



Tender Specifications

Framework agreement works contract for construction of energy efficient kitchens in selected secondary schools in Busoga and Rwenzori regions in Uganda.

Open procedure

Procurement reference number: UGA22008-10191

Navision code: UGA22008

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DEROGATIONS FROM THE ROYAL DECREE OF 14 JANUARY 2013

Chapter 4 of these Tender Specifications (CSC/Cahier Spécial des Charges) holds the specific administrative and contractual provisions that apply to this public contract by way of derogation from the Royal Decree of 14 January 2013 or as a complement or an elaboration thereof.

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

Because of the significance of the works, special penalties are provided in accordance with Article 45 of the General Implementing Rules.

1 Technical specifications

1.1 Requirements for the works

1.1.1 Technical Methodology

The Contractor shall provide the services and the deliverables as specified hereafter by applying a technical methodology (including one considering a non-disruption strategy during operations at the schools), which factors in the following aspects.

1.1.1.1 Background information

To ensure sustainability, school infrastructure should be responsive to the climate and to environment. Among many other interventions, this involves schools having in place energy efficient kitchens. The project proposes, as one of its interventions, the construction of energy efficient kitchens with energy cooking stoves in 19 selected secondary schools in the Rwenzori and Busoga regions as a quick win intervention to be achieved in 2025.

1.1.1.2 Scope and Tasks

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

estimated works sites shall be as follows;

Location	Schools	Scope of works
Jinja district	- Buyengo Secondary School	Minor repair works for the kitchen and installation of energy cooking stoves.
Jinja city	- Wanyange Girls S.S. - Buwenge TC Seed S.S. - Pilkington College Muguluka - St. Stephen S.S. Budondo	Construction of the kitchen and installation of energy cooking stoves in 4 selected schools.
Kamuli & Jinja districts	- Namasagali College - St Paul Mbulamuti - Busoga High School - Lubani S.S.	Construction of the kitchen and installation of energy cooking stoves in 4 selected schools.
Kasese district	- Ihandiro Voc S.S. - Maliba S.S. - SAAD Memorial S.S.	Construction of the kitchen and installation of energy cooking stoves in 3 selected schools.
Fort portal city & Kabarole district	- St Leos College Kyegobe - Kitumba S.S. - St. Joseph's Karangura S.S. - Kaboyo S.S.	Construction of the kitchen and installation of energy cooking stoves in 4 selected schools.

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Kyegegwa district	<ul style="list-style-type: none"> - Kakabara S.S. - Humura S.S. - Kibuye S.S. 	Construction of the kitchen and installation of energy cooking stoves in 3no. selected schools.
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Other locations and schools might be added during the period of validity of this framework agreement.

The specific requirements are stated in the Bills of Quantities (BoQs) and drawings, contained in the Technical Annex. Further requirements applicable are also contained in the Technical Annex. The specifications of equipment offered and works performed must conform to the Uganda Ministry of Works & Transport “Standard Specifications for Building Works - Ministry of Works and Transport (Appendix 1 and Appendix 2) separately attached to these tender documents”.

1.1.1.3 Location of sites

The construction shall be carried out in the following estimated schools and locations:

Region	Location	Number of Schools	Distance from Kampala to site in Km (Approx)	Name of school
Busoga	Jinja district	1	126	Buyengo Secondary School
	Jinja city	4	104	Wanyange Girls S.S.
			123	Buwenge TC Seed S.S.
			118	Pilkington College Muguluka
			115.2	St. Stephen Budondo S.S.
	Kamuli district	4	133	Namasagali College
			103	St Paul Mbulamuti
			116	Busoga High School
			377.7	Lubani S.S.
Rwenzori	Kasese district	3	432	Ihandiro Voc S.S.
			388	Maliba S.S.
			388	SAAD Memorial S.S.
	Kabarole district	4	309.1	St Leos College Kyegobe
			308.5	Kitumba S.S.
			327	St. Joseph’s Karangura S.S.
			319	Kaboyo S.S.
	Kyegegwa district	3	209	Kakabara S.S.
			198.5	Humura S.S.
			201	Kibuye S.S.

Other locations and schools might be added during the period of validity of this framework agreement.

1.1.2 Project management

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The contractor undertakes to deliver a project management plan to be approved by the contracting authority and her advisors within 14 calendar days following notification of contract award.

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

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

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

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

The contractor shall submit samples of materials and colour shade cards to the contracting authority for approval before commencing the works.

1.1.3 Quality Management

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

1.2 Requirements for the resources

1.2.1 Requirements for the human resources

The tenderer shall assemble a technical team including but not limited to the following key experts whose CVs shall be provided. Each CV should be no more than 3 pages and signed by the expert. The key experts should be available to perform the contract during the entire term of the contract. Key experts will not be replaced during the implementation of the contract without prior written approval by the contracting authority.

All required experience should be after graduation in relevant qualifications.

Key Experts

No.	Expert	Qualifications	Experience	Other requirements
1	Team leader/ Site engineer	At least a bachelor's degree in Civil/Building Engineering	- At least 5 years' general experience in works - At least 4 years' specific experience as a site engineer in works of an equivalent nature (education buildings works or equivalent)	-Signed CV -Academic documents -Availability: Full time
2	Building works foreman	At least an ordinary diploma in civil/building engineering	-At least 3 years' general experience in works -2 years' specific experience as a building works foreman in works of an equivalent nature (education buildings works or equivalent)	-Signed CV -Academic documents -Availability: Full time
3	Energy efficiency stoves installation specialist:	-At least an ordinary diploma in civil/building engineering	-At least 5 years of experience in the design and installation of energy efficient stove systems	-Signed CV -Academic documents -Availability: Full time

1.2.2 Management of the team

Efficient communication and sharing of experience must be put in place within the team. In case of unavailability of a team member, the contractor shall ensure prompt replacement, after Contracting authority approval, with at least the same level of qualifications as those of the expert being replaced and who was initially proposed for the assignment in accordance with the tender.

1.2.3 Requirements for the equipment

The contractor shall assemble all equipment and tools necessary to perform the works under the contract, including but not limited to the following. The contractor shall provide proof of ownership or lease of the equipment below in form of;

1. Purchase receipts for owned equipment.

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2. Lease agreement for leased equipment.
3. Motor vehicle logbooks, including leased vehicles.

Item	Equipment type and characteristics	Minimum quantity required
1.	Concrete mixer (minimum 1m3) and poker	2
2.	Tipper trucks / dumpers (3 & 9 ton)	2
3.	Height adjusted ladder 6-9metres	2
4.	Set of assorted assembly/joinery hand tools	1

1.2.4 Drawings and Bills of Quantities

The drawings for the kitchens & stoves for installation and bills of quantities for estimated scope are attached separately as an annex to these documents.

