff schedule and work organization between team members based on the instructions given in the Terms of Reference. They are subject to evaluation according to the following sub-criteria:

1.	<ul style="list-style-type: none"> <li>i. Detailed Methodology including the details on how all activities and sub-activities will be performed, <b>(20 Points)</b></li> <li>ii. understanding of Tor's; overall strategy for the implementation of the contract, and possible comments on the ToRs, <b>(15 points)</b></li> <li>iii. Risk analysis and related mitigation measures <b>(5points)</b></li> </ul>	<b>40 points</b>
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2.	i. Relevant and well detailed work plan & timetable of activities/ sub-activity for the whole contract duration ( <b>10 Points</b> ) ii. Relevant work distribution between the team members with reference to the maximum expert days ( <b>10 Points</b> )	<b>20 points</b>
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### **b) Financial proposal (40%)**

With regards to the 'price' criterion, the following formula will be used:

$$\text{Points tender A} = \frac{\text{amount of lowest tender} * 40}{\text{Amount of tender A}}$$

#### **3.4.7.5 Final score**

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

#### **3.4.7.6 Awarding the public contract**

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

The contract will be awarded to the tenderer(s) who has/have submitted the most economically advantageous tender.

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, 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/or 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;
- if any, minutes of the information session and/or clarifications and/or the addendum,
- 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 documents 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. Augustin SEBEKAMBWE, NTA Private Sector Development Expert, Tel: (+250) 788358091, E-mail: [augustin.sebakambwe@enabel.be](mailto:augustin.sebakambwe@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/her, 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 19. Filling out and signing this annex is therefore a condition of regularity of the tender.**

#### **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 meeting the requirements of the law on the statute and control of credit institutions (**BANK GUARANTEE**).

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](https://finances.belgium.be/sites/default/files/01_marche_public.pdf) (PDF, 1.34 Mo), and forward it by e-mail to [info.cdcdck@minfin.fed.be](mailto:info.cdcdck@minfin.fed.be)

- 2° in the case of public funds, by depositing such funds, for the account of the Deposit and Consignment Office, with the State Cashier at the head office of the National Bank in Brussels or at one of its provincial agencies or with a public institution with an equivalent function
- 3° in the case of a joint surety, by deposit via an institution that lawfully carries out this activity of a deed of joint surety with the Deposit and Consignment Office or with a public institution with an equivalent function
- 4° in the case of a guaranty, by the deed of undertaking of the credit institution.

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 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)**

The services must be performed within 18 months (1.5 years) 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.

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

The services will be performed in Rwanda.

##### **4.12.3 Evaluation of the services performed.**

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

When the services have been performed, the quality and conformity of the services shall be evaluated. A report of this evaluation shall be drawn up. The original copy of this report will be sent to the contractor. Any services that have not been performed correctly or in conformity shall be started again.

#### **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 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.

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 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 acceptance costs if any.

### **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. BOSMAN, Gerrit  
Project Manager \_ Value Chain Development  
Belgian development agency  
KN 67 Street, plot N° 10  
SORAS Towers, Wing A, 6th Floor.  
Opposite St Michel Catholic Church  
B.P. 6089 KIVUVU  
KIGALI- RWANDA**

Only service 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 any other documents that may be required.

When the procurement documents do not provide for any separate debt claim, the invoice will constitute the debt claim.

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: **“Provide Business Development Services Support to SMEs in the fisheries , aquaculture and horticulture value chains\_ RWA20001-10001”.**
- the reference of the tender documents: **« RWA20001-10001 »**
- the Navision code and the lot number: **“RWA2000111”.**
- the name of the Managing Official: **“Augustin SEBAKAMBWE”.**

Payment will be made in instalments (progress payment) as follows:

<b>Deliverable N°</b>	<b>Deliverable description and report</b>	<b>Payment Instalment</b>
1	<b>Upon approval and Acceptance inception report</b> that includes: <ul style="list-style-type: none"> <li>- The detailed workplan, methodology and deliverable highlights, the report will indicate timelines for each step of the assignment and</li> <li>- Comprehensive list of beneficiaries to be supported by the BDS program.</li> <li>- Monthly objectives, deliverables, targets, and deadlines developed to guide regular performance assessment and evaluation</li> </ul>	Install 1: 10% experts' costs
2	<b>upon submission and approval of the BDS needs assessment report based on inputs</b> from Enabel team and other stakeholders	Install 2: 20% experts' costs + reimbursable up to date (if any)
3	<b>Upon submission and approval of Training report</b>	Install 3: 20% experts' costs + reimbursable up to date (if any)
4	<b>upon submission and approval of the Report on coaching and after care support.</b>	Install 4: 20% experts' costs + reimbursable up to date (if any)

<b>Deliverable N°</b>	<b>Deliverable description and report</b>	<b>Payment Instalment</b>
5	<b>Upon submission and approval of the draft report</b>	Install 5: 20% experts' costs + reimbursable up to date (if any)
6	<b>Upon submission and approval of comprehensive final report and upon approval of short video about success story of impact of training/coaching in a company(ies) – development of script (shooting will be organized by the service provider in consultation with the client.</b>	Install 6 and last: 10% experts' costs+ reimbursable up to date (if any)

#### **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

## 5 Terms of reference

### **CONSULTANCY SERVICE TO PROVIDE BUSINESS DEVELOPMENT SERVICES SUPPORT TO SMEs IN THE FISHERIES, AQUACULTURE AND HORTICULTURE VALUE CHAINS**

#### 5.1. Background and context

In the Rwanda Vision 2050, agriculture for wealth is one of 5 key pillars. The National Strategy for Transformation (NST1 2017-2024) incorporates 3 key pillars of transformation, including Economic Transformation towards various expected outcomes: decent jobs creation, poverty reduction, export promotion and trade expansion.

With the adoption of the 4th Strategic Plan for Agriculture Transformation (PSTA IV - 2018 to 2024), the agricultural sector is progressively shifting its strategic orientation towards the “food system approach”, with a focus on “diversified higher value agricultural products (horticulture, vegetable, poultry, pork, fisheries)”. The Strategic Plan for the Transformation of Agriculture emphasizes a stronger role of the private sector, including farmers, with the government becoming a market enabler rather than a market actor. Yet, it is clear that the aquaculture sector is still in its early development stages with very low production levels. In 2016, FAO estimated that the aquaculture in Rwanda produced a total 1,580 metric tons (MT) but this estimate is considered unreliable since it does only account for pond farms 10,000m<sup>2</sup> and cages above 100m<sup>3</sup>. The sector is reportedly dominated by smallholders operating extensive to semi-intensive pond production systems but there seems to be an increasing number of cage producers. Most of the farmers still import their feed from abroad and availability and access to the quality feed at a reasonable cost remains one of the biggest challenges. For the horticulture sector, there is much progress done although there are persisting issues that the sector is still facing including: pests and diseases, erratic rainfalls, low productivity, low technology and expertise. Current post-harvest losses amount to  $\pm 35\%$ ; limited ability to respond to new market requirements (quantity demands with reliable consistency, food safety, and compliance to Global GAP certification). By addressing these key challenges and constraints, the program aims to enhance sustainable productivity, profitability, and competitiveness of smallholder producers and SMEs in these sectors. To achieve this, there is a need to design an intervention that aims to support SMEs involved both sectors to run their farming as enterprises enabling them to exploit domestic, regional market opportunities. SMEs are a key engine of economic growth and poverty reduction providing goods and services to the poor and underserved markets, as well as critical suppliers to corporates in value chains. However, gaps and deficiencies in the economic structure influence both formal and informal SMEs' capacity to grow and their potential to further contribute to decent job creation. Thus, the speed and quality at which new enterprises are being created needs to be accelerated, while strengthening the overall ecosystem supporting SMEs in order to target the creation of a significantly higher number of decent jobs while at the same time supporting existing SME to grow. In this light, this intervention intends to professionalize SMEs involved in the both aquaculture and horticulture value chain the way they run their business through hiring a specialized business development service provider to support them on BDS services including but not limited to financial management, business planning, marketing, standards, bookkeeping as well as market linkages and facilitation to access markets and help ease access to finance.

