



## Tender Specifications

Enabel Palestine

Public works contract for “The Transformation Works and Furniture Supply at Jerusalem American School Fablab”

Country: East Jerusalem

Navision code: PZA170421T-10054

<b>TENDERER:</b>

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# 1 General remarks

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

§1 Chapter 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 January 2013 or as a complement or an elaboration thereof.

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

## 1.2 Contracting authority

§3 The contracting authority of this public contract is ‘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).

§4 On behalf of the Belgian government, Enabel – the Belgian development agency – supports developing countries in their fight against poverty. Besides this public service mission on behalf of the Belgian government Enabel also provides services on behalf of other national and international organisations contributing to sustainable human development<sup>1</sup>.

§5 For this public contract Enabel is represented by Christelle Jocquet, Resident Representative of Enabel in Palestine.

## 1.3 Institutional framework of Enabel

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

- The Belgian Law on Development Cooperation of 19 March 2013<sup>2</sup>;
- The Belgian Law of 21 December 1998 establishing the Belgian Technical Cooperation as a public-law company<sup>3</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.

§7 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>4</sup>, as

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<sup>1</sup> For more information see <http://www.enabel.be/showpage.asp?iPageID=34>) and the Law of 21 December 1998 establishing the Belgian Technical Cooperation, changed by the Laws of 13 November 2001 and 30 December 2001.

<sup>2</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>3</sup> Belgian Official Gazette of 1 July 1999.

<sup>4</sup> Belgian Official Gazette of 18 November 2008.

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;

- 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>5</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 December 2017, Belgian Official Gazette of 22 December 2017) that sets out the rules and the special conditions for the execution of public service tasks by Enabel on behalf of the Belgian State.

### 1.3.1 Rules governing the public contract

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

- The Law of 17 June 2016 on public procurement<sup>6</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>7</sup>;
- The Royal Decree of 18 April 2017 on the award of public contracts in the classic sectors<sup>8</sup>;
- The Royal Decree of 14 January 2013 establishing the General Implementing Rules for public procurement and for concessions for public works<sup>9</sup>;
- Circulars of the Prime Minister with regards to public procurement.
- Law of 30 July 2018 on the protection of natural persons with regard to the processing of personal data.

§9 All Belgian regulations on public contracts can be consulted on [www.publicprocurement.be](http://www.publicprocurement.be)

### 1.3.2 Definitions

§10 The following definitions apply to this contract:

- The tenderer: the natural person (m/f) or legal entity that submits a tender;
- The contractor / building contractor: the tenderer to whom the public contract is awarded;
- The contracting authority: Enabel, represented by the Resident Representative of Enabel in Palestine;
- The tender: The commitment of the tenderer to perform the public contract under the conditions that 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;

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<sup>5</sup> <http://www.ilo.org/ilolex/french/convdisp1.htm>.

<sup>6</sup> Belgian Official Gazette 14 July 2016.

<sup>7</sup> Belgian Official Gazette of 21 June 2013.

<sup>8</sup> Belgian Official Gazette 9 May 2017.

<sup>9</sup> Belgian Official Gazette 27 June 2017.

- Procurement documents: Contract notice and Tender Specifications including the annexes and the documents they refer to;
- Technical specifications: A specification in a document defining the characteristics of a product or a service, such as the quality levels, the environmental and climate performance levels, the design for all needs, including accessibility for people with disabilities, and the evaluation of conformity, of product performance, of the use of the product, safety or dimensions, as well as requirements applicable to the product as regards the name by which it is sold, terminology, symbols, testing and test methods, packaging, marking or labelling, instructions for use, the production processes and methods at every stage in the life cycle of the supply or service, as well as the evaluation and conformity procedures;
- Variant: An alternative method for the design or the performance that is introduced either at the demand of the contracting authority, or at the initiative of the tenderer;
- Option: A minor and not strictly necessary element for the performance of the contract, which is introduced either at the demand of the contracting authority, or at the initiative of the tenderer;
- Summary bill of quantities: The procurement document, in a public works contract, which splits up the performance in different items and specifies the quantity or the method to determine the price for each of them;
- BDA: Belgian Public Tender bulletin (Bulletin des Adjudications);
- 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;
- General Implementing Rules GIR: Rules laid down in the consolidated version of the Royal Decree of 14 January 2013 establishing the General Implementing Rules for public procurement and for concessions for public works;
- Tender Specifications (Cahier Spécial des Charges/CSC): This document and its annexes and the documents it refers to;
- Corrupt practices: The offer of a bribe, gift, gratuity or commission to 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.

### 1.3.3 Confidentiality

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

§12 PRIVACY NOTICE OF ENABEL: Enabel takes your privacy serious. We undertake to protect and process your personal data with due care, transparently and in strict compliance with privacy protection legislation. See also: <https://www.enabel.be/content/privacy-notice-enabel>

### 1.3.4 Deontological obligations



- §13 Any failure to comply with one or more of the deontological clauses may lead to the exclusion of the candidate, tenderer or contractor from other public contracts for Enabel.
- §14 For the duration of the contract, the contractor and his staff respect human rights and undertake not to go against political, cultural or religious customs of the beneficiary country. The tenderer or contractor is bound to respect fundamental labour standards, which are internationally agreed upon by the International Labour Organization (ILO), namely the conventions on union freedom and collective bargaining, on the elimination of forced and obligatory labour, on the elimination of employment and professional discrimination and on the abolition of child labour.
- §15 In accordance with Enabel's Policy regarding sexual exploitation and abuse, the contractor and his staff have the duty to behave in an irreproachable manner towards the beneficiaries of the projects and towards the local population in general. They must abstain from any acts that could be considered a form of sexual exploitation or abuse and they must abide by the basic principles and guidelines laid down in this policy.
- §16 Any attempt of a candidate or a tenderer to obtain confidential information, to proceed to illicit arrangements with competitors or to influence the evaluation committee or the contracting authority during the investigation, clarification, evaluation and comparison of tenders and candidates procedure will lead to the rejection of the application or the tender.
- §17 Moreover, in order to avoid any impression of risk of partiality or connivance in the follow-up and control of the performance of the public contract, it is strictly forbidden to the contractor to offer, directly or indirectly, gifts, meals or any other material or immaterial advantage, of whatever value, to appointees of the contracting authority who are concerned, directly or indirectly, by the follow-up and/or control of the performance of the contract, regardless of their hierarchical rank.
- §18 The public contractor commits to supply, upon the demand of the contracting authority, any supporting documents related to the performance conditions of the contract. The contracting authority will be allowed to proceed to any desk review or on-the-spot check which it considers necessary to collect evidence to support the presumption of unusual commercial expenditure. Depending on the gravity of the facts observed, the contractor having paid unusual commercial expenditure is liable to have his contract cancelled or to be permanently excluded.
- §19 In accordance with Enabel's Policy regarding sexual exploitation and abuse of June 2019 and Enabel's Policy regarding fraud and corruption risk management complaints relating to issues of integrity (fraud, corruption, etc.) must be sent to the Integrity desk through the <https://www.enabelintegrity.be> website.

### **1.3.5 Applicable law and competent courts**

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

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

### 2.1 Type of contract

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

### 2.2 Subject-matter of the public contract

§25 This contract consists in the construction works for ‘the transformation works and furniture supply at Jerusalem American School Fablab’, in conformity with the conditions of these Tender Specifications.

### 2.3 Lots

§26 The contract is not divided into lots.

§27 The lab is a space of 230 square meter space that has civil, electrical and mechanical works with the supply of custom-made furniture to suite the spaces. Enabel believes one contractor is and better to ensure a smooth coordination of all works within the limited space of the lab and limited time available.

### 2.4 Items

§28 The contract consists of the following items:

▶ [see Annex 1: Bill of quantities](#)

§29 These items form one single contract. It is not possible to tender for one or several items only and the tenderer must submit price quotations for all items.

### 2.5 Duration of the public contract

§30 The contract starts upon award notification and expires upon final acceptance. No renewal of the contract is provided for.

### 2.6 Variants

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

### 2.7 Quantities

§32 Quantities will be determined in Purchase Orders. The presumed quantities below are given for information purposes only

- §33 Quantities are described in Annex 1: Bill of quantities.
- §34 The quantities will be paid according to the real implemented quantities as measured on site and supported by measurement sheets.
- §35 The presumed quantities mentioned in Annex 1: Bill of quantities are given for information purposes only.
- §36 The tenderer is required, under penalty of substantial irregularity of his tender, to quote prices for optional/provisional items. However, the contracting authority maintains the right to order any of these two options.

## 3 Procedure

### 3.1 Award procedure

- §37 This contract is awarded in accordance with Art. 41, of the Law of 17 June 2016 pursuant to a direct negotiated procedure with publication.

### 3.2 Publication

#### 3.2.1 Official notification

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

#### 3.2.2 Further notification

- §39 These Tender Specifications are posted on the website of Enabel ([www.enabel.be](http://www.enabel.be)).
- §40 The contract notice was also advertised through:
- Jobs.ps portal in Palestine (<https://www.jobs.ps>).

