



Tender Documents

“Rehabilitation of Mkongoro 1 Gravity-fed water supply scheme”

Public Works Contract No.: TAN 137

Country: TANZANIA

Navision code: 140 32 11

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1 General point

1.1 Deviations from the General Implementing Rules

Point 4 “Specific contractual provisions” of these tender documents includes the administrative and contractual terms that apply to this public contract as a deviation of the ‘General Implementing Rules of public contracts’ (Royal Decree of 14 January 2013) or as a complement or an elaboration thereof.

These tender documents derogate from Art. 25-33 of the General Implementing Rules (see point 4.7 “Performance bond (Art. 25-33)”).

1.2 Contracting authority

The contracting authority of this public contract is Enabel, Belgian development agency, further called “Enabel”, public-law company with social purposes, with its registered office at Rue Haute 147, 1000 Brussels in Belgium (enterprise number 0264.814.354, RPM/RPR Brussels).

Enabel, supports the developing countries in the fight against poverty on behalf of the Belgian government. In addition to this public service mission, Enabel also performs services for other national and international organisations contributing to sustainable human development. Moreover, Enabel can also perform other development cooperation missions at the request of public interest organisations, and it can develop its own activities to contribute towards realization of its objectives.

For this public contract, Enabel is represented by **Patrick GAUDISSERT**, Resident Representative of Enabel in Tanzania

1.3 Institutional framework of Enabel

The general reference framework under which Enabel operates is the Belgian Law of 19 March 2013 on Development Cooperation¹, the Belgian Law of 21 December 1998 establishing the Belgian Technical Cooperation as a public-law company² as well as the Belgian Law of 23 November 2017³ changing the name of the Belgian Technical Cooperation and defining the missions and functioning of Enabel, the Belgian development agency.

The following developments are also a leitmotiv in Enabel operations: We mention 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 are important touchstones;
- In the field of fighting corruption: The Law of 8 May 2007 approving the United Nations Convention against Corruption, adopted in New York on 31 October 2003⁴, as well as the Law of 10 February 1999 on the Suppression of Corruption transposing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;
- In the field of Human Rights: The United Nations’ Universal Declaration of Human Rights (1948) as well as the 8 basic conventions of the International Labour Organisation⁵ on

¹ Belgian Official Gazette of 26 march 2013

² Belgian Gazette of 30 December 1998

³ Belgian Official Gazette of 11 December 2017

⁴ Belgian Official Gazette of 18 November 2008.

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

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 respecting the environment: The Climate Change Framework Convention in Paris, 12 December 2015;
- The first Management Contract concluded between Enabel and the Belgian Federal State, approved by the Royal Decree of 17 December 2017, that sets out the rules and the special conditions for the execution of public service tasks by Enabel on behalf of the Belgian State.

1.4 Rules governing the public contract

This public contract shall be governed by the Belgian law, among others:

- The Law of 17 June 2016 on public procurement⁶;
- The Law of 17 June 2013 on motivation, information and remedies in respect of public contracts and certain works, supply and service contracts⁷;
- The Royal Decree of 18 April 2017 concerning the award of public works, supply and service contracts in the classical sector⁸;
- The Royal Decree of 14 January 2013 establishing the General Implementing Rules of public contracts⁹;
- Circulars of the Prime Minister with regards to public contracts⁶.

1.5 Definitions

The following definitions shall be used for the purposes of this contract:

- Bill of quantities: The contract 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;
- Contractor / building contractor: The tenderer to whom the contract is awarded;
- Contracting authority: Enabel, represented by the Resident Representative of Enabel in Tanzania;
- Corrupt practices: The offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or implementation of a contract already concluded with the contracting authority;
- Days: In the absence of any indication in this regard in the tender documents and the applicable regulations, all days should be interpreted as calendar days;

⁶ Belgian Official Gazette of 14 July 2016.

⁷ Belgian Official Gazette of 21 June 2013.

⁸ Belgian Official Gazette of 09 May 2017.

⁹ Belgian Official Gazette of 14 February 2013.

- General Implementing Rules: Rules given in the Royal Decree of 14 January 2013 establishing the general rules for the performance of public contracts;
- Litigation: Court action.
- Option: an accessory element which is not strictly necessary to the performance of the contract but which has been introduced on demand of the contracting authority or on the initiative of the tenderer;
- 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 kinds of needs, including access for people with disabilities, and the evaluation of conformity, the product performance, the use of the product, the safety or dimensions, as well as requirements applicable to the product as regards the name under which it is sold, the terminology, symbols, the testing and test methods, the packaging, the marking or labelling, instructions for use, the production processes and methods at any stage of the life cycle of the supply or service, as well as the evaluation and conformity procedures;
- Tender: The commitment of the tenderer to perform the public contract under the conditions that he/she has submitted;
- Tenderer: The economic operator that submits a tender;
- Tender documents: This document and its annexes and the documents it refers to;
- 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.

1.6 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 contract and will only divulge such information to third parties after receiving the prior written consent of the other party.

They will disseminate 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 will comply therewith.

Privacy notice of Enabel: Enabel takes your privacy serious. We undertake to protect and process your personal data with due care, transparently and in strict compliance with privacy protection legislation.

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

1.7 Deontological obligations

Any failure to conform with one or more of the deontological terms may lead to the exclusion of the candidate, the tenderer or the contractor from other public contracts concluded with Enabel.

For the duration of the contract, the contractor and its staff respect human rights and undertake not to go against political, cultural or religious customs of the beneficiary country.

The tenderer or contractor is bound to respect fundamental labour standards, which are internationally agreed upon by the International Labour Organisation (ILO), namely the conventions on union freedom and collective bargaining, on the elimination of forced and obligatory labour, on the elimination of employment and professional discrimination and on the abolition of child labour.

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, the clarification, evaluation of tenders and applicant's comparison procedures 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 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.

Any tender will be rejected and any (public) contract will be cancelled once it appears that the contract awarding or its performance was related to the transfer of 'extraordinary commercial expenditure'. Extraordinary commercial expenditure is any commission that is not mentioned in the main contract or that does not result from a contract in good and due form referring to that contract, any commission that is paid for no actual legal service, any commission transferred into a fiscal paradise, any commission transferred to a beneficiary that is not clearly identified or to a company that obviously merely serves as a façade.

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

1.8 Applicable law and competent court

The public contract must be performed and interpreted according to Belgian law. The parties commit to sincerely perform their engagements to ensure the good performance of this contract. In case of litigation or divergence of opinion between the contracting authority and the contractor, the parties will consult each other to find a solution. If agreement is lacking, the Brussels courts are the only courts competent to resolve the matter. See also point 4.23 "Litigation (Art. 73)".

2 Object and scope of the contract

2.1 Type of contract

Public contract for works.

The execution of works related to one of the activities referred to in Annex I of the Law of 17 June 2016 on public procurement;

2.2 Object and scope of the contract

This public works contract consists of construction of **a new intake, treatment plant, transmission mains and distribution network which includes distribution points**, in conformity with the conditions of these tender documents.

2.3 Lots

This contract is a contract with one lot.

The contract has one lot which is indivisible. The tenderer may submit a tender for one, lot. A tender for part of a lot is inadmissible.

2.4 Items

Items per lots are not applicable in this contract.

2.5 Duration

The contract begins upon award notification and has a duration of **8 (eight) months**. (see point 4.14 “Implementation period (Art. 76)”).

In accordance with Article 57 of the Law of 17 June 2016, after this initial period, the contracting authority can renew the contract and this by notifying the contractor at the latest one month before the date of anniversary of the contract.

The renewal will be made as per the terms and conditions of the initial Tender Specifications.

Should the contract not be renewed, the contractor cannot claim damages.

2.6 Variants

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

2.7 Quantities

In this contract, all blocks are fixed. The tenderer must, under penalty of substantial irregularity, submit an offer for all the blocks. In order to assess the tenders and determine the most advantageous tender, the contracting authority will take account of all the blocks.

3 Procedure

3.1 Award procedure

This contract is awarded in accordance with Art. 41, § 1 of the Law of 17 June 2016 pursuant to a direct negotiated procedure with publication.

3.2 Publication

The contract notice is published on the Enabel website, www.enabel.be, in the Belgian Public Tender bulletin (BDA) and on the Organisation for Economic Cooperation and Development (OECD) website.