## 5.2. Objectives of the Call for Proposals

The general objective is provide tailored business development services support to 60 selected SMEs/ companies in the selected value chains.

The business development services to be offered shall be based on SMEs' demand derived from gaps/needs identified in their business operations. During interactive sessions with business owners, any other business support that will be deemed necessary by the service provider will be documented and provided. A thorough a need assessment will be conducted for each selected SME.

The specific objectives of this assignment are:

- i. To develop selection criteria and support on the selection of 60 SMEs in close collaboration with Kwiha Project team , and key partners including RAB and NAEB teams
- ii. Launch a call for Expression of Interest for existing SMEs (Small and Medium Enterprises) active in the aquaculture, fishery or horticultural sectors to benefit from technical assistance, business development services and access to financial services
- iii. To strengthen the capacity of selected SMES in the targeted value chain on developing bankable business plans and financial management.
- iv. To accompany selected SMEs (who would have completed the training) to access funds through newly and existing established financial tools from financial service providers.

### Outputs or expected results are:

By the end of this project, the service provider is expected to meet the following outputs:

1. At least 60 SMES/companies and or cooperatives involved into the targeted value chains are selected, enrolled in well-tailored business training programs, supported to generate business ideas and supported to develop bankable business projects.
2. At least 60 SMEs/ companies are accompanied to receive capital through existing and new initiatives to expand or improve their businesses.
3. At least 60 beneficiaries receive after care business support services including mentoring and coaching, market networks, and others similar requirements to make them sustainable.
4. Trainings and after care support through providing tailored solution-oriented business support services to the selected SMEs/companies, including mentorship, coaching and follow up in practical business planning and management, marketing, and after care services for a maturity duration suitable for being left independent, and awareness raising in relation with the objective(iv) specified above.

## 5.3. Scope of the planned activities under this BDS Program

Under this BDS program 60 SMEs / Companies in the targeted value chains will be supported on the following activities:

- i) In collaboration with key partners and project staff select and recruit eligible SMEs / Companies to be supported under the Business development services program,
- ii) Providing tailored solution-oriented business support services to the selected SMEs, including but not limited to financial management , mentorship, coaching and follow up in practical



- business planning and management, market research, marketing, taxation, gender inclusion and decent work and after care services for a maturity duration suitable for being left independent;
- iii) Enabling the selected SMEs to access the finance required for business investment and growth needs from new and existing financial tools on the Rwandan financial markets.
- iv) Enabling supported SMEs to access to local, regional and national market opportunities for their products and services
- v) Enable supported enterprises to create and strengthen linkages with local and national business support institutions through learning exchanges.
- vi) Conducting monitoring and evaluating of beneficiaries. This is expected to happen throughout the duration of the intervention. This includes development of data collection methods, reporting templates, data collection, results monitoring, and reporting and other relevant tasks involves in M&E planning and execution exercises.

Reporting to Enabel under an agreed work plan, the consultant firm will undertake tasks that include, but not limited to the following:

In collaboration with Enabel, NAEB and RAB teams, develop guidelines to identify, select, recruit and group existing entrepreneurs to be supported based on a range of criteria.

Among other considerations, the selection should cater for:

- The need to have minimum 30 % of beneficiaries to be women.
- The need to be registered in RBD/RGB for at least 2 years
- The need to focus on innovative SMEs adding value in the aquaculture, fisheries, and horticulture sectors;
- The need to focus on SMEs that provide decent employment with a focus on sustainability.
- The need to focus on inclusive SMEs with Women and Youth
- The selection of final beneficiaries will be done by the service provider, in consultation with NAEB and RAB and Enabel

### **5.3.1. Initial assessment of the existing entrepreneurs in the targeted value chains**

Upon the completion of the selection processes the successful service provider will conduct a need assessment with the selected SMEs to better understand their specific needs. This will guide the development of the training and coaching sessions and development of training materials. A presentation will be made to Enabel, NAEB and RAB team on findings. The next steps will then be agreed on. This stage will be followed by training and coaching.