2. General provisions

2.1 Contracting Authority

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

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

2.2 Institutional framework of Enabel

The general framework of reference in which ENABEL operates is:

The Belgian Law on Development Cooperation of 19 March 2013;

The Belgian Law of 21 December 1998 establishing the Belgian Technical Cooperation as a public-law company¹;

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

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

- In the field of international cooperation: The United Nations Sustainable Development Goals and the Paris Declaration on the harmonisation and alignment of aid;
- In the field of the fight against corruption: the Law of 8 May 2007 approving the United Nations Convention against Corruption, adopted in New York on 31 October 2003², as well as the Law of 10 February 1999 on the Suppression of Corruption transposing the

¹ Belgian Official Gazette of 1 July 1999.

² Belgian Official Gazette of 18 November 2008.

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 Organization³ on Freedom of Association (C. n°87), on the Right to Organise and Collective Bargaining (C. n°98), on Forced Labour (C. n°29 and 105), on Equal Remuneration and on Discrimination in Respect of Employment (C. n°100 and 111), on Minimum Age for Admission to Employment (C. n°138), on the Prohibition of the Worst Forms of Child Labour (C. n°182);
- In the field of environmental protection: The Climate Change Framework Convention of Paris, of 12 December 2015;
- The first Management Contract contracting Enabel and the Belgian Federal State (approved by the Royal Decree of 17 December 2017, Belgian Official Gazette of 22 December 2017) that sets out the rules and the special conditions for the execution of public service tasks by Enabel on behalf of the Belgian State;
- Enabel's Code of Conduct of January 2019, Enabel's Policy regarding sexual exploitation and abuse of June 2019 and Enabel's Policy regarding fraud and corruption risk management of June 2019.

2.3 Rules governing the public contract

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

1. The Law of 17 June 2016 on public procurement⁴;
2. The Law of 17 June 2013 on justifications, notification and legal remedies for public contracts and certain contracts for works, supplies and services⁵;
3. The Royal Decree of 18 April 2017 on the awarding of public contracts in the classic sectors⁵;
4. The Royal Decree of 14 January 2013 establishing the General Implementing Rules for public procurement and for concessions for public works⁷
5. Circulars of the Prime Minister with regards to public procurement.

³ <https://www.ilo.org/global/standards/lang--en/index.htm>

⁴ A consolidated version of this document can be consulted on www.publicprocurement.be.

⁵ Belgian Official Gazette of 21 June 2013.

6. All Belgian regulations on public contracts can be consulted on www.publicprocurement.be.
7. Enabel's Policy regarding sexual exploitation and abuse – June 2019;
8. Enabel's Policy regarding fraud and corruption risk management – June 2019
9. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation, hereinafter referred to as 'the GDPR'), and repealing Directive 95/46/EC;
10. Law of 30 July 2018 on the protection of natural persons with regard to the processing of personal data;
11. [local legislation with regards to sexual harassment at the workplace or equivalent];

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

2.4 Definitions

The following definitions apply to this contract:

The tenderer: The natural person (m/f) or legal entity that submits a tender;

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

The contracting authority: Enabel, represented by the Resident Representative of Enabel in Uganda.

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

Technical specifications: A specification in a document defining the characteristics of a product or a service, such as the quality levels, the environmental and climate performance levels, the design for all needs, including accessibility for people with disabilities, and the evaluation of conformity, of product performance, of the use of the product, safety or dimensions, as well as requirements applicable to the product as regards the name by which it is sold, terminology,

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symbols, testing and test methods, packaging, marking or labelling, instructions for use, the production processes and methods at every stage in the life cycle of the supply or service, as well as the evaluation and conformity procedures;

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

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

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

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;

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.

2.5 Confidentiality

2.6.1 Processing of personal data

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

2.6.2 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>

2.6 Deontological obligations

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

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

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

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

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

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

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

2.7 Applicable law and competent courts

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

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

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

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

See also point 'Claims and requests' (Article 73 of the Royal Decree of 14 January 2013).

3 Modalities of the contract

3.1 Type of contract

This contract is a works tender in a framework agreement.

3.2 Scope of the contract

3.2.1 Subject-matter of the public contract

This framework agreement consists in the **construction of energy efficient kitchens in selected secondary schools in Busoga and Rwenzori regions in Uganda** in conformity with the conditions of these Tender Specifications.

3.2.2 Items

The public contract consists of the estimated items listed in section 1.1.1.2 “Scope and tasks” and in the drawings and the Bills of Quantities that are bound separately and annexed to this tender.

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

3.2.3 Variants

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

3.3 Duration of the public contract

The framework agreement shall commence upon award notification and last for a duration of **4 years**. Each party may, however, terminate the agreement at the end of the first, second or third year, provided that notification to the other party is sent at least 60 calendar days before the termination.

If the termination of the framework agreement is initiated by one of the participants, they will be deleted as a participant from the second, third or fourth year of the framework agreement, as the case may be. As soon as they are removed as a participant, they will no longer be considered for contracts based on the framework agreement.

Within three years of the conclusion of this contract and in accordance with Article 42 §1, 2° of the law of 17 June 2016, the contract may be extended to include new services consisting of the repetition of similar works or services.

3.4 Estimated quantities and maximum amount

The framework agreement estimated quantities are for information purposes. The contractor must therefore be able to perform these quantities for the period that covers the duration of the framework agreement.

The present framework agreement does not have minimum quantities. Exact quantities shall be determined in each subsequent contract. The contracting authority does not commit in any way as to quantities that shall actually be ordered through this contract. The contractor cannot use the fact that the listed quantities were not attained as a basis for claiming compensation.

The maximum amount to be ordered under this framework agreement is 1,500,000 Euros.

This amount is given for information only. Under no circumstances may the shortlisted participants be able to claim compensation if this maximum amount is not reached at the end of the framework duration.

4. Specific contract conditions

4.1 Definitions (Art. 2)

The following definitions apply to this contract:

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

4.2 Usage of digital means (Art. 10)

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

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

4.3 Managing official (Art. 11)

The managing official is Joeri Leysen, Project Manager, email: joeri.leysen@enabel.be who is supported by Frank Waibale, Infrastructure Expert, email: frank.waibale@enabel.be

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

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

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services, progress reports and reviews. He or she may order any modifications to the contract with regards to its Subject-matter provided that they remain within its scope.

However, the signing of amendments or any other decision or agreement implying derogation from the essential terms and conditions of the contract are not part of the competence of the managing official. For such decisions the contracting authority is represented as stipulated under point 2.1 Contracting Authority.

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

4.4 Subcontractors (Art. 12 to 15)

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

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

The building contractor undertakes to having the contract performed by the persons indicated in the tender, except for force majeure. The persons mentioned or their replacements are all deemed to effectively be involved in the performance of the contract. Any replacements must be approved by the contracting authority.

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

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

In the same way, the contractor will respect and enforce to his subcontractors, the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation, GDPR). The contracting authority may conduct an audit of the processing carried out in order to validate compliance with this legislation.

4.5 Confidentiality (Art. 18)

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

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

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

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

Therefore, he undertakes to:

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

4.6 Personal data protection

Processing of personal data by the contracting authority

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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.

Processing of personal data by the contractor

PROCESSING OF PERSONAL DATA BY A CONTROLLER (RECIPIENT)

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

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

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

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

4.7 Intellectual property (Art. 19 to 23)

The contracting authority does not acquire 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 Insurance (Art. 24)

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

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

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

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

4.9 Performance bond (Art. 25 to 33)

For each of the order under this contract, shall be required in case the total purchase order exceeds 50,000 Euros or implementation period exceed 45 calendar days. The performance bond is set at 5% of the total value, excluding VAT, of the order. 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.

By way of derogation from Article 26 the performance bond may be posted through an establishment that has its registered office in one of the countries of destination of the services. The contracting authority reserves the right to accept or refuse the posting of the bond through that institution. The tenderer mentions the name and address of this institution in the tender. This derogation is founded on the idea of providing possible local tenderers with an opportunity to submit a tender.

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

- 1° in the case of payment in cash, by transfer of the amount to the post bank account number of the Deposit and Consignment Office (Caisse des Depots et Consignations) in Belgium. Complete the following form as well as possible: https://finances.belgium.be/sites/default/files/01_marche_public.pdf (PDF, 1.34 Mo), and forward it by e-mail to info.cdcdck@minfin.fed.be . After reception and validation of the said form, an agent of the Caisse des Dépôts et Consignations will provide you with the payment instructions (account number + communication) for the bond deposit in cash.
- 2° in the case of public funds, by depositing such funds, for the account of the Deposit and Consignment Office, with the State Cashier at the head office of the National Bank in Brussels or at one of its provincial agencies or with a public institution with an equivalent function.
- 3° in the case of a joint surety, by deposit via an institution that lawfully carries out this activity of a deed of joint surety with the Deposit and Consignment Office or with a public institution with an equivalent function.
- 4° in the case of a guaranty, by the deed of undertaking of the credit institution.

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

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

These documents, signed by the depositor, must state why the performance bond was posted and its precise usage, consisting of a concise indication of the subject-matter of the contract and a reference to the procurement documents, as well as the name, first names and full address of the contractor and, where relevant, that of the third party that made the deposit on the contractor's account, bearing the statement "lender" or "mandatary" as appropriate.

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

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

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

For final acceptance: This is equal to a request to release the totality of the performance bond.

4.10 Conformity of performance (Art. 34)

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

4.11 Plans, documents and objects prepared by the Contracting Authority (Art.35)

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

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

4.12 Detailed plans and work plans prepared by the Contractor (Art. 36)

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

The procurement documents specify which plans require approval by the contracting authority, which has 30 days to approve or reject the plans starting from the date on which they are submitted to it.

Any corrected documents are resubmitted for approval to the contracting authority, which has 15 days to approve them, provided that the corrections requested are not the result of new demands made by the contracting authority.

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4.12.1 Construction planning

The planning shall be submitted to be discussed with the managing official.

The planning shall be submitted to the contracting authority for approval within 14 calendar days following tender award notification.

This draft construction planning provides, in addition to deadlines for the 'on-site' works as such, the timing for the different preliminary achievements such as the establishment of documents prescribed by the technical provisions, implementation plans and detailed plans, calculation notes, selection of equipment and materials, including the approval of related documents, the supplies, workshop or factory work, preliminary tests and conformity tests, etc.

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

4.12.2 Implementing documents

These plans take into account the Tender Specifications and technical provisions, the design drawings of the project developer and general architecture plans, stability plans and special techniques plans annexed to these Tender Specifications.

All implementation plans and detail plans are to be submitted for approval to the contracting authority along with calculation notes, technical approvals and technical forms and in particular those related to the works and the equipment listed below (non-exhaustive list):

1. Substructures
2. RC frame
3. Walling
4. Roofing and rainwater disposal
5. Doors
6. Windows
7. External finishes
8. Joinery finishes
9. Electrical installations
10. Mechanical installations
11. Kitchen works
12. Cooking stoves works

The managing official may refuse technical forms which are partial, incomplete or too commercial and do not provide the technical information required for assessment and approval.

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

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

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

4.12.3 Establishment of "As Built" plans

During performance, the building contractor shall revise and update the plans to the last detail in order to accurately reproduce the works and installations and their specifics as built.

When the works are completed and in view of provisional acceptance of the works, the building contractor is to submit the complete plans and diagrams of the works and installations as built.

When the works are completed and in view of provisional acceptance, the building contractor is to submit technical files including:

1. technical specifications with brands names, types, origin of the equipment installed,
2. users' manuals, explaining the functioning of all equipment,
3. maintenance manuals, explaining everything that needs to be done for the maintenance and care of the equipment (regular control and maintenance, list and codes of spare parts...),
4. and test reports, tuning and adjustment reports.

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

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

§1 Scope: The clause may be applied in case the contractor is unable to continue the performance of the contract due to termination of the contract (art. 61, 62 or 62/1, °2 GIR) or after taking an ex officio measure (art. 47 GIR).

§2 Nature of the amendment: In derogation of art. 47, §2, °3 GIR, the contracting authority may, in all the above cases, immediately award a new contract to the subcontractor(s) of the contractor already involved in the performance of the contract or to the second-ranked
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tenderer, for all or part of the contract still to be performed, and this without initiating a new award procedure. This agreement will take the form of an amendment to the original contract to be concluded between the contracting authority and the new contractor.

§3 Conditions under which this revision clause may be used:

Provided that they meet the selection criteria, and the exclusion criteria set out in this document, and if they can meet the initial conditions of the contract, the contracting authority may conclude a contract for account with the contractor's subcontractor(s) already involved in the performance of the contract. To this end, the contracting authority shall contact the subcontractor(s) or his (their) representative(s), asking whether he (they) can meet the original terms of the contract. If the subcontractor(s) cannot meet the original conditions, a contract for account may be concluded under amended conditions. Before concluding such an amended contract, the contracting authority shall check whether the new conditions are still more advantageous than those of the tenderer ranked second during the evaluation of bids under the original award procedure. If this is not the case, the contracting authority will close a contract for account as referred to in the second paragraph below.

If the contracting authority is unable or unwilling to avail itself of the option mentioned in the preceding paragraph, a contract for account may be concluded with the tenderer who was ranked second during the evaluation of tenders under the original award procedure, provided that he meets the selection criteria, and the exclusion criteria set out in this document.

To this end, the contracting authority contacts the second-ranked tenderer or his representative to ask whether he agrees to maintain his bid. If that bidder agrees without reservation, the Contracting authority proceeds to award and conclude the contract for account. If the tenderer in question does not agree to maintain the terms of his initial tender or if his modified tender does not remain the most economically advantageous on the basis of the evaluation of bids under the original award procedure (after exclusion of the initial contractor), the contracting authority shall address itself:

1° either successively, according to the ranking, to the other regular tenderers. In this case too, the contracting authority contacts the tenderer concerned or his representative to ask whether he agrees to maintain his bid. If that tenderer agrees without reservation, the contracting authority proceeds to award and conclude the contract for account;

2° or simultaneously to all the other regular tenderers, asking them to revise their tender, on the basis of the initial terms of the contract, in order to award and conclude the contract on the basis of the tender that has become the most economically advantageous.

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In any case, the contracting authority shall ensure that verification of the absence of grounds for exclusion and compliance with the selection criteria has taken place in an impartial and transparent manner, either in the context of the initial award procedure or at the time of the conclusion of the contract for account, so that no contract is awarded to a tenderer (or subcontractor) who should have been excluded or who does not meet the selection criteria. The minimum requirements of qualitative selection may, where appropriate, be adjusted in proportion to the remaining part of the contract if the contract for account is concluded only for part of the contract still to be performed. The contract for account will be concluded by means of an amendment to the original contract, which will be signed by the contracting authority and the new contractor. If the contract has already been partially executed, this amendment will accurately mention all parts of the contract that still need to be performed. The amendment shall also mention all the changed conditions compared to the original tender of the initial contractor and compared to the original tender of the new contractor. If necessary, the amendment shall state the method of application of the original conditions to the remaining part of the contract. All other conditions stated in the contract documents (the tender specifications and the original tender of the initial or new contractor), shall continue to apply unchanged.

If a contract for account is concluded, a copy of the amendment concerning the contract to be concluded shall be sent to the initial contractor by electronic transmission, in deviation from art. 47, §3, paragraph 3 GIR. If, following the application of an ex officio measure (art. 47 GIR), the price of the new contract for account concluded is higher than that of the initial contract, the initial contractor shall bear the additional costs.

4.13.2 Revision of prices (Art. 38/7)

For this framework agreement, price revisions shall be permitted. The framework agreement prices may be revised upwards or downwards at the request of one of the parties. To calculate the price revision, the following formula applies:

$$Pr = Po (Ir / Io)$$

Where:

Pr = Price after revision

Po = Price quoted in the tender

Io = Index for the month in which the Framework Agreement (FWA) enters into force.

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I_r = Index for the month in which the request to revise prices is received

This revision shall be determined by the trend in the harmonised consumer price index published by the Uganda Bureau of Statistics (UBOS) Database for the applicable index appropriate for the industry. The price revision may only be applied if the price increase or decrease following the request or if the price revision request amounts to at least 3% of the price quoted in the tender (for the first price revision) or of the last price revised or imposed (as of the second price revision). The total revision under this clause shall be subject to a ceiling of plus or minus 10% of the price quoted in the tender.

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

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

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

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

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

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

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

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

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Any order amending the contract during performance of the contract is issued in writing. However, minor amendments need only be entered in the works logbook. The orders or entries shall specify the changes to be made to the initial terms of the contract and to the plans

4.13.4 Setting unit or global prices – Calculation of the price

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

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

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

4.13.5 Setting unit or global prices – Procedure to follow

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

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

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

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

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

4.13.4 Unforeseen circumstances

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

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

4.14 Control and supervision of the public contract

4.14.1 Scope of the control and supervision (Art. 39)

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

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

The fact that such supervision or control has been carried out by the contracting authority does not release the contractor of its liability should delivery eventually be rejected due to defects of any kind.

4.14.2 Technical acceptance procedures (Art. 41)

Concerning technical acceptance, it is necessary to distinguish between:

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

The contracting authority may waive all or part of the technical acceptance procedures where the contractor can prove that the products have been controlled by an independent body during their production, in accordance with the specifications of the procurement documents. In this respect, any other certification procedure in force in a Member State of the European Union is regarded as comparable to the Belgian conformity certification procedure and deemed equivalent.

4.14.3 Preliminary technical acceptance (Art. 42)

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

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

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

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

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

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

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

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

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

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

In any case, the costs include:

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

4.14.4 Ex posts technical acceptance (Art. 43)

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

4.15 Performance period (Art. 146 et seq.)

4.16.1 Deadlines and terms (Art. 147)

For each order form issued, works shall be performed within **4 calendar months** as from the day after the date of site handover to the contractor up to provisional acceptance and thereafter, the Defects Liability Period (**DLP**) of **12 calendar months** shall commence from the date after provisional acceptance.

The order form is addressed to the contractor either by registered letter, or by fax, or by any other means through which the date of dispatch can be determined unambiguously.

Any further correspondence pertaining to the order form (and to the performance of the services) follows the same rules as those for the dispatch of the order form when a party wants to establish proof of its intervention.

In the event the acknowledgement of receipt of the order form is received after the period of two working days, upon written demand and justification of the contractor, the performance period may be extended pro rata of the delay of the acknowledgement of receipt of the order form. When the service that placed the order, upon examination of the written demand of the contractor, estimates that the demand is founded or partially founded, it will inform the contractor in writing of which extension of the period is accepted.

When the order form is clearly incorrect or incomplete and implementation of the order becomes impossible, the contractor immediately notifies the service that placed the order about this in writing in order to find a solution to allow for normal implementation of the order. If necessary, the contractor will ask for an extended performance period under the same conditions as those foreseen in case of late reception of the order form.

In any event, complaints about the order form are not admissible anymore if they are not submitted within 10 calendar days from the day following the date on which the contractor has received the order form.

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

The services shall be performed at the addresses stated in the technical specification and in the order form.

4.16 Provision of land (Art. 77)

The building contractor shall bear all costs pertaining to land that is needed for the installation of his construction sites, storing supplies, preparing and handling materials as well as land needed for storing soil, excavated soil that is known to be unsuitable for reuse as landfill, material from demolition, general waste of any kind and excess earth.

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

The enclosing hoardings may not be used for advertising.

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

4.17 Labour conditions (Art. 78)

All the legal, regulatory and contractual provisions relating to the general conditions of work and health and safety in the workplace will apply to all personnel on the contractor's site.

The building contractor, all persons acting as a subcontractor at any stage and all persons providing personnel, shall be required to pay their respective personnel salaries, bonuses and allowances at the rates established by law, by collective agreements concluded by company agreements.

The building contractor shall keep available to the contracting authority at all times, at a location designated by the latter, a list, updated on a daily basis, of all the personnel it employs on the site.

This list contains at least the following personal information:

the name; the first name; actual occupation per day on the construction site; the date of birth; the job title; qualifications;

The contact person and any other appointed by the building contractor for the performance of this contract with the contracting authority will have to master the following languages: English.

4.18 Organisation of the construction site (Art. 79)

The building contractor shall comply with the local legal and regulatory provisions governing building works, road works, health and safety in the workplace as well as the provisions of collective, national, regional, local and company agreements.

During the performance of the works, the building contractor shall be required to maintain the security of the site for the duration of the works and, in the interests of his appointees and the

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representatives of the contracting authority and third parties, to take all necessary measures to ensure their safety.

The building contractor shall, under his sole responsibility and at his own expense, take all necessary measures to ensure the protection, preservation and integrity of existing buildings and works. He shall also take all the precautions required by best building practices and any special circumstances to protect neighbouring properties and to prevent any disturbance to them through his fault.

The building contractor shall bear all costs of and implement all necessary measures to signal in daylight, at night as well as in fog, the construction sites and storage sites that are located where vehicles and pedestrians circulate. He is to completely enclose his sites along temporary or permanent sidewalks as well as along temporary or permanent traffic arteries. Such enclosing and hoarding will also ensure the protection of the construction site during the construction period against any outside intrusion.

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

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

4.19 Means of control (Art. 82)

The building contractor shall notify the contracting authority of the precise location of works in progress on its site, in his workshops and factories and on the premises of his subcontractors and suppliers.

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

If the building contractor uses products that have not been accepted or that do not meet the demands of the Tender Specifications, the managing official or his/her representative may forbid the further pursuit of the works concerned, until these refused products are replaced by others that meet the contract's conditions, without this decision generating an extension of the

performance period or any entitlement to compensation. The building contractor is notified about the decision by means of a written report.

4.19.1 Works logbook (Art. 83)

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

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

1. Weather conditions;
2. Interruptions to works caused by adverse weather conditions;
3. Accidents at work;
4. The number and capacity of workers employed on the site;
5. Materials supplied;
6. Equipment actually used and equipment out of service;
7. Unforeseen events;
8. Amending orders of minor impact;
9. The attachments and quantities performed for each item and in each zone of the construction site. The attachments constituting the true and detailed representation of all works performed, in quantity, dimensions and weights.

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

When the building contractor does not formulate any remarks in due form and within above-mentioned deadlines, he is deemed to be in agreement with the annotations made in the logbooks or detailed attachments.

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

4.20 Liability of the building contractor (Art. 84)

The building contractor shall be held liable in respect of all works performed by him or his subcontractors until final acceptance of all works. During the warranty period, the building contractor shall carry out on the work, as required, all the works and repairs necessary to restore it to a good state of operation, and maintain it in this state.

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

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4.21 Zero tolerance to Sexual exploitation and abuse

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

4.22 Means of action of the contracting authority (Art. 44-51 and 154-155)

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

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

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

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

4.22.1 Failure of performance (Art. 44)

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

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

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

The contractor must repair the defects without any delay. He may assert his right of defence by registered letter addressed to the contracting authority within fifteen days from the date of Procurement reference number: UGA22008-10191

dispatch of the report (process verbal). Silence on his part after this period shall be deemed as acknowledgement of the reported facts.

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

4.22.2 Fines for delay (Art. 46 and 154)

The fines for delay differ from the penalties referred to in Article 45. They are due, without the need for notice, by the mere lapse of the performance period without the issuing of a report and they are automatically applied for the total number of days of delay.

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

In case the works being the subject-matter of these Tender Specifications were not completed within the period set in point 1.4.18, the following fine will be applied as of right for every working day of delay without the need for notice, simply by the expiry of the period in question:

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

where,

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

M = the initial value of procurement;

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

n = the number of working days of delay.

However, if the factor M does not exceed EUR 75 000 and, at the same time, N does not exceed 150 working days, the denominator N^2 will be replaced by $150 \times N$. If the contract includes several parts or several stages, each of which has its own period N and value M, each of them will be deemed a distinct contract for the application of fines. If, without setting parts or stages, the Tender Specifications stipulate that partial periods apply, failure to observe these will be penalised by special fines provided for in the Tender Specifications, or, in the absence of such a provision, by fines calculated in accordance with the formula referred to in Art. 86§1 of the Royal Decree of 14 January 2013, in which the factors M and N refer to the total contract. However, the maximum of the fines relating to each partial period of P working days shall be:

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

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4.22.3 Measures as of right (Art. 47 and 155)

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

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

§2 The measures as of right are:

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

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

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

The measures referred to in 1°, 2° and 3° will be taken at the expense and risk of the defaulting contractor. However, any fines or penalties imposed during the performance of a replacement contract will be borne by the new contractor.

4.22.4 Other sanctions (Art. 48)

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

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

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

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

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

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

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

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

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

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

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

The building contractor shall be held liable in respect of all works performed by him or his subcontractors until final acceptance of all works.

During the defect liability period, the building contractor shall carry out on the work, as required, all the works and repairs necessary to restore it to a good state of operation, and maintain it in this state.

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

The contractor who, during the warranty period, does certain works or partial works, shall restore the adjacent parts (such as paint, wallpaper, parquet floor...) if these have been damaged because of the repairs undertaken.

In buildings or other property that are being occupied the contractor may not hinder or endanger said occupation in any way for the performance of his works. The contractor shall bear all costs for the measures needed for that purpose.

During the warranty period, which amounts to 12 months, the building contractor shall carry out on the work, as required, all the works and repairs necessary to restore it to a good state of operation, and maintain it in this state.

From the time of provisional acceptance and without prejudice to the provisions of paragraph 1 relating to its obligations during the warranty period, the building contractor shall be responsible for the solidity of the work and the proper execution of the works in accordance with Articles 1792 and 2270 of the Civil Code.

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

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

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

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

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

where,

e_1, e_2, \dots, e_n , represent the successive values of the element in question during the contractual period, which may be extended insofar as the delay is not attributable to the building contractor; t_1, t_2, \dots, t_n , represent the corresponding periods for applying these values, expressed in months of 30 days, each fraction of a month being ignored and the periods of suspension of performance of the contract not being taken into consideration.

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

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

The contractor shall send (one copy only of) the signed invoice and the signed contract acceptance report (original copy) to:

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Tabitha Nandera

Tabitha.nandera@enabel.be

Financial Controller, WeLearn/We Teach Project

Plot 11 Nile Crescent Rd, Jinja

Only works that have been performed correctly may be invoiced.

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

The invoice shows the full details of the works that justify the payment. The invoice shall be signed and dated and shall include the statement: 'Certified true and sincere for the amount of EUR (Amount in words)' and the reference 2800UGA-10191 as well as the name of the managing official. The invoice that does not include this reference cannot be paid.

