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**EUROPEAN UNION RULE OF LAW MISSION IN KOSOVO**

**EULEX KOSOVO**

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Pristina: 05 October 2009.

**Publication reference: PROC/150/09/ Drinking Water FWC II,  
(EuropeAid/129185/D/SUP/XK).**

Dear Madam/Sir,

**SUBJECT: INVITATION TO TENDER for the:  
“Supply of Drinking Water under Framework Contract”.**

**Tenderers are reminded that they shall also provide evidence of the “financial and economic standing” and of the “professional and technical capacity” in accordance with the selection criteria set in the paragraph 16 of the procurement notice.**

Please find enclosed the following documents, which constitute the tender dossier.

- A. INSTRUCTIONS TO TENDERERS
- B. DRAFT FRAMEWORK CONTRACT AND SPECIAL CONDITIONS, INCLUDING ANNEXES
  - DRAFT FRAMEWORK CONTRACT
  - SPECIAL CONDITIONS
  - ANNEX I GENERAL CONDITIONS
  - ANNEX II +III TECHNICAL SPECIFICATIONS + TECHNICAL OFFER (TO BE TAILORED TO THE SPECIFIC PROJECT)
  - ANNEX IV BUDGET BREAKDOWN (MODEL FINANCIAL OFFER)
  - ANNEX V FORMS
- C. FURTHER INFORMATION
  - ADMINISTRATIVE COMPLIANCE GRID
  - EVALUATION GRID
- D. TENDER FORM FOR A SUPPLY CONTRACT

For full information about procurement procedures please consult the Practical Guide to contract procedures for EC external actions and its annexes, which can be downloaded from the following web page: [http://ec.europa.eu/europeaid/work/procedures/implementation/supplies/index\\_en.htm](http://ec.europa.eu/europeaid/work/procedures/implementation/supplies/index_en.htm)

We look forward to receiving your tender and the accompanying tender guarantee, at the address specified in the Instructions to Tenderers **before 12 November 2009 at 15:00 hrs.** If you decide not to submit a tender, we would be grateful if you could inform us in writing, stating the reasons for your decision.

Yours faithfully,

**Yves de Kermabon**

**Head of EULEX KOSOVO**

## A.INSTRUCTIONS TO TENDERERS

### PUBLICATION REF.: PROC/150/09/ Drinking Water FWC II

In submitting a tender, the tenderer accepts in full and without restriction the special and general conditions governing the contract as the sole basis of this tendering procedure, whatever its own conditions of sale may be, which it hereby waives. Tenderers are expected to examine carefully and comply with all instructions, forms, contract provisions and specifications contained in this tender dossier. Failure to submit a tender containing all the required information and documentation within the deadline specified will lead to the rejection of the tender. No account can be taken of any reservation in the tender as regards the tender dossier; any reservation may result in the immediate rejection of the tender without further evaluation.

These Instructions set out the rules for the submission, selection and implementation of contracts financed under this call for tenders, in conformity with the provisions of the Practical Guide to contract procedures for EC external actions, which is applicable to the present call (available on the Internet at this address:

[http://ec.europa.eu/europeaid/work/procedures/index\\_en.htm](http://ec.europa.eu/europeaid/work/procedures/index_en.htm)).

#### 1. Supplies to be provided

1.1 The subject of the framework contract is to settle the terms governing the supply and delivery of drinking water as well as the performance of some ancillary services by the Contractor (*see Annex II and III of the Tender Dossier for the relevant description of the items and ancillary services and the yearly estimated quantities of items that MAY be purchased during the duration of the framework contract*):

in one lot at EULEX Kosovo, Pristina, DDU1.

The signature of the framework contract imposes no obligation on the Contracting Authority to purchase the quantities as estimated in Annex II and III.

Deliveries shall ONLY take place following the issuance of “purchase orders” to be issued by the Contracting Authority during the duration of this framework contract.

Deliveries shall take place within 7 (seven) calendar days after the receipt by the contractor of a “purchase order” issued by the Contracting Authority.

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<sup>1</sup> /DDU (Delivered Duty Unpaid - Incoterms 2000 International Chamber of [Commerce](http://www.iccwbo.org/incoterms/id3040/index.html) - <http://www.iccwbo.org/incoterms/id3040/index.html>)

- 1.2 The supplies must comply fully with the technical specifications set out in the tender dossier (technical annex) and conform in all respects with the drawings, quantities, models, samples, measurements and other instructions.
- 1.3 Tenderers are not authorised to tender for a variant in addition to the present tender.

## 2. Timetable

	DATE	TIME*
<b>Clarification meeting / site visit (if any)</b>	19/10/2009	15:00
<b>Deadline for request for any clarifications from the Contracting Authority</b>	22/10/2009	15:00
<b>Last date on which clarifications are issued by the Contracting Authority</b>	30/10/2009	15:00
<b>Deadline for submission of tenders</b>	12/11/2009	15:00
<b>Tender opening session</b>	12/11/2009	15:30
<b>Notification of award to the successful tenderer</b>	January 2010	
<b>Signature of the contract</b>	February 2010.	

\* All times are in the Kosovo time zone.

<sup>Ⓐ</sup> Provisional date

## 3. Participation

- 3.1 Participation in tendering is open to all legal persons participating either individually or in a grouping (consortium) of tenderers which are established in a Member State of the European Union, in an official candidate country, or a country that is a beneficiary of the Instrument for Pre-Accession Assistance, in a Member State of the European Economic Area, a country of the Western Balkans region or a contributing third State, as authorized by Council Joint Action 2008/124/CFSP of 04 February 2008 on EULEX KOSOVO. The participation is also open to international organisations. Participation of natural persons is directly governed by the specific instruments applicable to the programme under which the framework contract is financed.
- 3.2 These terms refer to all nationals of the said states and to all legal entities, companies or partnerships constituted under, and governed by, the civil, commercial or public law of such states and having their statutory office, central administration or principal place of business there. A legal entity, company or partnership having only its statutory office there must be engaged in an activity which has an effective and continuous link with the economy of the state concerned.