Following the business services need assessment exercise conducted with selected SMEs, the following activities will be performed:

- (i) Upon the need assessment exercise, the consultancy firm will develop tailored business development plans for the selected SMEs.
- (ii) Before this session begins, training materials or modules and coaching plan will be developed and shared with Enabel, RAB and NAEB team
- (iii) The successful service provider will be expected to develop training materials and conduct the training accordingly.



- (iv) It is assumed that the service provider is an expert in the field of providing business development services. Hence, the service provider will have existing training materials available for the proposed topics.
- (v) The service provider will contextualize /adjust the training materials for the target group.
- (vi) All training materials to be provided in Kinyarwanda or English as per the preference of the SMEs selected.
- (vii) Trainers and coaches that will interact with SMEs will have to be able to speak Kinyarwanda and English
- (viii) The service provider will deliver the capacity building program according to the agreed capacity building plan

### 5.3.2. Coaching

Coaching will be provided after training in all modules has been completed. The main purpose of the coaching is to support the trainees in practically implementing the training and providing after care support through providing tailored solution-oriented business support services to the selected SMEs, including mentorship, coaching, incubation, and follow up in practical business planning and management, marketing and accompany to access funds through newly and existing established financial tools from financial service providers.

## 5.4. EXPECTED DELIVERABLES FROM THE ASSIGNMENT

Based on the above proposed activities, the table shows expected deliverables to be adjusted accordingly

Deliverables	MAX person days per deliverables
Inception report explaining BDS need assessment for initial meetings with egg collectors, traders and meat processors with recommendations of types of BDS services and products needed by egg collectors, traders and meat processors: 1. The report will also cover a proposal on what methodology will be used for training and coaching. The report will indicate timelines for each step of the assignment and include the methodology of how the selection process will be conducted. The presentation of the findings will be made to the Enabel, RAB and NAEB team	5- man days
2. BDS needs assessment report (the needs assessment and analysis of specific capacity needs of selected or identified SMEs/ companies - the capacity needs assessment should focus on both organizational and individual needs of SMEs/ companies and relevant staff	30-man days
3. Support plan for each company based on needs assessment including proposed training/coaching methodology and category of companies to be supported based on their skills levels on BDS	5- man days
4. Submission of training modules and any other training materials developed based on needs of specific category of SMEs in the selected value chains, training plan. Coaching materials and coaching plan.	10-man days
5. Conduct training to SMEs/ companies (companies to be trained in groups) based on needs similarities	70-man days
6. Submission of Training report describing how the training were conducted	5-man days

7. Conduct coaching to companies as per support plans including development of business plans	140-man days
8. submission of coaching report (for each company) to Enabel, RAB and NAEB	10-man days
9. Submission of draft report	10-man days
10. Finalization and submission of the final report and short video about success story of impact of training/coaching in the SME(s) – development of script (shooting will be organised by service provider in consultation with Enabel, NAEB and RAB))	15-man days
ESTIMATED MAXIMUM PERSON DAYS FOR THE COMPLETION OF THE ASSIGNMENT	300- man days

## 5.5. Duration of the contract

The contract is estimated to last for at least 18 months (one year six months) from the final award of the tender.

## 5.6. INPUTS FROM THE CLIENT (Contracting Authority)

- a) Enabel will share with the services provider the relevant reports for reference (both fisheries, aquaculture, and horticulture value chains analysis reports), this should include but not limited to the list of potential companies to receive BDS program in both value chains. However, the services provider should go further the provided reports and list as they are not exhaustive. As the provided list is not exhaustive, the qualified service provider will conduct further mapping in the selected districts of interventions, based on the selection criteria that will be developed in consultation with Enabel, NAEB and RAB teams to select 60 companies to benefit from the Capacity Building and advisory services, upon approval by the client.
- b) Enabel in coordination with NAEB and RAB will approve the selected companies and provide guidance during the selection processes (for example proposing important companies in the sector that might be forgotten during the mapping);

## 5.7. GEOGRAPHICAL COVERAGE

The intervention is supporting beneficiaries in the selected potential districts of intervention for both aquaculture, fisheries and horticulture value chains as describe in the table below:

Province	Fish	Horticulture
Kigali	Gasabo	Gasabo, Nyarugenge
Southern	Muhanga, Ruhango, Huye, Nyamagabe, Gisagara	Kamonyi, Huye
Western	Rubavu, Rusizi, Rutsiro, Nyamasheke, Karongi	Rubavu, Rusizi, Nyabihu
Northern	Musanze, Burera, Gakenke, Rulindo	Musanze
Eastern	Bugesera, Rwamagana, Kayonza, Gatsibo	Rwamagana, Bugesera Ngoma, Gatsibo,
	<b>Total 23 districts</b>	<b>Total 13</b>

## 5.8. Reporting Modalities

The recruited services provider is accountable and will be supervised by including the submission of progress report to ENABEL designated Contract Manager, who will work in close collaboration with RAB and NAEB at the end of every completed deliverable, to review and approve it. In cases where the required service level do not conform with expected standards from the contracted service provider, the Enabel project intervention manager will inform the service provider and certain instructions to successfully and appropriately accomplish the deliverables, failures of performance will lead to termination of the contract.

## 5.9. Payment modality

The payments will be made in instalments (progress payments):

1. **1st instalment Upon approval of the Inception report** 10% of the expert fees will be paid to allow the service provider to organize the work  
The remaining payment (90%) will be made in different instalments, following the approval of the key deliverables (related reports to be submitted and approved)
2. **2nd instalment** of 20% of the expert fees + reimbursable up to date, **upon submission and approval of the BDS needs assessment report.**
3. **The 3rd instalment** of 20% of the expert fees + reimbursable up to date, **upon submission and approval of Training report.**
4. **The 4th instalment** of 20% of the expert fees + reimbursable up to date, **upon submission and approval of the Report on coaching and after care support**
5. **The 5th instalment** of 20% of the expert fees + reimbursable up to date, **upon submission and approval of the draft report.**
6. **The 6th and last instalment** of 10% of the expert fees + reimbursable up to date, **after the submission and approval of comprehensive final report and upon approval of short video about success story of impact of training/coaching in a company(ies) – development of script (shooting will be organized by the service provider in consultation with the client**

## 5.10. Required Profile: Minimum Requirement of selection stage.

### 5.10.1. The business consultancy firm should have the following minimum profile and experiences:

- Having business development services as core business is a must (with a legal document to prove this)
- At least five (5) years of professional experiences of providing successful business development services /solutions targeting small and medium enterprises (SMEs),
- At least two (2) certificates of satisfactory performance for at least 2 similar assignments (Providing Business development services /solutions targeting small and medium enterprises (SMEs) of similar magnitude),
- Proven experience in designing training and coaching materials, with at least 1 training and coaching material for each field.
- Experience in the East African region will be an added advantage.

### 5.10.2. Key Team members' minimum required profile (to be used at the selection stage)

#### Composition of the Key consultancy team members:

1. Team Leader/ Business Development Expert
2. Financial Management Expert.
3. Business development plan Expert
4. Marketing Expert
5. Food quality expert
6. Decent work Expert

#### 1. The Team Leader/ Business Development Expert

The role of the team leader is to coordinate the services requested, to conduct the general management of the assignment, take part in the capacity needs assessment and drawing up support plan per company, supporting other team members, ensure quality of all trainings and coaching provided and conduct reporting to Enabel. The following qualification is required:

- At least master's degree in business administration (MBA), Economics or equivalent disciplines
- With **At least 3 years'** practical working experience in training, coaching, capacity building of small and medium enterprises running agribusiness enterprises.
- or at least bachelor's degree in business administration, Economics or equivalent disciplines **with 5 years'** practical working experience in training, coaching, capacity building of small and medium enterprises running agribusiness enterprises.
- Proven experience and skills managing training teams offering business development support services to Small Medium Enterprises, with at least 2 similar assignments; proven by related certificates of good completion or any other relevant document;
- Experience in providing BDS support to SMEs / companies in the East African region is an added value;