### 3.3 Information

- §41 The awarding of this contract is coordinated by Ms. Karmel Al Salqan (Expert in Contracting and Administration). Throughout this procedure all contacts between the contracting authority and the (prospective) tenderers about this contract will exclusively pass through this service. (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.
- §42 Until **15 days before the deadline**, candidate-tenderers may ask questions about these Tender Specifications and the public contract. Questions will be in writing to Ms. Karmel Al Salqan ([karmel.alsalqan@enabel.be](mailto:karmel.alsalqan@enabel.be)) and they will be answered in the order received. The complete overview of questions asked will be available at the following address: <https://www.enabel.be/public-procurement/> as from **6 days before the deadline**.

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

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

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

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

### 3.3.1 Site Visit

§47 The Contracting Authority also organises for tenderers, **guided visits to the site:**

Date	Time (EET -Palestinian time)	GPS location	Address
April 15th 2024	10:00-10:30	31.8416, 35.2317	Jerusalem American School

§48 Transportation: interested tenderers need to ensure their transportation to the site by their own means.

§49 Participation is optional but **highly recommended**.

§50 The tenderer is supposed to submit his/her tender after reading and taking into account any corrections made to the contract notice or the tender documents that are published at the above-mentioned website and/or sent to him/her by electronic mail.

### 3.3.2 Information meeting

Information meeting will be held online, on **Wednesday, 15<sup>th</sup> April 2024** at **01:00 PM** (EET = Palestinian time). Interested tenderers are invited to join using the following details:

<p><b><u><a href="#">Join the meeting now</a></u></b> Meeting ID: 320 259 754 367 Passcode: kPNyfl</p>
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§51 Questions raised by tenderers during the information meeting will be written down and answered collectively to all interested bidders and published at the address mentioned at the following address: <https://www.enabel.be/content/enabel-tenders>.

## 3.4 Tender Preparation, submission and opening

### 3.4.1 Data to be included in the tender

§52 The tenderer must use the tender forms in annex.

► See. Forms, p.46

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

§54 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.

§55 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. One original copy of the completed tender document (the present document, 63 pages):

§56 The tenderer should submit:

- This document must be filled electronically, then printed completely (page 1 to 63), signed, and stamped on A4 paper.
- For filling in the pdf forms, we recommend using the free software Adobe Acrobat Reader, which can be downloaded for free here:

► <https://get.adobe.com/uk/reader/>

or an equivalent program.

- Printing in black and white and on both sides of paper is encouraged.
- Do not use sophisticated spiral binding or plastic covers: simply staple it in the upper-left corner or use a binder clip.
- None of the forms shall be filled by hand except for the signature field.
- The tenderer must use the tender forms provided.

1° One original copy of the completed Annex 1: Bill of quantities (see p.43):

- This document must be filled electronically, then printed, signed, and stamped on A4 paper.
- Printing in black and white and on both sides of paper is encouraged.
- Do not use sophisticated spiral binding or plastic covers: simply staple it in the upper-left corner or use a binder clip.
- None of the sheets shall be filled by hand except for the signature field.
- The total price offer in Annex 1 must be reported accurately in the Tender Document, in Form ( 2.)- Prices, p.47.

2° One original copy of the requested certificates, CVs and other documents requested in 5.5-Selection file and summarized in Part 8 -Checklist of documents to be joined to the tender, p.62 .These documents shall be printed in A4 paper, signed and stamped. All documents authored by the interested tenderer (CVs, declarations on honour, power of attorney, joint venture agreement, etc.) **must be written in English**. Documents authored by a third party (completion certificates, incorporation certificates, etc.) can be written in English, Arabic, Hebrew, French, Dutch or German. In accordance with Article 73 of the Royal Decree of 18 April 2017, where an economic operator wants to rely on the capacities of other entities (particularly

subcontractors or independent subsidiaries) for economic and financial capacity criteria and technical aptitude criteria (see 5.5-Selection file), 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.

3° One electronic copy of the following documents, on USB, a CD or DVD:

- The filled tender document in pdf format (as initially filled, not scanned)
- The filled in Annex 1: Bill of quantities.xls or compatible spreadsheet format;
- Annex 2: Drawings and Details (architectural, civil, electrical, and mechanical) as provided, in .pdf format;

4° The USB/CD/DVD shall be labelled with the reference number “PZA170421T-10054” ,the name of the tenderer and be signed and stamped. Alternatively, the above-mentioned documents may be printed on paper in a suitable format, signed and stamped, but this is not encouraged for environmental and archiving space reasons.

5° The printed documents and the CD/DVD must be submitted in a properly sealed and stamped envelope, on which the provided envelope cover page (see ) will be glued, after being duly filled and printed.

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

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

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

### **3.4.2 Period the tender is valid**

§60 The tenderers remain bound by their tender for a period of 90 calendar days from the tender reception deadline date.

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

### **3.4.3 Price determination**

§62 All prices shall be given in EUR (euros) and rounded off to two figures after the decimal point.

§63 This 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.

§64 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.

#### 3.4.4 Elements included in the price

§65 The tenderer is to include in his unit and global prices any charges and taxes generally applied to works, with the exception of the value-added tax.

§66 In the unit and global prices for the contract for works any costs, measures and charges applied to the performance of the contract, namely:

- 1° Where applicable, the measures imposed by occupational safety and worker health legislation;
- 2° Where applicable, the cost of working outside of usual working hours for dangerous or noisy works, to minimize the disturbances to the students and school staff when the school will be operating
- 3° All the works and supplies, such as bracing, sheet piling and drainage, necessary to prevent landslips and other damage and to remedy these if necessary;
- 4° The perfect preservation, possible shift and redeployment of cables and pipes which might be encountered during excavation, earthworks and dredging, provided that these achievements are not the legal responsibility of the owners of such cables and pipes;
- 5° Removal, within the confines of the excavations, earthworks and dredging which may be necessary for construction of the structure, of:
  - a. Earth, mud and gravel, stones, rubble, riprap of any kind, masonry remains, turf, plants, bushes, stumps, roots, coppices, debris and waste materials;
  - b. Any rock regardless of size where the procurement documents state that the earthworks, excavation and dredging are to be carried out in land known to be rocky, and in the absence of this statement, any rock and any blocks of masonry or concrete the individual volume of which does not exceed half a cubic metre;
- 6° The transportation and removal of excavated material, either away from the property of the contracting authority, or to locations within the sites for re-use, or to designated dumping sites, in accordance with the requirements of the procurement documents;
- 7° All overheads, incidental expenses and maintenance costs during contractual performance and the warranty period;
- 8° Charges related to water, electricity or fuel during the works implementation. If the contractor is planning to consume water or electricity from the existing facilities networks, (s)he shall find an agreement for the modality of its metering and reimbursement with the body usually paying these bills before the start of the works;
- 9° All costs related to repairing, replacing and/or reinstalling any built or equipment element that was damaged or made dysfunctionnal because of the works;
- 10° Customs and excise duties;
- 11° Acceptance costs (see related articles) and inspection, testing and comissioning costs (e.g. civil defense, electricity distribution companies, etc.).

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

#### 3.4.5 The right to submit tenders

§68 Without prejudice to any variants, the tenderer may only submit one tender only per contract.



### 3.4.6 Tender submission deadline and location

§69 The tender must be received **before Monday 29<sup>th</sup> April 2024** at **COB** (EET = Palestinian time) at the following addresses:

▶ Enabel, Belgian Development Agency, Consulate General of Belgium, 5 Baibars Street, Sheikh Jarrah, Jerusalem

GPS: 31.7943, 35.2309

▶ Enabel - Belgian Development Agency, Royal Center, 7<sup>th</sup> Floor, Al Balou', Mecca Street, Al Bireh – Ramallah and Al Bireh Governorate

GPS: 35.2186, 31.9235

§70 It may be submitted either:

- By mail (standard mail or registered mail). In this case, the sealed envelope is put in a second closed envelope addressed to: Enabel, Belgian Development Agency, Consulate General of Belgium, 5 Baibars Street, Sheikh Jarrah, Jerusalem or Enabel – Belgian Development Agency, Royal Center, 7<sup>th</sup> Floor, Al Balou', Mecca Street, Al Bireh – Ramallah and Al Bireh Governorate; depending on location of submission. The delivery record makes proof of compliance with the time-limit for receipt.
- 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.

§71 The service can be reached on working days during office hours: from 8 am to 4 pm.

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

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

§73 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.

§74 The withdrawal may also be communicated by email, 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.

### 3.4.8 Opening of Tenders

§75 The tenders must be in the possession of the contracting authority **before** the date and time specified in §69, p. 16. The tenders shall be opened behind closed doors.



## 3.5 Selection of Tenderers and evaluation of Tenders

### 3.5.1 Selection of tenderers

#### 3.5.1.1 Exclusion grounds

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

§76 By submitting this tender, the tenderer certifies that he is not in any of the cases of exclusion listed in the Articles 67 – 70 of the Law of 17 June 2016 and the Articles 61 – 64 of the Royal Decree of 18 April 2017.

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

§78 The grounds for exclusion apply to :

- 1° all participants who submit a joint request to participate and who intend, in the event of selection, to form a group of economic operators ;
- 2° all participants who, as a group of economic operators, jointly submit a tender; and
- 3° third parties (in particular subcontractors or independent subsidiaries) whose capacity is called upon with regard to the criteria relating to economic and financial capacity and the criteria relating to technical aptitude (see 5.5-Selection file) within the meaning of paragraph 1 of Article 73 of the R.D. of 18 April 2017.

#### 3.5.1.2 Selection criteria

§79 Moreover, by means of the documents requested, 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.

§80 The selection criteria are the following:

- 1° Economic and financial capacity - **average annual turnover**.
- 2° Technical aptitude – **staff**.
- 3° Technical aptitude – **references of experience** with certificates of completion.

§81 In view of the qualitative selection of tenderers and in conformity with Art. 67 to 74 of the Royal Decree of 18 April 2017, for this contract the tenderer must add to his/her tender documents a selection file with the information requested with regards to his/her financial capacity as well as his/her technical capacity.

§82 A tenderer may, if necessary and for a specific contract, submit the capacities of other entities, whatever the legal nature of the relations existing between himself and these entities. In that case, (s)he must prove to the Contracting Authority that, for the performance of the contract, (s)he shall have the necessary resources by presenting the commitment of these entities to make such resources available to the service provider.

Under the same conditions, a group of candidates or of tenderers can submit the capacities of the group's participants or those of other entities.

### 3.5.2 Overview of the procedure

- §83 In a first phase, the tenders submitted by the selected tenderers will be evaluated as to formal and material regularity.
- §84 The contracting authority reserves the right to have the irregularities in the tenderers' tender regularised.
- §85 In a second phase, the formally and materially regular tenders will be evaluated as to content by an evaluation commission. The contracting authority will restrict the number of tenders to be negotiated by applying the award criterion stated in the procurement documents. This evaluation will be conducted on the basis of the award criterion 'price/cost' given in these Tender Specifications and aims to setting a shortlist of tenderers with whom negotiations will be conducted. Maximum 5 tenderers may be included in the shortlist.
- §86 Then, the negotiation phase follows. With a view of improving the contents of the tenders, the contracting authority may negotiate with tenderers the initial tenders and all subsequent tenders that they have submitted, except final tenders. The minimum requirements and the award criteria are not negotiable. However, the contracting authority may also decide not to negotiate. In this case, the initial tender is the final tender.
- §87 When the contracting authority intends to conclude the negotiations, it will so advise the remaining tenderers and will set a common deadline for the submission of any BAFOs. Once negotiations are closed, the BAFO will be compared with the exclusion, selection and 'price/cost' award criteria. The tenderer whose regular BAFO is the best value for money will be appointed the contractor for this contract.
- §88 The BAFOs of the tenderers with whom negotiations have been conducted will be evaluated as to their regularity. Irregular BAFOs will be excluded.
- §89 Only the regular BAFOs will be considered and assessed against the award criteria.
- §90 The contracting authority reserves the right to review the procedure set out above in line with the principle of processing equality and transparency.

### 3.5.3 Award criteria

- §91 The contracting authority will choose the regular tender that it finds being most economically advantageous, taking account of the following criteria: award on the basis of the **price** using the following formula:

$$\text{Points tender A} = \frac{\text{amount of lowest tender}}{\text{amount of tender A}} * 100$$

- §92 The contract will be awarded to the tenderer with the highest final score, after the contracting authority has verified the accuracy of the Declaration on honour of this tenderer and provided the check shows that the Declaration on honour corresponds with reality.

#### **3.5.4 Awarding the public contract**

- §93 The contract will be awarded to the tenderer who have submitted the most economically advantageous, possibly improved, tender.
- §94 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.
- §95 The contracting authority may either decide not to award the contract, either redo the procedure, if necessary through another award procedure.

#### **3.5.5 Concluding the public contract**

- §96 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/her tender.
- §97 Notification is by scanned letter attached to an email, with the original letter sent by registered mail or handed by hand upon signed receipt within five calendar days.
- §98 So, the full contract consists of a contract awarded by Enabel to the chosen tenderer in accordance with:
- 1° These Tender Specifications and its annexes,
  - 2° The approved tender and all its annexes,
  - 3° The letter of notification of the award decision,
  - 4° If any, minutes of the information session and/or clarifications and/or the addendum,
  - 5° Any later documents that are accepted and signed by both parties, as appropriate.

## 4 Specific contractual and administrative conditions

§99 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.

§100 These Tender Specifications derogate from Article 26 of the General Implementing Rules – GIR (Royal Decree of 14 January 2013).

### 4.1 Definitions (Art. 2)

§101 The following definitions apply to this contract:

- Managing official: The official or any other person who manages and controls the performance of the contract;
- Performance bond: Financial collateral given by the contractor to ensure he will fulfil his obligations until final and good performance of the contract;
- Acceptance: Observation by the contracting authority that the performance by the contractor of all or part of the works, supplies or services is in compliance with good practice and with the terms and conditions of the contract;
- Progress payment: Payment of an instalment under the contract after acceptance of performance;
- Advance: Payment of part of the contract before acceptance of performance;
- Amendment: Agreement established between the contracting parties during contract performance in view of changing documents applicable to the contract.

### 4.2 Correspondence with the building contractor (Art. 10)

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

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

§104 Whether electronic means are used or not, communications, exchanges and storage of information take place in a way that ensures the integrity and confidentiality of data.

### 4.3 Managing official (Art. 11)

§105 The management and control of contract performance are entrusted to Mr. Alexis Doucet, Intervention Manager, assisted by Ms. Fatima Sarraj, National Technical Advisor.

§106 Once the contract is concluded, the managing official is the main contact point for the building contractor. Any correspondence or any questions with regards to the

performance of the contract will be addressed to him, unless explicitly mentioned otherwise in these Tender Specifications (see namely, "Payments" below).

- §107 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.
- §108 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 point Contracting authority.
- §109 Under no circumstances is the managing official allowed to modify modalities (e.g. performance period) of the contract, even if the financial impact is nil or negative. Any commitment, change or agreement derogating the conditions in the Tender Specifications and that has not been notified by the contracting authority, will be considered null and void.

#### **4.4 Subcontractors (Art. 12 to 15)**

- §110 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.
- §111 The contractor remains, in any case, solely liable to the contracting authority.
- §112 The building contractor undertakes to having the contract performed by the persons indicated in the tender, except for force majeure. The persons mentioned or their replacements are all deemed to effectively be involved in the performance of the contract. Any replacements must be approved by the contracting authority.

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

- §113 The building contractor and his employees are bound by a duty of reserve concerning the information which comes to their knowledge during performance of this contract. This information may not under any circumstances be communicated to third parties without the written consent of the contracting authority. The building contractor may, nevertheless, list this contract as a reference, provided that he indicates its status correctly (e.g. 'in performance') and that the contracting authority has not withdrawn this consent due to poor contract performance.

#### **4.6 Personal data protection**

##### **4.6.1 Processing of personal data by the contracting authority**

- §114 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.

## **4.6.2 Processing of personal data by the contractor**

### **4.6.2.1 OPTION 1: PROCESSING OF PERSONAL DATA BY A SUBCONTRACTOR =**

- §115 Where during contract performance, the contractor processes personal data of the contracting authority exclusively in the name and on behalf of the contracting authority, for the sole purpose of performing the services in accordance with the provisions of the Tender Specifications or in execution of a legal obligation.
- §116 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.
- §117 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.
- §118 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.
- §119 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.
- §120 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).

## **4.6.3 Intellectual property (Art. 19 to 23)**

For Design&Build: The contracting authority acquires the intellectual property rights created, developed or used during performance of the public 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.

## 4.7 Insurance (Art. 24)

The contractor takes out insurance policies covering his liability for occupational accidents and his third party liability for the performance of the contract.

The contractor also takes out any other insurance policy imposed by the procurement documents.

§ 2. Within thirty days from contract conclusion the contractor provides evidence that he has taken out these insurance policies through a certificate stating the extent of the liability covered required by the procurement documents.

At any time during contract performance, the contractor provides such certificate within fifteen days following the reception of such a request from the contracting authority.

## 4.8 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, or by an insurance company meeting the requirements of the law on control of insurance companies and approved for branch 15 (bonds).

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:

▶ [https://finances.belgium.be/sites/default/files/01\\_marche\\_public.pdf](https://finances.belgium.be/sites/default/files/01_marche_public.pdf)

as completely as possible and return it to the e-mail address:

▶ [info.cdcck@minfin.fed.be](mailto:info.cdcck@minfin.fed.be)

After reception and validation of said form, an agent of Belgium's Deposit and Consignment Office (Caisse des Dépôts et Consignations) will communicate the payment instructions (account number + communication) for posting the bond in cash;

- 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 guarantee, by the deed of undertaking of the credit institution or the insurance company.



5° This proof must be provided as applicable by submission to the contracting authority of:

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

§121 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.

§122 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.

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

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

- 1° For provisional acceptance: This is equal to a request to release the first half of the performance bond
- 2° For final acceptance: This is equal to a request to release the second half of the performance bond, or, in case no provisional acceptance applied, to release the whole of the performance bond.

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

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

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

§126 At the request of the contractor, the contractor receives free of charge and where possible in digital form a complete set of plans that has served as the basis for awarding the contract. The contracting authority is liable for the conformity of these copies with the original plans.

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



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

- §128 The contractor prepares at his own expense all the detailed plans and work plans it requires for successful performance of the contract.
- §129 The procurement documents specify which plans require approval by the contracting authority, which has 30 days to approve or reject the plans starting from the date on which they are submitted to it.
- §130 Any corrected documents are resubmitted for approval to the contracting authority, which has 15 days to approve them, provided that the corrections requested are not the result of new demands made by the contracting authority.

### **4.11.1 Construction planning**

- §131 How the planning is submitted is to be discussed with the managing official.
- §132 The first planning is to be introduced within 7 calendar days following tender award notification and it is to be updated every 15 days during construction.
- §133 This draft construction planning provides, in addition to deadlines for the 'on-site' works as such, the timing for the different preliminary achievements such as the establishment of documents prescribed by the technical provisions, implementation plans and detailed plans, calculation notes, selection of equipment and materials, including the approval of related documents, the supplies, workshop or factory work, preliminary tests and conformity tests, etc.
- §134 After it has been studied and remarks have been made and following approval of the contracting authority, the planning becomes contractually binding.

### **4.11.2 Master plan**

- §135 The building contractor undertakes to deliver a master plan to be approved by the contracting authority and its advisors within 15 calendar days following notification of contract conclusion.
- §136 This plan must sufficiently anticipate situations to allow the contracting authority to take decisions or provide answers or supply the documents that are incumbent upon it.
- §137 The master plan will be updated at least every month and must be consistent with the construction planning. It will be aligned with the construction planning and will be based on the same document.
- §138 The contractor will be sole manager of the planning of all activities required to perform this procurement contract.
- §139 In particular he plans:
- 1° Set dates for delivering implementation plans that he needs,
  - 2° The placing of orders to his suppliers and subcontractors,
  - 3° The presentation in due time of samples and technical forms of products submitted for preliminary technical acceptance,
  - 4° Measuring the works and the workshop manufacture period,
  - 5° Indication of deadlines dates for decisions to be taken by the contracting authority,

- 6° Indication of deadline dates for the conclusion of modifications to orders being elaborated,
- 7° Indication of deadline dates for the achievement of works performed by other enterprises,
- 8° Registration, in due time, of the measurements of the works,
- 9° etc.

#### 4.11.3 Implementing documents

- §140 These plans take into account the Tender Specifications and technical provisions, the design drawings of the project developer and general architecture plans, stability plans, and special techniques plans annexed to these Tender Specifications.
- §141 All implementation plans and detail plans are to be submitted for approval to the contracting authority along with calculation notes, technical approvals, and technical forms and in particular those related to the works and the equipment listed below (non-exhaustive list):
- 1° Upgrade foundations in view of works planned
  - 2° Stability: plans for slabs, posts and beams, stairs, or any prefabricated component
  - 3° Sealing
  - 4° Finishing of rooms (walls, floor, and ceiling)
  - 5° Inside and outside drainage
  - 6° List of stones
  - 7° Roof covering, roof carpentry
  - 8° Façades
  - 9° Partition walls
  - 10° False ceilings
  - 11° Furniture based on tender documents
  - 12° Lights layout plan
  - 13° Plan of metal joinery (banisters, handrails, gangway, porch)
  - 14° List of inside joinery Plan of special techniques
- §142 The managing official may refuse technical forms which are partial, incomplete, or too commercial and do not provide the technical information required for assessment and approval.
- §143 Samples of ironware, heating, electricity or plumbing fixtures or any similar pieces will be submitted for approval to the managing official and for advice to the project developer's and the approved model will remain on the construction site until the placement of the last piece of its kind.
- §144 At the request of the contracting authority, the building contractor will also provide the following documents during the performance period:
- 1° Samples of materials proposed corresponding to the technical forms.
  - 2° Colour shade cards to determine the choice of colours
  - 3° Test reports, technical manuals, technical approvals, technical forms, etc.
  - 4° Products or equipment used for this contract.

#### 4.11.4 Establishment of "As Built" plans

- §145 During performance, the building contractor shall revise and update the plans to the last detail in order to accurately reproduce the works and installations and their specifics as built.
- §146 When the works are completed and in view of provisional acceptance of the works, the building contractor is to submit the complete plans and diagrams of the works and installations as built.
- §147 When the works are completed and in view of provisional acceptance, the building contractor is to submit the technical files including:
- 1° technical specifications with brands names, types, origin of the equipment installed
  - 2° users' manuals, explaining the functioning of all equipment
  - 3° maintenance manuals, explaining everything that needs to be done for the maintenance and care of the amenities and equipment (regular control and maintenance, list and codes of spare parts, etc.)
  - 4° and test reports, tuning and adjustment reports.

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

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

- §148 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).
- §149 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.
- §150 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.

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

- §151 This public contract provides for a price revision. Only one price revision can be applied per year (upon the contract award anniversary date).
- §152 To calculate the price revision, the following formula applies:

$$\blacktriangleright P = P_0 \times \left( \frac{s}{S} \times 0.4 + \frac{i}{I} \times 0.4 + 0.2 \right)$$

- Lower-case letters relate to data that are valid on the date the price revision is applied. Capital letters relate to data that are available 10 days before the opening of the tenders.
- P = Price after revision
- P<sub>0</sub> = Price of the tender
- S = salary costs (including social contributions): represents the average hourly wages of skilled workers, skilled workers and laborers, set by the Belgian National Joint Committee for the Construction Industry or local equivalent, increased by the overall

percentage of social charges and insurance, as accepted by the Belgian Federal Public Service Economy (category A) or local equivalent, 10 days before the opening of tenders

- s = same average hourly wages as S but on the initial date of the monthly period considered in the progress payment
- I = the index based on annual consumption on the internal market of the main materials and raw materials, established by the Belgian Federal Public Service (SPF) Economy (or local equivalent) for the calendar month preceding the date of opening of the offers
- i = the same index, for the calendar month preceding the period of the progress payment

§153 Each fraction is rounded to the 5th decimal. The products of the multiplication of each of the quotients thus obtained by the value of the corresponding parameter are then also rounded to the 5th decimal.

§154 The price revision may only be applied if the price increase or decrease following the request or if the price revision request amounts to at least 3% of the price quoted in the tender (for the first price revision) or of the last price revised or imposed (as of the second price revision).

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

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

§156 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.

§157 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.

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

- 1° 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.
- 2° The suspension is not owing to unfavourable weather conditions.
- 3° The suspension occurred during the contract performance period.

§159 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.

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

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

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

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

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

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

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

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

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

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

- 1° The amending order from the contracting authority and more in general the justification of the modification of the works
- 2° The calculation of new unit or global prices
- 3° The quantities to be implemented for the existing items and for any new items
- 4° If appropriate, the tenders of subcontractors or suppliers consulted
- 5° Any other documents he or she deems pertinent

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

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

#### **4.12.6 Unforeseeable circumstances**

- §169 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.
- §170 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.

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

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

- §171 The contracting authority may have the preparation and the performance of the delivery supervised or controlled at any location by all appropriate means.
- §172 The contractor is required to provide the representatives of the contracting authority with all the information and facilities needed for carrying out their task.
- §173 The fact that such supervision or control has been carried out by the contracting authority does not release the contractor of its liability should delivery eventually be rejected due to defects of any kind.

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

- §174 Concerning technical acceptance, it is necessary to distinguish between:
- 1° Preliminary technical acceptance within the meaning of Article 42; and
  - 2° Ex post technical acceptance within the meaning of Article 43.
- §175 The contracting authority may waive all or part of the technical acceptance procedures where the contractor can prove that the products have been controlled by an independent body during their production, in accordance with the specifications of the procurement documents. In this respect, any other certification procedure in force in a Member State of the European Union is regarded as comparable to the Belgian conformity certification procedure and deemed equivalent .

#### **4.14.1 Preliminary technical acceptance (Art. 41 -42)**

- §176 As a general rule, the products cannot be used unless they have been previously received by the managing official or his delegate.
- §177 All the proposed material is subject to approval by the contracting authority. This approval is obtained on the basis of preliminary technical sheets which are drawn up by the contractor and sent to the managing official.
- §178 The technical sheets present the supplies, material and equipment overall and give the specifications and selections retained within the framework of the project.
- §179 The contracting authority refuses to receive partial, incomplete technical sheets which do not provide the technical information necessary for examination and approval.

- §180 As soon as the remarks are in the possession of the contractor, the latter takes them into account and completes the technical sheet in order to have it approved.
- §181 Technical acceptance can be carried out at different stages of production.
- §182 Products which, at a given stage, do not comply with the checks required, are declared not to be in a state of technical acceptance.
- §183 The contractor is responsible for the custody and conservation of these various products, taking into account the risks run by his company, until provisional acceptance of the work.
- §184 Except for approved products, the costs related to prior technical acceptance are borne by the contractor.
- §185 In any case, these costs include:
- 1° costs related to the services of the receivers; these include travel and subsistence allowances for receivers.
  - 2° the costs associated with taking samples, packaging and transporting the samples, regardless of where the inspection takes place,
  - 3° the costs linked to the tests (preparations, manufacture of the test pieces, actual cost of the tests (for this purpose, the circulars relating to the fixing of the test prices are applicable)).
  - 4° costs related to the replacement of products with defects or damage.

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

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

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

- §186 The building contractor is to complete the works within 75 calendar days as of the date set in the written service order to commence the works.
- §187 This deadline is to be counted as of the day put down in the written service order to commence the works.
- §188 The tenderer shall start the implementation on the date that was notified in the commencement order.

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

- §189 The building contractor shall bear all costs pertaining to land that is needed for the installation of his construction sites, storing supplies, preparing and handling materials as well as land needed for storing soil, excavated soil that is known to be unsuitable for reuse as landfill, material from demolition, general waste of any kind and excess earth.
- §190 He is liable, vis-à-vis adjoining landowners, for any damage to private property while achieving the works or storing the materials.
- §191 The enclosing hoardings may not be used for advertising.
- §192 No advertising is allowed on the sites used, except for 'Construction site information'.



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

- §193 All the legal, regulatory and contractual provisions relating to the general conditions of work and health and safety in the workplace will apply to all personnel on the contractor's site.
- §194 The building contractor, all persons acting as a subcontractor at any stage and all persons providing personnel, shall be required to pay their respective personnel salaries, bonuses and allowances at the rates established by law, by collective agreements concluded by company agreements.
- §195 The building contractor shall keep available to the contracting authority at all times, at a location designated by the latter, a list, updated on a daily basis, of all the personnel it employs on the site.
- §196 This list contains at least the following personal information: the name; the first name; actual occupation per day on the construction site; the date of birth; the job title; qualifications.
- §197 The contact person appointed by the building contractor for the performance of this contract with the contracting authority will have to master the following languages: English and Arabic.

### **4.17.1 Gender equality**

- §198 In accordance with article 3, 3<sup>o</sup> of the law of January 12, 2007 "Gender Mainstreaming", public procurement must take into account the possible differences between women and men (the gender dimension). The successful tenderer must therefore analyse according to the field concerned by the contract, whether there are differences between women and men. In carrying out the contract, he must therefore take account of the differences noted.
- §199 Communication must combat sexist stereotypes in terms of message, image and language, and take account of the different situations between women and men in the target audience.

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

- §200 The building contractor shall comply with the local legal and regulatory provisions governing building works, road works, health and safety in the workplace as well as the provisions of collective, national, regional, local and company agreements.
- §201 During the performance of the works, the building contractor shall be required to maintain the security of the site for the duration of the works and, in the interests of his own appointees and the representatives of the contracting authority and third parties, to take all necessary measures to ensure their safety.
- §202 The building contractor shall, under his sole responsibility and at his own expense, take all necessary measures to ensure the protection, preservation and integrity of existing buildings and works. He shall also take all the precautions required by best building practices and any special circumstances to protect neighbouring properties and to prevent any disturbance to them through his fault. (S)he is to protect and maintain the existing borders of the area (steel angles). In case they are moved or removed, because of the contractor usage of his equipment or any other reason, the contractor is return



these angles to their correct position as per the instructions provided by the Managing Official. The contractor is to cover and protect the works from the climatic conditions or misuse or negligence, etc., by providing a proper fence, nets and covers according to the Managing Official's approval. The contractor, at his own expenses, shall repair any damages to the works caused by his negligence.

- §203 In particular, during each organisation/club opening hours, the contractor shall ensure:
- 1° a total protection of the worksite from the intrusion of people (temporary doors, corridors and fences),
  - 2° no construction materials should be stored at the main entrance of other facilities or in any other location accessible by people,
  - 3° the minimizing of noise and other disturbances during the school working hours, and deliveries should take place outside of students' entry and exit to the school.
- §204 The building contractor shall bear all costs of and implement all necessary measures to signal in daylight, at night as well as in fog, the construction sites and storage sites that are located where vehicles and pedestrians circulate. He is to completely enclose his sites along temporary or permanent sidewalks as well as along temporary or permanent traffic arteries. Such enclosing and hoarding will also ensure the protection of the construction site during the construction period against any outside intrusion.
- §205 The building contractor shall supply a purpose-made notification billboard for this construction site with dimensions and following the model offered by the contracting authority prior to starting the works.
- §206 This informative panel will be put in place when construction work starts in a place that is to be defined by the contracting authority.

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

- §207 The building contractor shall notify the contracting authority of the precise location of works in progress on its site, in his workshops and factories and on the premises of his subcontractors and suppliers.
- §208 Without prejudice to the technical acceptance operations to be carried out on site, the building contractor shall at all times grant to the managing official and the representatives appointed by the contracting authority free access to the sites of production, for the purposes of monitoring strict application of the contract, in particular concerning the origin and quality of the products.
- §209 If the building contractor uses products that have not been accepted or that do not meet the demands of the Tender Specifications, the managing official or his/her representative may forbid the further pursuit of the works concerned, until these refused products are replaced by others that meet the contract's conditions, without this decision generating an extension of the performance period or any entitlement to compensation. The building contractor is notified about the decision by means of a written report.

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

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

- §211 Once the works have started, the building contractor shall supply 2 copies with all necessary information for establishing the Works logbooks on a daily basis to the contracting authority's representatives. This concerns:
- 1° Weather conditions
  - 2° Interruptions to works caused by adverse weather conditions
  - 3° Working hours
  - 4° The number and capacity of workers employed on the site
  - 5° Materials supplied
  - 6° Equipment actually used and equipment out of service
  - 7° Unforeseen events
  - 8° Amending orders of minor impact
  - 9° The attachments and quantities performed for each item and in each zone of the construction site. The attachments constituting the true and detailed representation of all works performed, in quantity, dimensions and weights.
- §212 Delay in providing the above documents may result in the application of penalties.
- §213 When the building contractor does not formulate any remarks in due form and within above-mentioned deadlines, he is deemed to be in agreement with the annotations made in the logbooks or detailed attachments.
- §214 When these observations are not deemed justified, the building contractor will be notified accordingly by registered letter.

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

- §215 The building contractor shall be held liable in respect of all works performed by him or his subcontractors until final acceptance of all works. During the warranty period, the building contractor shall carry out on the work, as required, all the works and repairs necessary to restore it to a good state of operation, and maintain it in this state.
- §216 Any repairs to shortcomings are performed in compliance with the instructions of the contracting authority.

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

- §217 The building contractor's default is not solely related to works as such but also to the whole of the building contractor's obligations.
- §218 In order to avoid any impression of risk of partiality or connivance in the follow-up and control of the performance of the public contract, it is strictly forbidden to the building contractor to offer, directly or indirectly, gifts, meals or any other material or immaterial advantage, of whatever value, to appointees of the contracting authority who are concerned directly or indirectly by the follow-up and/or control of the performance of the contract, regardless of their hierarchical rank.
- §219 In case of violation, the contracting authority may impose a lump-sum fine to the building contractor for each violation, which can be to up to three times the amount obtained by adding up the (estimated) values of the advantage offered to the appointee and of the advantage that the contractor hoped to obtain by offering the advantage to the appointee. The contracting authority will decide independently about the application and the amount of this fine.

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

§221 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.

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

§222 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.

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

§224 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 acknowledgement of the reported facts.

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

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

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

- 1° Non-delivery of administrative and technical documents such as the Construction Planning mentioned in [4.11.1 Construction planning, p.25](#) or other plans or drawings defined in 4.11, because not having delivered the documents listed by the time set during construction site meetings or by administrative order.
- 2° Absence from construction site meetings or coordination meetings: For every absence a penalty will be imposed to the building contractor who has not attended or has not been validly represented at meetings which he was supposed to attend.
- 3° Delay in executing observations or administrative orders of the contracting authority's via the managing official. Where the lists of observations result from construction site visits, in particular for painting orders, or upon acceptance, have not been fulfilled by the time set by the managing official, the contractor will be penalised per calendar day of delay until performance is effectively carried out.
- 4° Change of one of the key staff members without prior agreement of the contracting authority: A lump sum penalty is applied per day of default, ending

when, either the managing official obtains the approval of the contracting authority for the new member's being put in place, or the replaced member is re-established in its duties, or both parties agree about a new person as a replacement that is jointly accepted. When the penalties are applied, these may in no case be recuperated retrospectively, even where agreement is found.

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

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

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

§229 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.

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

§231 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.

§232 In case the works being the subject-matter of these Tender Specifications were not completed within the period set in point,4.15 Performance period (Art. 76), p.31 the following fine will be applied as of right for every working day of delay without the need for notice, simply by the expiry of the period in question:

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

§233 Where:

- R = the sum of the fines to be applied for a delay of n working days
- M = the initial value of procurement
- N = the number of working days initially specified for performance of the contract
- n = the number of working days of delay.

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

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

§236 If, without setting parts or stages, the Tender Specifications stipulate that partial periods apply, failure to observe these will be penalised by special fines provided for in the Tender Specifications, or, in the absence of such a provision, by fines calculated in accordance with the formula referred to in Art. 86§1 of the Royal Decree of 14 January

2013, in which the factors M and N refer to the total contract. However, the maximum of the fines relating to each partial period of P working days shall be:

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

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

§237 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.

§238 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.

§239 The measures as of right are:

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

§240 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.

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

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

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

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

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

§243 Immediately before the Contracting Authority takes possession of the building parts where the works have taken place (which may take place before or after the provisional acceptance of the works – cf. below), an exit inventory shall be drawn up by the same parties as the entry inventory. Any damage or defect to the neighbouring spaces and any missing, damaged or dysfunctional piece of equipment shall be considered as not having existed before the works and as being the responsibility of the contractor, unless it is specifically mentioned in the entry inventory or documented on one of the pictures/videos annexed to it.

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

§244 The managing official will closely follow up the works during performance, with the assistance of the National Technical Advisor and of the consultants in charge of the supervision. The works will not be accepted until after fulfilling audit checks, technical acceptance and prescribed tests.

§245 As a general rule, the Contractor must always invite the Contracting Authority to inspect works that are going to be hidden (e.g. wall insulation, concrete reinforcement, etc) before they get so, and must document (by pictures, videos or other means) any such works. Such works will always be presumed as not compliant if they have neither been inspected nor properly documented.

§246 In the absence of the managing official, the National Technical Advisor has authority to approve supplies and inspect works in the name of the Contracting Authority. However, indications from the consultants in charge of supervision must be considered as indicative and may be contradicted at any time by the Contracting Authority.

§247 Any change or deviation from what is indicated in the plans, bills of quantities and technical specifications, even if related to an apparent mistake in these documents, must be approved in writing by the Contracting Authority. In case of contradictory or ambiguous elements in these documents, the Contracting Authority is solely authorised to interpret or clarify these elements and must do so in writing. The consultants in charge of the supervision may in no case give such interpretation or make any changes to the content of these documents without the Contracting Authority's approval.

§248 Within the framework of this contract, is planned:

- 1° a partial provisional acceptance: provided upon submission of each progress payment
- 2° a complete provisional acceptance: provided upon the completion of performance of the works forming the subject-matter of the contract
- 3° a final acceptance: on expiry of a warranty period.

§249 The total or partial taking of possession of the work by the contracting authority does not constitute provisional acceptance.

§250 The contracting authority disposes of a verification term of thirty days starting on the date of Contractor's notification, to carry out the acceptance formalities and to notify the result to the building contractor.

§251 When the work is completed on the date set for its completion, and provided that the results of the technical acceptance inspections and prescribed tests are known, a report confirming provisional acceptance or refusing acceptance will be drawn up.



- §252 When the work is terminated before or after this date, the building contractor notifies the managing official thereof by e-mail, showing the exact date of dispatch, and requests, on that occasion, to proceed to provisional acceptance. Within 15 days after the date of receipt of the building contractor's request, and provided that the results of the technical acceptance inspections and prescribed tests are known, a report confirming provisional acceptance or refusing acceptance will be drawn up.
- §253 The provisional acceptance visit shall not take place until all works are fully terminated. In case the contractor notifies the managing official that works are terminated but it appears during the technical acceptance inspection that works are not fully implemented, a report refusing the technical acceptance will be drawn up, the contractor's notification is considered as void and the 15 day and 30 day deadlines set in §250 and §252 do not apply from its date. Once the works are fully implemented, the contractor will have to send a new notification as per §252.
- §254 Site security, including at night, shall be the building contractor's responsibility until the complete provisional acceptance report is signed, even if the Contracting Authority has already taken possession of the site.

#### **4.23.3 Warranty**

- §255 The warranty period commences on the date on which provisional acceptance is given and lasts for 1 year.
- §256 Within 15 calendar days preceding the date of expiry of the warranty period, a report confirming final acceptance or refusing acceptance will be drawn up.
- §257 The building contractor shall be held liable in respect of all works performed by him or his subcontractors until final acceptance of all works.
- §258 During the warranty period, the building contractor shall carry out on the work, as required, all the works and repairs necessary to restore it to a good state of operation, and maintain it in this state.
- §259 However, after provisional acceptance, the building contractor will not be liable for damage the causes of which are not attributable to him.
- §260 The contractor who, during the warranty period, does certain works or partial works, shall restore the adjacent parts (such as paint, wallpaper, parquet floor...) if these have been damaged because of the repairs undertaken.
- §261 In buildings or other property that are being occupied the contractor may not hinder or endanger said occupation in any way for the performance of his works. The contractor shall bear all costs for the measures needed for that purpose.
- §262 During the warranty period, which amounts to 1 year, the building contractor shall carry out on the work, as required, all the works and repairs necessary to restore it to a good state of operation, and maintain it in this state.
- §263 From the time of provisional acceptance and without prejudice to the provisions of paragraph 1 relating to its obligations during the warranty period, the building contractor shall be responsible for the solidity of the work and the proper execution of the works in accordance with Articles 1792 and 2270 of the Civil Code.

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

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

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

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

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

§266 where:

- e1, e2, ... en, represent the successive values of the element in question during the contractual period, which may be extended insofar as the delay is not attributable to the building contractor.
- t1, t2, ... tn, represent the corresponding periods for applying these values, expressed in months of 30 days, each fraction of a month being ignored and the periods of suspension of performance of the contract not being taken into consideration.

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

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

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

§269 The invoice shows the full details of the works that justify the payment. The invoice is signed and dated and includes the statement 'Certified true and sincere for the amount of EUR ..... (amount in words)', as well as the reference "PZA170421T-10054", indicating the name of the managing official: Mr Alexis Doucet. The invoice that does not include this reference cannot be paid.

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

§271 Payment will be made on the basis of the monthly progress reports that are established by the building contractor and the permanent supervisor and approved by the managing official after inspection and partial provisional acceptance.

§272 For each item, the progress report includes:

- Total quantities to be achieved in accordance with departure measurements
- The quantities already achieved and registered in the progress report of the preceding month
- The quantities achieved during the month
- Total quantities achieved by the end of the month
- The unit prices of the order
- The total prices of the quantities achieved during the month for each of the items
- The total price of the invoice of the month.



- §273 Payment will be by bank transfer only.
- §274 Payments will be made exclusively on the bank account specified by the tenderer in 1Form ( 1 )Form ( 1 )- Identification of the tenderer, p.46.
- §275 By way of derogation from the foregoing, and in accordance with Articles 12/1 to 5 of the Law of 17 June 2016, inserted by the Law of 22 December 2023 amending the regulations relating to public contracts with a view to promoting access by SMEs to the said contracts, the contracting authority shall pay an advance when the successful tenderer proves to be an SME within the meaning of Article 163, § 3, subparagraph 2, of the Law of 17 June 2016.
- §276 The amount of the advance payment is calculated by applying the following percentages to a reference value determined in accordance with Article 12/5 of the Law of 17 June 2016:
- 1° if the successful tenderer is a micro-enterprise, i.e. an enterprise that employs fewer than ten people and whose annual turnover or annual balance sheet total does not exceed two million euros, the percentage to be taken into account is twenty per cent;
  - 2° if the successful tenderer is a small business, i.e. a business that employs fewer than fifty people and whose annual turnover or annual balance sheet total does not exceed ten million euros, the percentage to be taken into account is ten per cent;
  - 3° where the successful tenderer is a medium-sized company, i.e. a company employing fewer than two hundred and fifty people and whose annual turnover does not exceed fifty million euros or whose annual balance sheet total does not exceed forty-three million euros, the percentage to be taken into account is five per cent.
- §277 According to Article 12/5 of the Law of 17 June 2016, the reference value relevant for calculating the advance is equal to the original amount of the contract, including all taxes.
- §278 The first half of the advance shall be set off against the sums due to the contractor when the value of the services performed reaches thirty per cent of the original order amount and the second half of the advance shall be set off against the sums due to the contractor when the value of the services performed reaches sixty per cent of the original order amount. The aforementioned amounts shall be understood as amounts inclusive of value-added tax.

