



## Tender Specifications

Public works contract for the supply, delivery and installation of generators, user training and construction of generator shelter at three Health Training Institutions.

Procurement reference number: UGA22010-10016

Navision code: UGA22010

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#### **DEROGATIONS FROM THE ROYAL DECREE OF 14 JANUARY 2013**

Chapter 4 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.

These Tender Specifications derogate from Article 26 of the General Implementing Rules This derogation is founded on the idea of providing possible local tenderers with an opportunity to submit a tender in order to increase competition.

# 1 Technical specifications

## 1.1 Requirements for the works

### 1.1.1 Technical Methodology

The Contractor shall apply the technical methodology for supply, delivery, installation, testing and training that is most suitable for achieving the results and in accordance with the requirements laid down in these specifications and industry best practices.

#### 1.1.1.1 Background information

The Government of Uganda (GoU) received a grant from the Kingdom of Belgium to finance a project that will transform education and training for an improved healthcare workforce with a global objectives of ensuring “The right to safe and quality education and health care is more transparently ensured, in particular for vulnerable groups including children, girls and women, and refugees” in the Health Training Institutions of Fort Portal College of Health Sciences, Hoima School of Nursing and Midwifery and Jinja School of Nursing and Midwifery.

The Ministry of Education and Sports (MoES) – Health Education and Training (HET) Department and Enabel, the Belgian development agency, jointly execute the project. This project aims to transform education and training for health by:

1. Improving the teaching skills of the pedagogic personnel;
2. Improving the institutional management;
3. Improve the learning environment (infrastructure, equipment, maintenance, and asset management)

To support the teaching, learning and management of the 3 health training institutions even when there is a power blackout from the national grid there is a need to provide a generator to each of the three Health Training Institutions.

#### 1.1.1.2 Tasks

The description of the scope of this tender is indicated in the table below.

No.	District	Facility	Scope of works
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1.	Fort Portal	Fort Portal College of Health Sciences.	<ul style="list-style-type: none"> <li>• Supply, delivery and installation a 60KVA, 3 phase, diesel generator</li> <li>• User training on operational maintenance of the generator.</li> <li>• Construction of the generator shelter.</li> </ul>
2.	Hoima	Hoima School of Nursing and Midwifery	<ul style="list-style-type: none"> <li>• Supply, delivery and installation a 60KVA, 3 phase, diesel generator</li> <li>• User training on operational maintenance of the generator.</li> <li>• Construction of the generator shelter.</li> </ul>
3.	Jinja	Jinja School of Nursing and Midwifery	<ul style="list-style-type: none"> <li>• Supply, delivery and installation a 60KVA, 3 phase, diesel generator</li> <li>• User training on operational maintenance of the generator.</li> <li>• Construction of the generator shelter.</li> </ul>

The detailed specific requirements and scope of works is included in the Bills of Quantities that are annexed to these tender specifications document.

**Deliverables:**

1. Fully installed generator and generator shelter
2. Training plan for users
3. Training report of the training activity
4. Report on how to maintain the equipment

**1.1.1.3 Ancillary Services**

Delivery and installation

The contractor shall supply, deliver and install the generators, conduct user trainings on operational maintenance of the generator and construct the generator shelters at the facilities below.

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Facility	Location
Fort Portal College of Health Sciences.	Fort Portal Tourism City, within the city center, East of Fort Portal city approximately 300 km from Kampala City.
Hoima School of Nursing and Midwifery.	Hoima Oil City, along Hoima Kampala highway approximately 200km from Kampala City.
Jinja School of Nursing and Midwifery.	Jinja City, within the city center, southwest of Jinja city approximately 90km from Kampala City.

## 1.2 Project management

The contractor undertakes to deliver a project management plan to be approved by the contracting authority and her advisors within 7 calendar days following notification of contract award.

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

The project management plan must be consistent with the work planning. It shall be aligned with the work planning and shall be based on the same document.

The contractor shall be sole manager of the planning of all activities required to perform this public contract. In particular, he will plan:

- Dates for delivering implementation plans that he needs,
- The placing of orders to his suppliers and subcontractors;
- The presentation in due time of samples and technical forms of products submitted for preliminary technical acceptance;
- Measuring the works and the workshop manufacture period, if applicable;
- Indication of deadlines dates for decisions to be taken by contracting authority;
- Indication of deadline dates for the conclusion of modifications to orders being elaborated;
- Indication of deadline dates for the achievement of works performed by other businesses;
- Registration, in due time, of the measurements of the works;

The contractor shall submit samples of materials to the contracting authority for approval before commencing the works. Material for approval will be submitted within 7 calendar days after award of contract.

### **1.2.1 Quality management**

The supplies, services and works shall comply in all respects with the contract documents. Even in the absence of detailed technical specifications in contract documents, the works, supplies and services must comply in all respects with good practice.

## **1.3 Requirements for the resources**

### **1.3.1 Requirements for the human resources**

The contractor shall assemble a technical team including but not limited to the following experts whose CVs and academic transcripts shall be provided and evaluated under the selection criteria. The contractor shall submit separate technical teams for the different locations.

#### **Key Experts**

**Electrical engineer;** the electrical engineer who shall be the team leader shall be a holder of a bachelor's degree in electro-mechanical Engineering and have a minimum of three years of experience in mechanical installation for institutional tools and equipment.

**Mechanical Supervisor;** The Electrical/mechanical supervisor shall be a holder of a College degree in Mechanical Engineering and have minimum of two (2) years of experience in electro-mechanical installation for institutional buildings and systems.

**Civil Engineer/supervisor;** shall be a holder of a College Diploma in Building and Civil Engineering and have a minimum of two years of experience in civil works and site supervision for institutional buildings and systems.

Each CV should not be more than 3 pages and signed by the expert.

The key expert should be available to perform the contract during the entire period of the contract.

The contractor shall not replace any of the key experts during the implementation of the contract without prior written approval by the contracting authority. In case of replacement, the Procurement reference number: UGA22010-10016

expert's qualifications and experience must be at least as high as those of the expert proposed in the tender.