- 3.3 These rules apply to:
- a) tenderers
  - b) members of a consortium
  - c) any subcontractors.
- 3.4 Natural persons, companies or undertakings falling into a situation set out in section 2.3.3 of the Practical Guide to contract procedures for EC external actions are excluded from participation in and the award of contracts. Tenderers must provide declarations to the effect that they are not in any of these exclusion situations. The declarations must cover all the members of a joint venture/consortium. Tenderers who have been guilty of making false declarations may also incur financial penalties and exclusion in accordance with section 2.3.4 of the Practical Guide.

The exclusion situation referred to above also applies to any subcontractor. Whenever requested by the Contracting Authority, the tenderer/contractor shall submit a declaration from the intended subcontractor that it is not in one of the exclusion situations. In case of doubt on this declaration of honour, the Contracting Authority shall request documentary evidence that the sub-contractor is not in a situation of exclusion.

- 3.5 To be eligible for participation in this tender procedure, tenderers must prove to the satisfaction of the Contracting Authority that they comply with the necessary legal, technical and financial requirements and have the means to carry out the contract effectively.
- 3.6 If the offer includes subcontracting, it is recommended that the contractual arrangements between the tenderer and its subcontractors include mediation, according to national and international practices, as a method of dispute resolution.

#### **4. Origin**

- 4.1 The rule of origin has been derogated.

#### **5. Type of contract**

- 5.1 Framework contract with unit-price per itemised expenditure.
- 5.2 The quantities estimated and specified in ANNEX II +III are only indicative quantities and do NOT compel the contracting authority to buy any of them. The contracting authority may at its own discretion purchase fewer or more quantities than the estimated quantities per item. The overall financial ceiling of purchase being the maximum budget available for the framework contract.
- 5.3 The contractor shall NOT be entitled to compensation and shall NOT be allowed to claim for changes of the unit prices, in case the contracting authority decides to purchase fewer or more quantities than the indicative ones specified per item in Annex II + III and/or in case the contracting authority decides NOT to purchase ANY of these quantities.
- 5.4 Payments and/or pre-financing will only be made by the Contracting Authority on the basis of the actual amount of the Purchase Orders to be issued during the duration of the framework contract. Actually, no pre-financing or payment shall be made on the only basis of the signature of this framework contract.

- 5.5 The framework contract shall be concluded for a period of two years (2 years), with effect on the date on which it enters into force, (although the Framework contract may be terminated at short notice. See article 36 of the special conditions of the draft contract).
- 5.6 Tender prices shall be firm and shall not be subject to revision for purchase orders placed during the first year of implementation of the framework contract. A price revision clause may be applied for the second year of implementation, see article 15 of the special conditions.
- 5.7 Unless exceptional circumstances or urgent logistic needs, the contracting authority will make efforts to let 15 days elapse between the issuance of two consecutive Purchase Orders. I.e. unless exceptional circumstances purchase orders will be issued on a bi-monthly basis.

## **6. Currency**

Tenders must be presented in EUROS.

## **7. Lots**

This tender procedure is not divided into lots.

## **8. Period of validity**

- 8.1 Tenderers shall be bound by their tenders for a period of 90 days from the deadline for the submission of tenders.
- 8.2 In exceptional cases and prior to the expiry of the original tender validity period, the Contracting Authority may ask tenderers in writing to extend this period by 40 days. Such requests and the responses to them must be made in writing. Tenderers that agree to do so will not be permitted to modify their tenders and they are bound to extend the validity of their tender guarantees for the revised period of validity of the tender. If they refuse, without forfeiture of their tender guarantees, their participation in the tender procedure will be terminated.
- 8.3 The successful tenderer will be bound by its tender for a further period of 60 days. The further period is added to the validity period irrespective of the date of notification.

## **9. Language of offers**

The offers, all correspondence and documents related to the tender exchanged by the tenderer and the Contracting Authority must be written in the language of the procedure which is English.

If the supporting documents are not written in one of the official languages of the European Union, a translation into the language of the call for tender must be attached. Where the documents are in an official language of the European Union other than the one of the procedure, it is however strongly recommended to provide a translation into the language of the call for tenders, in order to facilitate the evaluation of the documents.

## **10. Submission of tenders**

- 10.1 Tenders must be received before the deadline specified in 10.3. They must include all the documents specified in point 11 of these Instructions and be sent to the following address:

**EULEX Kosovo  
Procurement Section  
Ndërtesa Farmed  
“Muharren Fejza” p.n.  
Lagja e Spitalit  
10000 Pristina, Kosovo**

Tenders must comply with the following conditions:

- 10.2 All tenders must be submitted in one original, marked “original”, and three copies signed in the same way as the original and marked “copy”.
- 10.3 All tenders must be received at EULEX, Procurement Section, Ndërtesa Farmed, “Muharren Fejza” p.n, Lagja e Spitalit, 10000 Pristina, Kosovo before the deadline, 12 November 2009 at 15:00 hrs, by registered letter with acknowledgement of receipt or hand-delivered against receipt signed by the Contracting Authority or his representative.
- 10.4 All tenders, including annexes and all supporting documents, must be submitted in a sealed envelope bearing only:
- a) the above address;
  - b) the reference code of this tender procedure i.e. **PROC/150/09/Drinking Water FWC II**
  - c) the words “Not to be opened before the tender opening session” in the language of the tender dossier and “Te mos hapet para sesionit te hapjes” and “Ne otvori pre otvarajuce sesiju”
  - d) the name of the tenderer.