## **4.26 Litigation (Art. 73)**

- §279 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.
- §280 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.
- §281 In case of 'litigation', i.e. court action, correspondence must (also) be sent to the following address:

► Enabel

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

To the attention of Ms Inge Janssens

rue Haute 147

1000 Brussels

Belgium

## 5 Terms of reference

### 5.1 Project Location

§282 The designated fablab space is located on the first floor of main building of Jerusalem American School in Dahiyet Al Bared Neighbourhood. The GPS location is (31.8416, 35.2317).

### 5.2 Site Description

§283 The current space that will be converted to a fablab is an uninhabited space with an approximate area of 225 square meters comprising of six rooms and an open area.

§284 The Fablab will see the conversion of these rooms into larger rooms for the establishment of a fablab room, in addition to a demonstration area, design space, computer lab and a lobby area.

### 5.3 Scope of the works

§285 This project will tackle the creation of a fablab space, including but not limited to civil works, supply and installation of air conditioning units, including fresh air ventilation, and electrical and low voltage components to render the space functional.

§286 The project will also supply the needed furniture for the fablab, the design space, the demonstration area and the computer lab designed specifically to suite the space and the needs of the students/teachers.

### 5.4 Annexes

#### 5.4.1 Annex 1: Bill of quantities

#### 5.4.2 Annex 2: Drawings and Details (architectural, civil, electrical, and mechanical)

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

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

§288 and selecting the country “Palestine”.

## 5.5 Selection file

§289 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:

- 1° Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing a commitment by those entities to that effect.
- 2° The contracting authority shall verify whether the entities on whose capacity the economic operator intends to rely fulfil the relevant selection criteria and whether there are grounds for exclusion.
- 3° Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial standing, the contracting authority may require that the economic operator and those entities be jointly liable for the execution of the contract, provided the possibility of requiring joint liability has not been excluded as per procurement documents.

## 5.6 Economic and financial capacity

### 5.6.1 Selection criterion 1: Annual turnover

§290 In one of the past three financial years the tenderer must have achieved a minimum total turnover of:

Minimum annual turnover – (€)
150,000.00

§291 Tenderer shall include in his tender a statement on the total turnovers achieved during the past three 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).

## 5.7 Technical Aptitude

### 5.7.1 Selection Criterion 2: Disposal of sufficient staff

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

No.	Position/ Min. Requirements	Total work projects (years)	Minimum quantity required for being awarded:
1	Project Manager (B.Sc in Civil/Arch Engineering)	10	1 (full-time)

§293 The tenderer shall include in his tender an overview of staff that will be used for the performance of the contract, using the table on next page. The tenderer shall list the staff members' degrees (education) as well as their professional experience (number of years of post-graduate work experience in the construction sector), and their access to Jerusalem. Each staff proposed, including the foreman, shall be supported with a complete and up-to-date CV (2024) showing experience until present. The Contracting Authority reserves its right to request, during the works implementation, proofs of legal employment from relevant authorities of the different staff proposed in the tender.

### 5.7.2 Selection Criterion 3: List the references/similar experience

§294 In order to be selected for this contract, the tenderer must have relevant similar reference(s) carried out to the highest standard and to the client's full satisfaction, for the following minimum requirements: amounts in Euro (€):

Date	Minimum Number of contracts	Each with a minimum amount of (€) incl. VAT:	Minimum combined value of contracts (€) incl. VAT:	Similarity check
Within last five years (from 2019)	At least <b>three contracts</b>	70,000.00	240,000.00	Rehabilitation of schools, public playgrounds, and public buildings.

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

§296 Works shall be successfully and substantially completed and that are similar to the proposed works.

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

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

## 6 Forms

### Form ( 1 ) Identification of the tenderer

Name of the company and legal form		
Nationality of the tenderer and of staff (if different)		
Domicile / registered office <b>complete</b> address	Street name	
	House number	
	Zip code or neighbourhood	
	City or village	
	Country or territory	
Telephone number (with country code)		
National Social Security Office registration number or equivalent		
Enterprise number		
Represented by the undersigned	Full Name	
	Function	
Contact person	Full Name	
	Title / function	
	Phone	
	E-mail	
If different: Project manager	Full Name	
	Phone	
	E-mail	
Bank account for payments	IBAN	
	BIC/SWIFT	
	Financial institution	
	Account holder name	

First name:		Place:	
Last name:		Date:	
Duly authorised to sign this tender on behalf of:		Signature and stamp:	

## Form ( 2 ) Prices

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

§300 Before filling this form, the tenderer shall fill his unit prices in Annex 1: Bill of quantities (see p.43). 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 tenderer commits to performing the public contract in accordance with the provisions of the Tender Specifications for the following prices, given in euros:

	Price offer (without V.A.T)	
<b>Total</b>	€	

§301 Should this tender be approved, the performance bond will be constituted under the conditions and deadlines stipulated in the Tender Specifications (see 4.8 Performance bond (Art. 25 to 33).

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

§303 In order to correctly compare the tenders, the duly signed documents mentioned under point 3.4 Tender Preparation, submission and opening, must be attached to the tender.

§304 Certified true and sincere,

First name:		Place:	
Last name:		Date:	
Duly authorised to sign this tender on behalf of:		Signature and stamp:	

Management of VAT will depend on where the tenderers are registered.  
 For tenderers registered with the Palestinian Authority, contracts will be exempted from VAT. Enabel will be in charge of obtaining a VAT exemption from the Palestinian Ministry of Finance for the entire contract immediately after awarding. The contractor will be issuing invoices with zero-VAT.  
 For tenderers registered in Israel, Enabel will not be able to obtain a VAT exemption nor refund. VAT will therefore be paid by Enabel on each invoice on top of the prices mentioned in the financial offer.  
 In both cases, the tenderer shall fill their prices without VAT as part of their financial offer in the tender.  
 Please note that financial offers will be evaluated according to the cost actually incurred to the contracting authority. Therefore, for the evaluation of the award criterion, prices from tenderers registered in Palestine will be taken without VAT and be compared with prices with VAT for the tenderers registered in Israel.  
 Reminder: joint venture agreements may be set up for this tender, including for the purpose of providing more competitive offers.



### Form ( 3 ) Declaration on honour – Exclusion grounds

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

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

The exclusions on the basis of this criterion apply for a 5-year term from the date of judgement.

2. The tenderer which fails to fulfil his obligations relating to the payment of taxes or social security contributions for an amount in excess of EUR 3 000, except if the tenderer can demonstrate that a contracting authority owes him one or more unquestionable and due debts which are free of all foreseeable liabilities. These debts are at least of an amount equal to the one for which he is late in paying outstanding tax or social charges;
3. when the tenderer is in a state of bankruptcy, liquidation, cessation of activities, judicial reorganisation , or has admitted bankruptcy , or is the subject of a liquidation procedure or judicial reorganisation, or in any similar situation resulting from a procedure of the same kind existing under other national regulations;
4. The tenderer or one of its directors has committed **serious professional misconduct which calls into question their integrity.**

The following are considered serious professional misconduct, among others:

- 1° A breach of Enabel's Policy regarding sexual exploitation and abuse – June 2019
- 2° A breach of Enabel's Policy regarding fraud and corruption risk management – June 2019;
- 3° A breach of a regulatory provision in applicable local legislation regarding sexual harassment in the workplace
- 4° The tenderer was seriously guilty of misrepresentation or false documents when providing the information required for verification of the absence of grounds for exclusion or the satisfaction of the selection criteria, or concealed this information;
- 5° Where Enabel has sufficient plausible evidence to conclude that the tenderer has committed acts, entered into agreements or entered into arrangements to distort competition.

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

5. When a conflict of interest within the meaning of Article 6 of the Law 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 previous public contract, a previous contract placed with a contracting authority, when these failures have given rise

to measures as of right, damages or another comparable sanction;. Failures to respect applicable obligations regarding environmental, social and labour rights under European Union law, national law, labour agreements or international provisions on environmental, social and labour rights are considered 'significant'.

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

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

For the United Nations, the lists can be consulted at the following address:

<https://finances.belgium.be/fr/tresorerie/sanctions-financieres/sanctions-internationales-nations-unies>

For the European Union, the lists can be consulted at the following address:

<https://finances.belgium.be/fr/tresorerie/sanctions-financieres/sanctions-europ%C3%A9ennes-ue>

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

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

For Belgium:

[https://finances.belgium.be/fr/sur\\_le\\_spf/structure\\_et\\_services/administrations\\_generales/tr%C3%A9sorerie/contr%C3%B4le-des-instruments-1-2](https://finances.belgium.be/fr/sur_le_spf/structure_et_services/administrations_generales/tr%C3%A9sorerie/contr%C3%B4le-des-instruments-1-2)

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

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

- 1° Enabel can directly obtain the supporting documents concerned by consulting a national database in a Member State that is accessible for free, provided the tenderer has given the required information (website address, responsible authority for providing the information, specific reference of the documents) so Enabel can obtain these, with concomitant permission to access them;
- 2° Enabel already has said documents.

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

First name:		Place:	
Last name:		Date:	
Duly authorised to sign this tender on behalf of:		Signature and stamp:	

## Form ( 4 ) Integrity Statement of the tenderer

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

- 1° 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.
- 2° 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).
- 3° I have / we have read and understood the articles about deontology of this public contract (see 1.7.) as well as Enabel's Policy regarding sexual exploitation and abuse and Enabel's Policy regarding fraud and corruption risk management and I / we declare fully endorsing and respecting these articles.

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

- 1° In order to avoid any impression of risk of partiality or connivance in the follow-up and control of the performance of the public contract, it is strictly forbidden to the public contractor (i.e. members of the administration and workers) to offer, directly or indirectly, gifts, meals or any other material or immaterial advantage, of whatever value, to the employees of Enabel who are concerned, directly or indirectly, by the follow-up and/or control of the performance of the contract, regardless of their hierarchical rank.
- 2° 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.
- 3° Any failure to comply with one or more of the deontological clauses will lead to the exclusion of the contractor from this and other public contracts for Enabel.

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

First name:		Place:	
Last name:		Date:	
Duly authorised to sign this tender on behalf of:		Signature and stamp:	

## Form ( 5 ) Annual turnover

The tenderer must complete the following table of financial data based on his annual accounts.

Financial data	Year 2020 [EUR]	Year 2021 [EUR]	Year 2022 [EUR]
Annual turnover, excluding this public contract <sup>10</sup>			
Current Assets <sup>11</sup>			
Current Liabilities <sup>12</sup>			
Average annual exchange rates	1 ILS = 0.255 EUR	1 ILS = 0.261 EUR	1 ILS 0.283 EUR
	1 USD = 0.879 EUR	1 USD = 0.845 EUR	1 USD = 0.948 EUR

First name:		Place:	
Last name:		Date:	
Duly authorised to sign this tender on behalf of:		Signature and stamp:	

<sup>10</sup> Last accounting year for which the entity's accounts have been closed.

<sup>11</sup> The gross inflow of economic benefits (cash, receivables, other assets) arising from the ordinary operating activities of the enterprise (such as sales of goods, sales of services, interest, royalties, and dividends) during the year.

A balance sheet account that represents the value of all assets that are reasonably expected to be converted into cash within one year in the normal course of business. Current assets include cash, accounts receivable, inventory, marketable securities, prepaid expenses and other liquid assets that can be readily converted to cash.

<sup>12</sup> A company's debts or obligations that are due within one year. Current liabilities appear on the company's balance sheet and include short term debt, accounts payable, accrued liabilities and other debts.

**Form ( 6 ) Staff disposed**

<b>Position</b>	<b>Full name</b>	<b>Total work projects (years)</b>	<b>Educational degree</b>	<b>CV attached?</b>
Project Manager				

Note: The assigned personnel should have access to Jerusalem

The tenderer shall attached to his tender the up-to-date (2024) CVs of all mentioned personnel.

First name:		Place:	
Last name:		Date:	
Duly authorised to sign this tender on behalf of:		Signature and stamp:	

**Form ( 7 ) List the references/similar experience**

List below the experience under contracts in the role of contractor or subcontractor completed within the last **five years** prior to the applications submission deadline (**2019 – present**). Start with the most recent.

Description of the main works performed	Final contract value	Currency	Role contractor/subcontractor	Start date	End date (provisional acceptance)	Contracting authority

Description of the main works performed	Final contract value	Currency	Role contractor/subcontractor	Start date	End date (provisional acceptance)	Contracting authority

First name:		Place:	
Last name:		Date:	
Duly authorised to sign this tender on behalf of:		Signature and stamp:	



## Form ( 8 ) Subcontracting

The tenderer indicates the proportion of the contract which the building contractor intends possibly to subcontract.

Name and legal form	Address / Registered office	Object	Other entity within the meaning of Article 73 §1 of the Royal Decree of 18 April 2017 (YES/NO)*.

\* In accordance with Article 73 of the Royal Decree of 18 April 2017, where an economic operator wants to rely on the capacities of other entities (particularly subcontractors or independent subsidiaries) for economic and financial capacity criteria and technical aptitude criteria (see [5.5-Selection file](#)), 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.

First name:		Place:	
Last name:		Date:	
Duly authorised to sign this tender on behalf of:		Signature and stamp:	

## 7 Attachments

### Attachment ( 1 ) Power of attorney

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

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

- ▶ Please insert after this page the power of attorney empowering the person signing the tender on behalf of the company, joint venture or consortium, signed by the person(s) mentioned in the incorporation certificate (only needed if the person signing the tender is different).

## **Attachment ( 2 ) Incorporation certificate**

The tenderer shall include in his tender the incorporation certificate<sup>13</sup> from the competent authority (for local tenderers: Israeli or Palestinian Registration Certificate).

▶ Please insert after this page

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<sup>13</sup> In case of a consortium or a temporary association, the certificate must be submitted for all members of the tendering party.

### **Attachment ( 3 ) Certification of clearance with regards to the payments of social security contributions**

The tenderer must provide a certification<sup>13</sup> from the competent authority stating that (s)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. This requirement does not apply to tenderers registered in the Palestinian territory.

▶ Please insert after this page

## **Attachment ( 4 ) Certification of clearance with regards to the payments of applicable taxes**

The tenderer must provide a **recent certification**<sup>13</sup> (up to 1 year) from the competent authority stating that the tenderer is **in order with the payment of applicable taxes** that apply by law in the country of establishment. For firms registered in Israel or the Palestinian territory, a valid deduction at source certificate must be provided.

▶ Please insert after this page

## **Attachment ( 5 ) Approved/Audited financial statements**

The tenderer must also provide his approved financial statements for the last three financial years or a document listing all assets and liabilities of the enterprise. In case the enterprise has not yet published its Financial Statements, an interim balance certified true by an accountant or by a registered auditor or by the person or body with this function in the country concerned will do.

► Please insert after this page Approved/Audited financial statements for the last three financial year.

## **Attachment ( 6 ) CVs of all mentioned personnel**

The service provider must provide in his/her offer the **updated CVs of the key experts proposed** for implementing this services contract. The CV's (qualifications and experience of key experts) have to fulfil the profiles as requested. Each CV should be no longer than 5 pages.

- ▶ Please insert after this page CVs of all mentioned personnel  
Please respect the order of the personnel as listed in the form



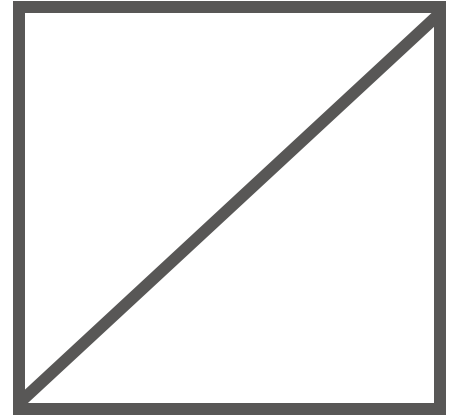
## 8 Checklist of documents to be joined to the tender

Please refer to Section 3.4 - Tender Preparation, submission and opening for complete instructions on how to fill the forms of the present tender document.

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

No.	Forms to be completed and joined	Filled?
1	<u>Form ( 1 ) - Identification of the tenderer</u>	
2	<u>Form ( 2 ) - Prices</u>	
3	<u>Form ( 3 ) - Declaration on honour – Exclusion grounds</u>	
4	<u>Form ( 4 ) - Integrity Statement of the tenderer</u>	
5	<u>Form ( 5 ) - Annual turnover</u>	
6	<u>1Form ( 6 )Form ( 6 ) - Staff disposed</u>	
7	<u>Form ( 7 ) - List the references/similar experience</u>	
8	<u>Form ( 8 ) - Subcontracting</u>	
	Attachments to be joined	Joined ?
9	<u>Attachment ( 1 ) - Power of attorney</u>	
10	<u>Attachment ( 2 ) - Incorporation certificate</u>	
11	<u>Attachment ( 3 ) - Certification of clearance with regards to the payments of social security contributions</u>	
12	<u>Attachment ( 4 ) - Certification of clearance with regards to the payments of applicable taxes</u>	
13	<u>Attachment ( 5 ) - Approved/Audited financial statements</u>	
14	<u>Attachment ( 6 ) - CVs of all mentioned personnel</u>	

**Enabel** 



**TENDER FOR:**

**PZA170421T-10054**

**Public works contract for “The  
Transformation Works and Furniture Supply  
at Jerusalem American School Fablab”**

**Tenderer’s company name:**

**Do not open this envelope except in presence of  
the tender opening committee.**