### **1.3.2 Requirements for the equipment**

The contractor shall assemble all tools necessary per location to perform the works under the contract, including but not limited to the following; the contractor shall submit proof of ownership or proof of lease for the entire contract duration.

<b>No.</b>	<b>Equipment Type and Characteristics</b>	<b>Min. quantity required</b>
1.	Transport van with Crane	1
2.	Poker vibrator	1
3.	Concrete Mixing machine	1
4.	Electrical tools kit	Set

### **1.3.3 Bills of quantities**

The Bills of Quantities are attached separately as annexes to this document.

## 2 General provisions

### 2.1 Contracting authority

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

For this procurement contract, Enabel is represented by person(s) who shall sign the award letter and are mandated to represent the organisation towards third parties.

### 2.2 Institutional framework of Enabel

The general framework of reference in which ENABEL operates is:

The Belgian Law on Development Cooperation of 19 March 2013<sup>1</sup>;

The Belgian Law of 21 December 1998 establishing the Belgian Technical Cooperation as a public-law company<sup>2</sup>;

- The Belgian Law of 23 November 2017 changing the name of the Belgian Technical Cooperation and defining the missions and functioning of Enabel, the Belgian development agency, published in the Belgian Official Gazette on 11 December 2017.

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

In the field of international cooperation: the United Nations Sustainable Development Goals and the Paris Declaration on the harmonisation and alignment of aid;

In the field of the fight against corruption: the Law of 8 May 2007 approving the United Nations Convention against Corruption, adopted in New York on 31 October 2003<sup>3</sup>, as well as the Law of 10 February 1999 on the Suppression of Corruption transposing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;

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

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

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

In the field of Human Rights: the United Nations' Universal Declaration of Human Rights (1948) as well as the 8 basic conventions of the International Labour Organization<sup>4</sup> on Freedom of Association (C. n°87), on the Right to Organise and Collective Bargaining (C. n°98), on Forced Labour (C. n°29 and 105), on Equal Remuneration and on Discrimination in Respect of Employment (C. n°100 and 111), on Minimum Age for Admission to Employment (C. n°138), on the Prohibition of the Worst Forms of Child Labour (C. n°182);

In the field of environmental protection: The Climate Change Framework Convention of Paris, of 12 December 2015;

The first Management Contract contracting Enabel and the Belgian federal State (approved by the Royal Decree of 17 December 2017, Belgian Official Gazette of 22 December 2017) that sets out the rules and the special conditions for the execution of public service tasks by Enabel on behalf of the Belgian State;

Enabel's Code of Conduct of January 2019, Enabel's Policy regarding sexual exploitation and abuse of June 2019 and Enabel's Policy regarding fraud and corruption risk management of June 2019.

### **2.3 Rules governing the public contract**

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

1. The Law of 17 June 2016 on public procurement<sup>5</sup>;
2. The Law of 17 June 2013 on justifications, notification and legal remedies for public contracts and certain contracts for works, supplies and services<sup>6</sup>;
3. The Royal Decree of 18 April 2017 on the awarding of public contracts in the classic sectors<sup>5</sup>;
4. The Royal Decree of 14 January 2013 establishing the General Implementing Rules for public procurement<sup>5</sup>;
5. Circulars of the Prime Minister with regards to public procurement<sup>5</sup>.
- 6.
7. Enabel's Policy regarding sexual exploitation and abuse – June 2019;
8. Enabel's Policy regarding fraud and corruption risk management – June 2019

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

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

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

9. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation, hereinafter referred to as 'the GDPR'), and repealing Directive 95/46/EC;
  10. Law of 30 July 2018 on the protection of natural persons with regard to the processing of personal data;
  11. [local legislation with regards to sexual harassment at the workplace or equivalent];
- All Belgian regulations on public contracts can be consulted on [www.publicprocurement.be](http://www.publicprocurement.be); Enabel's Code of Conduct and the policies mentioned above can be consulted on Enabel's website via <https://www.enabel.be/content/integrity-desk>.

## 2.4 Definitions

The following definitions apply to this contract:

12. The tenderer: The natural person (m/f) or legal entity that submits a tender;
13. The contractor / building contractor: The tenderer to whom the public contract is awarded;
14. The contracting authority: Enabel, represented by the Resident Representative of Enabel in Uganda;
15. 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;
16. Procurement documents: Contract notice and Tender Specifications including the annexes and the documents they refer to;
17. 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;
18. 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;

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19. 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;
20. 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;
21. General Implementing Rules (GIR): Rules laid down in the Royal Decree of 14 January 2013 establishing the General Implementing Rules for public procurement and for concessions for public works;
22. The Tender Specifications (Cahier spécial des charges/CSC): This document and its annexes and the documents it refers to;
23. Corrupt practices: The offer of a bribe, gift, gratuity or commission to a person as an inducement or reward for performing or refraining from an act relating to the award of a contract or performance of a contract already concluded with the contracting authority;
24. Litigation: Court action;

Subcontractor in the meaning of public procurement regulations: The economic operator proposed by a tenderer or contractor to perform part of the public contract;

Controller in the meaning of the GDPR: the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data;

Processor (subcontractor) in the meaning of the GDPR: a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;

Recipient in the meaning of the GDPR: a natural or legal person, public authority, agency or another body, to which the personal data are disclosed, whether a third party or not;

Personal data: any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

## **2.5 Confidentiality**

### **2.5.1 Processing of personal data**

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

### **2.5.2 Confidentiality**

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

PRIVACY NOTICE OF ENABEL: Enabel takes your privacy serious. We undertake to protect and process your personal data with due care, transparently and in strict compliance with privacy protection legislation.

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

## **2.6 Deontological obligations**

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.

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. 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

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be considered a form of sexual exploitation or abuse and they must abide by the basic principles and guidelines laid down in this policy.

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.

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.

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.

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 website <https://www.enabelintegrity.be>

## **2.7 Applicable law and competent courts**

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

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

In case of litigation or divergence of opinion between the contracting authority and the contractor, the parties will consult each other to find a solution.

If agreement is lacking, the Brussels courts are the only courts competent to resolve the matter. See also point 'Claims and requests' (Article 73 of the Royal Decree of 14 January 2013).