The invoice must be in **EUROS**.

Payment shall be made on admeasurement basis supported by the monthly progress reports that are established by the building contractor and the permanent supervisor and approved by the managing official.

For each item, the progress report includes:

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

Payment will be by bank transfer only.

Advance payment:

By way of derogation from the foregoing, and in accordance with Articles 12/1 to 5 of the Law of 17 June 2016, inserted by the Law of 22 December 2023 amending the regulations relating to public contracts with a view to promoting access by SMEs to the said contracts, the contracting authority shall pay an advance when the successful tenderer for a particular subsequent

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contract proves to be an SME within the meaning of Article 163, § 3, subparagraph 2, of the Law of 17 June 2016.

The amount of the advance payment is calculated by applying the following percentages to a reference value determined in accordance with Article 12/5 of the Law of 17 June 2016:

1° if the successful tenderer is a micro-enterprise, i.e. an enterprise that employs fewer than ten (10) people and whose annual turnover or annual balance sheet total does not exceed two million euros (2M euro), the percentage to be taken into account is twenty per cent (20%);

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

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

According to Article 12/5 of the Law of 17 June 2016, the reference value relevant for calculating the advance in a framework agreement is equal to the amount of each order, including all taxes. The first half of the advance shall be set off against the sums due to the contractor when the value of the services performed reaches thirty per cent of the original order amount and the second half of the advance shall be set off against the sums due to the contractor when the value of the services performed reaches sixty per cent of the original order amount.

The aforementioned amounts shall be understood as amounts inclusive of value-added tax.

The supplier must provide an **advance bank guarantee** prior to any advance payment.

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

4.26 Litigation (Art. 73)

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

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

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

Enabel

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

To the attention of Ms Inge Janssens

Rue Haute 147

1000 Brussels

Belgium

5. Procurement procedure

5.1 Award procedure

This contract is awarded in accordance with Article 36 of the Law of 17 June 2016 via an open procedure.

5.2 Publication

5.2.1 Official publication

This contract notice is officially advertised in the Belgian Public Tender bulletin

5.2.2 Enabel publication

This contract notice is furthermore published on the Enabel website

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

Additional publication

This procurement shall be published in the newspapers (New Vision and Monitor).

5.3 Information

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

Until 10 calendar days before the deadline for submission of tenders, prospective tenderers may ask questions about the Tender Specifications and the contract. Questions will be in writing by e-mail to uga_csc_contracts@enabel.be with a clear indication in the subject of the email of the procurement reference number and the contract title. They will be answered in the order received. The complete overview of questions asked will be available at the address mentioned above.

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

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The Contracting Authority shall organize an optional information/pre-bid meeting at the time, date and location specified below:

Public works contract for construction of energy efficient kitchens in selected secondary schools in Busoga and Rwenzori regions in Uganda.	10th Oct 2025 at 10:00 am Kampala time Online Meeting https://bitly.cx/cMEW4 Microsoft teams meeting Meeting ID: 365 479 185 838 6 Passcode: Cb2Qa7F4
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Pre-bid site visits

Prebid-sites visit is non-compulsory. However, tenderers who seek to visit the sites shall contact the Contracting Authority by email seeking permission to access the school. The Contracting Authority shall provide an introduction letter.

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 calendar days at the latest before the deadline for receipt of tenders.

5.4 Preparation and submission of tenders

5.4.1 Preparation of tenders

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

5.4.1.1 Content of tenders

The tenderer must use the tender forms 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**.

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

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

The tender shall contain the following parts:

1. Administrative Proposal

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

The Administrative proposal shall respect the following structure:

- Legal identification form
- Power of Attorney
- Certificate of registration/incorporation (as applicable)
- Articles of association
- Trading Licence
- Financial Identification Form (along with an account confirmation letter from the bank and bank signatory information. This account shall not change throughout the contract duration and implementation)
- Exclusion Criteria Form
- Integrity form
- Technical capacity form (including similar assignments proofs)
- Subcontractor form (if applicable)
- Signed CVs and academic documents of the experts
- List of equipment (with proof ownership i.e purchase receipt, motor vehicle logbooks (even for vehicles on lease) and or lease agreement)
- Financial capacity form (including proofs)

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

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

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2. Technical Proposal

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

- Technical methodology (max. 13 pages)
- Project management (max. 7 pages)

3. Financial Proposal

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

Determination, components and price adjustments

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

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

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

Elements included in the price

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

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

- 1° Where applicable, the measures imposed by occupational safety and worker health legislation;
- 2° All the works and supplies, such as bracing, sheet piling and drainage, necessary to prevent landslips and other damage and to remedy these if necessary;
- 3° The perfect preservation, possible shift and redeployment of cables and pipes which might be encountered during excavation, earthworks and dredging, provided that these achievements are not the legal responsibility of the owners of such cables and pipes;

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

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

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

5° The transportation and removal of excavated material, either away from the property of the contracting authority, or to locations within the sites for re-use, or to designated dumping sites, in accordance with the requirements of the procurement documents;

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

7° Customs and excise duties;

8° Where/If applicable, ugandan withholding tax regulations on withholding taxes. For national entities, 6% is deducted to the fees costs. For international entities, 15% is deducted to the fees costs.

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

The tenderer must duly fill out the Bills of Quantities attached in Excel format and submit it with his tender.

The contracting authority reserves the right to exclude the tender that is not duly filled out. Any omission, alteration and/or deletion in the Bill of Quantities (description, quantities and/or formulas) can be considered as a substantial irregularity leading to the exclusion of the tender.

5.4.1.2 Validity of tenders

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

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

5.4.2 Submission of tenders

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

The tenderer submits his tender as follows:

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The tenderer shall submit separately (in separate envelopes), the administrative, technical and financial proposals. The sealed envelopes containing the different proposals shall then be put together and sealed in one big envelope to be submitted to the contracting authority.

One original copy of the completed tender shall be submitted **on paper (hard copy)**. **Electronic copies** shall be submitted in **one or more PDF files on a USB stick**. The USB stick shall be inserted into the envelope containing the hard copy tender. **A copy of the financial proposal and BOQ details in Excel** version shall be added to the electronic copy to allow price verifications.

The tender submitted in a properly sealed envelope bearing the following information: Name of tenderer, the title of the contract and the reference number of the procurement, as stated on the cover page of the tender specifications.

It shall be submitted by hand delivery to the address:

Enabel Uganda
Contract Service Center
Lower Kololo Terrace, Plot 1B

The service shall be reached on working days during office hours: from **8:30 am to 5:00 pm, Kampala time**.

The tender shall be received by the Contracting Authority **before 3rd November 2025 at 10:00 am Kampala time**. Tenders that arrive late will not be accepted. (Article 83 of the Royal Decree on Awarding)

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

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

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

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

The subject-matter and the scope of the changes must be indicated in detail.

The withdrawal must be pure and simple.

5.5 Opening and evaluation of Tenders

5.5.1 Opening of tenderers

The opening of tenders will take place on the same day of the final date for receiving tenders indicated above. Tenders not received before 10:00 am will be rejected. The opening shall be a public opening at **10:30 am, Kampala time** at the address below.

Enabel Uganda
Lower Kololo Terrace, Plot 1B
PO Box 40131 Kampala – Uganda

5.5.2 Evaluation of Tenders

5.5.2.1 Selection of tenderers

Exclusion grounds

The mandatory and optional exclusion grounds are given in the Declaration on Honour enclosed to these Tender Specifications.

By submitting his tender, the tenderer declares officially on his honour that:

- he is not in one of the mandatory or facultative exclusion cases, which must or may lead to his exclusion.
- he fulfils the selection criteria established by the contracting authority in this public contract

Conflicts of interest - Revolving doors (Art. 51 Royal Decree 18/04/2017).

Without prejudice to Articles 6 and 69, paragraph 1, 5° of the Law, a conflict of interest is also considered any ('revolving doors') situation in which a natural person who has worked for a contracting authority as an internal staff member, whether in a hierarchy relation or not, as a concerned civil servant, public officer or any other person linked whatsoever to the contracting authority, would later intervene under a public contract awarded by this contracting authority

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and where a relation exists between the former activities that the above person conducted for the contracting authority and the activities he or she conducts under the contract.

The application of above-mentioned provision is limited however to a two-year term from the resignation of said person or any other type of termination of the former activities.

Selection criteria

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

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.

1	Sufficient Economic and Financial Capacity
1.1	Sufficient turnover
Minimum Standard	Minimum average annual turnover of 300,000 Euros during the past three (3) financial years
2	Sufficient Technical and Professional Capacity
2.1	Sufficient experience in construction of similar assignments (civil construction works)
Minimum Standard	Minimum of 2 similar assignments which were totally and successfully completed in the last 3 years.
2.2	Sufficient human resource
Minimum Standard	Sufficient experts having the required profiles as stated in technical specifications. Provide signed CVs and copies of academic documents for each of the experts.
2.3	Sufficient equipment

Minimum Standard	Minimum equipment required in the technical specification. (With proof ownership i.e purchase receipt, motor vehicle logbooks (even for vehicles on lease) and or lease agreement).
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A tenderer may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which he has with these entities. In that case, the following rules apply:

- Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing a commitment by those entities to that effect.
- The contracting authority shall verify whether the entities on whose capacity the economic operator intends to rely fulfil the relevant selection criteria and whether there are grounds for exclusion.
- Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial standing, the contracting authority may require that the economic operator and those entities be jointly liable for the execution of the contract.
- The contracting authority may require certain essential tasks to be carried out directly by the tenderer himself or, if the tender is submitted by a group of economic operators, by a member of the said group.

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

5.5.2.2 Regularity of tenders

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

The tenders **must be developed 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 will be rejected.

A substantial irregularity is such as giving a discriminatory advantage to the tenderer, to distort competition, to prevent the evaluation of the bidder'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° if applicable, 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, 1alinéa 1er, 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-vis the tenderers.

3° failure to comply with the minimum requirements and the requirements that are indicated in the technical specifications.

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).

5.5.2.3 Award Criteria evaluation

The contracting authority shall shortlist the regular bidders that it finds to be most economically advantageous, taking account of the following criteria:

- **Qualitative award criteria: 40 %.**

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

No.	Qualitative Award Criteria	Max. Points: 40
1.	Quality of the proposed Technical Methodology (Work processes, construction and installation techniques from subsequent contract award to end of DLP, strategy on minimizing carbon footprint)	20

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2.	Quality of proposed Project Management (Quality management plan, Work plan and schedule of activities for a typical kitchen, Risks management plan (at least 5 potential risks and mitigation measures), Health, Safety and Environmental plan, non-disruption plan)	20
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Only tenders with scores of at least 20 points out of 40 points qualify for the financial evaluation.

- **Price: 60%;**

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

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

Final score

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

5.6 Award and Conclusion of Contract

5.6.1 Awarding the framework agreement.

The framework agreement shall be awarded to maximum the first **3 tenderers** who have submitted the most economically advantageous tender after the contracting authority has verified the grounds for exclusion.

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 e-mail.

The conclusion of a contract based on these tender specifications does not give the tenderer any right of exclusivity.

It should be noted that, in accordance with Article 85 of the Law of 17 June 2016, there is no obligation on the contracting authority to conclude the framework agreement.

The contracting authority may either abandon the conclusion of the framework agreement or restart the procedure, if necessary, using another method. The contracting authority also reserves the right to conclude a framework agreement for some works.

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

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

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

5.6.2. Awarding subsequent contracts

Subsequent contracts will be concluding following an alternating method where orders are awarded successively to the successful shortlisted tenderers according to their ranking, in a systematic manner (order 1 to the first-ranked successful tenderer, order 2 to the second-ranked successful tenderer, etc.).

6. Annexes

6.1 Technical documents

Technical drawings and Bills of Quantities, are bound separately as annexes to these procurement specifications documents.

6.2 Contractual Documents

Model Performance Bond

Only for the successful tenderer:

Bank X

Address

Performance bond n° X

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

X, address (the “Bank”)

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

“X, tender documents Enabel < UGAX, lot X” (the “Contract”).

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

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

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

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

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

Done in X on X Signature: Name:

6.3 Procedural Documents – Tender Forms

6.3.1 ADMINISTRATIVE PROPOSAL

Legal Identification forms

Natural Person

I. PERSONAL DATA FAMILY NAME(S) ① FIRST NAME(S) ① DATE OF BIRTH JJ MM YYYY PLACE OF BIRTH COUNTRY OF BIRTH (CITY, VILLAGE) TYPE OF IDENTITY DOCUMENT IDENTITY CARD PASSPORT DRIVING LICENCE ② OTHER ③ ISSUING COUNTRY IDENTITY DOCUMENT NUMBER PERSONAL IDENTIFICATION NUMBER ④ PERMANENT PRIVATE ADDRESS POSTCODE P.O. BOX CITY REGION ⑤ COUNTRY PRIVATE PHONE PRIVATE E-MAIL	
II. BUSINESS DATA	
If YES, please provide business data and attach copies of official supporting documents	
Do you run your own business without a separate legal personality (e.g. sole traders, self-employed etc.)?	BUSINESS NAME (if applicable) VAT NUMBER REGISTRATION NUMBER

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<p>YES NO</p>	<p>PLACE OF REGISTRATION</p> <p>CITY</p> <p>COUNTRY</p>
<p>DATE</p>	<p>Name of authorized person:</p> <p>Title:</p> <p>SIGNATURE</p>

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

Legal person entity private/public legal body

OFFICIAL NAME ② ABREVIATION MAIN REGISTRATION NUMBER ③ SECONDARY REGISTRATION NUMBER (if applicable) <table style="width: 100%;"> <tr> <td style="width: 40%;">PLACE OF MAIN REGISTRATION</td> <td style="width: 20%;">CITY</td> <td style="width: 40%;">COUNTRY</td> </tr> </table> DATE OF MAIN REGISTRATION <div style="text-align: center;">DD MM YYYY</div> VAT NUMBER OFFICIAL ADDRESS <table style="width: 100%;"> <tr> <td style="width: 30%;">POSTCODE</td> <td style="width: 30%;">P.O. BOX</td> <td style="width: 40%;">CITY</td> </tr> </table> <table style="width: 100%;"> <tr> <td style="width: 60%;">COUNTRY</td> <td style="width: 40%;">PHONE</td> </tr> </table> E-MAIL				PLACE OF MAIN REGISTRATION	CITY	COUNTRY	POSTCODE	P.O. BOX	CITY	COUNTRY	PHONE
PLACE OF MAIN REGISTRATION	CITY	COUNTRY									
POSTCODE	P.O. BOX	CITY									
COUNTRY	PHONE										
DATE		STAMP									
SIGNATURE OF AUTHORISED REPRESENTATIVE Name of authorized person: Title:											

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

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Public law entity

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

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

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

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

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Financial identification form *(along with an account confirmation letter from the bank and details of the account signatory. This account shall not change throughout the contract duration and implementation)*

<u>BANKING DETAILS</u>		
ACCOUNT NAME ⁶		
IBAN/ACCOUNT NUMBER ⁷		
CURRENCY		
BIC/SWIFT CODE		
BANK NAME		
ADDRESS OF BANK BRANCH		
STREET & NUMBER		
TOWN/CITY	POST CODE	
COUNTRY		

<u>ACCOUNT HOLDER'S DATA</u> AS DECLARED TO THE BANK		
ACCOUNT HOLDER		
STREET & NUMBER		
TOWN/CITY	POST CODE	
COUNTRY		
SIGNATURE OF ACCOUNT HOLDER (Obligatory) NAME : TITLE		DATE (Obligatory)

6 This does not refer to the type of account. The account name is usually the one of the account holder. However, the account holder may have chosen a different name to its bank account.

7 Fill in the IBAN Code (International Bank Account Number) if it exists in the country where your bank is established.

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Declaration on honour – exclusion criteria

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

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

Are also considered such serious professional misconduct:

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

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

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

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

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

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

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

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

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

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

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

<https://finances.belgium.be/fr/tresorerie/sanctions-financieres/sanctions>
<https://finances.belgium.be/fr/tresorerie/sanctions-financieres/sanctions-europeennes-ue>
https://eeas.europa.eu/headquarters/headquarters-homepage/8442/consolidated-list-sanctions_en
https://eeas.europa.eu/sites/eeas/files/restrictive_measures-2017-01-17-clean.pdf

For Belgium:

https://finances.belgium.be/fr/sur_le_spf/structure_et_services/administrations_generales/tr%C3%A9sorier/contr%C3%B4le-des-instruments-1-2

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

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

Name of authorized person:

Title:

Integrity statement for the tenderers

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

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

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

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

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

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

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

Name of authorized person:

Title:

6.3.2 Qualitative selection

Economic and financial capacity Form

Financial Statement

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

Financial data	Year- 2 € or NC	Year- 1 € or NC	Last year € or NC	Average € or NC
Annual turnover, excluding this public contract ⁸				

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

⁸ Last accounting year for which the entity's accounts have been closed.

Technical and professional capacity form

List of main similar assignments

Framework agreement works contract for construction of energy efficient kitchens in selected secondary schools in Busoga and Rwenzori regions in Uganda.

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

Certificates of completion

For each of the assignments listed, the tenderer must provide in the administrative proposal as annexes to this form the certificates of completion as a main contractor approved by the entity which awarded the contract and supervised by a registered consultant/Expert.

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

List of Experts

The tenderer must complete the table hereunder. He must provide in his offer **the signed CVs and academic documents of the key experts proposed** for implementing this public work contract. The CVs (qualifications and experience of key experts) have to fulfil the profiles as requested in the technical specifications. Each CV should be no longer than 3 pages.

Framework agreement public works contract for construction of energy efficient kitchens in selected secondary schools in Busoga and Rwenzori regions in Uganda.

Proposed position	Name of expert	Academic qualification	Years of general experience	Years of specific experience
Team Leader/Site Engineer				
Building works foreman				
Energy efficiency stoves installation specialist				

List of equipment and tools

Framework agreement public works contract for construction of energy efficient kitchens in selected secondary schools in Busoga and Rwenzori regions in Uganda.

No.	Description of Equipment and tools	Number of units	Year of manufacture	Model / Power rating	Source i.e., owned / leased
1	Concrete mixer (minimum 1m3) and poker	12			
2	Tipper trucks / dumpers (3 & 9 ton)	2			
3	Height adjusted ladder 6-9metres	2			

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4	Set of assorted assembly/joinery hand tools	14			
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N.B. Where an economic operator wants to rely on the capacities of other entities with regard to criteria relating to economic and financial standing, it shall prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing a commitment by those entities to that effect.

6.3.2 TECHNICAL PROPOSAL

The technical proposal may be presented in free format, but it shall not exceed twenty pages.

Subcontractors (if applicable)

Name and legal form	Address / Registered office	Object

6.3.3 FINANCIAL PROPOSAL

Framework agreement public works contract for construction of energy efficient kitchens in selected secondary schools in Busoga and Rwenzori regions in Uganda.

Tender Forms

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

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

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

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

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

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

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

No.	Description (see BOQs) annexed to this tender document	Total Price in EUR exc. VAT
1.	Minor repair works for the kitchen and installation of energy cooking stoves at Buyengo SS.	
2.	Construction of the kitchen and installation of energy cooking stoves at selected schools in Busoga region.	
3.	Construction of the kitchen and installation of energy cooking stoves at selected schools in Rwenzori region.	
Total VAT Excl.		
VAT%		
Total VAT incl		
This contract is subjected to Ugandan withholding tax. For national entities 6% is deducted at payment, for international entities 15% is deducted according to the withholding tax regulation of Uganda		

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Note: The contractor shall include a dully filled BOQ per school in Excel format and provide a soft copy with the tender

Name and first name of authorized person:

Title of authorized person:

Duly authorised to sign this tender on behalf of:

Place and date:

Signature:

Procurement reference number: UGA22008-10191