The contract notice will be published in local newspapers and on <https://btctanzania.wordpress.com/>

3.3 Information

The awarding of this contract is coordinated by **Mr. Amos CHIGWENEMBE, Enabel Project Manager** for the intervention in Tanzania. Throughout this procedure, all contacts between the contracting authority and the (possible) tenderers about the present contract will exclusively pass through this person. (Possible) tenderers are prohibited to contact the contracting authority any other way with regards to this contract, unless otherwise stipulated in these tender documents.

At the latest 15 calendar days before the final date for receipt of tenders, tenderers may ask questions about the tender documents and the contract in accordance with Art. 64 of the Law of 17 June 2016. Questions shall be addressed in writing to: amos.chigwenembe@enable.be

They shall be answered in the order received. The complete overview of questions asked shall be available as of at the latest 15 calendar days before the final date for receipt of tenders at the address mentioned above. Until the notification of the award decision, no information shall be provided about the evolution of the procedure.

In order to submit a tender in due form, the interested tenderers can obtain / consult the relevant documents at the above-mentioned address.

The tenderer is supposed to submit his/her tender after reading and taking into account any corrections made to the contract notice or the tender documents that are published and/or that are sent to him/her by individual registered letter or by electronic mail.

To do so, when tenderers have downloaded the tender documents, they are requested to contact the above-mentioned person, to provide him/her with their contact details and to be informed of possible changes or additional information. Tenderers who have downloaded the tender documents are also advised to consult Enabel website (www.enabel.be).

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

3.4 Tender

3.4.1 Data to be included in the tender

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

The tender of the tenderer will consist of the physically separate sections mentioned below (see point 6 “Forms”):

- The identification form;
- The power of attorney;
- The integrity statement for the tenderers;
- The access right and qualitative selection documents;
- The financial offer & tender form;
- The bill of quantities & the price schedule;
- The technical offer.

N.B the tenderers who are interested have to ask for the complete file to amos.chigwenembe@enable.be

The tenderer is strongly advised to use the tender forms in annexe (see point 6 “Forms”). When not using this form, he/she is fully responsible for the perfect concordance between the documents he/she has used and the form. The tender and the annexes to the tender form are drawn up in in English.

The tenderer may submit **one copy of forms 6.1 to 6.12**. The tenderer will also include a **copy of the bill of quantities in Excel**.

By submitting a tender, the tenderer automatically renounces to his/her own general or specific sales conditions.

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

3.4.2 Price determination

All prices shall be given in EUR (euros) and rounded off to two figures after the decimal point. Prices given are exclusive of VAT.

For this contract, only the unit prices are lump-sum prices. The amounts due under the contract will be calculated by applying the unit prices to the quantities actually supplied, in accordance with the contract.

According to Art. 37 of the Royal Decree of 18 April 2017, the contracting authority may for the purpose of verifying the prices carry out an audit involving any and all accounting documents and an on-site audit to check the correctness of the indications supplied.

According to Art. 36 of the Royal Decree of 18 April 2017, the contracting authority will carry out a price review for any tender whose total amount deviates by **at least 15% below the average of the tenders** submitted by the tenderers. If, after justification by the tenderer,

the contracting authority finds that the **amount** of one or more non-negligible items is **abnormal**, the tender will be rejected because of the **substantial irregularity**.

3.4.3 Elements included in the price

Except for VAT, **the unit prices include all costs, taxes, duties and contributions of any kind**, and namely:

- 1° The measures imposed by occupational safety and health legislation;
- 2° All the works and supplies, such as bracing, sheet piling and drainage, necessary to prevent landslips and other damage and to remedy these if necessary;
- 3° The perfect preservation, possible shift and redeployment of cables and pipes which might be encountered during excavation, earthworks and dredging, provided that these achievements are not the legal responsibility of the owners of such cables and pipes;
- 4° Removal, within the confines of the excavations, earthworks and dredging which may be necessary for construction of the structure, of:
 - a) earth, mud and gravel, stones, rubble, riprap of any kind, masonry remains, turf, plants, bushes, stumps, roots, coppices, debris and waste materials;
 - b) Any rock whatever its size where the contract 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 contract documents;
- 6° All overheads, incidental expenses and maintenance costs during contractual performance and the warranty (defects liability) period.
- 7° Customs and excise duties;
- 8° Acceptance costs;
- 9° All the works which, by their nature, depend on or are associated with those described in the contract documents.

In case the contract is extended, the unit prices mentioned in the contract apply.

3.4.4 Period of validity

Tenderers will be bound by their tenders for a period of **90 calendar days** from the deadline for the submission of tenders.

3.5 Submission of tenders

The tender and all accompanying documents have to be numbered and signed (**original hand-written signature**) by the tenderer or his/her representative. The same applies to any alteration, deletion or note made to this document. The representative must clearly state that he/she is authorised to commit the tenderer. If the tenderer is a company / association without legal body status, formed by separate natural or legal persons (temporary group or temporary partnership), the tender must be signed by each of these persons.

Tenderers shall submit their tender in the following manner:

(a) An original copy of tender shall be submitted **electronically and exclusively** at: **lea.lecomte@enabel.be**.

(b) Tenders must be received at the following e-mail address no later than **13/05/2020 15.00 PM**. A confirmation of receipt will be sent.

Tenders transmitted in any other way or to other recipients will be dismissed from the procedure.

All tenders must be received before the final date and time of submission.

The late tenders will not be accepted. (Article 83 of the AR Passation).

The successful tenderer will provide the contracting authority with a tender signed in a manner that is legally valid on paper or equivalent (certified electronic signature), no later than the award of the contract

b) or hand delivered directly to the contracting authority (**Water and Sanitation Project Kigoma Region, P.O. Box 24, Kigoma, United Republic of TANZANIA**) against a signed and dated receipt: In this case, the acknowledgment of receipt makes proof of compliance with the time-limit for receipt.

Offices can be reached on working days during office hours: **from 8:30 AM to 04:30 PM**. All times are in the time zone of the country of the Contracting Authority (Tanzanian time).

Any request for participation or tender must arrive before the final submission date and time. Requests for participation or tenders that arrive late will not be accepted.

3.6 Amending or withdrawing tenders

To change or withdraw a tender already sent or submitted, a written statement is required, which shall be correctly signed by the tenderer or his/her representative. The object and the scope of the changes must be described in detail. Any withdrawal shall be unconditional.

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

3.7 Opening of tenders

The tenders must be in the possession of the contracting authority before the final submission date and time specified in point 3.5 "Submission of tenders". **The tenders will be opened behind closed doors.**

3.8 Evaluation of tenders

The tenderers' attention is drawn to Art. 52 of the Law of 17 June 2016 (Prior participation of tenderers) and Art. 51 of the Royal Decree of 18 April 2017 (Conflicts of Interest - Tourniquet).

Any infringement of these measures which may be likely to distort the normal conditions of competition is punishable in accordance with the provisions of Art. 5 of the Law of 17 June 2016 on public procurement. In practice, this penalty consists, as the case may be, either of rejecting the offer or of terminating the contract.

The attention of the tenderers is drawn to the fact that they have to allow delegates of the contracting authority to visit their installations under the framework of the analysis of the tenders by the contracting authority.

3.8.1 Access rights and selection criteria

3.8.1.1 Exclusion grounds

By submitting this tender, the tenderer certifies that he/she is not in any of the cases of exclusion listed in point 6.3 “Declaration on access rights and exclusion criteria”.

The tenderer will provide the required supporting document(s) with regard to the exclusion criteria mentioned under point 6 “Forms” to the contracting authority at the latest upon contract awarding.

Pursuant to section 70 of the Law of 17 June 2016, any tenderer who is in one of the situations referred to in sections 67 or 69 of the Law of 17 June 2016 may provide evidence to show that the actions taken by him/her are sufficient to demonstrate his/her reliability despite the existence of a relevant ground for exclusion. If this evidence is considered sufficient by the contracting authority, the tenderer concerned is not excluded from the award procedure.

The contracting authority may also check whether there are grounds for exclusion for subcontractor(s) within the meaning of Articles 67 to 69 of the Law of 17 June 2016.