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## **3 Modalities of the contract**

### **3.1 Type of contract**

This contract is a public works contract.

### **3.2 Scope of the contract**

#### **3.2.1 Subject-matter of procurement**

This public contract consists of the supply, delivery and installation of generators, user training and construction of the generator shelters at three Health Training Institutions in conformity with the conditions of these Tender Specifications.

#### **3.2.2 Items**

This public contract consists of the items listed in section 1 “technical specification” and in the bill of quantities.

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

#### **3.2.3 Variants**

Each tenderer may submit only one tender. Variants are not permitted.

### **3.3 Duration of the public contract**

The contract shall start upon award notification and last for **90 calendar days**. Thereafter, the defects liability period of 12 months shall commence from the day following date of provisional acceptance. The works shall be carried out concurrently at the different sites

## 4 Specific contract conditions

### 4.1 Definitions (Art. 2)

The following definitions apply to this contract:

- Managing official: The official or any other person who manages and controls the performance of the public 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 Usage of digital means (Art. 10)

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

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

### 4.3 Managing official (Art. 11)

The management and control of contract performance are entrusted to Miss. Hannah Nayoga, Intervention manager, [hannah.nayoga@enabel.be](mailto:hannah.nayoga@enabel.be) and assisted by Mr. Frank Waibale [frank.waibale@enabel.be](mailto:frank.waibale@enabel.be)

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

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

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

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)**

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

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

The 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.

The contractor may not sub-contract, sub-lease, delegate or transfer in any way the whole or more than 30 per cent (of the value) of the works.

When the contractor uses a subcontractor to carry out specific processing activities on behalf of the contracting authority, the same data protection obligations as those of the contractor are imposed on that subcontractor by contract or any other legal act.

In the same way, the contractor will respect and enforce to his subcontractors, the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation, GDPR). The contracting authority

may conduct an audit of the processing carried out in order to validate compliance with this legislation.

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

Knowledge and information obtained by the contractor, including any persons responsible for the mission and any other person involved in this public contract, are strictly confidential.

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

All parties directly or indirectly involved are therefore bound by the duty of discretion.

In accordance with Article 18 of the Royal Decree of 14 January 2013 establishing the general rules for public procurement, the tenderer or contractor undertakes to consider and process in a strictly confidential manner any information, all facts, any documents and/or any data, whatever their nature and support, which have been communicated to him, in any form and by any means, or to which he has access, directly or indirectly, in the context or on the occasion of this public contract. Confidential information covers, in particular, the very existence of this public contract, without this list being limited.

Therefore, he undertakes to:

- Respect and enforce the strict confidentiality of these elements and to take all necessary precautions in order to preserve their secrecy (these precautions cannot in any case be inferior to those taken by the tenderer for the protection of his own confidential information);
- Consult, use and/or exploit, directly or indirectly, all of the above elements only to the extent strictly necessary to prepare and, where applicable, to carry out this public contract (particularly regarding the privacy legislation with respect to personal data processing);
- Not reproduce, distribute, disclose, transmit or otherwise make available to third parties the above elements, in whole or in part, and in any form, unless having obtained prior and written consent of the contracting authority;
- Return, at first request of the contracting authority, the above elements;
- In general, not disclose directly or indirectly to third parties, whether for advertising or any other reason, the content of this public contract, or the fact that the tenderer or contractor performs this public contract for the contracting authority, or, where applicable, the results obtained in this context, unless having obtained prior and written consent of the contracting authority.

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## **4.6 Personal data protection**

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

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

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

#### PROCESSING OF PERSONAL DATA BY A CONTROLLER (RECIPIENT)

Where during contract performance, the contractor processes personal data of the contracting authority or in execution of a legal obligation, the following provisions apply:

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

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

Given the public contract, it is to be considered that the contracting authority and the contractor will each be responsible, individually, for the processing.

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

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.

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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.

Where the contracting authority does not acquire the intellectual property rights, it obtains a patent licence of the results protected by intellectual property law for the exploitation modes that are mentioned in the procurement documents.

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

#### **4.8 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.

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

The performance bond is set at 5% of the total value of the procurement contract excluding VAT.

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.

By way of derogation from Article 26 the performance bond may be posted through an establishment that has its registered office in one of the countries of destination of the services.

The contracting authority reserves the right to accept or refuse the posting of the bond through that institution. The tenderer mentions the name and address of this institution in the tender.

This derogation is founded on the idea of providing possible local tenderers with an opportunity to submit a tender.

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The contractor must, within 30 calendar days from the day of contract conclusion, furnish proof that he or a third party has posted the bond in one of the ways set out below:

- 1° in the case of cash, by transfer of the amount to the bpost bank account number of the Deposit and Consignment Office. Complete the following form as well as possible: [https://finances.belgium.be/sites/default/files/01\\_marche\\_public.pdf](https://finances.belgium.be/sites/default/files/01_marche_public.pdf) (PDF, 1.34 Mo), and forward it by e-mail to [info.cdcck@minfin.fed.be](mailto:info.cdcck@minfin.fed.be)
- 2° in the case of public funds, by depositing such funds, for the account of the Deposit and Consignment Office, with the State Cashier at the head office of the National Bank in Brussels or at one of its provincial agencies or with a public institution with an equivalent function
- 3° in the case of a joint surety, by deposit via an institution that lawfully carries out this activity of a deed of joint surety with the Deposit and Consignment Office or with a public institution with an equivalent function
- 4° in the case of a guaranty, by the deed of undertaking of the credit institution.

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

- 1° the deposit receipt of the Deposit and Consignment Office or of a public institution with an equivalent function or
- 2° a debit notice issued by the credit institution
- 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 granting a guaranty.

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.

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

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

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

1° For 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.

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

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

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

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.

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.

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

The contractor prepares at its own expense all the detailed plans and work plans he requires for successful performance of the contract

The procurement documents specify which plans require approval by the contracting authority, which has 10 days to approve or reject the plans starting from the date on which they are submitted to it.

Any corrected documents are resubmitted for approval to the contracting authority, which has 5 days to approve them, provided that the corrections requested are not the result of new demands made by the contracting authority.

#### **4.12.1 Construction planning**

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

The first planning is to be introduced within 7 calendar days following tender award notification and it is to be updated every month during construction.

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.

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

#### **4.12.2 Master plan**

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.

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.

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.

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

In particular he plans:

- Set dates for delivering implementation plans that he needs,
- The placing of orders to his suppliers and subcontractors,

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- The presentation in due time of samples and technical forms of products submitted for preliminary technical acceptance,
- Measuring the works and the workshop manufacture period,
- Indication of deadline dates for decisions to be taken by the contracting authority,
- Indication of deadline dates for the conclusion of modifications to orders being elaborated,
- Indication of deadline dates for the achievement of works performed by other enterprises,
- Registration, in due time, of the measurements of the works,
- etc.

#### **4.12.3 Performance documents**

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.

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):

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

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

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

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

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

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

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

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

#### **4.13.2 Revision of prices (Art. 38/7)**

For each of the lots, price revisions are not permitted.

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

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

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

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

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

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

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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.

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.

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.

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

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

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.

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.

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

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.

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:

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

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

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.

#### **Unforeseeable circumstances**

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

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

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

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

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

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

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.

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

Concerning technical acceptance, it is necessary to distinguish between:

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

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.

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

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

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

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

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

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

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

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

The request of the contractor will be considered not having been made. A new request is made when the product is fit for acceptance.

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

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

In any case, the costs include:

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- Costs pertaining to tasks of the acceptance experts, including travel and accommodation costs of acceptance experts.
- Costs pertaining to collecting, packaging, and transporting samples, regardless where or where to,
- Costs pertaining to tests (preparation, manufacture of testing tools, the tests as such (in this respect, the circular letters pertaining to setting rates for tests apply),
- Costs pertaining to the replacement of products that are faulty or damaged.

#### **4.14.1.4 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)**

The building contractor is to complete the works within a period of **90 calendar days** up to provisional acceptance and thereafter a **12 calendar months** defects liability period shall commence.

The contract shall start the date following the kick off meeting.

The above-mentioned deadlines are mandatorily applicable.

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

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.

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

The enclosing hoardings may not be used for advertising.

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

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

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.

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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.

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.

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;

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.

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

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.

During the performance of the works, the building contractor shall be required to maintain the security of the site for the duration of the works and, in the interests of his appointees and the representatives of the contracting authority and third parties, to take all necessary measures to ensure their safety.

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.

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.

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

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

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

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.

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

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.

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

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

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

- Weather conditions;
- Interruptions to works caused by adverse weather conditions;
- Accidents at work;
- The number and capacity of workers employed on the site;
- Materials supplied;
- Equipment actually used and equipment out of service;

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- Unforeseen events;
- Amending orders of minor impact;
- The attachments and quantities performed for each item and in each zone of the construction site. The attachments constituting the true and detailed representation of all works performed, in quantity, dimensions and weights.

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

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.

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

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

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.

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

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

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

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

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

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

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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.

In case of violation, the contracting authority may impose a lump-sum fine to him 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.

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.

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)**

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

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

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

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

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

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

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

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

##### **Special penalties**

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

- Non-delivery of administrative and technical documents such as reports: because not having delivered the documents listed by the time set during construction site meetings or by administrative order.
- Absence from construction site meetings or coordination meetings: For every absence a penalty will be imposed to the building contractor who has not attended or has not been validly represented at meetings which he was supposed to attend.
- Delay in executing observations or administrative orders of the contracting authorities via the managing official: Where the lists of observations result from construction site visits, in particular for painting orders, or upon acceptance, have not been fulfilled by the time set by the managing official, the contractor will be penalised per calendar day of delay until performance is effectively carried out.
- Change of one of the key staff members without prior agreement of the contracting authority: A lump sum penalty is applied per day of default, ending when, either the managing official obtains the approval of the contracting authority for the new member's being put in place, or the replaced member is re-established in its duties, or both parties agree about a new person as a replacement that is jointly accepted. When the penalties are applied, these may in no case be recuperated retrospectively, even where agreement is found.

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.

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)**

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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.

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

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.

In case the works being the subject-matter of these Tender Specifications were not completed within the period set in point 1.4.18, 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:

$$R = 0,45 * (M * n^2) / N^2$$

where,

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

M = the initial value of procurement;

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

n = the number of working days of delay.

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

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

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:

$$R_{par} = (M / 20) * (P / N)$$

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

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.

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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.

The measures as of right are:

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

2° Performance under regie of all or part of the non-performed contract;

3° Conclusion of one or more replacement contracts with one or more third parties for all or part of the contract remaining to be performed.

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)**

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

The managing official will closely follow up the works during performance. The services will not be accepted until after fulfilling audit checks, technical acceptance and prescribed tests.

Provisional acceptance is provided upon the completion of performance of the works forming the subject-matter of the contract and, on expiry of a warranty period, a final acceptance marking full completion of the contract.

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

The contracting authority disposes of a verification term of thirty days starting on the final or partial end date of the works, set in conformity with the modalities in the procurement documents, to carry out the acceptance formalities and to notify the result to the building contractor.

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.

When the work is terminated before or after this date, the building contractor notifies the managing official thereof, by registered letter or e-mail showing the exact date of dispatch, and requests, on that occasion, to proceed to provisional acceptance. Within 15 days after the date of receipt of the building contractor's request, and provided that the results of the technical acceptance inspections and prescribed tests are known, a report confirming provisional acceptance or refusing acceptance will be drawn up.

The warranty period commences on the date on which provisional acceptance is given and last for 12 calendar months.

Within 15 days preceding the date of expiry of the warranty period, a report confirming final acceptance or refusing acceptance shall be drawn up.

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.

However, after provisional acceptance, the building contractor will not be liable for damage the causes of which are not attributable to him.

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.

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.

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.

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)**

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:

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

where,

$e_1, e_2, \dots, e_n$ , 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;  $t_1, t_2, \dots, t_n$ , represent the corresponding periods for applying these values, expressed in months of 30 days, each fraction of a month being ignored and the periods of suspension of performance of the contract not being taken into consideration.

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

#### **4.25 Terms and Conditions of Payment of the works (Art. 66 et seq and 95)**

Payment shall be made within 30 days after submission and approval of the invoice.

The invoice shows the full details of the works that justify the payment. The invoice will be signed and dated, and will include the statement: 'Certified true and sincere for the amount of EUR ... (amount in words).' and the reference UGA22010-10016 as well as the name of the managing official (Hannah Nayoga) The invoice that does not include this reference cannot be paid.

The invoice address is:

Ms. Lydia Namulondo

[lydia.namulondo@enabel.be](mailto:lydia.namulondo@enabel.be)

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Financial Controller – We Learn  
Enabel in Uganda

Payment shall be made corresponding to 100% based on the actual work executed per site.  
Payment will be by bank transfer only.

**Advance payment:**

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.

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 (10) people and whose annual turnover or annual balance sheet total does not exceed two million euros (2M euro), the percentage to be taken into account is twenty per cent (20%); 2° if the successful tenderer is a small business, i.e. a business that employs fewer than fifty (50) people and whose annual turnover or annual balance sheet total does not exceed ten million euros (10M euro), the percentage to be taken into account is ten per cent (10%);

3° where the successful tenderer is a medium-sized company, i.e. a company employing fewer than two hundred and fifty (250) people and whose annual turnover does not exceed fifty million euros (50M euro) or whose annual balance sheet total does not exceed forty-three million euros (43M euro), the percentage to be taken into account is five per cent (5%).

According to Article 12/5 of the Law of 17 June 2016, the reference value relevant for calculating the advance in a framework agreement is equal to the amount of each order, including all taxes. 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

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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.

The supplier must provide an advance bank guarantee prior to any advance payment. The amount of the advance will be deducted from the final invoice of each order.

No advance will be paid when implementation duration of an order is less than 60 days.

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

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

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

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

Enabel

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

To the attention of Ms Inge Janssens

rue Haute 147

1000 Brussels

Belgium

## 5 Procurement procedure

### 5.1 Award procedure

This is a negotiated Procedure without Prior Publication in application of Article 42 of the Law of 17 June 2016.

### 5.2 Publication

#### 5.2.1 Enabel publication

These Tender Specifications are posted on the website of Enabel <https://www.enabel.be/public-procurement/>.

### 5.3 Information

The awarding of this contract is coordinated by the Contract Service Centre of Enabel Uganda. Throughout this procedure all contacts between the contracting authority and the (prospective) tenderers about this contract will exclusively pass through this service / this person. (Prospective) tenderers are prohibited to contact the contracting authority in any other way with regards to this contract, unless otherwise stipulated in these Tender Specifications.

Until 10 calendar days before the deadline for submission of tenders<sup>7</sup>, prospective tenderers may ask questions about the Tender Specifications and the contract in accordance with Article 44 of the Royal Decree of 1 July 2011. Questions will be in writing by e-mail to [UGA\\_CSC\\_CONTRACTS@enabel.be](mailto:UGA_CSC_CONTRACTS@enabel.be) with copy to [sandra.adero@enabel.be](mailto:sandra.adero@enabel.be). The e-mail comprising the question shall indicate in the subject the procurement procedure reference number and the contract title, as stated on the cover page of these tender specifications. They will be answered in the order received. The complete overview of questions asked will be available at the address mentioned above.

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

**To be able to submit a tender in full knowledge of the facts, the tenderer may visit the sites at their own expense. The tenderer may write to contracting authority for an introductory letter to Enabel him/her visit the site**

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

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

## **5.4 Preparation and submission of tenders**

### **5.4.1 Preparation of tenders**

The tenderer shall prepare separately, the administrative, technical and financial proposals as explained below;

#### **5.4.1.1 Content of tenders**

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

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

By submitting a tender, the tenderer automatically renounces to his own general or specific sales conditions, even if these are mentioned in any of the annexes to his tender.

The tenderer clearly designates in his tender which information is confidential and/or relates to technical or business secrets and may therefore not be divulged by the contracting authority.

The tender shall contain the following parts:

#### **1. Administrative Proposal**

The tenderer shall use the tender forms included in the corresponding section of the Annex.

The Administrative proposal shall respect the following structure:

- Legal identification form
- Financial Identification Form **(along with an account confirmation letter from the bank. This account shall not change throughout the contract duration and implementation)**
- Subcontractor form
- Exclusion Criteria Form

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- Integrity form
- Technical capacity form
- Financial capacity form

The successful tenderer shall be required to provide the following documents before award

- Tax Clearance Certificate (e.g.; URA, as applicable)
- Social Security Contribution Clearance (e.g., NSFF as applicable)
- An extract from the criminal record in the name of the tenderer (legal person) or his representative (natural person) if there is no criminal record for legal persons (ex. certificate of good conduct from Interpol);
- Articles of Association

## **2. Technical Proposal**

The technical proposal may be presented in free format. It shall not exceed fifteen pages, not counting the CVs. It shall respect the following page limit and structure:

- Technical methodology (max. 8pages)
- Quality Management (max. 2 pages)
- Project management (max. 5 pages)

## **3. Financial Proposal**

The tenderer shall use the tender forms included in the corresponding section of the Annex.

### **Determination, components and price adjustments**

All prices given in the tender form must obligatorily be quoted in **Euros**.

This public contract is a price-schedule contract, i.e. a contract in which only the unit prices are lump-sum prices. The price to be paid will be obtained by applying the unit prices given in the inventory to the quantities actually performed.

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.

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

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The tenderer is to include in the unit and global prices of the works contract all costs, measures and charges generally inherent to the performance of the contract, with the exception of the value-added tax.

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

1° Where applicable, the measures imposed by occupational safety and worker health legislation;

2° All the works and supplies, such as bracing, sheet piling and drainage, necessary to prevent landslips and other damage and to remedy these if necessary;

3° The perfect preservation, possible shift and redeployment of cables and pipes which might be encountered during excavation, earthworks and dredging, provided that these achievements are not the legal responsibility of the owners of such cables and pipes;

4° Removal, within the confines of the excavations, earthworks and dredging which may be necessary for construction of the structure, of:

a) earth, mud and gravel, stones, rubble, riprap of any kind, masonry remains, turf, plants, bushes, stumps, roots, coppices, debris and waste materials;

b) any rock regardless of size where the procurement documents state that the earthworks, excavation and dredging are to be carried out in land known to be rocky, and in the absence of this statement, any rock and any blocks of masonry or concrete the individual volume of which does not exceed half a cubic metre;

5° The transportation and removal 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;

6° All overheads, incidental expenses and maintenance costs during contractual performance and the warranty period;

7° Customs and excise duties;

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.

#### **5.4.1.2 Validity of tenders**

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

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

#### **5.4.2 Submission of tenders**

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

The tenderer submits his tender as follows:

The duly completed and signed tender shall be submitted only by e-mail; [uga\\_csc\\_tenders@enabel.be](mailto:uga_csc_tenders@enabel.be) and only as attachments and not via a link to a platform. The files shall be clearly named and structured and submitted in a compressed zip folder. The tenderer is solely responsible for the accessibility and legibility of files. The tenderer shall not submit at the last minute. Untimely submission, incomplete submission or indirect submission of documents that are inaccessible or illegible may lead to the rejection of the tender. The tenderer shall submit the administrative, technical and financial proposals as separate email attachments. The subject of the e-mail shall clearly mention the procurement reference number and the contract title, as stated on the cover page of the tender specifications, as well as the name of tenderer.

The tender shall be received by the Contracting Authority on **3<sup>rd</sup> May, 2024 at 11:00 am, Kampala time**. Tenders that arrive late will not be accepted. (Article 83 of the Royal Decree on Awarding)

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

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

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

The withdrawal may also be communicated by fax or electronic means, provided that it is confirmed by registered letter deposited at the post office or against acknowledgement of receipt at the latest the day before the tender acceptance deadline. The subject-matter and the scope of the changes must be indicated in detail.

The withdrawal must be pure and simple.

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## 5.5 Opening and evaluation of Tenders

### 5.5.1 Opening of tenderers

The opening of tenders will take place on the day of the final date for receiving tenders indicated above. Tenders not received before this time will be rejected. The opening will take place behind closed doors.

### 5.5.2 Evaluation of Tenders

#### 5.5.2.1 Selection of tenderers

##### Exclusion grounds

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

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

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

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

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

##### Selection criteria

Moreover, by means of the documents requested in the Annexes - Administrative Proposal, 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 procurement contract.

<b>1</b>	<b>Sufficient Economic and Financial Capacity</b>
1.1	Sufficient turn-over
Minimum Standard	Minimum average annual turnover of 90,000 Euros during the past three financial years
<b>2</b>	<b>Sufficient Technical and Professional Capacity</b>

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2.1	Sufficient experience in supply, delivery and installation of generators
Minimum Standard	Minimum of 2 assignments which were totally and successfully completed in the last 3 years. The similar works shall each be at least 90,000 euros.
2.2	Sufficient human resource
Minimum Standard	CVs of the experts of the profile defined in the technical specification. The contractor shall propose different experts for the different locations.
2.3	Sufficient equipment
Minimum Standard	Minimum equipment required in the technical specification. The contractor shall propose different equipment for each of the different locations.

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:

- 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.
- 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.
- 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.
- The contracting authority may require certain essential tasks to be carried out directly by the tenderer himself or, if the tender is submitted by a group of economic operators, by a member of the said group.

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

### **Regularity of tenders**

The tenders submitted by the selected tenderers will be evaluated as to formal and material regularity. Irregular tenders will be rejected.

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

### 5.5.2.2 qualitative and financial evaluation of tenders

#### Negotiation

The formally and materially regular tenders will be evaluated as to content by an evaluation committee. The contracting authority will restrict the number of tenders to be negotiated by applying the award criteria stated in the procurement documents. This evaluation will be conducted on the basis of the award criteria given in these Tender Specifications and aims to setting a shortlist of tenderers with whom negotiations will be conducted.

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

When the contracting authority intends to conclude the negotiations, it will so advise the remaining tenderers and will set a common deadline for the submission of any BAFOs. Once negotiations have closed, the BAFO will be compared with the exclusion, selection and award criteria. The tenderer whose BAFO shows the best value for money (obtaining the best score based on the award criteria given below) will be designated the contractor for this procurement contract.

#### Award Criteria

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

- Qualitative award criteria: 40%;

The tenderer proposes a technical methodology and a project management plan based on the instructions given in the technical specifications. They are subject to evaluation according to the following sub-criteria:

N.	Qualitative Award Criteria	Max. Points: 40
1.	Quality of the proposed Technical Methodology (Works processes and techniques, strategy)	15

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2.	Quality of the proposed quality management plan	5
3.	Quality of the proposed Project Management (workplan and schedule of activities, Risk and risk migration strategies, health, safety and environmental plan (HSE) and social and decent work plan)	20

Only tenders with scores of at least 28 points out of 40 points qualify for the financial evaluation.

- Price: 60 %;

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

$$\text{Points tender A} = \frac{\text{amount of lowest tender}}{\text{amount of tender A}} * 60$$

### Final score

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

## 5.6 Award and Conclusion of Contract

### 5.6.1 Awarding the contract

The lots of the procurement contract will be awarded to the tenderer who has submitted the most economically advantageous tender for the lot.

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

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

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

### 5.6.2 Concluding the contract

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

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Notification is via e-mail.

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

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

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

## 6 Annexes

### 6.1 Technical documents

N/A

### 6.2 Contractual Documents

#### Model Performance Bond

*Only for the successful tenderer:*

Bank

Address

Performance bond n°

This performance bond is posted in the context of the Law of 17 June 2016 on public contracts and on certain works, supply and service contracts and in conformity with the General Implementing Rules (GIR) provided in the Royal Decree of 14 January 2013 establishing the general implementing rules of public contracts and the award of public works.

address (the "Bank")

hereby declares posting security for a maximum amount of  € ( euros) for the Belgian Development Agency (Enabel) for the obligations of   address for the contract:

" tender documents Enabel  UGAX," (the "Contract").

Consequently, the Bank commits, under condition of the beneficiary waiving any right to contest or divide liability, to pay up to the maximum amount, any amount which  may owe to Enabel in case  defaults on the performance of the "Contract".

This performance bond shall be released in accordance with the provisions of the tender documents Enabel  UGAX and of Art. 25-33 of the Royal Decree of 22 June 2017, and at the latest at the expiry of 18 months after the provisional acceptance of the Contract.

Any appeal made to this performance bond must be addressed by registered mail to the Bank   address, with mention of the reference of the procurement procedure.

Any payment made from this performance bond will ipso jure reduce the amount secured by the Bank.

The performance bond is governed by the Belgian Law and only Belgian courts are competent in case of litigation.

Done in  on  Signature: Name:

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## 6.3 Procedural Documents – Tender Forms

### 6.3.1 ADMINISTRATIVE PROPOSAL

#### Legal Identification forms

<b>I. PERSONAL DATA</b> <b>FAMILY NAME(S)</b> ① <b>FIRST NAME(S)</b> ① <b>DATE OF BIRTH</b> JJ MM YYYY <b>PLACE OF BIRTH</b> <b>COUNTRY OF BIRTH</b> (CITY, VILLAGE) <b>TYPE OF IDENTITY DOCUMENT</b> IDENTITY CARD      PASSPORT      DRIVING LICENCE ②      OTHER ③ <b>ISSUING COUNTRY</b> <b>IDENTITY DOCUMENT NUMBER</b> <b>PERSONAL IDENTIFICATION NUMBER</b> ④ <b>PERMANENT PRIVATE ADDRESS</b> POSTCODE                      P.O. BOX                      CITY REGION ⑤    COUNTRY <b>PRIVATE PHONE</b> <b>PRIVATE E-MAIL</b>	
<b>II. BUSINESS DATA</b>	
If YES, please provide business data and attach copies of official supporting documents	
Do you run your own business without a separate legal personality (e.g. sole traders, self-employed etc.)? YES      NO	<b>BUSINESS NAME (if applicable)</b> <b>VAT NUMBER</b> <b>REGISTRATION NUMBER</b> <b>PLACE OF REGISTRATION</b> CITY

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	<b>COUNTRY</b>
<b>DATE</b>	<b>SIGNATURE</b>

- 
- ① As indicated on the official document.
  - ② Accepted only for Great Britain, Ireland, Denmark, Sweden, Finland, Norway, Iceland, Canada, United States and Australia.
  - ③ Failing other identity documents: residence permit or diplomatic passport.
  - ④ See table with corresponding denominations by country.
  - ⑤ To be completed with Region, State or Province by non-EU countries only, excluding EFTA and candidate countries.



Legal person entity private/public legal body

<b>OFFICIAL NAME</b> ②	
<b>ABREVIATION</b>	
<b>MAIN REGISTRATION NUMBER</b> ③	
<b>SECONDARY REGISTRATION NUMBER</b> (if applicable)	
<b>PLACE OF MAIN REGISTRATION</b>	<b>CITY</b> <b>COUNTRY</b>
<b>DATE OF MAIN REGISTRATION</b>	<b>DD</b> <b>MM</b> <b>YYYY</b>
<b>VAT NUMBER</b>	
<b>OFFICIAL ADDRESS</b>	
<b>POSTCODE</b>	<b>P.O. BOX</b> <b>CITY</b>
<b>COUNTRY</b>	<b>PHONE</b>
<b>E-MAIL</b>	
<b>DATE</b>	<b>STAMP</b>
<b>SIGNATURE OF AUTHORISED REPRESENTATIVE</b>	

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

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Public law entity

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

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

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

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

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**Financial identification form**

<b><u>BANKING DETAILS</u></b>	
ACCOUNT NAME <sup>8</sup>	
IBAN/ACCOUNT NUMBER <sup>9</sup>	
CURRENCY	
BIC/SWIFT CODE	
BANK NAME	
<b>ADDRESS OF BANK BRANCH</b>	
STREET & NUMBER	
TOWN/CITY	POST CODE
COUNTRY	

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

SIGNATURE OF ACCOUNT HOLDER (Obligatory) NAME: TITLE:	DATE (Obligatory)
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<sup>8</sup> This does not refer to the type of account. The account name is usually the one of the account holder. However, the account holder may have chosen a different name to its bank account.

<sup>9</sup> Fill in the IBAN Code (International Bank Account Number) if it exists in the country where your bank is established.

**Subcontractors**

Name and legal form	Address / Registered office	Object

### **Declaration on honour – exclusion criteria**

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

- 1) The tenderer or one of its 'directors [1]' was found guilty following a conviction by final judgement for one of the following offences:
  - 1° involvement in a criminal organisation
  - 2° corruption
  - 3° fraud
  - 4° terrorist offences, offences linked related to terrorist activities or incitement to commit such offence, collusion or attempt to commit such an offence
  - 5° money laundering or terrorist financing
  - 6° child labour and other trafficking in human beings
  - 7° employment of foreign citizens under illegal status
  - 8° creating a shell company.
- 2) The counterparty which fails to fulfil his obligations relating to the payment of taxes or social security contributions for an amount in excess of EUR 3 000, except if the counterparty can demonstrate that a contracting authority owes him one or more unquestionable and due debts which are free of all foreseeable liabilities. These debts are at least of an amount equal to the one for which he is late in paying outstanding tax or social charges.
- 3) The counterparty who is in a state of bankruptcy, liquidation, cessation of activities, judicial reorganisation or has admitted bankruptcy or is the subject of a liquidation procedure or judicial reorganisation, or in any similar situation resulting from a procedure of the same kind existing under other national regulations;
- 4) When Enabel can demonstrate by any appropriate means that the counterparty or any of its directors has committed serious professional misconduct which calls into question his integrity.

Are also considered such serious professional misconduct:

- a. A breach of Enabel's Policy regarding sexual exploitation and abuse – June 2019
- b. A breach of Enabel's Policy regarding fraud and corruption risk management – June 2019

- c. A breach of a regulatory provision in applicable local legislation regarding sexual harassment in the workplace
- d. The counterparty was seriously guilty of misrepresentation or false documents when providing the information required for verification of the absence of grounds for exclusion or the satisfaction of the selection criteria, or concealed this information
- e. Where Enabel has sufficient plausible evidence to conclude that the counterparty has committed acts, entered into agreements or entered into arrangements to distort competition

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

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

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

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

- 7) Restrictive measures have been taken vis-à-vis the counterparty with a view of ending violations of international peace and security such as terrorism, human rights violations, the destabilisation of sovereign states and de proliferation of weapons of mass destruction.

