



**Tender Specifications of March 2025**

**Public contract for the Supply of  
Improved Cooking Stoves under  
DeSIRA project - RWA18003-10026**

**Negotiated procedure without publication  
of the notice**

**Project Navision code: RWA1800311**

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# 1 General provisions

## 1.1 Derogations from the General Implementing Rules

Section 4, ‘*Specific contractual and administrative conditions*’ of these Tender Specifications (CSC/Cahier Special 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 do not derogate of the General Implementing Rules – GIR (Royal Decree of 14 January 2013).

## 1.2 Contracting authority

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

This tender is launched in the context of the DeSIRA project, with the specific purpose to Effectively understand and demonstrate the ecological, social, and economic pathways to, and resultant benefits from, the scale-up of agroforestry-based restoration and sustainable biomass use in peri-urban Kigali and drylands in the Eastern Province. the DeSIRA initiative is contributing to the larger TREPA project (Transforming Eastern Province through Adaptation Project) financed by the Green Climate Fund (2022-2028), where Enabel is executing the results 1.5 which is essentially dealing with the dissemination of ICS in 100.000 rural farmers’ households of the Eastern Province

For this public contract, Enabel is represented by the Enabel Rwanda country director, **Ms Virginie HALLET** who will sign the award letter = ‘mandataries’ / who are mandated to represent the company towards third parties.

## 1.3 Institutional framework of Enabel

The general framework of reference in which Enabel operates is:

- The Belgian Law on Development Cooperation of 19 March 2013<sup>1</sup>;
- The Belgian Law of 21 December 1998 establishing the Belgian Technical Cooperation as a public-law company<sup>2</sup>;
- The Belgian Law of 23 November 2017 changing the name of the Belgian Technical Cooperation and defining the missions and functioning of Enabel, the Belgian development agency, published in the Belgian Official Gazette on 11 December 2017.

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

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

<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.

- 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, 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;
- 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;

## 1.4 Rules governing the public contract

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

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

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

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

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

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

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

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

- Law of 30 July 2018 on the protection of natural persons with regard to the processing of personal data.

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

## 1.5 Definitions

The following definitions apply to this contract:

The tenderer: An economic operator submitting a tender;

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

The contracting authority: Enabel

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;

Procurement documents: Tender Specifications including the annexes and the documents they refer to;

Technical specifications: A specification in a document defining the characteristics of a product or a service, such as the quality levels, the environmental and climate performance levels, the design for all needs, including accessibility for people with disabilities, and the evaluation of conformity, of product performance, of the use of the product, safety or dimensions, as well as requirements applicable to the product as regards the name by which it is sold, terminology, symbols, testing and test methods, packaging, marking or labelling, instructions for use, the production processes and methods at every stage in the life cycle of the supply or service, as well as the evaluation and conformity procedures;

Variant: An alternative method for the design or the performance that is introduced either at the demand of the contracting authority, or at the initiative of the tenderer;

Option: A minor and not strictly necessary element for the performance of the contract, which is introduced either at the demand of the contracting authority, or at the initiative of the tenderer;

Inventory: The procurement document, in a public supply or service contract, which splits up the performance in different items and specifies the quantity or the method to determine the price for each of them;

General Implementing Rules (GIR): Rules laid down in the Royal Decree of 14 January 2013, establishing the General Implementing Rules for public procurement and for concessions for public works;

The Tender Specifications (Cahier spécial des charges/CSC): This document and its annexes and the documents it refers to;

BDA: Belgian Public Tender bulletin;

OJEU: Official Journal of the European Union;

OECD: Organisation for Economic Cooperation and Development;



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

Corrupt practices: The offer of a bribe, gift, gratuity or commission to 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;

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.

## **1.6 Processing of personal data by the contracting authority and confidentiality**

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

The contracting authority undertakes to process the personal data that are communicated to it 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.

### **1.6.2 Confidentiality**

The tenderer or contractor and Enabel are bound to secrecy vis-à-vis third parties with regards to any confidential information obtained within the framework of this public contract and will only divulge such information to third parties after receiving the prior written consent of the other party.

They will disclose this confidential information only among appointed parties involved in the assignment. They guarantee that said appointed parties will be adequately informed of their obligations in respect of the confidential nature of the information and that they shall comply therewith.

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

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

## **1.7 Deontological obligations**

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

1.7.2. For the duration of the contract, the contractor and his staff respect human rights and undertake not to go against political, cultural or religious customs of the beneficiary country. The tenderer or contractor is bound to respect fundamental labour standards, which are internationally agreed upon by the International Labour 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.

1.7.3. In accordance with Enabel's Policy regarding sexual exploitation and abuse, the contractor and his staff have the duty to behave in an irreproachable manner towards the beneficiaries of the projects and towards the local population in general. They must abstain from any acts that could be considered a form of sexual exploitation or abuse and they must abide by the basic principles and guidelines laid down in this policy.

1.7.4. Any attempt of a candidate or a tenderer to obtain confidential information, to proceed to illicit arrangements with competitors or to influence the evaluation committee or the contracting authority during the investigation, clarification, evaluation and comparison of tenders and candidates procedure will lead to the rejection of the application or the tender.

1.7.5. Moreover, in order to avoid any impression of risk of partiality or connivance in the follow-up and control of the performance of the public contract, it is strictly forbidden to the contractor to offer, directly or indirectly, gifts, meals or any other material or immaterial advantage, of whatever value, to appointees of the contracting authority who are concerned, directly or indirectly, by the follow-up and/or control of the performance of the contract, regardless of their hierarchical rank.

1.7.6. The public contractor commits to supply, upon the demand of the contracting authority, any supporting documents related to the performance conditions of the contract. The contracting authority will be allowed to proceed to any desk review or on-the-spot check which it considers necessary to collect evidence to support the presumption of unusual commercial expenditure. Depending on the gravity of the facts observed, the contractor having paid unusual commercial expenditure is liable to have his contract cancelled or to be permanently excluded.

1.7.7. In accordance with Enabel's Policy regarding sexual exploitation and abuse of June 2019 and Enabel's Policy regarding fraud and corruption risk management complaints relating to issues of integrity (fraud, corruption, etc.) must be sent to the Integrity desk through the <https://www.enabelintegrity.be> website.

## **1.8 Applicable law and competent courts**

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

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

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

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

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

### 2.1 Type of procurement contract

This public supply contract

### 2.2 Subject-matter of procurement

These public supply contract consists performance of “**Supply of Improved Cooking Stoves under DeSIRA project**”, in conformity with the conditions of these Tender Specifications.

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

The public contract has one single Lot which is indivisible. A tender for part of a lot is inadmissible.

### 2.4 Items

The procurement contract consists of the single item (1) which is made of different elements as described in the technical specifications – section 5.

### 2.5 Term of the procurement contract<sup>10</sup>

The contract begins upon award notification and has an overall duration of 1 month starting from the date of the reception of the award notification letter.

### 2.6 Variants

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

### 2.7 Option

Options are not permitted.

### 2.8 Fixed blocks / conditional blocks

This public contract is divided into one fixed blocks. Although the conclusion of the public contract covers the whole of the contract, it commits the contracting authority only for the fixed blocks.

The execution of any possible conditional block is subject to a decision of the contracting authority brought to the attention of the successful tenderer via a letter signed by the contracting authority.

The blocks are described in the Technical Specifications.

### 2.9 Quantities

The Maximum number of stoves to be supplied is 2700.

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<sup>9</sup>

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

## 3 Procedure

### 3.1 Award procedure

Negotiated Procedure without Prior Publication in application of Article 42 of the Law of 17 June 2016..

### 3.2 Semi-official notifications

#### 3.2.1 Enabel publication

This procurement contract is published on the Enabel website ([www.enabel.be](http://www.enabel.be)) **up to 9<sup>th</sup> April 2025**.

### 3.3 Information

The awarding of this contract is coordinated by **Ms. Françoise MUSHIMIYIMANA, National Expert in Contracting and Administration - ECA**. Throughout this procedure all contacts between the contracting authority and the (prospective) tenderers about this contract will exclusively pass through 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 20<sup>th</sup> March 2025 (11 days before the submission date) inclusive, candidate-tenderers may ask questions about these Tender Specifications and the public contract. Questions will be in writing to:

Mrs. Françoise MUSHIMIYIMANA  
Expert in Contracting and Administration - ECA Enabel in Rwanda

[francoise.mushimiyimana@enabel.be](mailto:francoise.mushimiyimana@enabel.be)

CC to:

Jacques PEETERRS ([jacques.peeters@enabel.be](mailto:jacques.peeters@enabel.be))

And

Evariste SIBOMANA, ([evariste.sibomana@enabel.be](mailto:evariste.sibomana@enabel.be))

and they will be answered in the order received. The complete overview of questions asked will be available at the address mentioned above as from the 7<sup>th</sup> day before submission of bids before the final date for reception of tenders.

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

The procurement documents can be consulted free of charge at the following internet address:

- [www.enabel.be](http://www.enabel.be)

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

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

## 3.4 Tender

### 3.4.1 Data to be included in the tender

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

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

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

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

### 3.4.2 Period the tender is valid

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

### 3.4.3 Determination of prices

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

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

In accordance with Article 37 of the Royal Decree of 18 April 2017, the contracting authority may for the purpose of verifying the prices carry out an audit of any and all accounting documents and perform on-the-spot checks with a view of verifying the correctness of the indications supplied.

#### 3.4.3.1. Elements included in the price

*(Art. 32 Royal Decree of 18 April 2017)*

The tenderer is to include in its unit and global prices any charges and taxes generally inherent to the performance of the contract, including the value-added tax.

The following are in particular included in the prices:

- 1° packaging (except if these remain the property of the tenderer), loading, trans-shipment and intermediate unloading, transportation, insurance and customs clearance
- 2° unloading, unpacking and deployment at the place of delivery, provided that the procurement documents state the exact place of delivery and the means of access
- 3° documentation pertaining to the delivery of supplies and any documentation required by the contracting authority,
- 4° assembly and taking into operation,
- 5° Installation and training required for operation,
- 6° where applicable, the measures imposed by occupational safety and health legislation.
- 7° customs and excise duties

All prices are DDP (Delivery Duty Paid) add as appropriate (INCOTERMS 2010 International Chamber of Commerce : <https://iccwbo.org/business-solutions/incoterms-rules/incoterms-rules-trademark-and-copyright-policy/>)

8° Acceptance costs (if any)

**9° The delivery of the ICS at village level (list of village and location of delivery will be provided at the time of delivery)**

### 3.4.4 How to submit tenders?

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

Pursuant to article 14, §2, 1<sup>o</sup>, 2<sup>o</sup> and 3<sup>o</sup> of the law of 17 June 2016 on public contracts, the transmission and reception of bids must be carried out by using transmission by postal service or any other appropriate portage service.

The bid will be drawn up in **3 copies**, one copy of which will mention “**original**” and the two other copies of which will mention “**copy**”. **The identical soft copy MUST also be submitted in one or more PDF files on a USB stick**. Without prejudice to any variants, each Bidder may only submit one bid per contract.

The signed and dated original and “copies” will be sent in a sealed envelope mentioning: “**BID**”, the tender documents number (**RWA18003-10026**) and the Navision code (**RWA1800311**)

The bid must be received **before 9<sup>th</sup> April 2025 at 4:00 PM Kigali time**. It must be sent to:

**Mrs. Françoise MUSHIMIYIMANA**  
**Enabel Rwanda**  
**KN 67 ST, n°10**  
**SORAS TOWERS, Wing A, 6<sup>th</sup> Floor.**  
**Kigali, Rwanda**

a) Either by Post (standard mail or registered mail): In this case, the sealed envelope is put in a second closed envelope. The delivery record makes proof of compliance with the time-limit for receipt.

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

**Any bid must arrive before the final submission date and time. Bids that arrive late will not be accepted (Art. 83 of the Royal Decree of 18 April 2017).**

The contracting authority draws the attention of tenderers to the fact that sending an offer by email does not meet the conditions of art. 14 § 6 and 7 of the law of June 17, 2016.

The contracting authority reminds that a scanned written signature is not an admissible electronic signature.

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

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

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

The withdrawal may also be communicated by fax or electronic means, provided that it is confirmed by registered letter deposited at the post office or against acknowledgement of receipt at the latest the day before the tender acceptance deadline.

### 3.4.6 Opening of Tenders

The tender must be in the possession of the contracting authority before the final submission date and time specified in point 3.4.5 “How to submit tenders”. The tenders shall be opened behind closed doors.

## 3.5 Selection of tenderers

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

### 3.5.1 Exclusion grounds

*Articles 52 and 69 of the Law; Article 51 of the Royal Decree of 18.04.2017*

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

**By submitting the Declaration on honour – exclusion criteria enclosed in the annex to these Tender Specifications along with his tender, the tenderer certifies that he is not in any of the cases of exclusion listed in the Articles 67 – 70 of the Law of 17 June 2016 and the Articles 61 – 64 of the Royal Decree of 18 April 2017.**

The Bidder will provide with his tender, the required supporting document(s) with regard to the exclusion criteria mentioned under point 6 “Forms” to the contracting authority.

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.

### 3.5.2 Selection criteria

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

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

To perform this public contract, the firm is required to meet the following minimum requirements:

- Having at least two (2) years of experience in the field of supply of improved cooking stove either for public or private entities or for individuals (to be verified from the company profile or list of previous supply/ performance)
- Demonstrate that the stove is locally produced (**proven by the commitment letter**)
- Having manufactured and sold/supplied more than 1000 ICS (disregarding of the model) in last 3 years, demonstrated/proven by:
  - o Related Certificate(s) of good completion in case it was for supply service contract(s) to public or private entities,
  - o And/or the extract of audited accounting showing the number of ICS sold in case of direct selling to individual clients
- Having the quantity required by this contract (max 2700 ICS) already available in their stock at the time of the application and award of the tender (**proven by the commitment letter**)
- Demonstrating their financial and economic capacity by a total turn-over for the last 3 years of at least the value of the tender (with regards to maximum estimated quantities).

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



### 3.5.3 Modalities relating to tender examination and regularity of the tenders

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

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

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

The substantially irregular tenders are excluded.

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

The following irregularities are deemed substantial:

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

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

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

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

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

### 3.5.4 Award criteria

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

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

*The award criteria and sub-criteria must be weighted.*

Award on the basis of best value for money, which is evaluated in the light of the price or cost and criteria related to quality and environmental factors:

- **Criterion 1: The quality and technical compliance & respect of environmental factor: thermal efficiency in % (proven by a RSB test reports) with a total score weight of 30%**
- **Criterion 2: The price with a total score weight of 70%**

**The award criteria are evaluated as follows:**

**Award criterion 1** (thermal efficiency) is evaluated on the basis of the RSB ICS test report to be provided by the bidders: **If the thermal efficiency is below 33%, the technical proposal will be considered as not compliant with the minimum requirements and consequently, substantially irregular.** For a stove with the thermal efficiency of minimum



33%, the technical score will be 20 out of 30. For stove with an efficiency between 33% and 40%=X, the score out of 30 will be:  $20 + 10 * (\text{Eff} - 33) / 7$ , for the stoves with a thermal efficiency superior to 40%, the score will still be 30 out of 30 (the maximum).

**Award criterion 2 (price)** = the total cost of the financial proposal.

The lowest price will get the maximum point (70 out of 70).

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

Score of the Bid A =  $\frac{70 * \text{Total cost of lowest bid}}{\text{total cost of the bid A}}$

#### **3.5.4.1 Final score**

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

#### **3.5.4.2 Awarding the public contract**

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

The contract will be awarded to the tenderer who gets the higher total score.

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

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

if necessary, according to another award procedure in accordance with Article 58 §1, third paragraph.

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

##### ***Article 88 of the Royal Decree on Awarding***

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

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

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

- These Tender Specifications and its annexes;
- The approved tender 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 view of transparency, Enabel undertakes to annually publish the list contractors of its public contracts. By submitting tender, the contractor of the public contract declares agreeing with the publication of the contract title, the nature and subject-matter of the contract, his name and location as well as the value of the contract.

## 4 Special contractual provisions

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

These Tender Specifications do not derogate from Article(s) 25-33 of the General Implementing Rules the GIR.

### 4.1 Definitions (Art. 2)

- Contract manager/Managing Official: The official or any other person who manages and controls the performance of the contract;
- Performance guarantee: Financial guarantee given by the successful Bidder to cover its obligations until final and good performance of the contract;
- Acceptance: Observation by the contracting authority that the performance of all or part of the works, supplies or services is in compliance with good practice and with the terms and conditions of the contract;
- Progress payment: Payment of an instalment under the contract after service delivery is accepted;
- Advance: Payment of part of the contract before service delivery is accepted;
- Amendment: Agreement established between the contracting parties during contract performance in view of changing documents applicable to the contract.

### 4.2 Use of electronic means (art. 10)

The adjudicator "authorizes " the use of electronic means for the exchange of written documents, **except for the bids**. Whether electronic means are used or not, communications, exchanges and storage of information take place in such a way as to ensure that the integrity and confidentiality of the data are preserved.

### 4.3 Managing official (Art. 11)

The managing official is **Jaques PEETERS, Forestry management expert – DeSIRA**, E-mail: [jaques.peeters@enabel.be](mailto:jaques.peeters@enabel.be) , to be also mentioned in the notification letter

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

Once the public contract is concluded the managing official is the main contact point for the supplier. 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.

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

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

Under no circumstances is the managing official allowed to modify 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. For such decisions the contracting authority is represented as stipulated under ‘The contracting authority’.

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

The fact that the successful tenderer (or supplier) entrusts all or part of its commitments to subcontractors does not release its liability towards the contracting authority. The latter does not recognize any contractual link with these third parties.

The successful tenderer remains, in all cases, solely responsible vis-à-vis the contracting authority. The supplier commits 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.

When the supplier 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 another 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, if necessary, to carry out this public contract (particularly in accordance with the privacy legislation with respect to personal data processing);
- Not reproduce, distribute, disclose, transmit or otherwise make available to third parties the above elements, in whole or in part, and in any form, unless having obtained prior and written consent of

the contracting authority;

- Return, at 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. »

## **4.6 Protection of personal data**

### **4.4.1 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.

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

Where during contract performance, the contractor may process personal data of the contracting authority exclusively in the name and on behalf of the contracting authority, for the sole purpose of performing the services in accordance with the provisions of the Tender Specifications or in execution of a legal obligation.

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

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

The personal data that will be processed are confidential. The contractor will therefore limit access to data to the strictly necessary personnel for the performance, management and monitoring of the public contract.

For the performance of the public contract, the contracting authority will determine the purposes and means of processing personal data. In this case, the contracting authority will be responsible for the processing and the contractor will be its processor, within the meaning of Article 28 of the GDPR.

Processing carried out on behalf of a controller must be governed by a contract or other legal act that is binding on the processor with regard to the personal data controller and that sets out that the subcontractor acts only on the instruction of the person in charge of the processing and that the confidentiality and security obligations regarding the processing of personal data are also the responsibility of the subcontractor - Article 28 §3 of the GDPR.

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

## **4.7 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.

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 Performance bond (Art. 25 to 33)**

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

In accordance with the legal and regulatory provisions, the performance bond may be constituted either of cash or of public funds or may take the form of a joint performance bond.

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

**By way of derogation from Article 26** the performance bond may be posted through an establishment that has its registered office in one of the countries of destination of the services. The contracting authority reserves the right to accept or refuse the posting of the bond through that institution. The 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. This measure is made essential by the specific requirements of the contract.

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

1° in the case of cash, by transfer of the amount to the bpost bank account number of the Deposit and Consignment Office Complete the following form as well as possible:

[https://finances.belgium.be/sites/default/files/01\\_marche\\_public.pdf](https://finances.belgium.be/sites/default/files/01_marche_public.pdf)  
(PDF, 1.34 Mo), and forward it by e-mail to [info.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.

Such 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; or

- 3° the deposit certificate issued by the State Cashier or public institution with an equivalent function; or
- 4° the original copy of the deed of joint surety stamped by the Depot and Consignment Office or by a public institution with an equivalent function; or
- 5° the original copy of the deed of undertaking issued by the credit institution 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 name and full address of the contractor and, where relevant, that of the third party that made the deposit on the contractor's account, bearing the statement "lender" or "mandatary" as appropriate.

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

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

#### **4.8.1 Failure to post the performance guarantee (Art. 29)**

When the supplier fails to prove that the performance guarantee has been posted within 30 calendar days, he will be set in default by letter. This notification will be considered as a 'failure report' as mentioned in art. 44, § 2 of the General Implementing Rules (see below).

When, after notification of this failure by letter, the supplier has still failed to produce proof that the performance guarantee has been posted within a further period of 15 calendar days dating from the date of dispatch of the letter, the contracting authority may:

- 1° Post the performance guarantee itself by deduction from amounts due under the contract in question; in this case, the penalty shall be fixed at a flat rate of 2% of the initial amount of the contract; or
- 2° Apply the measures taken as of right. In any event, termination of the contract for this reason shall preclude the application of penalties or fines for delay.

#### **4.8.2 Release of the Guarantee (Art. 33)**

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

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

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

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

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

##### **4.10.1 Replacement of the supplier (Art. 38/3)**

Provided that he meets the selection and exclusion criteria set out in this document, a new supplier may



replace the supplier 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 supplier submits his request as quickly as possible by registered post, stating the reasons for this replacement and providing a detailed inventory of the state of the supplies and services already delivered, the new supplier'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 supplier remains liable to the contracting authority for the performance of the remainder of the contract.

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

For this contract, price revisions are not permitted.

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

The contracting authority reserves the right to suspend the performance of the contract for a given period, mainly when it considers that the 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 supplier 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 supplier** has a right to damages for suspensions ordered by the contracting authority when:

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

Within thirty days of their occurrence or the date on which the supplier or the contracting authority would normally have become aware of them, the supplier reports the facts or circumstances succinctly to the contracting authority and describes precisely their impact on the progress and cost of the contract.

#### **4.10.4 Unforeseeable circumstances**

As a rule, the supplier 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.

#### **4.10.5 Terms of introduction (Art. 38/14)**

The contracting authority or the successful tenderer who wishes to rely on one of the review clauses, as referred to in Articles 38/09 to 38/12, must disclose the facts or circumstances on which it is based, in writing within 30 days of their occurrence or of the date on which the successful tenderer or the contracting authority should normally have known of them.

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

Products may not be used if they have not been accepted by the managing official or his or her representative.

Products that at a given stage do not satisfy the technical acceptance tests imposed will be declared unfit for technical acceptance. Upon the request of the supplier, the contracting authority in accordance with the procurement documents verifies whether the products have the required qualities or at the very least comply with good practice and satisfy the conditions of the contract. If certain products are destroyed during verification, the supplier replaces these at its own expense. The procurement documents specify the quantity of products to be destroyed.

Where the contracting authority declares that the product presented is not in the required condition for examination, the acceptance request by the building supplier will be considered not having been made. A new request is made when the product is fit for acceptance.

#### **4.12 Performance modalities (Art. 115 et seq.)**

##### **4.12.1 Deadlines and terms (Art. 116)**

The supplies must be delivered within a period that is to be expressed **in calendar days**, and the **maximum set by the contracting authority is 15 calendar days** which has to be confirmed by tenderer in his tender. the delivery period starts as from the day following the date on which the supplier received the award notification letter. All days are indistinguishably included in the period,

##### **4.12.2 Quantities to be supplied (Art. 117)**

The maximum number of stoves to be supplied is 2700. Considering the fixed available budget, this quantity might be revised (+/-10%) during the negotiation process in function of the negotiated unit cost.

Without prejudice to the possibility for the contracting authority to terminate the contract if the supplies delivered do not meet the requirements imposed or if they are not delivered by the deadlines asked, by concluding this contract the supplier acquires the right to deliver these quantities, under penalty of indemnification by the contracting authority.

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

The stoves will be delivered by the ICS suppliers at village level, across the 7 Districts of the Eastern Province (list of beneficiary's villages will be provided at the time of delivery).

From the villages, the project will organise on its own, the distribution to each of individual beneficiaries with the support of the TREPA project ICS animators

##### **4.12.4 Packaging (Art. 119)**

Packaging will become the property of the contracting authority, without the supplier having any claim to compensation in this regard.

##### **4.12.5 Inspection of the supplies delivered (Art. 120)**

The supplier delivers only goods that have no apparent and/or hidden defects and that correspond strictly to the order (in kind, quantity, quality...) and, if necessary, to the prescriptions of related documents as well as applicable regulations, in compliance with good practice, the state of the art, the highest standards of usage, of reliability and of longevity, and for the purposes that the contracting authority has in mind, which the supplier knows or at least should know.



Acceptance (provisional acceptance) only takes place after the complete inspection by the contracting authority of the conformity of the goods and services delivered. The contracting authority disposes of a period for verification of thirty days starting on the date of delivery. This period will begin on the day after arrival of the supplies at the place of delivery, provided that the contracting authority is in possession of the delivery note or invoice.

The signature of (a staff member of) the contracting authority, in particular in electronic reception devices, upon delivery of the goods, does consequently only count as evidence of taking possession and does not concern the acceptance of the goods.

Acceptance on site counts as complete provisional acceptance

Acceptance implies the transfer of ownership and of risks of damage and loss.

In case of full or partial refusal of a delivery, the supplier is bound to take back, at his own costs and risks, the products refused. The contracting authority may ask the supplier to deliver goods that comply as soon as possible, either cancel the order and get supplied by another supplier.

#### **4.12.6 Gender equality**

In accordance with article 3, 3 ° of the law of January 12, 2007 “Gender Mainstreaming”, public contracts must take into account any differences between women and men (the gender dimension). The successful tenderer must therefore analyze, depending on the area concerned by the contract, whether there are any differences between women and men. As part of the performance of the contract, it must therefore take into account the differences noted. Communication should fight against sexist stereotypes in terms of message, image and language, and take into account the differences in the situation between women and men in the target audience.

#### **4.12.7 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.

### **4.13 Liability of the supplier (Art. 122)**

The supplier shall be liable for his supplies up to the time when the inspection and notification formalities referred to under Article 120 are carried out, unless losses or damage sustained in the warehouses of the consignee are due to the events or circumstances referred to in Articles 54 and 56.

Moreover, the supplier indemnifies the contracting authority against damages for which it is liable towards third parties due to late performance of the contract or due to failure of the supplier

### **4.14 Obligations of the supplier (Art. 137 and 138)**

The supplier shall:

- 1° put the supplies at the disposal of the contracting authority within the deadline set in the procurement documents;
- 2° Unless otherwise stipulated in the procurement documents, ensure their maintenance and make all necessary repairs within the timing imposed by the warranty period to keep the goods in good state during the public contract term.

Where the supplies are completely or partially destroyed during the contact term without the contracting authority being liable, the supplier shall replace these or repair them at his costs within the deadline set.

#### **4.15 Obligations of the contracting authority (Art. 136)**

The contracting authority shall:

- 1° use the goods delivered for the needs stipulated under the public contract and in accordance with technical user guidance provided by the supplier;
- 2° make no changes to the goods delivered without the written preliminary approval of the supplier, unless otherwise stipulated in the procurement documents.

#### **4.16 Means of action of the contracting authority (Art. 44-51 and 123-126)**

The supplier 's default is not solely related to performance as such but also to the whole of the supplier '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 supplier 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.

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

This clause is without prejudice to the possible application of other measures as of right provided in the GIR, namely the unilateral termination of the contract and/or the exclusion from procurement by the contracting authority for a determined duration.

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

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

- 1° when the delivery is not carried out in accordance with the conditions specified in the procurement documents;
- 2° at any time, when the delivery has not progressed in such a way that it can be fully completed on the due dates;
- 3° when he does not observe written orders, which have been given in due form by the contracting authority.

§2 Any failure to comply with the provisions of the 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 supplier by registered mail.

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

Any defects detected that can be attributed to the supplier render him liable to one or more of the measures provided for in Articles 45 to 49, 154 and 155.

##### **4.16.2 Fines for delay (Art. 46 and 123)**

The fines for delay differ from the penalties referred to in Article 45. They are due, without the need

for notice, by the mere lapse of the performance period without the issuing of a report and they are automatically applied for the total number of days of delay.

Regardless of the application of any fines for delay, the supplier indemnifies the contracting authority against damages for which it is liable towards third parties due to late performance of the contract.

#### **4.16.3 Measures as of right (Art. 47 and 124)**

§1 When, upon expiry of the term given in Article 44, §2, the supplier has not taken action or has presented means deemed unjustified by the contracting authority, the contracting authority may apply the measures as of right described in paragraph 2.

However, the contracting authority may apply measures as of right without waiting for the expiry of the term given in Article 44, §2, when the supplier has explicitly recognised the defects detected.

§2 The measures as of right are:

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

2° Performance under 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 supplier. However, any fines or penalties imposed during the performance of a replacement contract will be borne by the new supplier.

### **4.17 End of the public contract**

#### **4.17.1 Acceptance of the products delivered (Art. 64-65 and 128)**

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

When the supplies will be delivered before or after this date, it is the responsibility of the supplier to inform them by registered mail or electronic mail, ensuring in an equivalent manner the date of dispatch to the managing official and to ask, at the same time, to proceed to reception. Within thirty days of the date of receipt of the suppliers request, a report of receipt or refusal of receipt is drawn up, as the case may be.

The products are stored for delivery in the supplier's warehouses. Delivery cannot occur prior to the contracting authority's accepting the goods stored for delivery. The managing official who will carry out acceptance is named in the contract award notification if his/her name has not yet been mentioned in the procurement documents.

In this contract, the following acceptances are provided for:

#### **Provisional acceptance**

Full acceptance is proceeded to at the place of delivery without partial acceptance at the place of manufacture.

Provisional acceptance is carried out in full at the place of delivery. To investigate and test the

supplies as well as to notify its decision to accept or reject the delivery, the contracting authority disposes of a period of thirty days

This period will begin on the day after the date of arrival of the supplies at the place of delivery, provided that the contracting authority is in possession of the delivery note or invoice. It comprises the 30-day period stipulated in Article 120.

#### **4.17.2 Transfer of ownership (Art. 132)**

The contracting authority automatically becomes the owner of the supplies as soon as they have been accepted for payment pursuant to Article 127 of GIR.

#### **4.17.3 warranty period (Art. 134)**

The warranty period commences on the date on which provisional acceptance is given, at **lasts one year**. The bid will warranty period below this minimum will be considered as substantially irregular..

#### **4.17.4 Final acceptance (Art. 135)**

Final acceptance occurs upon expiry of the warranty period. It is implicit when the delivery has not led to any claims during said period.

If delivery has led to complaints during the warranty period, a final acceptance or refusal of acceptance report will be issued within 15 days prior to the expiry of said period.

#### **4.17.5 Acceptance costs**

NA

#### **4.17.6 Invoicing and payment of services (Art. 66 to 72 – 160)**

The amount owed to the supplier must be paid within maximum 30 calendar days with effect from the reception and approved by the contracting authority of a valid invoice accompanied by the acceptance report.

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

- **“Enabel, public-law company with social purposes, with its registered office at Rue Haute 147, 1000 Brussels in Belgium (enterprise number 0264.814.354, RPM/RPR Brussels)”**.

the name of the contract: **“Supply of Improved Cooking Stoves under DeSIRA project**

- the reference of the tender documents: **“RWA18003-10026”**.
- the Navision code: **“RWA1800311”**.
- the name of the contract manager: **“Jacques PEETERS”**.

The invoice shall be in **euros**.

Only delivery that has been performed correctly may be invoiced.

The amount owed to the supplier must be paid within thirty days with effect from the expiry of the verification term or with effect from the day after the last day of the verification term, if this is less than thirty days. And provided that the contracting authority possesses, at the same time, the duly established invoice and any other documents that may be required.

No advance may be asked by the supplier, and the total payment (100%) is made after provisional acceptance of the entire delivery of a same order per Lot. The provisional acceptance report will only be signed after the installation and training/transfer of knowledge on the usage of the supply.

#### **4.18 Release of the performance bond (Art. 144)**

Unless stipulated otherwise in the procurement documents, the bond can be released in one time upon final acceptance of deliveries.

#### **4.19 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 supplier 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:

Belgian development agency - Enabel

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

To the attention of Ms Inge Janssens

rue Haute 147

1000 Brussels

Belgium

## 5 Terms of reference

### Supply of Improved Cooking Stoves under DeSIRA project

#### 5.1 Context

Within the framework of the EU initiative on Climate-relevant Development Smart Innovations through Research in Agriculture (and food systems) in developing countries –DeSIRA, the Belgian Development Agency (Enabel) jointly with IUCN is implementing (2020-2025) the project called “Improving resilience of farmers’ livelihoods to climate change through innovative, research-proven climate-smart agroforestry and efficient use of tree resources in the Eastern Province and peri-urban areas of Kigali city”.

The specific purpose of this DeSIRA project is to: Effectively understand and demonstrate the ecological, social, and economic pathways to, and resultant benefits from, the scale-up of agroforestry-based restoration and sustainable biomass use in peri-urban Kigali and drylands in the Eastern Province. Among the 5 main results, result 3 is focusing on “Locally tested expertise and knowledge on highly efficient, durable, affordable and user-friendly improved cooking stoves (ICS) and their supply chains.” This result being implemented by Enabel.

Through this knowledge generation, the DeSIRA initiative is contributing to the larger TREPA project (Transforming Eastern Province through Adaptation Project) financed by the Green Climate Fund (2022-2028), where Enabel is executing the results 1.5 which is essentially dealing with the dissemination of ICS in 100.000 rural farmers’ households of the Eastern Province.

In order to maximise the adoption of ICS by farmers, it is essential to disseminate the models of ICS which are adapted and suitable to the local context of households (type of biomass used for cooking and access, incomes level, family members, behaviours, and social economic factors and constraints, etc.).

This is in this context that Enabel is launching this tender, for the supply of Improved Cooking Stoves **under DeSIRA project**.

#### 5.2 General Description of the supplies

The supplies must be new and guaranteed of origin. They must be free of any flaw or defect that could harm their appearance and proper functioning, and they must comply with the ‘Technical Sheets’.

The tenderer attaches the following to his tender:

- The duly completed technical forms of the supplies to be delivered
- The certificates and attestations of origin of the supplies which must be delivered at the same time as the supplies
- A working drawing or photographs of proposed Improved Cooking Stove (ICS) with all the technical specification of the stoves;
- The results of the testing done on the proposed ICS by the Rwanda Standard Board (Efficiency %, Co2 emission and particle emission)

**It consists in the supply of Improved Cooking Stove as follows:**

- Being a mobile stove sized for a normal household, locally produced (in Rwanda);
- Having an isolating part + an external metallic structure (increasing durability while

avoiding hot temperature)

- Accommodating fuel wood as primary fuel, but also crop residue as secondary fuel
- With a laboratory thermal efficiency superior or equal to 33% ( $\geq$ ) to be proven by a testing report from RSB
- Each ICS having a unique serial identifying number or code provided by the suppliers

The stoves have to be readily available in the stock of the supplier's wait the time of the award of the tender. From there, in the 2 following weeks, the stoves should be delivered by the ICS suppliers at village level, across the 7 Districts of the Eastern Province (Bugesera, Gatsibo, Kayonza, Ngoma, Kirehe, Nyagatare and Rwamagana). The list of beneficiary's villages will be provided at the time of delivery.

From the villages, the project will organise on its own the distribution to each of individual beneficiaries with the support of the TREPA project ICS animators.

### 5.3 After-sales service

In his tender the tenderer will include a statement certifying that he undertakes to ensure a **minimum of 1 year guarantee** on provided supplies, ensuring its reparation/replacement in case the supply is no longer working properly due to evident manufacturing defects.

### 5.4 Required technical profile of the consulting firm and the proposed key experts (to be analysed at selection stage)

To perform this contract, the firm is required to meet the following minimum requirements:

- Having at least two (2) years of experience in the field of supply of improved cooking stove either for public or private entities or for individuals (to be verified from the company profile or list of previous supply/ performance)
- Demonstrate that the stove is locally produced (**proven by the commitment letter**)
- Having manufactured and sold/supplied more than 1000 ICS (disregarding of the model) in last 3 years, demonstrated/proven by:
  - o Related Certificate(s) of good completion in case it was for supply service contract(s) to public or private entities,
  - o And/or the extract of audited accounting showing the number of ICS sold in case of direct selling to individual clients
- Having the quantity required by this contract (maximum 2700 stoves) already available in their stock at the time of the application and award of the tender (**proven by the commitment letter**)
- Demonstrating their financial and economic capacity by a total turn-over for the last 3 years of at least the value of the lot (s) for which he is tendering (with regards to maximum estimated quantities).

### 5.5 Detailed Technical specifications

#### General description

The product must be new, in every detail and produced in series. The unit should be **manufactured in Rwanda**, in accordance with state-of-the-art technology, based on the raw materials of the best quality.

Each stove must have its own serial identifying number, provided by the suppliers.

The product should be free from any defects in workmanship or design defects which might affect appearance, performance, strength, and durability. The product must be safe and reliable while in operations and meet relevant legislation and applicable standards in Rwanda.



***In the table below:***

Columns 1 & 2 **should be completed by the Contracting Authority**

Columns 3&4 **should be completed by the Bidder,**

Column 5 **is reserved for the evaluation committee,**

The Bidders are requested to complete the template on the next pages:

- Column 2 is completed by the Contracting Authority shows the required specifications (not to be modified by the Bidder),
- Column 3 is to be filled in by the Bidder and must detail what is offered (for example the words “compliant” or “yes” are not sufficient)
- Column 4 allows the Bidder to make comments on its proposed supply and to make eventual references to the documentation,

The eventual documentation supplied should clearly indicate **(highlight, mark)** the models offered, so that the evaluators can see the exact configuration.

The bidder shall provide a colored DESIGN with pictures for the proposed items.

Training of users on-site shall be provided by the supplier without any charge to the users.

**Offers that do not permit to precisely identify the models and the detailed specifications, might be rejected by the evaluation committee.**

**The offer must be clear enough to allow the evaluators to make an easy comparison between the requested specifications and the offered specifications.**

**Notice**

<b><u>Please Give complete answers to the specification in the bidders' response column provided. And avail soft copy of specification.</u></b>	
<b>The following words or statements in answering to the specifications are not sufficient, and might lead to the disqualification from further evaluation stages, for that particular item or Lot:</b>	
i)	Tick (√)
ii)	Yes
iii)	As per specifications.
iv)	Complies
v)	Compliant
vi)	As specified
ix)	Copy and paste technical specifications of this document
<b>Wherever the bidder's response needs technical explanation as well as commitment, the bidder shall respond in writing with office seal/ stamp and signature with date...</b>	



**Supply of locally produced mobile Improved Cooking Stove (efficiency  $\geq$  33%)**

N°	Item	Technical specification/Description	Bidder's response to the tender specifications	Notes, remarks, reference to documentation	Evaluation committee's notes
1	To be provided	Technical plan (drawing) with main key dimensions,			
		Pictures			
		To be available in the stock of the ICS supplier at the time of the award, then in the 2 following weeks to be delivered at village level			
		Minimum Warranty Period of 1 years (12 months), from the date of installation, inclusive spare part, and labor against manufacturer defects.			
2	Type	Being a mobile stove sized for a normal household			
3	Fuel	Design to accommodate wood as primary fuel, and accommodating crop residue as alternative second fuel			
4	Shape and material	Having an isolating part + an external metallic structure (increasing durability while avoiding hot temperature)			
5	Thermal efficiency	With a laboratory thermal efficiency superior or equal to 33% ( $\geq$ ), to be attested by a testing report from RSB			
6	Made in	Made in Rwanda, <b>with serial identifying number provided</b>			
7	Carbon	Bidder provided a duly signed commitment letter stipulating that the stove subsidized and disseminated by this DeSIRA project contract will not be used by the company to claim any carbon credit, and that the price offered is not including any other carbon credit support.			

## 6 Forms

### 6.1 Identification form

#### 6.1.1 Natural person

To fill out the form, please click here:

<https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:412289af-39d0-4646-b070-5cfed3760aed>

<b>I. PERSONAL DATA</b>			
FAMILY NAME(S) <sup>11</sup>			
FIRST NAME(S)			
DATE OF BIRTH			
DD	MM YYYY		
PLACE OF BIRTH (CITY, VILLAGE)	COUNTRY OF BIRTH		
TYPE OF IDENTITY DOCUMENT			
IDENTITY CARD	PASSPORT	DRIVING LICENCE <sup>12</sup>	OTHER <sup>13</sup>
ISSUING COUNTRY			
IDENTITY DOCUMENT NUMBER			
PERSONAL IDENTIFICATION NUMBER <sup>14</sup>			
PERMANENT PRIVATE ADDRESS			
POSTCODE	P.O. BOX	CITY	
REGION <sup>15</sup>	COUNTRY		
PRIVATE PHONE			
PRIVATE E-MAIL			
<b>II. BUSINESS DATA</b>			
If YES, please provide business data and attach copies of the official supporting documents.			
Do you run your own business without a separate legal personality (e.g. sole traders, self-employed etc.) and you provide as such services to the Commission, other Institutions, Agencies and EU-Bodies? <b>YES</b> <b>NO</b>	<b>BUSINESS NAME (if applicable)</b> <b>VAT NUMBER</b> <b>REGISTRATION NUMBER</b> <b>PLACE OF MAIN REGISTRATION CITY</b> <b>COUNTRY</b>		
<b>DATE</b>	<b>SIGNATURE</b>		

<sup>11</sup> As indicated on the official document.

<sup>12</sup> Accepted only for Great Britain, Ireland, Denmark, Sweden, Finland, Norway, Iceland, Canada, United States and Australia.

<sup>13</sup> Failing other identity documents: residence permit or diplomatic passport.

<sup>14</sup> See table with corresponding denomination by country.

<sup>15</sup> To be completed with Region, State or Province by non-EU countries only, excluding EFTA and candidate countries.

## 6.1.2 Private/public law body with legal form

To fill out the form, please click here:

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

<b>OFFICIAL NAME<sup>16</sup></b>				
<b>BUSINESS NAME (if different)</b>				
<b>ABBREVIATION</b>				
<b>LEGAL FORM</b>				
<b>ORGANISATION</b>	<b>FOR PROFIT</b>			
<b>TYPE</b>	<b>NON FOR-PROFIT</b>	<b>NGO<sup>17</sup></b>	<b>YES</b>	<b>NO</b>
<b>MAIN REGISTRATION NUMBER<sup>18</sup></b>				
<b>SECONDARY REGISTRATION NUMBER (if applicable)</b>				
<b>PLACE OF MAIN</b>				
<b>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>ADDRESS OF</b>				
<b>HEAD OFFICE</b>				
<b>POSTCODE</b>	<b>P.O. BOX</b>			<b>CITY</b>
<b>COUNTRY</b>				<b>PHONE</b>
<b>E-MAIL</b>				
<b>DATE</b>		<b>STAMP</b>		
<b>SIGNATURE OF AUTHORISED REPRESENTATIVE</b>				

<sup>16</sup> National denomination and its translation in EN or FR if existing.

<sup>17</sup> NGO = Non-Governmental Organisation, to be completed if NFPO is indicated.

<sup>18</sup> Registration number in the national register of companies. See table with corresponding denomination by country.

### 6.1.3 Public-law body<sup>19</sup>

To fill out the form, please click here:

<https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:c52ab6a5-6134-4fed-9596-107f7daf6f1b>

<b>OFFICIAL NAME<sup>20</sup></b>	
<b>ABBREVIATION</b>	
<b>MAIN REGISTRATION NUMBER<sup>21</sup></b>	
<b>SECONDARY REGISTRATION NUMBER</b>	
<b>(if applicable)</b>	
<b>PLACE OF MAIN</b>	
<b>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>	

<sup>19</sup> 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. 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.).

<sup>20</sup> National denomination and its translation in EN or FR if existing.

<sup>21</sup> Registration number in the national register of the entity.

#### 6.1.4 Subcontractors

Name and legal form	Address / Registered office	Regards

## 6.2 Financial identification<sup>22</sup>

<b><u>BANKING DETAILS</u></b>	
ACCOUNT NAME <sup>23</sup>	
IBAN/ACCOUNT NUMBER <sup>24</sup>	
CURRENCY	
BIC/SWIFT CODE	
BANK NAME	

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

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

SIGNATURE OF ACCOUNT HOLDER (Obligatory)	DATE (Obligatory)

<sup>22</sup> The winner of the tender will provide a confirmation from the Bank.

<sup>23</sup> This does not refer to the type of account. The account name is usually the one of the account holders. However, the account holder may have chosen a different name to its bank account.

<sup>24</sup> Fill in the IBAN Code (International Bank Account Number) if it exists in the country where your bank is established.

### 6.3 Tender form – Price<sup>25</sup> offer

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 a special item of the inventory, to be added to the tender 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:

DESCRIPTION	Unit	Unit price in euro (DDP) VAT exclusive <sup>26</sup> <sup>27</sup>	Quantity	Total VAT exclusive <sup>2</sup>
<b>Supply of ICS</b>	stove	... €	2700	... €
<b>SUB-TOTAL VAT exclusive (A)</b>				... €
<b>VAT 18%<sup>28</sup> (B)</b>				... €
<b>GRAND TOTAL VAT inclusive (C) = (A+B)</b>				... €

Should the bidder be registered in Rwanda, EBM invoice will be required for payments.

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

The tenderer declares on honour that the information given is accurate and correct and that it has been established while fully aware of the consequences of misrepresentation.

Certified true and sincere,

Done at ....., on .....

<sup>25</sup> To be used as such, no modification on the content allowed

<sup>26</sup> Refer to the Rwanda Revenue Authority (RRA) link, publishing the double taxation agreements (DTA) for international bidders: [https://www.rra.gov.rw/en/publications?tx\\_news\\_pi1%5Baction%5D=detail&tx\\_news\\_pi1%5Bcontroller%5D=News&tx\\_news\\_pi1%5Bnews%5D=1105&cHash=f71e9bc7ede752e64679f8c39e73871c](https://www.rra.gov.rw/en/publications?tx_news_pi1%5Baction%5D=detail&tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Bnews%5D=1105&cHash=f71e9bc7ede752e64679f8c39e73871c)

<sup>27</sup> Refer to article 63 of the law N° 027/2022 of 20/10/2022, establishing taxes on income in Rwanda. A tax of fifteen percent - 15% - shall be withheld on public tenders if the recipient is not registered with the Tax Administration or is registered but does not have his/her previous income tax declaration.

<sup>28</sup> For international bidders, the reverse VAT of 18% will be applicable (art.12 of the law 37/2012 of 09/11/2012)

## 6.4 Declaration on honour – Exclusion grounds

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

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

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

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

The following are considered serious professional misconduct, among others:

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 tenderer was seriously guilty of misrepresentation or false documents when providing the information required for verification of the absence of grounds for exclusion or the satisfaction of the selection criteria, or concealed this information;
- e. Where Enabel has sufficient plausible evidence to conclude that the tenderer has committed acts, entered into agreements or entered into arrangements to distort competition.

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

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

Failures to respect applicable obligations regarding environmental, social and labour rights under European Union law, national law, labour agreements or international provisions on environmental, social and labour rights are considered 'significant'.

The presence of the tenderer on the exclusion list of Enabel because of such a failure serves as evidence.
7. Restrictive measures have been taken vis-à-vis the supplier with a view of ending violations of international peace and security such as terrorism, human-rights violations, the destabilisation of sovereign states and de proliferation of weapons of mass destruction.
8. The tenderer or one of its directors are on the lists of persons, groups or entities submitted by the United Nations, the European Union and Belgium for financial sanctions:



For the United Nations, the lists can be consulted at the following address:  
<https://finances.belgium.be/fr/tresorerie/sanctions-financieres/sanctions-internationales-nations-unies>

For the European Union, the lists can be consulted at the following address:  
<https://finances.belgium.be/fr/tresorerie/sanctions-financieres/sanctions-europ%C3%A9ennes-ue>

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

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

For Belgium:

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

9. The tenderer formally declares being able, when asked and without delay, to provide the relevant certificates and other kinds of supporting documents, except if:
- a. Enabel can directly obtain the supporting documents concerned by consulting a national database in a Member State that is accessible for free, provided the tenderer has given the required information (website address, responsible authority for providing the information, specific reference of the documents) so Enabel can obtain these, with concomitant permission to access them;
  - b. Enabel already has said documents.

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

Date

Location:

Signature

## 6.5 Integrity Statement of the tenderer

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

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

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

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

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

Date

Location

Signature

## 6.6 Selection file – Economic capacity

<b>Economic and financial capacity – See Art. 67 of the Royal Decree of 18 April 2017</b>	
<p>In the past 3 financial years the tenderer must have achieved a total turnover of at least <b>the value of the tender</b>. He shall include in his tender a statement on turnover during the three past financial years, unless total turnover is mentioned in the approved Financial Statements that can be consulted via the digital portal (i.e. Financial Statements deposited with the National Bank of Belgium, in a full or shortened accounting scheme in which the option of turnover achieved has been filled out).</p>	<p><b>The statement on the total turnovers achieved during the for the 3 years.</b></p> <p><b>The Total required turnover is “at least the value of the tender</b></p>
<p>The tenderer must also provide evidence of his financial solvability.</p> <p>This financial capacity will be evaluated on the basis of <b>the approved Financial Statements</b> of the past 3 financial years.</p> <p>For individual undertakings it suffices to draw up a document that lists all assets and liabilities by an IEC/IAB accountant or a registered auditor. This document must be certified true by an IEC/IAB accountant or by the registered auditor, as appropriate. The document must present recent financial conditions (dated 6 months maximum from the tender opening date).</p> <p>In case the enterprise has not yet published its Financial Statements, an interim balance certified true by the IEC/IAB accountant, or the registered auditor will do.</p> <p>Non-Belgian enterprises must also attach to their tender <b>their approved Financial Statements for the past 3 financial years</b> or a document listing all assets and liabilities of the enterprise.</p> <p>In case the enterprise has not yet published its Financial Statements, <b>an interim balance certified true by an accountant or by a registered auditor or by the person or body with this function in the country concerned will do.</b></p>	<p><b>The Financial Statements documents approved by the competent organ/Authority, for the past 3 financial years to be attached</b></p>

## 6.7 Selection file – Technical aptitude

<b>Technical aptitude: See Art. 68 of the Royal Decree of 18.04.2017</b>	
<p>The tenderer must present his previous experience with the <b>minimum requirements set in section 3.5.2</b></p> <p>The tenderer includes in his tender a list with the main services that have been delivered over the past two years including the amount and date as well as the public or private recipients. Service delivery is demonstrated by certificates drawn up or approved by the competent authority or, where the client was a private purchaser, by certification of the private purchaser, or by default, by a simple statement of the service provider.</p>	<p><b>Company profile with clear experience and delivered stoves to be provided.</b></p> <p><b>List of similar projects performed before (Supplies delivered)</b> <b>(Refer to section 3.5.2 of the TD – Selection criteria)</b></p>
<p>An indication of the proportion of the contract which the service provider intends possibly <b>to subcontract.</b></p>	<p><b>If sub-contracting is applicable – to be indicated</b></p>

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

### 6.8 Power of attorney

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

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

### 6.9 Incorporation certificate

The Bidder shall include in his tender the **incorporation certificate/trading license**<sup>29</sup> from the competent authority.

### 6.10 VAT Registration certificate

### 6.11 Non-Bankruptcy certificate

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

At the latest before award, the Bidder must provide a certification<sup>29</sup> from the competent authority stating that he is **in order with its obligations with regards to the payments of social security contributions** that apply by law in the country of establishment. The Bidder registered in Belgium must be in order for the **4<sup>th</sup> term of 2024**.

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

At the latest before award, the bidder must provide a **recent certification**<sup>29</sup> (up to 6 months) from the competent authority stating that the bidder is **in order with the payment of applicable taxes** that apply by law in the country of establishment.

### 6.14 List of the similar assignments

Bidder must provide in his bid the list of the main similar experience as described in sections (3.5.2), including the amount involved and the relevant dates, and the public or private bodies on behalf of which they were carried out showing that the Bidder has experience in delivering those products.

Description of the main similar contract performed	Delivery places	Total number of stoves	Amount involved	Relevant dates in the last 2 years	Name of the Client

<sup>29</sup> In case of a consortium or a temporary association, the required certificates must be submitted for all members of the consortium.

## 6.15 Certificates of completion

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

## 6.16 Annexes

### 6.16.1 GDPR clause (in case where service provider will process personal data)

*This Annex must be used where the contractor is a subcontractor in the meaning of the GDPR, i.e. a natural or legal person which processes personal data on behalf of Enabel.*

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

AGREEMENT on the Processing of personal data (GDPR)

**BETWEEN:**

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

Represented by: [.....],

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

**AND:**

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

Represented by: [.....],

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

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

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

**Preamble**

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

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

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

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

### **Article 1: Definitions**

- 1.1. Terms such as ‘process’/‘processing, ‘personal data,’ ‘personal data controller,’ ‘processor’ and ‘personal data breach’ must be interpreted in light of data protection legislation. ‘Data protection legislation’ refers to any regulation of the European Union and/or its Member States, including, without being limited to laws, directives and regulations for the protection of personal data, in particular European Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and the free movement of such data (GDPR) and the Belgian law of 30 July 2018 on the protection of natural persons with regard to the processing of personal data.