3.8.1.2 Selection criteria

Before the contracting authority can start investigating the regularity of the tenders and evaluating them on the basis of the award criterion/criteria, tenderers that do not meet certain minimum quality conditions shall be excluded from the procedure and their tender shall not be evaluated.

In view of the qualitative selection of tenderers and in conformity with Art. 65 to 74 of the Royal Decree of 18 April 2017, for this contract the tenderer must add to his/her tender documents a selection file with the information requested in point 6 “Forms” with regards to **their economic and financial capacity as well as their technical capacity.**

A tenderer may, if necessary and for a specific contract, submit the capacities of other entities, whatever the legal nature of the relations existing between him/herself and these entities. In that case, he/she must prove to the contracting authority that, for the performance of the contract, he/she shall have the necessary resources by presenting the commitment of these entities to make such resources available to the supplier. Under the same conditions, a group of candidates or of tenderers can submit the capacities of the group’s participants or those of other entities.

3.8.2 Overview of the procedure

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

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

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

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

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

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

3.8.3 Award criteria

The contracting authority selects the regular tender that it finds to be most advantageous, taking account of the bid price.

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

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

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

3.8.4 Awarding the public contract

The contract will be awarded to the (selected) tenderer who submitted the most advantageous, possibly improved, tender on the basis of the criteria mentioned above.

The contracting authority restricts the number of lots that can be awarded to a single tenderer to 1 lot per tenderer. Contracts will be awarded lot by lot, but the contracting authority must choose the most favourable overall solution on the basis of the criteria mentioned above.

We need to point out though, that in conformity with Art. 85 of the Law of 17 June 2016, there is no obligation for the contracting authority to award the contract. The contracting authority can either renounce to award the contract, either redo the procedure, if necessary, through another awarding procedure.

3.9 Concluding the contract

Pursuant to Art. 88 of the Royal Decree of 18 April 2017, the contract is formalized by the notification to the chosen tenderer of the approval of his/her tender. Notification is by registered letter, by fax or by any other electronic means in as far, in the latter two cases, the content of the notification be confirmed within five calendar days by registered letter.

So, the full contract agreement consists of a public contract awarded by Enabel to the chosen tenderer in accordance with the following documents, in the order of precedence:

- these tender documents and the annexes,
- the approved BAFO (contractor's bid) and all its annexes,

- the notification of the award decision,
- any later documents that are accepted and signed by both parties.

4 Specific contractual provisions

This chapter contains the specific contractual provisions that apply to this public contract as a deviation of the 'General Implementing Rules of public contracts' of the Royal Decree of 14 January 2013, or as a complement or an elaboration thereof. The numbering of the articles below (in parenthesis) follows the numbering of the General Implementing Rules articles. Unless indicated, the relevant provisions of the General Implementing Rules shall apply in full.

These tender documents derogate from Art. 25-33 of the General Implementing Rules (see point 4.7 "Performance bond (Art. 25-33)").

4.1 Definitions (Art. 2)

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

4.2 Correspondence with the building contractor (Art. 10)

Notifications by the contracting authority are addressed to the domicile or to the registered office mentioned in the tender. The contracting authority allows the use of electronic means for the purpose of notification. Whether electronic means are used or not, when communicating, sharing and storing information, data must be kept complete and confidential.

4.3 Managing Official (Art. 11)

The contract manager is **Amos CHIGWENEMBE**, amos.chigwenembe@enabel.be

Once the contract is concluded, the contract manager is the main contact point for the building contractor. Any correspondence or any questions with regards to the performance of the contract shall be addressed to him, unless explicitly mentioned otherwise in these tender documents (see namely, "Payment" below).

The contract manager 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 works and signing acceptance and failure report(s).

Under no circumstances is the contract manager allowed to modify the terms and conditions (e.g., performance deadline, etc.) of the contract, even if the financial impact is nil or negative. For such decisions the contracting authority is represented as stipulated under

point 1.2 “Contracting authority”. Any commitment, change or agreement that deviates from the conditions in the tender documents and that has not been notified by the contracting authority, shall be considered null and void.

4.4 Subcontractors (Art. 12-15)

The fact that the contractor entrusts all or part of his/her commitments to subcontractors does not release him/her of his/her responsibility towards the contracting authority. The latter does not recognize any contractual relation with these third parties.

The contractor remains, in any case, the only person liable towards the contracting authority. The contractor commits to having the contract performed by the persons indicated in the tender, except for force majeure. The persons mentioned or their replacements are all deemed to effectively be involved in the performance of the contract. Any replacements must be approved by the contracting authority.

4.5 Confidentiality (Art. 18)

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

4.6 Intellectual property (Art. 19-23)

The contracting authority does not acquire the intellectual property rights created, developed or used during performance of the contract unless otherwise specified.

Contracting Authority’s use of the contractor’s documents:

The Contractor shall retain the copyright and other intellectual property rights in the Contractor’s Documents and other design documents made by (or on behalf of) the Contractor.

The Contractor shall be deemed (by submitting a tender) to give to the Contracting Authority a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Contractor’s Documents, including making and using modifications of them. This licence shall:

- Apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
- Entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor’s Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
- In the case of Contractor’s Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.

The Contractor’s Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor’s consent, be used, copied or communicated to

a third party by (or on behalf of) the Contracting Authority for purposes other than those permitted under this Sub-Clause.

Contractor's use of Contracting Authority's documents:

As between the Parties, the Contracting Authority shall retain the copyright and other intellectual property rights in the Specification, the Drawings and other documents made by (or on behalf of) the Contracting Authority. The Contractor may, at his cost, copy, use, and obtain communication of these documents for the purposes of the Contract. They shall not, without the Contracting Authority's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

Insurance (Art. 24)

The contractor takes out insurance policies covering its liability for (occupational) accidents and its third-party liability for the performance of the contract. The contractor also takes out any other insurance policy imposed by the contract documents.

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

4.6.1 Liability for damage to works

The contractor shall assume full responsibility for maintaining the integrity of the works and the risk of loss and damage, whatever their cause, until the final acceptance.

Compensation for damage to the works resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to the contract value. However, compensation for loss or damage resulting from fraud or gross negligence of the Contractor, its staff, its subcontractors and any person for which the contractor is answerable, can in no case be capped.

After the final acceptance, the contractor shall remain responsible for any breach of its obligations under the contract for such period as may be determined by the law governing the contract, or by default for a period of 10 years.

4.6.2 Contractor's liability in respect of the contracting authority

At any time, the contractor shall be responsible for and shall indemnify the contracting authority for any damage caused, during the performance of the works, to the contracting authority by the contractor, its staff, its subcontractors and any person for which the contractor is answerable.

Compensation for damage resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to the contract value. However, compensation for loss or damage resulting from the contractor's liability in case of bodily injury, including death, can in no case be capped. The same applies to compensation for any damages of any kind resulting from fraud or gross negligence of the contractor, its staff, its subcontractors and any person for which the contractor is answerable.

4.6.3 Contractor's liability in respect of third parties

The contractor shall, at its own expense, indemnify, protect and defend, the contracting authority, its agents and employees, from and against all actions, claims, losses or damage,

direct or indirect, of whatever nature arising from any act or omission by the contractor, its staff, its subcontractors and/or any person for which the contractor is answerable, in the performance of the duties.

4.6.4 Insurance – general issues

Within thirty days from contract conclusion, and for the period of implementation of tasks, the contractor shall ensure that itself, its staff, its subcontractors and any person for which the contractor is answerable, are adequately insured with insurance companies recognized on the international insurance market.

Within thirty days from contract conclusion, the contractor shall provide the contracting authority and the supervision consultant with all cover notes and/or certificates of insurance showing that the contractor's obligations relating to insurance are fully respected. The contractor shall submit without delay, whenever the contracting authority or the contract manager so requests, an updated version of the cover notes and/or certificates of insurance.

Whenever possible, the contractor shall ensure that the subscribed insurance contracts contain a waiver of recourse in favour of the contracting authority and the supervision consultant, their agents and employees.

The purchase of adequate insurances by the contractor shall in no case exempt it from its statutory and/or contractual liabilities. The contractor shall fully bear the consequences of a total or partial lack of coverage, and to the full discharge of the contracting authority and the supervision consultant.

The contractor shall ensure that its staff, its subcontractors and any person for which the contractor is answerable comply with the same insurance requirements imposed to it under this contract. In case of default of insurance or inadequate insurance of its staff, its subcontractors or any person for which the contractor is answerable, the contractor shall indemnify the contracting authority and the supervision consultant from all consequences resulting therefrom.

Under its own responsibility and without prejudice to the obligation to take out all insurance covering its obligations under this contract, the contractor shall ensure that all compulsory insurances are subscribed in compliance with the laws and regulations in force in the country in which the works are executed. It shall also ensure that all possible statutory obligations applying to the coverage are complied with.

The contracting authority and the supervision consultant shall not bear any liability for the assessment and adequacy of insurance policies taken out by the contractor with their contractual and/or statutory obligations.

4.6.5 Insurance for damage to third parties

The contractor shall take out a civil liability insurance covering bodily injury and property damage that may be caused to third parties by reason of the execution of the works, as well as during the defect liability period. The insurance policy must specify that the contracting authority's and the supervision consultant's staff, as well as that of other contractors and third parties located on site are considered third parties under this insurance, which shall be unlimited for bodily injury.

4.6.6 Works insurance

The contractor shall take out a "Contractor All Risk" insurance to the joint benefit of itself, its subcontractors, the contracting authority and the supervision consultant.

This insurance shall cover all damage to which the works included in the contract may be subject, including damage due to a defect or a design flaw of the plans, the building materials or the implementation for which the contractor is responsible under the contract and the damages due to natural events. This insurance shall also cover damage to existing goods and properties of the contracting authority and of the supervision consultant.

This insurance shall also cover the equipment and the temporary works on the site up to their total value of reconstruction/replacement.

4.6.7 Motor insurance

The contractor shall take out insurance covering all vehicles used by the contractor or its subcontractors (whether they own them or not) in connection with the contract.

4.6.8 Insurance against accidents at work

The contractor shall take out insurance policies providing coverage of the contractor itself, its staff, its subcontractors and any person for which the contractor is answerable, in case of an accident at work or on the way to work. It shall ensure that its subcontractors do the same. It indemnifies the contracting authority against any claims that its employees or those of its subcontractors could have in this regard.

4.6.9 Insurance of liability related to the soundness of the works

The contractor shall take out insurance covering in full its liability that may be triggered with regard to the soundness of the works even after final acceptance, as foreseen by the law of the Country in which the works are executed.

4.7 Performance bond (Art. 25-33)

4.7.1 Provision of a bond

The successful tenderer is required to provide a financial guarantee to cover its obligations until final and good performance of the contract.

The performance bond is set at **5%** of the total amount, excluding VAT, of the contract. The amount thus obtained shall be 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 collective performance bond. The performance bond may also take the form of a guarantee (see “Model of Proof of posting bond”) issued by a credit institution meeting the requirements of the law relating to the status and control of credit institutions, or by an insurance company meeting the requirements of the law relating to the control of insurance companies and approved for insurance branch 15 (bonds).

As a deviation from Art. 26, the performance bond may be:

- posted through an establishment that has its registered office in one of the countries of destination of the works. The contracting authority maintains the right to accept or refuse the posting of the bond through that institution. The tenderer shall mention the name and address of this institution in the tender.

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

The successful tenderer must, within **30 calendar days**, as from the day of the awarding of the contract, furnish proof that he/she or a third party has posted the bond in one of the ways set out below:

1. in the case of cash, by transfer of the amount to the bpost account number of the Caisse des Dépôts et Consignations:

Fill out the form

https://finances.belgium.be/sites/default/files/01_marche_public.pdf as

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

info.cdcdck@minfin.fed.be

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

2. in the case of public funds, by depositing such funds, for the account of the Deposit and Consignment Office, with the State Cashier at the head office of the National Bank in Brussels or at one of its provincial agencies or with a public institution with an equivalent function;
3. in the case of a collective performance bond, through the depositing, by a company lawfully practising this profession, of a joint and several performance bond with the Caisse des Dépôts et Consignations or a public body fulfilling a similar function;
4. in the case of a surety, by the written undertaking of the credit institution or the insurance company.

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

1. the deposit receipt of the Caisse des Dépôts et Consignations or a public body fulfilling a similar function; or
2. a debit notice issued by the credit institution or the insurance company; or
3. the deposit acknowledgement issued by the government cashier or public body fulfilling a similar function; or
4. the original of the performance bond stamped by the Caisse des Dépôts et Consignations or a public body fulfilling a similar function; or
5. the original of the written undertaking issued by the credit institution or the insurance company granting a surety.

These documents, signed by the depositor, must state for whom the performance bond has been constituted, its precise allocation through a brief statement of the purpose of the contract and the reference number of the contract documents, together with the name, first name and full address of the successful tenderer and, if applicable, of the third party making the deposit, with the words "lender" or "representative" as applicable.

The period of 30 calendar days specified above shall be suspended during the period of closure of the successful tenderer's business during paid annual holidays and the days off in lieu stipulated by regulation or by a compulsory collective labour agreement.

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

4.7.2 Failure to post the performance bond (Art. 29)

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

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

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

4.7.3 Release of the Bond (Art. 33)

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

1° For the provisional acceptance: This is equal to a request to release the first half of the performance bond;

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

4.8 Conformity of performance (Art. 34)

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

4.9 Plans, documents and objects prepared by the contracting authority (Art. 35)

Upon request, the contractor will receive, free of charge:

- A copy of the tender documents and its annexes;
- A complete set of copies of the plans on which contract awarding was based. 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.

4.10 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 it requires for successful performance of the contract. This includes all shop drawings as required by the contract through contract manager.

The contract documents specify which plans require approval by the contracting authority, which has **15 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.

Construction planning

How the planning is submitted is to be discussed with the contract manager.

The first planning is to be introduced within **15 calendar days** following tender award notification and it is to be updated every month during construction.

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

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

The updated planning is to be visibly fixed to the wall in the site office, and an electronic copy is to be sent to the contracting authority and supervisor as soon as available.

Management plan

The building contractor undertakes to deliver a management plan to be approved by the contracting authority and his/her advisors within 15 calendar days following notification of contract conclusion.

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

The management plan will be updated at least every month and must be consistent with the construction planning. It will be aligned with the construction planning and will be based on the same document.

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

- Set dates for delivering implementation plans that he/she needs,
- The placing of orders to his/her 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;
- Indication of deadlines dates for decisions to be taken by contracting authority;
- Indication of deadline dates for the conclusion of modifications to orders being elaborated;

- Indication of deadline dates for the achievement of works performed by other businesses;
- Registration, in due time, of the measurements of the works;
- etc.

Implementing documents

These plans take into account the tender documents and technical specifications, the design drawings of the project developer and general architecture plans, stability plans and special techniques plans annexed to these tender documents.

All implementation plans and detail plans are to be submitted for approval to the contracting authority through the supervision consultant 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):

- Upgrade foundations in view of works planned;
- Stability: plans for slabs, posts and beams, stairs or any prefabricated component;
- Sealing;
- Finishing of rooms (walls, floor and ceiling);
- Inside and outside drainage;
- List of stones;
- Roof covering, roof carpentry;
- Façades;
- Partition walls;
- False ceilings;
- Furniture based on tender documents;
- Light layout plan;
- Plan of metal joinery (banisters, hand rails, gangway, porch);
- Outside joinery List of inside joinery Plan of special techniques.

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

Samples of ironware, heating, electricity or plumbing fixtures or any similar pieces will be submitted for approval to the contract manager through the supervision consultant and for advice to the project developers 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 will also provide the following documents during the implementation period:

- Samples of materials proposed corresponding to the technical forms;

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

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 (equivalent to 'practical completion'), 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:

- technical specifications with brands names, types, origin of the equipment installed;
- users manuals, explaining the functioning of all equipment;
- 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...);
- and test reports, tuning and adjustment reports.

The information is to be supplied to the supervising consultant who will check and deliver the As-Built drawings to the contracting authority.

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

4.11.1 Adjusting the prices (Art. 38/7)

A price revision can be applied for this contract for changes in cost of materials, salaries and social contributions of the contractor's staff members. Only one price revision can be applied per year (upon the contract award anniversary date).

To calculate the price revision, the following formula applies:

$$P = P_o \times \left[\frac{(s \times 0,80)}{S} + 0,20 (=F) \right].$$

Lowercase letters relate to data that are valid on the date the price revision is applied. Capital letters relate to data that are available 10 days before the opening of the tenders.

P = Price after revision

P_o = Price of the tender

s and S = salary costs (including social contributions)

F: part that cannot be adjusted including fixed costs and benefits.

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 adjusted or imposed (as of the second price revision).

4.11.2 Unforeseen circumstances (Art. 38/9)

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 contract, Enabel will do everything reasonable to agree a maximum compensation figure.

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

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

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

When services are suspended, based on this clause, the contractor is required to take all necessary precautions, at his/her 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 time and at least ten working days or two calendar weeks, depending on whether the performance time is expressed in working days or calendar days;
- the suspension is not due to unfavourable weather conditions;
- the suspension occurred during the contract performance time.

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

It is brought to mind that in accordance with Article 80 of the Royal Decree of 14 January 2013, the building contractor shall be required to continue the works without interruption, notwithstanding any disputes, which might result from the determination of the new prices.

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

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

Setting unit or global prices – Calculation of the price

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

- In accordance with the unit or global prices of the approved tender;

- By default, in accordance with the unit or global prices inferred from the approved tender;
- By default, in accordance with the unit or global prices from another public contract of Enabel;
- 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, man-hours, equipment hours and general costs as well as profits.

Setting unit or global prices – Procedure to follow

The building contractor submits his/her proposal for the execution of the complementary achievements or his/her new prices within 10 calendar days from the request of the contract manager (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 contract manager and will come with all necessary annexes and justifications.

This form of 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/she deems pertinent.

After executing the achievement and at the latest upon establishment of the final settlement of account, the building contractor shall transfer the invoices that have been sent to him/her by subcontractors and suppliers to the contract manager. He/she 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.

4.12 Control and supervision of the public contract (Art 39-43)

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

4.12.2 Technical acceptance procedures (Art. 41)

Verification by the contracting authority that the products to be implemented, the work carried out, the supplies to be delivered or delivered, or the services provided, meet the conditions imposed by the tenders' specifications.

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 contract 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.

4.12.3 Prior technical acceptance (Art. 42)

As a general rule, products may not be used if they have not been accepted by the contract manager or his/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 contract manager.

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 that do not provide the technical information required for examination and approval.

Once the comments made are in the possession of the building contractor, he/she 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 contractor is responsible for storing and conserving his/her products in view of any risks run by his/her 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 whereto,
- 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.

4.12.4 Ex post technical acceptance (Art. 43)

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

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

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

Moreover, 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 building 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 him/her 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.

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

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

4.13.1 Failure of performance (Art. 44)

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

- When works are not performed in accordance with the conditions defined by the contract documents;
- At any time, when the performance is not conducted in such a way that it can be fully completed at the dates set;
- When the contractor does not follow written orders, which are given in due form by the contracting authority.

Any failure to comply with the provisions of the contract, including the non-observance of orders of the contracting authority, shall be recorded in a 'failure report', a copy of which shall be sent immediately to the contractor by registered letter or equivalent.

The contractor shall repair the deficiencies without any delay. He/she can assert his/her right of defence by registered letter addressed to the contracting authority within fifteen calendar days from the date of dispatch of the 'failure report'. His/her silence is considered, after this period, as an acknowledgement of the facts recorded.

Any deficiencies found on his/her part render the contractor liable for one or more of the measures provided for in Art. 45 to 49 and 154 and 155.

4.13.2 Penalties (Art. 45)

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

- Non-delivery of administrative and technical documents: because not having delivered the documents listed by the time set during construction site meetings or by administrative order.

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

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

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

4.13.3 Fines for delay (Art. 46-86)

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 term without the issuing of a report and they are automatically applied for the total number of days of delay.

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

Without prejudice to the application of fines for delay, the contractor continues to guarantee the contracting authority against any damages for which it may be liable to third parties due to late performance of the contract.

In case the works being the object of these tender documents were not completed within the period set, 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 the contract;

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 75,000 euros and, at the same time, N does not exceed 150 working days, the denominator N2 will be replaced by 150 x N.

4.13.4 Measures as of right (Art. 47-87)

§ 1 When upon the expiration of the deadline given in Art. 44, § 2 for asserting his/her right of defence the contractor has remained inactive or has presented means that are considered unjustified by the contracting authority, the latter 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 expiration of the deadline given in Art. 44, § 2, when the contractor has explicitly recognized the deficiencies found.

§ 2 The measures as of right are:

1° Unilateral termination of the contract. In this case the entire 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 of the contract;

2° Performance under own management 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° shall be taken at the expense and risk of the defaulting contractor. However, any fines or penalties imposed during the performance of a replacement contract shall be borne by the new contractor.

4.13.5 Other sanctions (Art. 48)

Without prejudice to the sanctions provided in these tender documents, the contractor defaulting on performance may be excluded by the contracting authority from its 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/her.

4.14 Implementation period (Art. 76)

The contractor is to complete the works within a period of **Eight months** from the date set in the written service order to commence the works. Final completion however, will be after **365 calendar days which is at the end of the warranty/defects' liability period counting as from provisional acceptance.**

The above-mentioned deadlines are mandatorily applicable.

4.15 Provision of land (Art. 77)

The building contractor shall bear all costs pertaining to land that is needed for the installation of his/her 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".

4.16 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 contracting authority will make arrangements to monitor the follow-up of all legal health and safety regulations.

The 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 in Tanzania, by collective agreements concluded by company agreements.

The contractor shall ensure that first aid facilities, are available at all times at all construction sites for contractor's and employer's personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of health hazards

The contractor shall ensure that there is an accident prevention focal person at the site, responsible for all managing health and safety of workers. Throughout the execution of the works, the contractor shall provide whatever is required by this person to exercise this responsibility and authority. This person can be one of the foremen on site.

The contractor shall send, to the supervisor, details of any accident as soon as practicable after its occurrence. The contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the engineer may reasonably require.

The contractor shall conduct an HIV-AIDS awareness programme via an approved service provider, and shall undertake such other measures as are specified in this contract to reduce the risk of the transfer of the HIV virus between and among the contractor's personnel and the local community, to promote early diagnosis and to assist affected individuals.

The 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 must contain at least the following personal information:

The name; First name; Actual occupation per day on the construction site; Date of birth; Profession; Qualification.

The personnel appointed by the building contractor for the performance of this public contract with the contracting authority will have to master the following language: English.

The contractor must employ women and local work force on the construction site. We envisage a minimum of 20% across all the profiles on site (not only for cooking).

The Contractor shall also ensure involvement of students in parts of the construction process as a means to introduce them to new technologies without slowing down the construction process. Students could take on part of the production, and the use of, stabilized bricks for one or two building blocks, the metal construction or the installation and maintenance of the renewable energy system, or/and involved during some critical project stages like concrete, roofing works etc. The involvement of students will be discussed in detail for each site separately.

4.17 Organisation of the construction site (Art. 79)

The building contractor shall comply with the 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/her own employees and the officials of the contracting authority and third parties, to take all necessary measures to ensure their safety.

The building contractor shall, under his/her sole responsibility and at his/her own expense, take all necessary measures to ensure the protection, preservation and integrity of existing buildings and works. He/she 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/her 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/she is to completely enclose his/her 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.

The information contains: Rehabilitation and Extension works of Mkongoro 1 GFS / Owner: Ministry of Water / Funding agency: Kingdom of Belgium / Executing agency: Enabel (Water Project Management Unit) / Contract value: ... EUR / Contractor: ... / Design: Edge Engineering Consultants / Supervision: / / Start and proposed end of the contract

A sample of the panel design will be proposed to the contracting authority for approval.

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.

4.18 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/her workshops and factories and on the premises of his/her 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 contract manager and other officials 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 implements products that have not been accepted or that do not meet the demands of the tender documents, the contract manager 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 implementation period or any entitlement to compensation. The building contractor is notified about the decision by means of a written report.

4.19 Works logbook (Art. 83)

Upon contract award notification, the building contractor makes the necessary Works logbooks available to Enabel. 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 agent. This concern:

- Weather conditions;
- Interruptions to works caused by adverse weather conditions;
- Working hours;
- The number and capacity of workers employed on the site;
- Materials supplied;
- Equipment actually used and equipment out of service;
- Unforeseen events;
- Amending orders of minor impact;
- The attachments and quantities performed for each item and in each zone of the construction site. The attachments constituting the true and detailed representation of all works performed, in quantity, dimensions and weights.

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

When the building contractor does not formulate any remarks in due form and within above-mentioned deadlines, he/she 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/her or his/her subcontractors until final acceptance of all works.

During the warranty (defects 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.

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

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

The contract manager will closely follow up the works during performance. The works will not be accepted until after fulfilling audit verifications, technical acceptance and prescribed tests.

4.21.1 Provisional acceptance

Provisional acceptance (practical completion) is provided upon the completion of performance of 100% of the works forming the object of the contract.

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

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

When the works are 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 works are completed 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 request, on that occasion, to proceed to provisional acceptance. Within 15 days after the date of receipt of the 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.

4.21.2 Final acceptance

The warranty (defects liability) period commences on the date on which provisional acceptance is given and lasts for **12 months**. Within 15 calendar days preceding the date of expiry of the warranty period, a report confirming final acceptance or refusing acceptance will be drawn up by the contracting authority.

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

However, after provisional acceptance, the building contractor will not be liable for damage the causes of which are not attributable to him/her. 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/her works. The contractor shall bear all costs for the measures needed for that purpose.

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.

From the time of provisional acceptance and without prejudice to the provisions of relating to its obligations during the warranty period, the 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 and lead to measures as of right, in accordance with Article 44 of the General Implementing Rules.

4.22 General payment modalities (Art. 66-72 and 160)

The contractor shall send the original invoice with a copy of the approved progress report to the following address:

**Mr. Amos Chigwenembe,
Lake Tanganyika Basin Water Board premises;
P.O. Box 24, Kigoma**

The invoice will mention:

- “Enabel,
- the name of the contract: “**Rehabilitation of Mkongoro 1 Gravity-fed water supply scheme**”;
- the reference of the tender documents: **TAN 137**
- the Navision code: **TAN1403211**
- the name of the contract manager: **Amos Chigwenembe**;

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

The invoice shall be in **euros**. Invoices shall not mention VAT as the Enabel in Tanzania is VAT exempted. Payment will be by bank transfer only. No advance may be asked by the contractor and the payment will be made on a monthly basis, in line with the accepted progress reports.

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.

4.23 Litigation (Art. 73)

This contract and all legal consequence that might ensue fall fully within the scope of Belgian law. 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 competent courts of Brussels shall have exclusive jurisdiction over any dispute arising from the performance of this contract. French or Dutch are the languages of proceedings.

The contracting authority shall 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 guarantees the contracting authority against any claims for compensation by third parties in this respect.

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

Enabel, Public-law Company with social purposes
Legal unit of the Logistics and Acquisitions service (L&A)
To the attention of Ms. Inge Janssens
Rue Haute 147, 1000 Brussels, Belgium.

5 Technical specifications and drawings

The technical specifications are presented separately as Volume II.

The drawings are presented separately as Volume III.

6 Forms

6.1 Identification form

Name and first name of the tenderer or name of the company and legal form	
Nationality of the tenderer and of staff (if different)	
Domicile / Registered office	
Telephone number	
National Social Security Office registration number	
Company number	
Represented by the undersigned (Surname, first name and function)	
Contact person (telephone number, e-mail address)	
If different: Project manager (telephone number, e-mail address)	
Account number for payments Financial institution Under the name of	

Done in, on

Signature:

Name:

.....

6.2 Integrity statement for the tenderers

By submitting this tender, the tenderer declares on honour the following (cf. Art. 52 and seq. of the Law of 17 June 2016):

- Neither members of administration or staff members, or any person or legal person the tenderer has concluded an agreement with in view of performing the 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 firms, organisations, etc. that have a direct or indirect link with Enabel (which could, for instance, bring about a conflict of interests).
- He has read and understood the articles about deontology and anti-corruption included in the tender documents and declares going along completely and respecting these articles.

He is also aware of the fact that the personnel of Enabel are tied to the provisions of an ethical code, which states that: “In order to ensure the impartiality of personnel, they are not allowed to solicit, demand or receive gifts, bonuses or any other kind of benefits for themselves or third parties, whether in exercising their function or not, when said gifts, bonuses or benefits are linked to that exercising. Privately, staff members do not accept any financial or other bonus, gift or benefit for services rendered”.

If above-mentioned contract is awarded to the tenderer, he/she declares, 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 contract, it is strictly forbidden to the contractor of the contract (i.e. members of administration and workers) to offer, directly or indirectly, gifts, meals or any other material or immaterial advantage, of whatever value, to the employees of Enabel who are concerned, directly or indirectly, by the follow-up and/or control of the performance of the contract, regardless of their hierarchical position.
- Any (public procurement) contract will be terminated, once it appears that contract awarding or contract performance would have involved the obtaining or the offering of the above-mentioned advantages appreciable in cash.
- Any failure to conform with one or more of the deontological terms may lead to the exclusion of the contractor from this contract and from other contracts for Enabel.
- The contractor of the public contract commits to supply, upon the demand of the contracting authority, any supporting documents related to the performance conditions of the contract. The contracting authority will be allowed to proceed to any control, on paperwork or on site, which it considers necessary to collect evidence to support the presumption of unusual commercial expenditure.

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.

Name and first name:

Duly authorised to sign this tender on behalf of:

Date: Signature:

6.3 Selection file

Exclusions - see Art. 67 - 70 of the Law of 17 June 2016	
<p>Mandatory grounds for exclusion:</p> <p>Art. 67. § 1. Save where the candidate or tenderer demonstrates, in accordance with Article 70, that he has taken sufficient measures to demonstrate his reliability, the contracting authority can exclude, at any stage whatsoever in the award procedure, a candidate or tenderer from taking part in the award procedure when it has established or has been informed in any other way that the candidate or tenderer has been convicted by an infeasible legal decision of one of the following offences:</p> <ul style="list-style-type: none"> 1° involvement in a criminal organisation; 2° corruption; 3° fraud; 4° terrorist offence, offence related to terrorist activities or incitement to commit such offence, collusion or attempt to commit such an offence; 5° money laundering or financing of terrorism; 6° child labour or any other forms of human trafficking. 7° employment of foreign citizens under illegal status. <p>The King may state the offences listed in clause 1 in more detail.</p> <p>By derogation to clause 1, the contracting authority excludes the candidate or tenderer who has employed foreign citizens under illegal status, even where there is no infeasible conviction, once this offence has been noted by an administrative or legal decision, including by written notification in execution of Article 49/2 of the Social Criminal Code. This derogation does not preclude the possibility, as set out in Article 70, of the candidate or tenderer invoking corrective measures, where appropriate.</p> <p>By derogation to clause 1, the contracting authority may in exceptional situations and for imperative reasons in the general interest provide for a derogation from the mandatory exclusions</p> <p>The obligation to exclude the candidate or tenderer also applies when the person found guilty is a member of the administrative, management or monitoring body of the said candidate or tenderer or holds a power of representation, decision or control within it. Where this involves an offence stated in clause 3 and where there is no aforementioned final judgement, the same obligation of exclusion is applicable, when the person in question is designated in an administrative or legal decision as being a person where an offence has been noted in terms of employment of foreign citizens with illegal status, and who is a member of the administrative, management or monitoring body of the said candidate or tenderer or holds a power of representation, decision or control within it.</p> <p>By derogation to clause 5, the contracting authorities are nevertheless not obliged, for procurement contracts with an estimated value of less than the thresholds fixed for European publication, to check the lack of grounds for exclusion as set out</p>	<p>Implicit declaration on honour</p>

<p>in this article of people stated in the aforementioned clause.</p> <p>§ 2. The exclusions stated in paragraph 1, clause 1, 1° to 6°, from participating in public procurement contracts apply only for a period of five years with effect from the date of judgement.</p> <p>The exclusion stated in paragraph 1, clause 1, 7°, from participating in public procurement contracts applies only for a period of five years from the end of the offence.</p> <p>Notwithstanding the case stated in paragraph 1, clause 4, the economic operators may not, when they find themselves in a situation of mandatory exclusion on the day after the final deadline for submitting requests for participation or tenders, take part in the public procurement contracts, save when they certify that they have taken, in accordance with Article 70, sufficient corrective measures to demonstrate their reliability despite the existence of an applicable ground for exclusion.</p> <p>Ground for exclusion pertaining to tax and social security debts</p> <p>Art. 68. § 1. Save for overriding requirements in the general interest and subject to the cases mentioned in paragraph 3, the contracting authority excludes, at any stage whatsoever in the award procedure, a candidate or tenderer which fails to fulfil his obligations relating to the payment of all taxes or social security contributions except:</p> <p>1° when the unpaid amount does not exceed the amount to be fixed by the King; or</p> <p>2° when the candidate or tenderer can demonstrate that he possesses with respect to a contracting authority or public company one or more certain and payable debts free of all commitment with respect to third parties. These debts are at least of an amount equal to the one for which he is late in paying outstanding tax or social charges. This amount is reduced by the amount fixed by the King in execution of the provision of 1°.</p> <p>When the contracting authority sees that the outstanding fiscal and social charges exceed the amount stated in clause 1, 1°, it asks the candidate or tenderer if he finds himself in the situation mentioned in clause 1, 2°.</p> <p>The contracting authority does, however, give all economic operators the opportunity to comply with these social and tax obligations during the award procedure after noting a first time that the candidate or tenderer did not meet the requirements. The contracting authority gives the economic operator five working days from this observation to provide proof of regularisation. Such regularisation may be applied only once. This term starts to run on the day following the notification. To calculate this term, Council Regulation 1182/71 of 3 June 1971 relating to the determination of rules applicable to deadlines, dates and terms is not applicable.</p> <p>§ 2. The King determines the outstanding tax and social charges to be taken into consideration and the additional modalities in the matter.</p> <p>§ 3. This article no longer applies when the candidate or tenderer has fulfilled his obligations by paying or entering into a binding arrangement with a view to paying the taxes or social security contributions due, including, where applicable, any interest accrued or fines provided that this payment or the</p>	
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entering into this binding arrangement occurred before the submission of a request for participation or, in an open procedure, before the tender submission deadline.

Facultative grounds for exclusion

Art. 69. Save where the candidate or tenderer demonstrates, in accordance with Article 70, that he has taken sufficient measures to demonstrate his reliability, the contracting authority may exclude, at any stage whatsoever in the award procedure, a candidate or tenderer from taking part in the procedure in the following cases:

1° when the contracting authority can demonstrate by any appropriate means that the candidate or tenderer has failed in the applicable obligations in the areas of environmental, social and labour law, set out in Article 7;

2° when the candidate or tenderer is in a state of bankruptcy, liquidation, cessation of activities, judicial reorganisation or has admitted bankruptcy or is the subject of a liquidation procedure or judicial reorganisation, or in any similar situation resulting from a procedure of the same kind existing under other national regulations;

3° when the contracting authority can demonstrate by any appropriate means that the candidate or tenderer has committed serious professional misconduct which calls into question his integrity;

4° when the contracting authority has sufficiently plausible elements to conclude that the candidate or tenderer has committed acts, entered into agreements or made arrangements with a view to distorting competition within the meaning of Article 5, clause 2;

5° when a conflict of interest within the meaning of Article 6 cannot be remedied by other, less intrusive measures;

6° when a distortion of competition resulting from prior participation of candidates or tenderers in the preparation of the award procedure, referred to in Article 52, cannot be remedied by other, less intrusive measures;

7° when significant or persistent failures by the candidate or tenderer were detected during the execution of an essential obligation incumbent on him in the framework of a previous public procurement contract, a previous procurement contract placed with a contracting authority or of a previous concession, when these failures have given rise to measures without consultation, damages or another comparable sanction;

8° the candidate or tenderer is seriously guilty of misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the satisfaction of the selection criteria, has hidden this information or is not in a position to submit the supporting documents required by virtue of Article 73 or of Article 74; or

9° the candidate or tenderer has applied undue influence on the decision-making process of the contracting authority or has undertaken to obtain confidential information likely to give him an unfair advantage in the award procedure, or has provided, through negligence, misleading information likely to have a decisive influence on the exclusion, selection or award decisions.

The exclusions from participating in public procurement

contracts mentioned in clause 1 apply only for a term of three years with effect from the date of the event in question or for a repeated offence, from the end of the offence.

Unless provided for otherwise in the procurement documents, the contracting authority is not required to verify the absence of optional exclusion grounds for members of the administrative, management or monitoring body of the candidate or tenderer or people who hold a power of representation, decision or control within it.

Corrective measures

Art. 70. Any candidate or tenderer who finds himself in one of the situations listed in Articles 67 or 69 may provide proof certifying that the measures he has taken suffice to demonstrate his reliability despite the existence of a relevant ground for exclusion. Where this proof is deemed sufficient by the contracting authority, the candidate or tenderer in question is not excluded from the award procedure.

For this purpose, the candidate or tenderer proves on his own initiative that he has paid or undertaken to pay compensation for any prejudice caused by the criminal offence or the fault, clarified totally the facts and circumstances by collaborating actively with the authorities in charge of the enquiry and taken concrete specific technical, organisational and personnel measures to prevent a new criminal offence or a new fault.

The measures taken by the candidate or the tenderer are assessed by taking account of the severity of the criminal offence or the fault and its particular circumstances. This involves in all circumstances a decision by the contracting authority for which material and official reasons must be given. When the measures are deemed insufficient, the reasoning behind the decision in question is sent to the economic operator.

An economic operator that has been excluded by an indefeasible legal decision from participating in the award procedures for the procurement contract or allocation of concession is not authorised to make use of the possibility provided for in this article during the exclusion period fixed by the said decision in the Member States where the judgement is in effect.

6.3.1 Power of attorney

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

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

6.3.2 Certification of registration and / or legal status

The tenderer shall include in his/her tender copies of the most recent documents¹⁰ showing the **legal status** and **place of registration** of the tenderer's headquarters (certificate of incorporation or registration...).

6.3.3 Certification of clearance with regards to the payments of social security contributions

At the latest before award, the tenderer must provide a **recent certification**¹⁰ from the competent authority stating that he/she is **in order with its obligations with regards to the payments of social security contributions** that apply by law in the country of establishment. The tenderer registered in Belgium must be in order for the **2nd trimester of 2019**.

6.3.4 Certification of clearance with regards to the payments of applicable taxes

At the latest before award, the tenderer must provide a **recent certification**¹⁰ (up to 1 year) from the competent authority stating that the tender is **in order with the payment of applicable taxes** that apply by law in the country of establishment.

6.3.5 Extract from the criminal record

At the latest before award, the tenderer must provide an **extract from the criminal record**¹⁰ in the name of the tenderer (legal person) or his/her representative (natural person) if there is no criminal record for legal persons (ex. certificate of good conduct from Interpol).

¹⁰ In case of a joint venture, the certificate must be submitted for all members of the tendering party.

6.3.6 Financial statement

The tenderer must enclose a reference/certificate about the financial situation of the company and its **access to credit facilities or bank guarantee** totalling **at least 100,000 euro** (or its equivalent in Tanzanian Shillings).

The tenderer must have achieved a **total turnover** for **the last three financial years** of **at least 1,200,000 euros** (or equivalent in the national currency).

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 ¹¹				
Current Assets ¹²				
Current Liabilities ¹³				

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

¹¹ Last accounting year for which the entity's accounts have been closed.

¹² The gross inflow of economic benefits (cash, receivables, other assets) arising from the ordinary operating activities of the enterprise (such as sales of goods, sales of services, interest, royalties, and dividends) during the year.

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

¹³ A company's debts or obligations that are due within one year. Current liabilities appear on the company's balance sheet and include short term debt, accounts payable, accrued liabilities and other debts.

6.3.7 List of the main similar works

The tenderer must provide in his/her offer the list of the **main similar (nature and complexity) works (min. 8) totally performed in the last 5 years**, including the amount involved and the relevant dates, and the public or private bodies on behalf of which they were carried out showing that the tenderer has experience in performing those works. **At least TWO of the similar works in the last 5 years must have been performed in Africa and has to be in construction of water supply infrastructure similar to this contract.**

The minimum amount of each of the similar works in the last 5 years must exceed 500,000 euros.

Description of the main similar works <u>totally</u> performed	In Africa (min. 2)	Amount involved (min. Euro)	Completion date in the last 5 years (only <u>totally</u> performed works)	Name of the public or private bodies

6.3.8 Certificates of completion

For each of the assignments listed, the tenderer must provide in his/her offer the certificates of completion (statement or certificate without major reservation) approved by the entity which awarded the contract.

6.3.9 Equipment

The tenderer must provide a **list of construction equipment** proposed and available for implementation of the contract. At the request of the contracting authority, the tenderer will submit **proof of ownership and/or promise of leasing only of this equipment**. The description must demonstrate the tenderer's ability to complete the work.

The bidder must demonstrate that he has the key equipment listed hereunder:		
No.	Equipment Type and Characteristics	Minimum Number required
1	Lorry – ordinary (3t)	1
2	Lorry – Flatbed (10t)	1
3	4WD Pick-up	1
4	Excavator, (1.0m ³)	1
5	Wheel Loader/Backhoe (1.0m ³)	1
6	Tipper 7t	1
7	Lifting Device/hoist Cranes (for min.1000kg)	1
8	Compressor, incl. tools, hose and jack	1
9	Hand Vibratory Rollers (500 kg)	1
10	Concrete Mixers (500L)	2
11	Vibration Pokers	2
12	Diesel Generator on Trolley (20 kVA)	1
13	Engine Driven Pump (20 m ³ h)	1
14	Electric and Gas Welding Sets	1
15	De-watering pumps (DN 40mm)	1
16	Plumber's Tool Kits	2
17	Pipe Testing Equipment	1
18	Electro-fusion Welding Machine (for HDPE	1
19	Water bowser 3m ³ capacity mounted on 5ton truck	1

By submitting this tender, the tenderer explicitly declares that the listed equipment will be fully dedicated to the project for all verifiable time of need for this project without exception.

Description (type/make/model)	Power/ capacity	No of units	Age (years)	Owned or leased (current lease contract only)	Origin (country)
Construction equipment					
...					
Vehicles and trucks					
...					
Other equipment					
...					

Name and first name:

Duly authorised to sign this tender on behalf of:

Place and date:

Signature:

6.3.10 Supervisory staff to be employed on the contract

The tenderer must complete the **table hereunder** and must provide in his/her offer the **CV's of the supervisory staff** proposed for implementing this works contract. Each CV should be signed by the concerned person and no longer than 3 pages. The supervisory staff must have appropriate experience and must have the proven qualifications for work of a similar nature to that of the project under consideration. Descriptions of professional experience must demonstrate their ability to carry out the work.

The tenderer must also provide in his/her offer the copy of **Engineers Registration Board documents and Practicing Certificate**.

The tenderer must present the following profiles:

Construction manager practicing registered civil engineer with 10 years' general experience and 5 years' specific experience as a construction Manager in works of an equivalent nature and volume. The experience should be post qualification/after graduation in relevant qualifications. Copy of Engineers Registration Board documents and Practicing Certificate shall be required.

Proposed position	Name of expert	Age	Educational background	Years of experience as a construction manager	Years of experience in construction
Construction manager					
Description of the major works for which responsible	Year	Position	Value	Client's Contacts (tel. nr or e-mail address)	

Site/Water engineer with at least a BSc degree in Civil Engineering with 8 years' general experience and 5 years' specific experience as a site engineer in works of an equivalent nature and volume. The experience should be after graduation in relevant qualifications.

Proposed position	Name of expert	Age	Educational background	Years of experience as a site engineer	Years of experience in construction
Site engineer					
Description of the major works for which responsible		Year	Position	Value	Client's Contacts (tel. nr or e-mail address)

Site Technician with at least an ordinary diploma in civil engineering with 8 years' general experience and 5 years' specific experience as a water projects in works of an equivalent nature and volume. The experience should be after graduation in relevant qualifications.

Proposed position	Name of expert	Age	Educational background	Years of experience as a building works foreman	Years of experience in construction
Building works foreman					
Description of the major works for which responsible		Year	Position	Value	Client's Contacts (tel. nr or e-mail address)

6.3.11 Availability of the supervisory staff

By submitting this tender, the tenderer explicitly declares that the following supervisory staff is available for the whole period scheduled for his/her input to implement the tasks set out in the tender document and/or in the methodology. The supervisory staff will not be replaced during the implementation of the contract without prior written approval by the contracting authority. In case of replacement, the expert's qualifications and experience must be at least as high as those of the expert proposed in the tender.

Supervisory staff	Number of days on this contract (indicate from.. to ...)	
Construction manager		
Name: ...		
Site/Water engineer		
Name: ...		
Site Technician		
Name: ...		

Name and first name:

Duly authorised to sign this tender on behalf of:

Place and date:

Signature:

6.4 Methodology

In this section, the tenderer proposes a methodology (understanding of technical specifications, strategy and work plan and timetable of activities) based on the instructions given in the technical specifications.

1. Work plan and timetable of activities:
<p>1.1. Critical milestone bar chart (schedule of execution) representing the construction programme and detailing:</p> <ul style="list-style-type: none"> • relevant activities; • allocation of labour; • allocation of equipment and material resources, etc.
<p>1.2. Construction site organisation plan showing the main issues for good management of the work site during the implementation period and the main issues to sustain and integrate the environmental peculiarities. State the proposed location of your main office on the site, stations (steel/concrete/asphalt structures), warehouses, etc. (sketches to be attached).</p>

6.5 Overview of site operatives to be employed on the contract

Site operatives to be employed on the contract:	Male	Female
a - Site management
b - Administrative staff
c - Technical staff		
- Engineer(s)
- Surveyor(s)
- Foreman/men
- Mechanics
- Technicians
- Machine operators
- Drivers
- Other skilled staff
- Labourers and unskilled staff
Total:

6.6 Financial offer and tender form

Do NOT change the “Financial offer & tender form” and the bill of quantities. Reservations are not permitted. Tenderers must, under penalty of substantial irregularity, give prices in euros and exclusive of VAT for all blocks

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

The unit prices and the global prices for each item in the bill of quantities 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 bill of quantities, to be added to the tender's value. The tenderer commits to performing the public contract in accordance with the provisions of tender documents, for the following prices, given in **euros** and **exclusive of VAT**:

.....euros excl. VAT.

Applicable VAT %: %

If this tender is approved, the bond will be made under the conditions and deadlines prescribed in the specifications above.

Confidential information and / or information relating to technical or commercial secrets is clearly indicated in the tender.

In order to make it possible to compare tenders adequately, the data or documents mentioned in the section "Summary of documents to be delivered", duly signed, must be attached to the tender.

In annex, the tenderer attaches to his tender

Certified for true and compliant,

Original handwritten signature (s):

Fixed blocks (cf. 6.7 Bill of Quantities) **	
Description of Fixed	Total cost in € exc. VAT
Preliminaries and Generals	
In-take Works	
Treatment Works	
Transmission Mains	
Distribution Network Mkongoro Village	
Distribution Network Nyamhoza, Mkwanga and Nyabigufa	
Distribution Network Kizenga Village	
Distribution Network Bitale Village	
Distribution Network Kiganza Village	
Contingency	
Total for Works	

****All unit prices should be provided in the Bill of Quantities in 6.7 below.**

Certified true and sincere,

Name and first name:

Duly authorised to sign this tender on behalf of:

Place and date:

Signature:

If the tenderer plans to subcontract part of the works, they must provide the following details:

Work intended to be subcontracted	Name and details of subcontractors	Value of subcontracting as percentage of the total cost of the project	Experience in similar work (details to be specified)

The upper limit authorised for subcontracting is **30 % of the value of the tender.**

6.7 Bill of quantities

The bill of quantities is presented separately as Volume I.

6.8 Technical Specification

The technical specification is presented separately as Volume II.

6.9 Drawings

The drawings are presented separately as Volume III.

N.B the tenderers who are interested have to ask for the complete file to amos.chigwenembe@enable.be