#### 2. Financial Management expert

- Having master's degree in business administration, Economics, or equivalent field with at least 3 years' working experience in the fields related to management or entrepreneurship.
- or at least Bachelor's degree in business administration, Economics, or equivalent field with at least 5 years' experience in business management or entrepreneurship,
- At least 2 similar assignments in training and coaching small and medium enterprises (with two similar certificates of good completion to prove it) in Rwanda or in the region;
- Must be Fluent in Kinyarwanda and English (speaking and writing)

#### 3. Business Development plan Expert

- Master's degree in economics, Agribusiness, Business Administration or equivalent field with at least 3 years' practical working experience in training, coaching, capacity building of small and medium companies;
- or a bachelor's degree in economics, Agribusiness, Business Administration or equivalent field with at least 5 years' practical working experience in training, coaching, capacity building of small and medium companies

- Proven experience of supporting SMEs with developing business plans with at least 2 similar assignments in Rwanda or in the region, proven by certificates of good completion ;
- Fluent in Kinyarwanda and English (speaking and writing) is a must.

#### **4. Marketing Expert**

- Master's degree in economics, Marketing, or equivalent field with at least 3 years' practical working experience in training, coaching, capacity building of small and medium companies
- or a bachelor's degree in economics, Marketing, or equivalent field with at least 5 years' practical working experience in training, coaching, capacity building of small and medium companies
- Proven experience of supporting companies with marketing in Rwanda or in the region with at least 2 similar assignments proven by related certificates.
- Fluent in Kinyarwanda and English (speaking and writing) is a must

#### **5. Food Quality Expert**

- Master's degree in food sciences, Food Technology or equivalent field
- With at least 5 years' practical working experience in preparing and conducts fields audit and in providing support with cold storage technologies, packing houses, cooling facilities and in providing food processing technological support
- Proven experience of advising or supporting companies with food safety, quality handling and food processing technologies with at least 2 similar assignments in Rwanda or in the region proven by certificates of good completion.
- Fluent in Kinyarwanda and English (speaking and writing) is a must

#### **6. Decent Work Expert**

- Master's degree in economics, business administration (MBA), or equivalent field;
- With at least three years of professional experience at the national level or in the regional in area of labour rights, working conditions, labour inspection, or with at least Bachelor's degree in business administration, Economics, or equivalent field with at least 5 years' experience preferably with an international organization;
- Proven experience in advising private companies / government or civil society organizations on ILO's constituents on institutional strengthening and on the application of ILO standards of decent work with at least 2 similar assignments in Rwanda or in the region, proven by certificates of good completion.
- Having this above mention experience in Rwanda or in the region is an added value

## 6 Forms

### 6.1 Identification forms

#### 6.1.1. 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])

<b>I. PERSONAL DATA</b>			
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			
<b>II. BUSINESS DATA</b>		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 ?	<b>BUSINESS (if applicable) NAME</b> <b>VAT NUMBER</b> <b>REGISTRATION NUMBER</b> <b>PLACE OF REGISTRATION</b> <b>CITY</b> <b>COUNTRY</b>		
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.

### 6.1.2 Legal person entity private/public legal body

To fill the form, please click here :

[https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:fcf7423f-7287-4cbb-9c7b-645ab60734a3\[lien\]](https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:fcf7423f-7287-4cbb-9c7b-645ab60734a3[lien])

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

- 
- 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.**



### 6.1.3 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])

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

<sup>①</sup> National denomination and its translation in EN or FR if existing.

<sup>②</sup> NGO = Non-Governmental Organisation, to be completed if NFPO is indicated.

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

#### 6.1.4 Subcontractors

Name and legal form	Address / Registered office	Object

## 6.2 Tender Forms – prices

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 inclusive of VAT and other applicable taxes (written in figures):

VAT percentage: 18%.