### **Article 2: Subject-matter of the Agreement**

- 2.1. During performance of the public contract, the contracting authority entrusts the contractor with the processing of personal data. The contractor undertakes to process personal data in the name of and on behalf of the contracting authority.
- 2.2. The contractor performs the public contract in accordance with the provisions of this Agreement.
- 2.3. Both Parties explicitly undertake to comply with the provisions of applicable data protection laws and to do nothing or fail to cause the other Party to violate relevant and applicable data protection laws.
- 2.4. The elements included in the processing are further included and clarified in Annex 1 of this Agreement. The following are particularly included in said Annex:
  - a) Personal data processing activities;
  - b) The categories of personal data processed;
  - c) The categories of stakeholders to which the personal data of the contracting authority’s relate;
  - d) The purpose of the processing.
- 2.5. Only the personal data mentioned in Annex 1 of this Agreement may and must be processed by the contractor. In addition, personal data will only be processed in light of the purposes set out by the Parties in Annex 1 of this Agreement.



- 2.6. Both Parties undertake to take appropriate measures to ensure that personal data are not misused or acquired by an unauthorized third party.
- 2.7. In the event of a conflict between the provisions of this Agreement and those of the Tender Specifications, the provisions of this Agreement will prevail.

### **Article 3: Instructions of the contracting authority**

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

### **Article 4: Assistance to the contracting authority**

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

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

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

The contractor is required to remedy the negative consequences of a data breach as quickly as possible or to minimise other potential consequences. The contractor will immediately

implement all remedies requested by the contracting authority or the relevant authorities to remedy any data breach or other non-compliance and/or mitigate the risks associated with these events. The contractor will have to cooperate at all times with the contracting authority and observe its instructions in order to enable it to carry out an appropriate investigation into the data breach, formulate a correct response and then take appropriate action.

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

#### **Article 5: Obligations of the contractor/processor**

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

#### **Article 6: Obligations of the contracting authority/controller**

- 6.1. The contracting authority will provide all necessary assistance and cooperate in good faith with the contractor to ensure that any processing of personal data is in accordance with the requirements of the Regulation, including the principles relating to the processing of personal data.

- 6.2. The contracting authority will agree with the contractor on the appropriate channels of communication to ensure that instructions, guidance and other communications regarding personal data that are processed by the contractor on behalf of the contracting authority are well received between the Parties. The contracting authority notifies the contractor of the identity of the single point of contact of the awarding authority that the contractor is required to contact under this Agreement. Unwritten instructions (e.g. oral instructions by telephone or in person) must always be confirmed in writing.

The point of contact of the contracting authority is: [dpo@enabel.be](mailto:dpo@enabel.be)

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

#### **Article 7: Use of subsequent subcontractors/processors**

- 7.1. In accordance with the Tender Specifications, the contractor may use the capacity of a third party to tender for the public contract, which constitutes further subcontracting within the meaning of Article 28 of the GDPR.<sup>30</sup>
- 7.2. The contractor may engage another subcontractor (hereinafter, the ‘subsequent subcontractor’) for carrying out specific processing activities. In this case, he informs the contracting authority in advance and in writing of any change considered with regards to adding or replacing other subcontractors. This information must clearly indicate the processing activities that are subcontracted, the identity and contact details of the subcontractor and the dates of the subcontracting contract. The contracting authority disposes of 30 days from the date of reception of said information to voice any objections. Such subsequent subcontracting may only be carried out if the contracting authority has not voiced any objection during said period.
- 7.3. The contractor will use only subsequent subcontractors who provide sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of this public contract, of Belgian legislation and of the GDPR and assures the rights of the data subject concerned.
- 7.4. When the contractor uses another subcontractor to carry out specific processing activities in the name of the contracting authority, obligations in any respect identical to those provided for in this Agreement will have to be imposed on this subsequent

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<sup>30</sup> To be adapted in accordance with Tender Specifications.

subcontractor; the latter in particular must provide the same sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the Regulation.

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

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

### **Article 8: Rights of the data subject concerned**

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

### **Article 9: Security measures**

- 9.1. Throughout the duration of this Agreement, the contractor must have appropriate technical and organisational measures in place to ensure that the processing meets the requirements of the Regulation and ensures the protection of the rights of the data subject concerned.

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

#### **Article 10: Audit**

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

in the audit, the contractor will remedy this breach as soon as possible. Parties may agree to put in place a plan, including a timetable for implementing the plan, to address the gaps revealed by the audit.

- 10.6. The contracting authority will cover the costs of any audit carried out within the meaning of this article. Without prejudice to the above, the contractor will bear the costs of his employees. However, where the audit has revealed that the contractor is clearly not in compliance with the Regulation and/or provisions of this Agreement, the contractor bears the costs of said audit. The costs of re-compliance with the Regulation and/or the provisions of this Agreement are borne by the contractor.

#### **Article 11: Transfers to third parties**

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

#### **Article 12: Transfer outside the EEA**

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

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

#### **Article 13: Behaviour towards national government and judicial authorities**

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

#### **Article 14: Intellectual property rights**

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

#### **Article 15: Confidentiality**

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

#### **Article 16: Liability**



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

**Article 17: End of contract**

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

**Article 18: Mediation and competence**

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

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

FOR THE CONTRACTING AUTHORITY

FOR THE CONTRACTOR

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Name: [.....]

Name: [.....]

Function: [.....]

Function: [.....]



## **Annex 1: Description of personal data processing activities by the contractor<sup>31</sup>**

### **1. Processing activities carried out by the subcontractor**

Subject matter of processing:

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

Duration of the processing:

Purpose of the processing:

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

- Personal identification data (e.g. name, address and telephone)
- Electronic identification data (e.g. e-mail address, ID Facebook, ID Twitter, user names, passwords or other connection data, etc.)
- Electronic location data (e.g. IP addresses, mobile phone, GPS, connection points, etc.)
- Biometric identification data (e.g. fingerprints, iris scan, etc.)
- Copies of identity documents
- Financial identification data (e.g. account numbers (bank), credit card numbers, salary and payment information, etc.)
- Personal characteristics (e.g. gender, age, date of birth, marital status, nationality, etc.)
- Physical data (e.g. height, weight, etc.)
- Habits of life
- Psychological data (e.g. personality, character, etc.)
- Family composition
- Leisure and interests
- Memberships
- Consumption habits
- Education and training
- Career and occupation (e.g. function, title, etc.)
- Images/photos
- Sound recordings

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<sup>31</sup> To be filled out by the contracting authority and the contractor.

- National Social Security Register Number/Identification Number
- Details of the contract (e.g. contractual relationship, order history, order numbers, invoicing and payment, etc.)
- Other categories of data, <Describe>

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

- Special categories of personal data (Art. 9 GDPR)
  - Data revealing racial or ethnic origin
  - Data concerning sexual orientation
  - Political opinions
  - Trade union membership
  - Religious or philosophical beliefs
- Data concerning health (Art. 9 GDPR)
  - Physical health
  - Mental health
  - Risk situations and risk behaviours
  - Genetic data
  - Healthcare data
- Judicial data (Article 10 of the general data protection law)
  - Suspicions and indictments
  - Convictions and sentences
  - Judicial measures
  - Administrative sanctions
  - DNA data

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

- (Potential)/(former) clients

If yes, <describe>

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

If yes, <describe>

- (Potential)/(former) suppliers

If yes, <describe>

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

If yes, <describe>

Other category

If yes, <describe>

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

<Describe>

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

<Describe>

**7. Processing place**

<Describe>

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

<Describe>

**8. Use of following subsequent subcontractors/processors:**

<Describe>

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

Name:	
Title:	
Telephone number:	
E-mail:	
Name: <sup>32</sup>	
Title:	
Telephone number:	
E-mail:	

<sup>32</sup> Identify the person responsible of the project/department/other as appropriate.

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

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

### Annex 2: Security of processing<sup>33</sup>

The controller should use only processors providing sufficient guarantees, in particular in terms of expert knowledge, reliability and resources, to implement technical and organisational measures which will meet the requirements of this Regulation (in particular Article 32 of the GDPR), including for the security of processing.<sup>34</sup>

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

These security measures comprise the following, among others:

- [Describe]

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<sup>33</sup> To be filled out by supplier

<sup>34</sup> Consideration 81 of the GDPR