The technical and financial offers must be placed together in a sealed envelope. The envelope should then be placed in another single sealed envelope/package, unless their volume requires a separate submission for each lot.

## **11. Content of tenders**

All tenders submitted must comply with the requirements in the tender dossier and comprise:

### **Part 1: Technical offer:**

- a detailed description of the supplies tendered in conformity with the technical specifications, including any documentation required;
- A detailed technical proposal related to the ancillary services, (see “additional requirements” in Annex II + III).

The technical offer should be presented as per template (annex II+III\*, the contractor’s technical offer) completed when and if necessary by separate sheets for details.

## **Part 2: Financial offer:**

- A single financial offer calculated on a basis of DDU<sup>2</sup> (therefore covering both the cost of the supplies and of the ancillary services);

i.e. there shall be no budget breakdown related to the respective cost of the supplies and of the ancillary services. The cost of the ancillary services shall not be mentioned separately but shall be incorporated into the unit price of the items.

This financial offer should be presented as per template (annex IV\*, budget breakdown), and if necessary completed by separate sheets for the details.

## **Part 3: Documentation:**

### **To be supplied following templates in annex\*:**

- The tender guarantee, for: **940 EUROS (nine-hundred and forty Euros)**.
- The “Tender Form for a Supply Contract”, duly completed, which includes the tenderer’s declaration, point 7, (from each member if a consortium):
- The details of the bank account into which payments should be made (financial identification form) (Where the tenderer has already signed another contract with the European Commission, it may provide instead of the financial identification form either its financial identification form number or a copy of the financial identification form provided on that occasion, unless a change occurred in the meantime.)
- The legal entity file and the supporting documents (Where the tenderer has already signed another contract with the European Commission, it may provide instead of the legal entity sheet and its supporting documents either its legal entity number or a copy of the legal entity sheet provided on that occasion, unless a change in its legal status occurred in the meantime.)

### **To be supplied on free formats:**

- A description of the warranty conditions, which must be in accordance with the conditions laid down in Article 32 of the General Conditions.
- Duly authorised signature: an official document (statutes, power of attorney, notary statement, etc.) proving that the person who signs on behalf of the company/joint venture/consortium is **duly** authorised to do so.

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<sup>2</sup> DDU (delivered duty unpaid) - Incoterms 2000 International Chamber of Commerce - <http://www.iccwbo.org/incoterms/id3040/index.html>

- An official document; issued within 12 month from the date of submission of the tenderer's offer; by the "Kosovo Institute of Public Health" or by an equivalent public foreign institution certifying that the Water to be supplied by the tenderer meets as a minimum the basic standards laid down by the "Kosovo Institute of Public Health".
- A technical description along with a picture of the "water dispensers" to be put at the disposal of the contractor in accordance with the "additional requirements" (ancillary services) specified in Annex II + III.

Remarks:

Tenderers are requested to follow this order of presentation.

Annex\* refers to templates attached to the tender dossier. These templates are also available on: [http://ec.europa.eu/europeaid/work/procedures/index\\_en.htm](http://ec.europa.eu/europeaid/work/procedures/index_en.htm)

## 12. Pricing

- 12.1 Tenderers will be deemed to have satisfied themselves, before submitting their tender(s), as to (its)(their) correctness and completeness, to have taken account of all that is required for the full and proper execution of the contract and to have included all costs in their rates and prices.
- 12.2 Depending on whether the supplies proposed are manufactured locally or are to be imported into the country of the Beneficiary, Tenderers must quote, by lot, unit (and overall) prices for their tenders on one of the following bases:
- a) for supplies manufactured locally, unit and overall prices must be quoted for delivery to the place of destination and in accordance with the above conditions, excluding all domestic taxation applicable to their manufacture and sale;
  - b) for supplies to be imported into the country of the Beneficiary, unit and overall prices must be quoted for delivery to the place of destination and in accordance with the above conditions, excluding all duties and taxes applicable to their importation and VAT, from which they are exempt.
- 12.3 Whatever the origin of the supplies, the contract is exempt from stamp and registration duties.
- 12.4. Tender prices shall be firm and shall not be subject to revision for purchase orders placed during the first year of implementation of the framework contract. A price revision clause may be applied for the second year of implementation, see article 15 of the special conditions.

## 13. Additional information before the deadline for submission of tenders

The tender dossier should be clear enough to preclude the need for tenderers to request additional information during the procedure. If the Contracting Authority, either on its own initiative or in response to a request from a prospective tenderer, provides additional information on the tender dossier, it must send such information in writing to all other prospective tenderers at the same time.

Tenderers may submit questions in writing to the following address up to 21 days before the deadline for submission of tenders, specifying the **publication reference and the contract title**:

**EULEX Kosovo**  
**Procurement Section**  
**Ndërtesa Farmed**  
**“Muharren Fejza” p.n.**  
**Lagja e Spitalit**  
**10000 Pristina, Kosovo**  
**E-mail: [tenders@eulex-kosovo.eu](mailto:tenders@eulex-kosovo.eu)**

The Contracting Authority has no obligation to provide clarifications after this date.

Any clarification of the tender dossier will be published on the Contracting Authority's website at <http://www.eulex-kosovo.eu> at the latest 11 days before the deadline for submission of tenders.

Any prospective tenderers seeking to arrange individual meetings with either the Contracting Authority and/or the European Commission during the tender period may be excluded from the tender procedure.

#### **14. Clarification meeting / site visit**

- 14.1. A clarification meeting will be held on **19 October 2009 at 15:00 hrs**, at EULEX, Procurement Section, Ndërtesa Farmed, “Muharren Fejza” p.n, Lagja e Spitalit, 10000 Pristina, Kosovo, to answer any questions on the tender dossier which have been forwarded in writing or are raised at the meeting. Minutes will be taken during the meeting and these will be published on the Contracting Authority's website at <http://www.eulex-kosovo.eu> together with any clarifications in response to written requests which are not addressed during the meeting - at the latest 11 calendar days before the deadline for submission of tenders. No further clarification will be provided after this date. All the costs of attending this meeting will be borne by the tenderers.
- 14.2. Visits by individual prospective tenderers during the tender period other than this site visit for all prospective tenderers cannot be permitted.

#### **15. Alteration or withdrawal of tenders**

- 15.1 Tenderers may alter or withdraw their tenders by written notification prior to the deadline for submission of tenders referred to in Article 10.1. No tender may be altered after this deadline. Withdrawals must be unconditional and will end all participation in the tender procedure.
- 15.2 Any such notification of alteration or withdrawal must be prepared and submitted in accordance with Article 10. The outer envelope must be marked 'Alteration' or 'Withdrawal' as appropriate.
- 15.3 No tender may be withdrawn in the interval between the deadline for submission of tenders referred to in Article 10.1 and the expiry of the tender validity period. Withdrawal of a tender during this interval may result in forfeiture of the tender guarantee.

#### **16. Costs of preparing tenders**

No costs incurred by the tenderer in preparing and submitting the tender are reimbursable. All such costs will be borne by the tenderer.

## **17. Ownership of tenders**

The Contracting Authority retains ownership of all tenders received under this tender procedure. Consequently, tenderers have no right to have their tenders returned to them.

## **18. Joint venture or consortium**

- 18.1 If a tenderer is a joint venture or consortium of two or more persons, the tender must be single with the object of securing a single contract, each person must sign the tender and will be jointly and severally liable for the tender and any contract. Those persons must designate one of their members to act as leader with authority to bind the joint venture or consortium. The composition of the joint venture or consortium must not be altered without the prior consent in writing of the Contracting Authority.
- 18.2 The tender may be signed by the representative of the joint venture or consortium only if it has been expressly so authorised in writing by the members of the joint venture or consortium, and the authorising contract, notarial act or deed must be submitted to the Contracting Authority in accordance with point 11 of these Instructions to Tenderers. All signatures to the authorising instrument must be certified in accordance with the national laws and regulations of each party comprising the joint venture or consortium together with the powers of attorney establishing, in writing, that the signatories to the tender are empowered to enter into commitments on behalf of the members of the joint venture or consortium. Each member of such joint venture or consortium must provide the proof required under Article 3.5 as if it, itself, were the tenderer.

## **19. Opening of tenders**

- 19.1 The opening and examination of tenders is for the purpose of checking whether the tenders are complete, whether the requisite tender guarantees have been furnished, whether the required documents have been properly included and whether the tenders are generally in order.
- 19.2 The tenders will be opened in public session on **12 November 2009 at 15:30 hrs**, at EULEX, Procurement Section, Ndërtesa Farmed, “Muharren Fejza” p.n, Lagja e Spitalit, 10000 Pristina, Kosovo by the committee appointed for the purpose. The committee will draw up minutes of the meeting, which will be available on request.
- 19.3 At the tender opening, the tenderers' names, the tender prices, any discount offered, written notifications of alteration and withdrawal, the presence of the requisite tender guarantee (if required) and such other information as the Contracting Authority may consider appropriate may be announced.
- 19.4 After the public opening of the tenders, no information relating to the examination, clarification, evaluation and comparison of tenders, or recommendations concerning the award of the contract can be disclosed until after the contract has been awarded.
- 19.5 Any attempt by a tenderer to influence the evaluation committee in the process of examination, clarification, evaluation and comparison of tenders, to obtain information on how the procedure is progressing or to influence the Contracting Authority in its decision concerning the award of the contract will result in the immediate rejection of its tender.
- 19.6 All tenders received after the deadline for submission specified in the procurement notice or these instructions will be kept by the Contracting Authority. The associated guarantees will be

returned to the tenderers. No liability can be accepted for late delivery of tenders. Late tenders will be rejected and will not be evaluated.

## **20. Evaluation of tenders**

### **20.1 Examination of the administrative conformity of tenders**

The aim at this stage is to check that tenders comply with the essential requirements of the tender dossier. A tender is deemed to comply if it satisfies all the conditions, procedures and specifications in the tender dossier without substantially departing from or attaching restrictions to them.

Substantial departures or restrictions are those which affect the scope, quality or execution of the contract, differ widely from the terms of the tender dossier, limit the rights of the Contracting Authority or the tenderer's obligations under the contract or distort competition for tenderers whose tenders do comply. Decisions to the effect that a tender is not administratively compliant must be duly justified in the evaluation minutes.

If a tender does not comply with the tender dossier, it will be rejected immediately and may not subsequently be made to comply by correcting it or withdrawing the departure or restriction.

### **20.2 Technical evaluation**

After analysing the tenders deemed to comply in administrative terms, the evaluation committee will rule on the technical admissibility of each tender, classifying it as technically compliant or non-compliant.

**The minimum qualifications required (see selection criteria in Procurement Notice point 16) are to be evaluated at the start of this stage.**

**20.3** In the interests of transparency and equal treatment and to facilitate the examination and evaluation of tenders, the evaluation committee may ask each tenderer individually for clarification of its tender including breakdowns of prices, within a reasonable time limit to be fixed by the evaluation committee. The request for clarification and the response must be in writing, but no change in the price or substance of the tender may be sought, offered or permitted except as required to confirm the correction of arithmetical errors discovered during the evaluation of tenders pursuant to Article 20.4. Any such request for clarification must not distort competition. Decisions to the effect that a tender is not technically compliant must be duly justified in the evaluation minutes.

### **20.4 Financial evaluation**

- a) Tenders found to be technically compliant shall be checked for any arithmetical errors in computation and summation. Errors will be corrected by the evaluation committee as follows:
  - where there is a discrepancy between amounts in figures and in words, the amount in words will be the amount taken into account;
  - except for lump-sum contracts, where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will be the price taken into account.
- b) Amounts corrected in this way will be binding on the tenderer. If the tenderer does not accept them, its tender will be rejected.

## 20.5 Variant solutions

Variant solutions will not be taken into consideration.

## 20.6 Award criteria

The sole award criterion will be the price. The contract will be awarded to the lowest compliant tender.

## 21. Signature of the contract and performance guarantee

- 21.1 The successful tenderer will be informed in writing that its tender has been accepted (notification of award). Before the Contracting Authority signs the contract with the successful tenderer, the successful tenderer must provide the **documentary proof** or statements required under the law of the country in which the company (or each of the companies in case of a consortium) is established, to show that it does not fall into the exclusion situations listed in section 2.3.3 of the Practical Guide to contract procedures for EC external actions. This evidence or these documents or statements must carry a date, which cannot be more than 1 year before the date of submission of the tender. In addition, a statement shall be furnished stating that the situations described in these documents have not changed since then.
- 21.2 The successful tenderer shall also provide evidence of the financial and economic standing and the technical and professional capacity according to the selection criteria for this call for tender specified in the procurement notice, point 16. The documentary proofs required are listed in sections 2.4.12.1.3 and 2.4.12.1.4 of the Practical Guide to contract procedures for EC external actions.
- 21.3 If the successful tenderer fails to provide the documentary proof or statement or the evidence of the financial and economic standing and the technical and professional capacity within 15 calendar days following the notification of award or if the successful tenderer is found to have provided false information, the award will be considered null and void. In such a case, the Contracting Authority may award the tender to the next lowest tenderer or cancel the tender procedure.
- 21.4 Within 30 days of receipt of the contract already signed by the Contracting Authority, the selected tenderer must sign and date the contract and return it, with the performance guarantee (if applicable), to the Contracting Authority. On signing the contract, the successful tenderer will become the Contractor and the contract will enter into force.
- 21.5 If it fails to sign and return the contract and any financial guarantee required within 30 days after receipt of notification, the Contracting Authority may consider the acceptance of the tender to be cancelled without prejudice to the Contracting Authority's right to seize the guarantee, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the Contracting Authority.
- 21.6 The performance guarantee referred to in the General Conditions is set **at 7%**, (seven %), of the yearly maximum amount of the framework contract at the signing of the framework contract. It must be presented in the form specified in the annex to the tender dossier. It will be released within 45 days of the issue of the final acceptance certificate by the Contracting Authority.

## 22. Tender guarantee

The tender guarantee referred to in Article 11 above is set at **940 EUROS (nine hundred and forty Euros)** and must be presented in the form specified in the annex to the tender dossier. It must remain valid for 45 days beyond the period of validity of the tender. Tender guarantees provided by tenderers who have not been selected shall be returned together with the information letter that the tenderer has been unsuccessful. The tender guarantee of the successful tenderer shall be released on the signing of the contract, once the performance guarantee has been submitted.

## 23. Ethics clauses

- 23.1 Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee or the Contracting Authority during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of its candidacy or tender and may result in administrative penalties.
- 23.2 Without the Contracting Authority's prior written authorisation, a Contractor and its staff or any other company with which the Contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for the project. This prohibition also applies to any other projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the Contractor.
- 23.3. When putting forward a candidacy or tender, the candidate or tenderer shall declare that it is affected by no conflict of interest and has no equivalent relation in that respect with other tenderers or parties involved in the project. Should such a situation arise during execution of the contract, the Contractor must immediately inform the Contracting Authority.
- 23.4 The Contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of its profession. It shall refrain from making public statements about the project or services without the Contracting Authority's prior approval. It may not commit the Contracting Authority in any way without its prior written consent.
- 23.5 For the duration of the contract the Contractor and its staff shall respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary state. In particular and in accordance with the legal basic act concerned, tenderers who have been awarded contracts shall respect core labour standards as defined in the relevant International Labour Organisation conventions (such as the Conventions on freedom of association and collective bargaining; Abolition of forced and compulsory labour; Elimination of forced and compulsory labour; Abolition of child labour).
- 23.6 The Contractor may accept no payment connected with the contract other than that provided for therein. The Contractor and its staff must not exercise any activity or receive any advantage inconsistent with their obligations to the Contracting Authority.
- 23.7 The Contractor and its staff shall be obliged to maintain professional secrecy for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the Contractor shall be confidential.
- 23.8 The contract shall govern the Contracting Parties' use of all reports and documents drawn up, received or presented by them during the implementation of the contract.
- 23.9 The Contractor shall refrain from any relationship likely to compromise its independence or that of its staff. If the Contractor ceases to be independent, the Contracting Authority may,

regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation.

- 23.10 The Commission reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process and if the Contracting Authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, "corrupt practices" are 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.
- 23.11 All tenders will be rejected or contracts terminated if it emerges that the award or implementation of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has every appearance of being a front company.
- 23.12 The Contractor undertakes to supply the Commission on request with all supporting documents relating to the conditions of the contract's execution. The Commission may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected unusual commercial expenses.
- 23.13 Contractors found to have paid unusual commercial expenses on projects funded by the Community are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving Community funds.
- 23.14 The Contracting Authority reserves the right to suspend or cancel the procedure, where the award procedure proves to have been subject to substantial errors, irregularities or fraud. Where such substantial errors, irregularities or fraud are discovered after the award of the Contract, the Contracting Authority may refrain from concluding the Contract.

#### **24. Cancellation of the tender procedure**

In the event of a tender procedure's cancellation, tenderers will be notified by the Contracting Authority. If the tender procedure is cancelled before the tender opening session the sealed envelopes will be returned, unopened, to the tenderers.

Cancellation may occur where:

- the tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no response at all;
- the economic or technical parameters of the project have been fundamentally altered;
- exceptional circumstances or force majeure render normal implementation of the project impossible;
- all technically compliant tenders exceed the financial resources available;
- there have been irregularities in the procedure, in particular where these have prevented fair competition.

**In no event shall the Contracting Authority be liable for any damages whatsoever including, without limitation, damages for loss of profits, in any way connected with the cancellation of a tender procedure even if the Contracting Authority has been advised of the possibility of damages. The publication of a procurement notice does not commit the Contracting Authority to implement the programme or project announced.**

## **25. Appeals**

Tenderers believing that they have been harmed by an error or irregularity during the award process may file a complaint. See further section 2.4.15 of the Practical Guide.

**B. DRAFT FRAMEWORK CONTRACT AND SPECIAL CONDITIONS, INCLUDING ANNEXES.**

**SUPPLY FRAMEWROK CONTRACT FOR EUROPEAN  
COMMUNITY EXTERNAL ACTIONS**

**No: PROC/150/09/ Drinking Water FWC II**

**FINANCED FROM THE EC GENERAL BUDGET/EDF**

**Yves de Kermabon, Head of EULEX Kosovo**, and address at EULEX KOSOVO, Ndërtesa Farmed, “Muharrem Fejza” p.n., 10000 Pristina-Kosovo, (“The Contracting Authority”),

and

of the one part,

<Full official name of Contractor>  
[Legal status/title]<sup>3</sup>  
[Official registration number]<sup>4</sup>  
[Full official address]  
[VAT number]<sup>5</sup>, (“the Contractor”)

of the other part,

have agreed as follows:

**CONTRACT TITLE**

**“Framework Contract for the Supply of Drinking Water”.**

**Identification number: PROC/150/09/ Drinking Water FWC II**

**Article 1 Subject**

**1.1** The subject of this framework contract is to establish the terms (including the unit prices and the implementing rules) for the supply and delivery of “Drinking Water”, along with the implementation of some ancillary services, in one lot, as described in ANNEX II + III; for EULEX Kosovo in Pristina-Kosovo, **DDU6**, during the period of implementation of the framework contract.

<sup>3</sup> Where the contracting party is an individual.

<sup>4</sup> Where applicable. For individuals, mention their ID card or passport or equivalent document - number

<sup>5</sup> Except where the contracting party is not VAT registered.

<sup>6</sup> /DDU (Delivered Duty Unpaid - Incoterms 2000 International Chamber of [Commerce - http://www.iccwbo.org/incoterms/id3040/index.html](http://www.iccwbo.org/incoterms/id3040/index.html)

- 1.2** The framework contract will be implemented by “purchase orders”. I.e. whenever the Contracting Authority intends to acquire items pursuant to this framework contract, it shall send a “Purchase Order” to the contractor, specifying the quantities of items to be supplied. Deliveries shall take place in accordance with the terms and conditions of the special and general conditions, supplemented and/or amended by the specific terms for each particular delivery as set out in the “purchase orders”.
- 1.3** The quantities estimated and specified in ANNEX II +III are only indicative quantities and do NOT compel the contracting authority to buy any of them The contracting authority may at its own discretion purchase fewer or more quantities than those estimated quantities per item. The overall financial ceiling being the maximum budget available for this framework contract as expressed in article 3.1 below.
- 1.4** The contractor shall NOT be entitled to compensation and shall NOT be allowed to claim for changes of the unit prices, in case the contracting authority decides to purchase fewer or more quantities than the indicative ones specified per item in Annex II + III and/or in case the contracting authority decides NOT to purchase ANY of these quantities.
- 1.5** The framework contract shall be concluded for a period of two years (2 years) with effect on the date on which it enters into force, (although the Framework contract may be terminated at short notice. See article 36 of the special conditions).
- 1.6** The place of acceptance of the supplies shall be at EULEX Kosovo Regional Centres (Peja/Pec; Mitrovica/Mitrovica; Gjilan/Gnjilane, Ferizaj/Urosevac and Prizren) and in several locations; up to twelve (12) in Pristina region. The accurate addresses will be provided at the same of the issuance of each purchase order. The time limits for the delivery shall be 7 (seven) calendar days from the reception by the contractor of a Purchase Order placed by the Contracting Authority and the Incoterm applicable shall be DDU (delivered duty unpaid)<sup>7</sup>.
- 1.7** The Contractor shall comply strictly with the terms of the Special Conditions and the technical annex.

**Article 2 Origin**

The rule of origin has been derogated.

**Article 3 Price**

- 3.1.** The price of the supplies shall be that shown on the financial offer (specimen in Annex IV). The sum of all payments shall not exceed the maximum budgetary sum of <maximum budget amount > per annual contract period.
- 3.2.** The unit prices referred to in Article 3.1 above shall be the sole remuneration owed by the Contracting Authority to the Contractor under the framework contract. I.e. the prices for the water will include all costs related to the ancillary services.
- 3.3.** The unit prices shall be firm and shall not be subject to revision for purchase orders placed during the first year of implementation of the framework contract. A price revision clause may be applied for the second year of implementation of the Framework Contract, see article 15 of the special conditions

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<sup>7</sup> <DDP (Delivered Duty Paid) /DDU (Delivered Duty Unpaid)> - Incoterms 2000 International Chamber of Commerce - <http://www.iccwbo.org/incoterms/id3040/index.html>

- 3.4. Payments shall be made in accordance with the General and/or Special Conditions (Articles 26 to 28). Payments shall be made to the bank account of the contractor, with identification number <...>.
- 3.5. Tax and customs arrangements.  
The contract shall be exempt from all duties and taxes, including VAT. 8

#### **Article 4 Order of precedence of contract documents**

The contract is made up of the following documents, in order of precedence:

- the framework contract agreement;
- the Special Conditions
- the General Conditions (Annex I);
- the Technical Specifications (Annex II [including clarifications before the deadline for submission of tenders];
- the Technical Offer (Annex III [including clarifications from the tenderer provided during tender evaluation];
- the budget breakdown (Annex IV);
- (specified forms and other relevant documents (Annex V);
- the respective purchase order.

The various documents making up the contract shall be deemed to be mutually explanatory; in cases of ambiguity or divergence, they shall prevail in the order in which they appear above.

Done in English in four originals, three originals being for the Contracting Authority and one original being for the Contractor.

#### **For the Contractor**

Name:

Title:

Signature:

Date:

#### **For the Contracting Authority**

Name:

Title:

Signature:

Date:

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<sup>8</sup> EULEX Kosovo is a diplomatic mission and based on UNMIK Executive Decision No 2008/36 of 9 December 2008, it is granted exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on articles for its official use.

## SPECIAL CONDITIONS

### CONTENTS

These conditions amplify and supplement, if necessary, the General Conditions governing the contract. Unless the Special Conditions provide otherwise, those General Conditions remain fully applicable. The numbering of the Articles of the Special Conditions is not consecutive but follows the numbering of the Articles of the General Conditions. In exceptional cases, and with the authorisation of the competent Commission departments, other clauses may be introduced to cover specific situations.

#### Article 2 Law applicable

- 2.1 Belgian law shall apply in all matters not covered by the provisions of the contract.
- 2.2 The language used shall be English.

#### Article 4 Communications

Any written communication relating to this Contract between the Contracting Authority and/or the Project Manager, on the one hand, and the Contractor on the other must state the Contract title and identification number, and must be sent by post, fax, e-mail or by hand.

For the Contracting Authority:

<b>Name:</b>	EULEX Kosovo Attn: <b>Project Manager.</b>
<b>Address:</b>	<b>EULEX Kosovo</b> <b>XXX Section</b> <b>Ndërtesa Farmed</b> <b>“Muharren Fejza” p.n.</b> <b>Lagja e Spitalit</b> <b>10000 Pristina, Kosovo</b>
<b>Telephone:</b>	
<b>Fax:</b>	

For the Contractor:

<b>Name:</b>	
<b>Address:</b>	
<b>Telephone:</b>	
<b>Fax:</b>	
<b>e-mail:</b>	

## **Article 10 Origin**

10.1 The rule of origin has been derogated.

## **Article 11 Performance guarantee**

The amount of the performance guarantee shall be <... Euros> equivalent to 7% (seven %) of the yearly maximum amount of the framework contract

## **Article 12 Insurance**

The contractor shall insure for replacement value of the goods until delivery.

## **Article 15: Tender prices**

For the second year of performance of the framework contract, prices may be revised upwards or downwards, where such revision is requested by one of the contracting parties by registered letter no later than three months before the anniversary of the date on which it was signed. Purchase orders shall be placed on the basis of the prices in force on the date on which they are signed. Such prices shall not be subject to revision.

This revision shall be determined by the trend in the harmonized consumer price index, HICP – all items of the Euro area, as published on Eurostat’s webpage (Euroindicators – HICP Predefined tables. <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home>

Revision shall be calculated in accordance with the following formula:

$$Pr = Po \left( \frac{Ir}{Io} \right)$$

Where :

Pr = revised price.

Po = price in the original tender.

Io = index for the month in which the validity of the tender expires.

Ir = index for the month corresponding to the date of receipt of the letter requesting a revision of prices.

## **Article 16 Tax and customs arrangements**

For supplies manufactured locally, all internal fiscal charges applicable to their manufacture, including VAT, shall be excluded.

For supplies to be imported into the country of the Contracting Authority, all duties and taxes applicable to their importation, including VAT shall be excluded.

Whatever the origin of the supplies, the contract shall be exempt from stamp and registration duties.

## **Article 18 Commencement order**

- 18.1 The framework contract shall enter into force on the day of its signature by both parties.
- 18.2 The framework contract will be implemented by means of “purchase orders” which implementation date (*governing the 7 (seven) calendar days delivery period*) will start on the date of reception by the Contractor of a “purchase order” placed by the Contracting Authority.
- 18.3. Under no circumstances may purchase orders be placed before the date on which the framework contract enters into force and/or after the framework contract expires.

## **Article 22 Variations**

Provisions of Article 22 of the general conditions related to variations are not applicable to the present framework contract.

## **Article 24 Quality of supplies**

- 24.1 No preliminary technical acceptance is required.
- 24.2 The basic standard that must be reached by the water to be supplied is that LATEST standard laid down by the ‘Kosovo Institute of Public Health’ at the time of the delivery.
- 24.3 The Contractor shall provide EULEX-Kosovo with copies of results of any tests that may be conducted on the production, premises or water quality in accordance with the dispositions of UNMiK Administrative Instruction (health) 2/1999 “Testing and Enforcing Minimum Standards of Drinking Water Quality” and/or in accordance with any subsequent legislation in this field imposing additional requirements.

## **Article 25 Inspection and testing**

- 25.1 Inspection and testing will take place upon delivery and in accordance with Article 25 of the General Conditions at the delivery address specified in Article 1.6 of the framework Contract.
- 25.2 EULEX -Kosovo has the right to independently test the water provided by the contractor to ascertain the compliance with the standards laid down by the ‘Kosovo Institute of Public Health’ at the time of the delivery. If an independent test reveals these standards are not met, EULEX-Kosovo has the right to reject the complete batch of that delivery and have it replaced at no cost to EULEX Kosovo, including any transportation or handling costs

## **Article 26 Methods of payment**

- 26.1. Payments shall be made in EUROS.
- 26.2. Payments shall be authorised and made by the Contracting Authority.
- 26.3. No pre-financing payments shall be made.

- 26.4. Request for payments shall only be made on the basis of the amount value of a valid Purchase Order issued by the contracting authority.
- 26.5. Invoices for delivered water should be calculated at the conclusion of each calendar month and the invoice presented to EULEX in the first few days of the following month. Each monthly bill should include any discount, (percentage reduction) offered in the tender by the Contractor.
- 26.6. In order to obtain payments, the Contractor must forward to the authority referred to in paragraph 26.1 above, (*in addition to the performance guarantee*), the invoice(s) in triplicate following provisional acceptance of the supplies.

## **Article 29      Delivery**

29.1. The place of acceptance of the supplies shall be at EULEX Kosovo Regional Centres (Peja/Pec; Mitrovice/Mitrovica; Gjilan/Gnjilane, Ferizaj/Urosevac and Prizren) and in several locations; up to twelve (12) in Pristina region. The accurate addresses will be provided at the same of the issuance of each purchase order. The time limits for the delivery shall be 7 (seven) calendar days from the reception by the contractor of a Purchase Order placed by the Contracting Authority and the Incoterm applicable shall be DDU (delivered duty unpaid)<sup>9</sup>.

29.2 The Contractor shall bear all risks relating to the goods until provisional acceptance at destination. The supplies shall be packaged so as to prevent their damage or deterioration in transit to their destination.

29.3. The delivery shall take place on a working day and during the normal working hours of the Contracting Authority's warehouse; the "working hour schedule" shall be accurately specified at the time of the signature of the contract.

29.4. Use of Standard European "Euro-Pallets" and other mandatory requirements.

29.4.a.            The contractor shall deliver the goods on standard European "Euro-pallets". The packaging shall become the property of the recipient subject to respect for the environment.

29.4.b.            Every 'Euro-Pallet' has to be labeled with its exact content and total weight.

29.4.c.            The maximum load per standard "Euro-pallet" (including the pallet) shall be up to 400 kg. For new certified pallets the maximum load (including the pallet) may be up to 1,2 t maximum.

29.4.d.            Height of packing shall be up to maximum 1.6 m.

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<sup>9</sup> <DDP (Delivered Duty Paid) /DDU (Delivered Duty Unpaid)> - Incoterms 2000 International Chamber of Commerce - <http://www.iccwbo.org/incoterms/id3040/index.html>

- 29.4.e.** Items shall be packed into boxes with like items packed together. Every box should have individual labeling indicating clearly the content, weight and dimensions, including but not limited to labeling for dangerous goods in accordance with IATA/ADR dangerous goods labeling and in accordance with REGULATION (EC) No 1272/2008 of 16 December 2008.
- 29.4.f.** Should the nature of the goods make it impossible to meet a requirement set under this article 29, variations may be authorised by the Project manager, following the receipt, before the actual delivery, of a detailed request letter from the Contractor.
- 29.4.g.** Unless, duly authorised by the Project manager before the actual delivery, any shipment delivered in violation of the contractual obligations set under this article 29 will be rejected and remain under the custody and exclusive responsibility of the contractor or the carrier appointed by it. The Contractor or carrier shall NOT be entitled to claim for any compensation or indemnity for loss suffered in case the shipment was rejected by the Contracting Authority due to the violation of a contractual obligation set under article 29 of these special conditions.

### **Article 31 Provisional acceptance**

The Certificate of Provisional Acceptance must be issued using the template in Annex C11.

### **Article 32 Warranty**

The Contractor shall warrant that the supplies are new, unused, of the most recent models and incorporate all recent improvements in design and materials. The Contractor shall further warrant that none of the supplies have any defect arising from design, materials or workmanship. This warranty shall remain valid for **six months** after provisional acceptance.

**In addition, the expiration date of the water shall be minimum six month from the date of provisional acceptance.**

### **Article 36 - Termination by the Contracting Authority**

1. The framework contract is of two years duration starting from its signature by both parties. In addition to the grounds for termination defined in the General Conditions, the Contracting Authority may terminate the contract after giving 15 days' notice to the Contractor, in case EULEX's mandate was not to be prolonged and/or in case of budgetary issues affecting the financing of the project.
2. In case of termination of the framework contract on such grounds, the Contractor shall NOT be entitled to claim any indemnity for loss suffered.
3. The Contractor shall only be entitled to claim for sums owing to it for supplies already delivered and/or for supplies pending delivery following the receipt by the Contractor (before the date of notification of the termination of the framework contract) of a valid purchase order issued by the Contracting Authority.

**Article 40 Settlement of disputes**

40.1 Any disputes arising out of or relating to this contract which cannot be settled otherwise shall be referred to the exclusive jurisdiction of the Courts of Brussels (Belgium) , applying the Belgian Law

## **ANNEX I: GENERAL CONDITIONS**

### **FOR SUPPLY CONTRACTS FINANCED BY THE EUROPEAN COMMUNITY OR BY THE EUROPEAN DEVELOPMENT FUND CONTENT**

#### **PRELIMINARY PROVISIONS**

- Article 1 Definition
- Article 2 Law and language of the contract
- Article 3 Order of precedence of contract documents
- Article 4 Communications
- Article 5 Assignment
- Article 6 Subcontracting

#### **OBLIGATIONS OF THE CONTRACTING AUTHORITY**

- Article 7 Supply of documents
- Article 8 Assistance with local regulations

#### **OBLIGATIONS OF THE CONTRACTOR**

- Article 9 General Obligations
- Article 10 Origin
- Article 11 Performance guarantee
- Article 12 Insurance
- Article 13 Programme of implementation of the tasks
- Article 14 Contractor's drawings
- Article 15 Sufficiency of tender prices
- