



Tender Specifications

Negotiated Procedure without Prior Publication

Legal Advice Procurement Contract

Navision code: BXL-14104

**Deadline for submission of tenders: March 25, 2024,
at 10:00 a.m.**

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1 General provisions

1.1 Derogations from the General Implementing Rules

Chapter ‘*Specific contractual and administrative conditions*’ of these Tender Specifications (CSC/Cahier Spécial des Charges) holds the specific administrative and contractual provisions that apply to this public procurement contract as a derogation of the Royal Decree of 14.01.2013 or as a complement or an elaboration thereof.

These Tender Specifications derogate from Article 19 of the General Implementing Rules – GIR – established in the Royal Decree of 14.01.2013.

1.2 Contracting authority

The contracting authority of this public procurement 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 the 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 procurement contract, Enabel is represented by is represented by Jean Van Wetter, General Director, et Danny Verspreet, Finances & IT Director, who are mandated to represent the company towards third parties.

1.3 Institutional setting of Enabel

The general framework of reference in which Enabel operates is:

- The Belgian Law on Development Cooperation of 19 March 2013¹;
- The Belgian Law of 21 December 1998 establishing the Belgian Technical Cooperation as a public-law company²;
- The Belgian Law of 23 November 2017 changing the name of the Belgian Technical Cooperation and defining the missions and functioning of Enabel, the Belgian development agency, published in the Belgian Official Gazette on 11 December 2017.

1.4 Rules governing the procurement contract

All Belgian regulations on procurement contracts can be consulted on <https://bosa.belgium.be/fr/themes/marches-publics/reglementation>.

These policies can be consulted on Enabel’s website via <https://www.enabel.be/content/integrity-desk>:

- Enabel’s Code of Conduct 2019;
- Enabel’s Policy regarding sexual exploitation and abuse – June 2019;
- Enabel’s Policy regarding fraud and corruption risk management – June 2019.

¹ Belgian Official Gazette of 30 December 1998, of 17 November 2001, of 6 July 2012, of 15 January 2013 and of 26 March 2013.
Belgian Official Gazette of 1 July 1999.

1.5 Processing of personal data by the contracting authority and 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 procurement 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: [GDPR Privacy notice - Enabel - Belgian Development Agency |](#)

1.6 Deontological obligations

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

1.6.2. For the duration of the procurement 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.

1.6.3. 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.

1.6.4. 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.

1.6.5. Moreover, in order to avoid any impression of risk of partiality or connivance in the follow-up and control of the performance of the procurement 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 agents of the contracting authority who are concerned, directly or indirectly, by the follow-up and/or control of the performance of the procurement contract, regardless of their hierarchical rank.

1.6.6. The contractor of the procurement contract 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. Depending on the gravity of the facts observed, the contractor having paid unusual commercial expenditure is liable to have its

contract cancelled or to be permanently excluded from receiving funds.

1.7 Applicable law and competent courts

The procurement 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 procurement 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 procurement contract

2.1 Type of procurement contract

This procurement contract is a services procurement contract.

The specific tasks outlined within this procurement contract are further detailed in Article 2.4 below.

2.2 Subject-matter of the procurement contract

Enabel seeks a legal advisor to facilitate the initiation of its operations in Ukraine, helping with all administrative procedures.

This contract entails the provision of legal services, focusing on public and administrative law, tax and fiscal matters, corporate law, as well as social and labour law.

2.3 Lots

The procurement contract is not divided into lots.

2.4 Items

The expected services encompass advice and support on the following legal aspects (specifically):

- Guidance on the optimal approach and the steps to be taken to start implementing Enabel's projects in Ukraine. This entails advising on the procedure to be followed for signing an 'Establishment Agreement' and drafting its content. It includes proposing various scenarios with an analysis of their implications on different aspects such as timing, the ratification process, considerations regarding immunities and privileges, exemptions, and other relevant factors;
- Advice and support for the official registration of Enabel as an international development agency in Ukraine, enabling the direct implementation of development projects within the country;
- Verification of the prerequisites for benefiting from the various tax exemptions;
- In the administrative area: ensuring the requisite registrations with Ukrainian authorities to establish an office, open bank accounts, and facilitate the importation of goods;
- In the field of human resources: providing guidance on employment contracts, consultancy contracts, and other agreements in accordance with national legislation. This includes verifying formalities, compliance with social laws, meeting Labour Inspectorate requirements, determining the appropriate type of employment contract, and more. Here is an illustrative set of questions to consider:
 - Regarding international staff: Do they require a work permit, authorization, or declaration to work in the country? What practical measures are necessary to ensure that expatriates can work legally in the country? Can expatriates

open a bank account in their own name, and if so, what are the conditions?

- Concerning national staff: What are the main formalities necessary to legally employ locally recruited personnel? How can national staff be most effectively recruited? Are there any recruitment agencies available for this purpose? If so, which ones are recommended? Is it feasible to delegate the administrative aspects of employment contracts (such as calculations, social security contributions, taxes, insurance, etc.) to local organizations specializing in personnel management? If so, which organizations are suitable for this purpose?

These items are pooled and form one single procurement contract. It is not possible to tender for one or several items and the tenderer must submit price quotations for all items of the procurement contract.

2.5 Term of the procurement contract

The procurement contract starts upon award notification and lasts until the complete execution of the services outlined in the procurement contract.

The total duration of the procurement contract cannot exceed four years.

2.6 Variants

There are neither required nor permitted variants.

Free variants are not permitted.

2.7 Option

There are neither required nor permitted options.

Free options are not permitted.

3 Award procedure

3.1 Procedure

In compliance with Article 89, §1, 2° of the Law of June 17, 2016, on public procurement, the procurement contract is awarded through Negotiated Procedure without Prior Publication.

Indeed, the services covered by the contract are legal services, as defined in Annex III of the Law of June 17, 2016, on public procurement. Furthermore, the estimated value of the contract is less than 750,000.00 EUR excluding VAT.

3.2 Semi-official notification

3.2.1 Enabel publication

This procurement contract is published on the Enabel website (<https://www.enabel.be/public-procurement/>) from 14 to 24 March 2024.

3.3 Information

The awarding of this procurement contract is coordinated by Mrs. Marie SCULIER, Procurement Partner, L&A service. Throughout this procedure all contacts between the contracting authority and the (prospective) tenderers about this procurement 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 March 20th inclusive, candidate-tenderers may ask questions about these Tender Specifications and the procurement contract. Questions will be in writing to Mrs Marie SCULIER, marie.sculier@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.

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

The tenderer is supposed to submit his tender after reading and considering any corrections made to the Tender Specifications that are which are brought to its attention via the e-procurement platform.

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.

3.4 Tender

3.4.1 Data to be included in the tender

The tenderer must use the tender form in annexe. 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 French or Dutch or 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
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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 60 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.

This procurement contract is a price-schedule contract, i.e. a contract in which only the unit prices are lump-sum prices, and the quantities are presumed. The price to be paid will be obtained by applying the unit prices mentioned in the inventory to the quantities delivered or executed. The presumed quantities below are given for information purposes only. They do not bind the contracting authority. The awardee cannot claim damages if these quantities are not reached.

Prices are submitted in accordance with Article 32, § 3, of the Royal Decree of April 18, 2017.

Without prejudice to the above provision, all services covered by the contract, further elaborated in Article 2.4, are included in the lump-sum prices. No additional payment will therefore be made by the contracting authority. The prices include all costs, measures, and charges inherent to the execution of the public procurement.

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 all accounting documents and an on-site audit to check the correctness of the indications supplied.

3.4.3.1 Elements included in the price

The service provider is deemed to have included in his prices any charges and taxes generally applied to services, apart from the value-added tax.

The following are included in the prices (in particular):

- The administrative management and secretariat;
- Travel, transportation and insurance;
- Documentation pertaining to the services;
- The delivery of documents or of pieces related to the performance;
- Training required for operation;
- Where applicable, the measures imposed by occupational safety and worker health legislation;
- Customs and excise duties for equipment and products used;
- Acceptance costs.

3.4.4 How to submit tenders?

The tenderer may only submit one tender only per procurement contract.

The tenderer submits his tender via the e-procurement platform <https://www.publicprocurement.be/>, which ensures compliance with the conditions of Article 14, §7 of the Law.

Tenders must be in possession of the contracting authority no later than 10:00 a.m. on Monday, March 25, 2024.

Further information can be obtained on the site <https://www.publicprocurement.be/> or by calling the e-procurement department helpdesk: +32 (0)2 740 80 00.

The tenderer must not sign the tender and its annexes individually when they are uploaded to the electronic platform. These documents are signed **globally** by affixing a **signature to the relevant submission report**. For the signature procedure, please refer to the link: [Entreprises - Signer votre offre/demande de participation \(service-now.com\)](#)

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 accepted³.

3.4.5 Selection of tenderers

3.4.5.1 Exclusion grounds

The mandatory and optional exclusion grounds are given in attachment to these Tender Specifications.

By submitting this tender, 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 exactitude 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.

3.4.5.2 Selection criteria

Moreover, by means of the documents requested in the 'Selection file', the tenderer must prove that he is sufficiently capable, from a technical point of view, to successfully perform this public procurement contract.

3.4.5.3 Overview of the procedure

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

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

In a second phase, the formally and materially regular tenders will be evaluated as to content.

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

negotiate. In this case, the initial tender is the final tender.

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

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

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

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

3.4.5.4 Award criteria

The contracting authority will choose the regular BAFO that it finds to be most advantageous, taking account of the following criterion:

- **First criterion – price (50 points)**

Tenderers shall indicate in the tender form the proposed unit price for:

- First sub-criterion (30 points): unit price proposed for 1 day (8 hours) for a "Senior" lawyer (with more than 15 years of experience)
- Second sub-criterion (20 points): unit price proposed for 1 day (8 hours) for a "Confirmed" lawyer (between 5 and 15 years of experience)

For each sub-criterion, the tender with the lowest unit price will be awarded the maximum points for this criterion.

For the other tenders, the criterion "price" will be evaluated based on the following proportionality rule:

$$B = [P(\text{lowest}) / P(\text{bid})] \times Z$$

Where:

B = the number of points obtained by the tender under consideration;

P(lowest) = the lump-sum price of the lowest regular tender;

P(bid) = the lump-sum price of the tender under consideration;

Z = the weighting for the price criterion.

The contracting authority specifies that it estimates the number of working days required for the execution of the mission to be 45. However, tenderers are required to include in their proposal their own assessment of the number of working days for the mission. This information is solely for providing an indication to the contracting authority about the scope of the mission. However, this assessment will not be considered during the analysis of the offers.

- **Second criterion – The experience and knowledge of the concerned tender in the subject matters of the procurement contract (50 points)**

The tenderer may nominate one or more lawyers, legal experts, or specialists to address the expertise required (as outlined in point 2.4. above).

The proposed experts must be proficient in English, with at least 50% of them also required to be proficient in Ukrainian. Additionally, all experts must be capable of drafting their opinions and reports in English.

All experts must have a minimum of 5 years of experience.

In order to ensure compliance with these minimum requirements and to assess the offers in accordance with the criteria concerning experience and knowledge, the tenderer must include with its tender:

- A description of the team tasked with executing the procurement contract along with the Curriculum Vitae of its members. The tenderer must specify the diplomas held by these personnel, as well as their professional qualifications and experience relevant in the subjects covered by the procurement contract. Furthermore, the tenderer must indicate the proficiency level in the required languages;

- A list of references and training, along with any other documents that may be beneficial in showcasing the tenderer's experience and expertise in the areas covered by the procurement contract (such as attended or conducted training sessions, list of reference cases, etc.).

3.4.5.5 Final score

The scores for the award criteria will be added up. The procurement 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.

3.4.5.6 Awarding the procurement contract

The procurement contract will be awarded to the tenderer who has 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 procurement contract.

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

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 Special contractual provisions

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

These Tender Specifications derogate from Article 19 of the GIR.

4.1 Managing official (Art. 11)

The managing official is Ms. Isabel LASTRA, Manager of Contract Finance & Legal, Isabel.lastra@enabel.be.

Once the procurement 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 procurement 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 procurement contract, including issuing service orders, drawing up reports and states of affairs, approving the services, progress reports and reviews. She may order any modifications to the procurement contract with regards to its subject-matter if 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 procurement 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.

4.2 Confidentiality (art. 18)

The knowledge and information gathered by the tenderer under the framework of this procurement 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 procurement contract. Confidential information covers the very existence of this procurement contract, without this list being limited.

4.3 Protection of personal data

4.3.1 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 regarding the processing of personal data contains stricter provisions, the contracting authority will act in accordance with said law.

4.3.2 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 procurement 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 procurement 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 procurement contract.

For the performance of the procurement 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 agrees, by submitting its tender, to comply with the obligations further detailed in Annex 5.5.

4.4 Intellectual property (Art. 19 to 23)

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

The copyright attached to the "work" created in execution of this procurement contract will be transferred without restriction to the contracting authority upon approval of the contract documents and payment of the related fees. This is a permanent transfer that applies to all modes of exploitation, even those not specified in this specification. The contracting authority may therefore freely exploit, reproduce, and distribute anything related to this contract without payment of any rights.

The contractor may not claim any special remuneration, compensation, or damages due to the use, for the execution of this procurement contract, of copyright, royalties, licenses, patents, etc., as it is assumed to have considered the charges resulting from this use when preparing its offer.

It is further specified that under no circumstances shall the contracting authority be required to pay anything to any third party holding a patent, license, etc., used for the execution of this contract, as the contractor has retained exclusive responsibility for its execution processes. The contracting authority reserves the right to use all documents produced under this contract and to take photos or make copies as the related fees are paid.

The contracting authority reserves the right to use all documents produced under this contract for the development and implementation of subsequent contracts.

4.5 Performance bond (Art. 25 to 33)

For this procurement contract no performance bond is required.

4.6 Conformity of performance (Art. 34)

The works, supplies and 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.

4.7 Changes to the procurement contract (Art. 37 to 38/19)

According to Articles 38 and subsequent provisions of the Royal Decree of January 14, 2013, procurement contracts cannot be modified without initiating a new procurement procedure, except in cases outlined in Articles 38/1 (additional services), 38/2 (unforeseeable circumstances involving the contracting authority), 38/3 (contractor replacement), 38/4 (minor modifications), and 38/5 and 38/6 (non-substantial modifications).

- Furthermore, these Tender Specifications includes the following re-examination clauses:
- Impositions affecting the contract amount (art. 38/8);
- Unforeseeable circumstances detrimental to the contractor (art. 38/9);
- Unforeseeable circumstances favourable to the contractor (art. 38/10);
- Acts of the contracting authority and the awardee (art. 38/11);
- Compensation for suspensions ordered by the contracting authority and incidents during the procedure (art. 38/12).

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

The services will primarily take place in Ukraine, particularly for meetings and

administrative procedures. Partial home-based work may be feasible.

4.9 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.

4.10 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.

4.11 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.

4.12 End of the procurement contract

4.12.1 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 verifications, 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.

4.12.2 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:

Enabel, the Belgian development agency

Rue Haute 147

1000 Brussels

Belgium

To the attention of Mrs. Isabel LASTRA

Manager of Contract Finance & Legal

Isabel.lastra@enabel.be and accounting@enabel.be

Only services that have 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.

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.

For Enabel to obtain the VAT exemption and customs clearance documents as quickly as possible, the original invoice and all ad hoc documents will be transmitted as soon as possible before provisional acceptance.

In accordance with Article 12/1 of the Law of June 17, 2016, the contractor is not permitted to request an advance payment for the following reasons. Firstly, the contract's execution period is less than 2 months (as a reminder, the estimated timeframe for completing the mission is 45 days of service). Secondly, the decision to use the Negotiated Procedure without Prior Publication is grounded in Article 89, § 1er, 2°, of the law of June 17, 2016 (social and specific services).

4.13 Litigation (Art. 73)

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

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

Enabel, public-law company

Global Procurement Services

To the attention of Mrs. Inge Janssens

rue Haute 147

1000 Brussels, Belgium

5 Forms

5.1 Identification forms

5.1.1 Private/public law body with legal form

PRIVATE/PUBLIC LAW BODY WITH LEGAL FORM	
OFFICIAL NAME	
ABBREVIATION	
BUSINESS NAME (if different)	
LEGAL FORM ORGANISATION TYPE (FOR PROFIT OR NOT FOR PROFIT, NGO)	
MAIN REGISTRATION NUMBER /SECONDARY REGISTRATION NUMBER (if applicable)	
PLACE OF MAIN REGISTRATION CITY COUNTRY	
DATE OF MAIN REGISTRATION: DD/MM/YYYY	
VAT NUMBER	
ADDRESS HEAD OFFICE POSTCODE, P.O. BOX CITY COUNTRY	
CONTACT PERSON PHONE EMAIL	
DATE	SIGNATURE OF AUTHORIZED REPRESENTATIVE

5.1.2 Subcontractors

Name and legal form	Address / Registered office	Subject-matter

5.2 Tender Forms – prices

By submitting this tender, the tenderer commits to performing this procurement contract in conformity with the technical specifications of this procurement contract –, this procurement contract and explicitly declares accepting all conditions listed in the request for a price quote and renounces any derogatory provisions such as his own general sales conditions.

PRICES ⁴				
Description	Unit price proposed for 1 day (8 hours) in euros (exclusive of VAT)	Total price proposed for 45 days in euros (exclusive of VAT)	Unit price proposed for 1 day (8 hours) in euros (inclusive of VAT)	Total price proposed for 45 days in euros (inclusive of VAT)
"Senior" lawyer (with more than 15 years of experience)				
"Confirmed" lawyer (between 5 and 15 years of experience)				

Certified true and sincere,

Done at, on

⁴ < The tenderer is thus to have included in his unit and global prices any costs, taxes, measures and charges generally inherent to the performance of the contract, with the exception of the value-added tax. The following are in particular included in the prices:
Fees and per diems, accommodation costs, < international transportation costs, insurance costs, security costs, visa costs, communication costs, administrative and secretariat costs, photocopy and printing costs, costs for documentation of the services that can be requested by the contracting authority, the production and delivery of documents or records associated with the performance of the services, the reception costs, all costs and charges for staff and equipment needed for the performance of this procurement contract, the copyright fees, the purchase or leasing of third-party services needed for the performance of this procurement contract, < costs for intellectual property rights.

5.3 Declaration on honour – exclusion criteria

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

1. The tenderer nor any of his directors was found guilty following **an indefeasible judgement** for one of the following offences:
 - 1° involvement in a **criminal organisation**
 - 2° **corruption**
 - 3° **fraud**
 - 4° **terrorist offence**, offence linked to terrorist activities or incitement to commit such offence, collusion or attempt to commit such an offence
 - 5° **money laundering** or **financing of terrorism**
 - 6° **child labour** and other trafficking in human beings
 - 7° employment of foreign citizens under illegal status
 - 8° creation of a shell company.

The exclusions on the basis of this criterion apply for a 5-year term from the date of judgement (or the end of the offence for 7°).

2. The tenderer has failed to fulfil his obligations to **pay taxes or social security contributions**, i.e. Late payment for an amount in excess of EUR 3 000, except if the tenderer can demonstrate that a contracting authority owes him one or more unquestionable and due debts which are free of all foreseeable liabilities. These debts are at least of an amount equal to the one for which he is late in paying outstanding tax or social charges.

3. The tenderer is in **a state of bankruptcy, liquidation, cessation of activities, judicial reorganisation** or has admitted bankruptcy or is the subject of a liquidation procedure or judicial reorganisation, or in any similar situation resulting from a procedure of the same kind existing under other national regulations.

4. The tenderer or one of his directors has committed **serious professional misconduct which calls into question their integrity**.

The following are considered serious professional misconduct, among others:

- a. A breach of Enabel's Policy regarding sexual exploitation and abuse – June 2019
https://www.enabel.be/app/uploads/2022/11/Exploitation_Abus_Sexuel_-_Policy_FR.pdf
- b. A breach of Enabel's Policy regarding fraud and corruption risk management – June 2019
https://www.enabel.be/app/uploads/2022/11/Fraude_Corruption_Policy_FR.pdf
- c. A breach of a legal regulatory provision applicable in the country of performance of the services regarding au sexual harassment on the work floor;
- d. The tenderer was seriously guilty of misrepresentation or false documents when providing the information required for verification of the absence of grounds for exclusion or the satisfaction of the selection criteria, or concealed this information;
- e. Where Enabel has sufficient plausible evidence to conclude that the tenderer has committed acts, entered into agreements, or entered into arrangements to distort competition.
The presence of this tenderer on one of Enabel's exclusion lists as a result of such an act/agreement/arrangement is considered to be sufficiently plausible an element.

5. When a conflict of interest cannot be remedied by other, less intrusive measures;

6. When **significant or persistent failures** by the tenderer were detected during the execution of an **essential obligation** incumbent on him in the framework of a past contract concluded with Enabel or another contracting authority, when these failures have given rise to measures as of right, damages or another comparable sanction. Failures to respect applicable obligations regarding environmental, social and labour rights under European Union law, national law, labour agreements or international provisions on environmental, social and labour rights are considered ‘significant’.

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

7. The tenderer or one of his directors are on the lists of persons, groups or entities subject to United Nations, European Union or Belgian financial sanctions – consolidated list:

https://finances.belgium.be/fr/sur_le_spf/structure_et_services/administrations_generales/tr%C3%A9sorerie/services-et-activit%C3%A9s-0

I have / we have read and understood the articles about deontology of this procurement contract (see 1.6) as well as Enabel’s Policy regarding sexual exploitation and abuse and Enabel’s Policy regarding fraud and corruption risk management and I / we declare fully endorsing and respecting these articles.

Date

Place

Signature

5.4 Selection file – technical aptitude

<p>Technical aptitude: See Art. 68 of the Royal Decree of 18.04.2017</p>	
<p>List the references of similar services that have been delivered over the last three years.</p> <p>The tenderer includes in his tender a list with the similar 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>Minimum level of requirement: the tenderer must demonstrate that it has performed at least 2 similar services in Ukraine over the past three years.</p>
<p>An indication of the proportion of the contract which the service provider intends possibly to subcontract.</p>	
<p>A tenderer may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which he has with these entities. In that case, the following rules apply:</p> <p>Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing a commitment by those entities to that effect.</p> <p>The contracting authority shall verify whether the entities on whose capacity the economic operator intends to rely on fulfil the relevant selection criteria and whether there are grounds for exclusion.</p> <p>Regarding criteria relating to the educational and professional qualifications, or to the relevant professional experience, economic operators may however only rely on the capacities of other entities where the latter will actually perform the works or services for which these capacities are required.</p> <p>Under the same conditions, a group of candidates or tenderers may submit the capacities of the group's participants or of other entities.</p>	

5.5 GDPR clauses

Obligations of the contractor ('subcontractor or processor') vis-à-vis the contracting authority ('personal data controller')

The subcontractor undertakes to:

1. Process the personal data **only for the purpose(s)** stipulated in the contract;
2. Process the personal data **only on documented instructions** from the controller mentioned in attachment to this contract. Where the subcontractor considers an instruction constitutes a violation of European regulations in relation to data protection or any other legal Union or Member State provision in relation to data protection he shall immediately notify the controller thereof. Furthermore, where the subcontractor is to proceed to the transfer of personal data to a third country or an international organisation in accordance with Union or Member State law to which he is subject, in such a case, he shall inform the controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interests.
3. **Ensure the confidentiality** of the personal data processed under the framework of this contract.
4. Ensure that **persons authorised to process the personal data** pursuant to this contract:
 - have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - obtain necessary training in personal data protection;
5. regarding tools, products, applications or services, principles of **data protection by design and by default** should also be taken into consideration.
6. **Subcontracting**

The subcontractor may engage another subcontractor (hereinafter, the 'subsequent subcontractor') for carrying out specific processing activities. In this case, he informs the controller 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 controller disposes of a minimum period of [...] from the date of reception of said information to voice any objections. Such subcontracting may only be carried out if the controller has not voiced any objection during said period.

The subsequent subcontractor is to respect the obligations of this contract for the account of and following the instructions of the controller. The initial subcontractor must ensure that the subsequent subcontractor provides the same data protection guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the European Data Protection Regulation. Where the subsequent subcontractor fails to fulfil his data protection obligations, the initial subcontractor shall remain fully liable to the controller for the performance of that other subcontractor's obligations.

7. Information rights of data subjects

When collecting data, the subcontractor is required to inform data subjects about the data processing which will be carried out. The formulation and format of this notification must be agreed with the controller prior to data collection.

8. Data subjects exercising their rights

Where possible, the subcontractor shall assist the controller to fulfil his obligation in responding to data subject rights requests: right to access, to change, right to erasure ('right to oblivion') and opposition, right to limit processing, right to transfer data, right not to be subject to an automated individual decision (such as profiling).

The subcontractor must respond, in the name and on behalf of the controller and within the terms set by the European Data Protection Regulation, to any requests of persons concerned exercising their rights where it pertains to data that are the subject-matter of subcontracting under this contract.

9. Notification of personal data breaches

The subcontractor shall notify the controller of any personal data breach not later than [...] hours after becoming aware of it by means of [...]. This notification shall be accompanied by all useful documentation allowing the controller, where needed, to notify this breach to the competent supervisory authority.

The notification shall at least:

- describe the nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned, and the categories and approximate number of personal data records concerned;
- communicate the name and contact details of the data protection officer or other contact point where more information can be obtained;
- describe the likely consequences of the personal data breach;
- describe the measures taken or proposed to be taken by the controller to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.

10. Assistance of the subcontractor in ensuring compliance by the controller of his obligations.

The subcontractor shall assist the controller in carrying out data protection impact assessments. The subcontractor assists the controller with the prior consultation of the supervisory authority.

11. Security measures

The subcontractor undertakes to implement the following security measures: [...]

12. Processing of data

The subcontractor undertakes upon completing data processing service delivery to:

- erasing all personal data, or
- sending back all personal data to the controller, or
- forwarding the personal data to the subcontractor designated by the controller. Such dispatch is accompanied by the erasure of all existing copies in the data systems of the subcontractor.

After erasure, the subcontractor shall substantiate the erasure in writing.

13. Data Protection Officer

The subcontractor shall communicate to the controller the name and contact details of his Data Protection Officer, if he has designated one in accordance to Article 37 of the European Data Protection Regulation.

14. Register of categories of processing activities

The subcontractor declares keeping written records of all categories of processing activities carried out on behalf of the controller, including:

- The name and contact details of the controller on behalf of whom he operates, of any subcontractors, and where applicable, of the Data Protection Officer.
- The categories of processing carried out on behalf of the controller;
- Where applicable, transfers of personal data to a third country or an international organisation, including the identification of that third country or international organisation and, in the case of transfers referred to in the second subparagraph of Article 49(1) of the European Data Protection Regulation, the documentation of suitable safeguards;

Where possible, a general description of the technical and organisational security measures, including inter alia as appropriate: The pseudonymisation and encryption of personal data; the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

15. Documentation

The subcontractor makes available to the controller all information necessary to demonstrate compliance with his obligations laid and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller.

5.6 Overview of the documents to be submitted – to be completed exhaustively

- 1. Forms:**
 - a) Identification form (Article 5.1);**
 - b) Tender form – prices (Article 5.2);**
 - c) Declaration on honour – exclusion criteria (Article 5.3);**
- 2. Selection files – technical aptitude (Article 5.4):**
 - a) List the references of similar services that have been delivered over the last three years;**
 - b) Proportion of the contract which the service provider intends to subcontract;**
- 3. Documents allowing the analysis of the award criteria (Article 3.4.5.4), namely:**
 - a) Description of the team along with the Curriculum Vitae of its members;**
 - b) List of references and training, along with any other documents that may be beneficial in showcasing the tenderer's experience and expertise;**
- 4. An estimate of the number of working days required to execute the mission;**
- 5. Recent criminal record excerpt (dated within the last 3 months).**