<b>1. Expert Fees</b>				
	<b>Unit</b>	<b>Unit price* incl. WHT</b>	<b>Quantity (maximum 300 person days)</b>	<b>Total incl. WHT<sup>17,18</sup></b>
Expert 1 (Team Leader/ Business Development Expert -1)	Man-day	€		€
Expert 2 (Financial Management Expert)	Man-day	€		€
Expert 3 (Business development plan Expert)	Man-day	€		€
Expert 4 (Marketing Expert)	Man-day	€		€
Expert 5 (Food quality expert)	Man-day	€		€
Expert 6 (Decent work Expert)		€		€
<b>Sub-total</b>				<b>€</b>
<b>VAT<sup>19</sup> (if applicable)</b>				
<b>2. Reimbursable Fees (if applicable)</b>				
International travel costs		€		€
Visa costs		€		€
<b>GRAND TOTAL (WHT &amp; VAT inclusive)</b>				<b>€</b>

<sup>17</sup> Refer to article 63 of the law N° 027/2022 of 20/10/2022, establishing taxes on income in Rwanda (a tax of fifteen percent (15%) shall be withheld on public tenders if the recipient is not registered with the Tax Administration or is registered but does not have his/her previous income tax declaration)

<sup>18</sup> Mind double taxation for international bidders- see RRA website.

<sup>19</sup> For international bidders, the reverse VAT of 18% will be applicable, to be paid by the Client (art.14 of the LAW N° 049/2023 OF 05/09/2023)

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.

Name and first name: .....

Place and date: .....

Certified true and sincere,

Handwritten original signature (s): .....

### 6.3 Financial identification

<b><u>BANKING DETAILS</u></b>	
ACCOUNT NAME <sup>20</sup>	
IBAN/ACCOUNT NUMBER <sup>21</sup>	
CURRENCY	
BIC/SWIFT CODE	
BANK NAME	

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

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

SIGNATURE OF ACCOUNT HOLDER (Obligatory)	DATE (Obligatory)

<sup>20</sup> 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.

<sup>21</sup> Fill in the IBAN Code (International Bank Account Number) if it exists in the country where your bank is established.

#### 1.4. 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/headquarters/headquarters-homepage/8442/consolidated-list-sanctions_en)

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

For Belgium:

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

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

.....

Place, date

## 6.5 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



## 6.6 Selection file – economic and financial capacity

Economic and financial capacity – See Art. 67 of the Royal Decree of 18 April 2017	
<p>In 3 years past financial years the tenderer must have achieved a total turnover of at least <b>the value of the bid</b>. 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).</p>	<p><b>The statement on the total turnovers achieved during the for the past 3 financial years.</b></p> <p><b>The minimum required turnover is at least “<u>the value of the tender</u>”</b></p>
<p>The tenderer must also provide evidence of his financial solvability.</p> <p>This financial capacity will be evaluated on the basis of <b>the approved Financial Statements</b> of the past 3 financial years.</p> <p>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).</p> <p>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.</p> <p>Non-Belgian enterprises must also attach to their tender <b>their audited and approved Financial Statements for the past 3 financial years or a document listing all assets and liabilities of the enterprise.</b></p> <p>In case the enterprise has not yet published its Financial Statements, <b>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.</b></p>	<p><b>Provisions of the Financial Statements documents approved by the competent organ/Authority, for the past 3 financial years</b></p>

## 6.7 Selection file – technical aptitude

<b>Technical aptitude: See Art. 68 of the Royal Decree of 18.04.2017</b>	
<p>The tenderer shall dispose of staff that can perform the contract properly.</p> <p>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' <b>degrees</b> as well as their <b>professional qualifications</b> and experience and proof of experience.</p>	<p><b>PROVIDE</b> an overview of <b>staff (6 experts) that will be used for the performance of the contract with their documents (CV, Certificates proving their qualification and previous experience).</b></p> <p><b>(Please refer to the minimum requirement- for the key staff in the ToRs – point 5.10.2)</b></p>
<p>The tenderer must present his previous experience with the following minimum requirements.</p> <ul style="list-style-type: none"> <li>• <b>Having business development services as core business is a must (with a legal document to prove this)</b></li> <li>• <b>At least five (5) years of professional experiences of providing successful business development services /solutions targeting small and medium enterprises (SMEs),</b></li> <li>• <b>At least two (2) certificates of satisfactory performance for at least 2 similar assignments (Providing Business development services /solutions targeting small and medium enterprises (SMEs) of similar magnitude),</b></li> <li>• <b>Proven experience in designing training and coaching materials, with at least 1 training and coaching material for each field.</b></li> <li>• <b>Experience in the East African region will be an added advantage.</b></li> </ul> <p><b>The consulting firm should also be able to avail key experts who meet the minimum required profile as describe on section 5.10.2 of the TD.</b></p> <p>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.</p>	<p><b>(Refer to point 5.10.10f the TD – minimum required profile for the consulting firm)</b></p>
<p>An indication of the proportion of the contract which the service provider intends possibly to <b>subcontract</b>.</p>	<p><b>If sub-contracting is applicable – to be indicated</b></p>

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

### 6.8 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 venture agreement of 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.

### 6.9 Criminal record certificate for the person mandated to commit for the firm.

### 6.10 Incorporation certificate

The Bidder shall include in his tender the **incorporation certificate/trading license**<sup>22</sup> from the competent authority.

### 6.11 VAT Registration certificate

### 6.12 Non-Bankruptcy certificate (good standing certificate)

### 6.13 Certification of clearance with regards to the payments of social security contributions

At the latest before award, the Bidder must provide a certification<sup>22</sup> 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 **2<sup>nd</sup> term of 2023**.

### 6.14 Certification of clearance with regards to the payments of applicable taxes

At the latest before award, the bidder must provide a **recent certification**<sup>22</sup> (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.

### 6.15 List of the similar assignments

Bidder must provide in his bid the list of the **main similar services (min. 2) performed in the last 5 years (in Business development services /solutions targeting micro and small enterprises)**, including **the amount** involved and **the relevant dates** (to measure the similarity), and the public or private bodies on behalf of which they were carried out showing that the Bidder has experience in delivering those services.

And at least 1 training and coaching material previously developed (with a sample)

Description of the main similar services performed	Delivery places	Amount involved	Relevant dates in the last 5 years	Name of the Client

<sup>22</sup> In case of a consortium or a temporary association, the required certificates must be submitted for all members of the consortium.


## 6.16 Certificates of completion

For each of the listed projects (minimum 2, 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., and samples

### 6.17 Key experts

The tenderer must complete the summarized table hereunder. He must provide in his offer the CVs of the key experts proposed for implementing this services contract as well as degree certificates. The consultancy team will be comprised of the 6 Key team members. The CV's (qualifications and experience of key experts) have to fulfil the profiles as requested in the ToRs. **Each CV should be signed by the respective expert.**

Name of expert	Proposed position	Years of relevant experience	Education background	Special area of knowledge

### 6.18 Availability of key experts

By submitting this tender, the tenderer explicitly declares that the following key experts are available for the whole period scheduled for his/her input to implement the tasks set out in the Terms of Reference and/or in the methodology. Key experts will not be replaced during the implementation of the contract without prior written approval by the contracting authority.

Key experts	from	to
X		
Name:		
X		
Name:		
X		
Name:		

Name and first name: .....

Duly authorised to sign this tender on behalf of: .....

Place and date: .....

Signature: .....

## 6.19 Annexes

### 6.19.1 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](mailto: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 GDPR<sup>23</sup>.
- 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.

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<sup>23</sup> To be adapted in accordance with Tender Specifications.

- 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 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

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Name: [.....]

Name: [.....]

Function: [.....]

Function: [.....]

## **Annex 1: Description of personal data processing activities by the contractor<sup>24</sup>**

### **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.)

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<sup>24</sup> To be filled out by the contracting authority and the contractor.

- ☐ Electronic location data (e.g. IP addresses, mobile phone, GPS, connection points, etc.)
- ☐ Biometric identification data (e.g. fingerprints, iris scan, etc.)
- ☐ 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: <sup>25</sup>	
Title:	
Telephone number:	
E-mail:	

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

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<sup>25</sup> Identify the person responsible of the project/department/other as appropriate

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

## **Annexe 2: Security of processing<sup>26</sup>**

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.<sup>27</sup>

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]

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<sup>26</sup> To be filled out by contractor

<sup>27</sup> Consideration 81 of the GDPR