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

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

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

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

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<https://finances.belgium.be/fr/tresorerie/sanctions->

[financieres/sanctionseurop%C3%A9ennes-ue](https://finances.belgium.be/fr/tresorerie/sanctions-)

[https://eeas.europa.eu/headquarters/headquarters-homepage/8442/consolidatedlist-](https://eeas.europa.eu/headquarters/headquarters-homepage/8442/consolidatedlist-sanctions_en)  
[sanctions\\_en](https://eeas.europa.eu/sites/eeas/files/restrictive_measures-2017-01-) [https://eeas.europa.eu/sites/eeas/files/restrictive\\_measures-2017-01-](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](https://finances.belgium.be/fr/sur_le_spf/structure_et_services/administrations_generales/tr%C3%A9sorerie/contr%C3%B4le-des-instruments-1-2)  
[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)

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

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

Place, date

### **Integrity statement for the tenderers**

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

- Neither member of administration or employees, or any person or legal person with whom the tenderer has concluded an agreement in view of performing the public contract, may obtain or accept from a third party, for themselves or for any other person or legal person, an advantage appreciable in cash (for instance, gifts, bonuses or any other kind of benefits), directly or indirectly related to the activities of the person concerned for the account of Enabel.
- The board members, staff members or their partners have no financial or other interests in the businesses, organisations, etc. that have a direct or indirect link with Enabel (which could, for instance, bring about a conflict of interests).
- I have / we have read and understood the articles about deontology and anticorruption included in the Tender Documents (see 1.7.), as well as *Enabel's Policy regarding sexual exploitation and abuse* of June 2019 and *Enabel's Policy regarding fraud and corruption risk management* of June 2019 and I / we declare fully endorsing and respecting these articles.

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

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

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- The public contractor commits to supply, upon the demand of the contracting authority, any supporting documents related to the performance conditions of the contract. The contracting authority will be allowed to proceed to any control, on paperwork or on site, which it considers necessary to collect evidence to support the presumption of unusual commercial expenditure.

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

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

Place, date

## Economic and financial capacity Form

### Financial Statement

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

<b>Financial data</b>	<b>Year- 2</b> € or NC	<b>Year- 1</b> € or NC	<b>Last year</b> € or NC	<b>Average</b> € or NC
Annual turnover, excluding this public contract <sup>10</sup>				

The tenderer must also provide his/her approved financial statements for the last three financial years or an appropriate supporting document, such as 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.

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

**Technical and professional capacity form**

**List of main similar assignments**

Description of the main similar assignments <u>totally</u> performed	Location	Amount involved	Completion date in the last 3 years (only <u>totally</u> performed assignments)	Name of the public or private bodies

**Certificates of completion**

For each of the assignments listed, the tenderer must provide in the administrative proposal as annexes to this form the certificates of completion/acceptance (statement or certificate without major reservation) and / or any supporting documents (contracts, invoices...) approved by the entity which awarded the contract and or registered supervising consultant/Expert.

**Note:** - For similar assignments where the tenderer was subcontracted, the value of the subcontract should be clearly stated and certified by the main contractor / supervising consultant.

**CVs of the key personnel**

The tenderer must complete the **table hereunder**. He must provide in his offer the **CVs of the key experts (the team leader and experts) proposed** for implementing this services contract. The CV's (qualifications and experience of key experts) have to fulfil the profiles as requested in the ToRs. Each CV should be no longer than 3 pages.

**Location 1: Fort Portal College of Health Sciences**

Proposed position	Name of expert	Academic qualification	Years of general experience	Years of Specialist experience

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Electrical Engineer				
Mechanical Supervisor				
Civil Engineer/Supervisor				

**Location 2: Hoima School of Nursing and Midwifery**

Proposed position	Name of expert	Academic qualification	Years of general experience	Years of Specialist experience
Electrical Engineer				
Mechanical Supervisor				
Civil Engineer/Supervisor				

**Location 3: Jinja School of Nursing and Midwifery**

Proposed position	Name of expert	Academic qualification	Years of general experience	Years of Specialist experience
Electrical Engineer				
Mechanical Supervisor				
Civil Engineer/Supervisor				

**Requirements for the equipment**

The contractor shall assemble all tools necessary to perform the works under the contract, including but not limited to the following; the contractor shall submit proof of ownership or proof of lease for the entire contract duration.

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**Location 1: Fort Portal College of Health Sciences**

No.	Equipment Type and Characteristics	Min. quantity required	Equipment available
1.	Transport van with Crane	1	
2.	Poker vibrator	1	
3.	Concrete Mixing machine	1	
4.	Electrical tools kit	Set	

**Location 2: Hoima School of Nursing and Midwifery**

No.	Equipment Type and Characteristics	Min. quantity required	Equipment available
1.	Transport van with Crane	1	
2.	Poker vibrator	1	
3.	Concrete Mixing machine	1	
4.	Electrical tools kit	Set	

**Location 3: Jinja School of Nursing and Midwifery**

No.	Equipment Type and Characteristics	Min. quantity required	Equipment available
1.	Transport van with Crane	1	
2.	Poker vibrator	1	
3.	Concrete Mixing machine	1	
4.	Electrical tools kit	Set	

### 6.3.3 FINANCIAL PROPOSAL

#### Tender Forms – prices

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

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

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

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

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

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

In order to correctly compare the tenders, the duly signed information or documents mentioned under Preparation of Tenders.

N°	Description (see BoQs) annexed to this tender document).	Lump-sum unit prices exc. VAT*
1.	Public works contract for the supply, delivery and installation of generators, user training and construction of generator shelter at three Health Training Institutions.	€
VAT percentage (if applicable):		

Name and first name: .....

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

signature and date: .....

**Note: The tenderer shall duly fill out the bill of quantities attached in Excel and provide a soft copy with it's tender.**

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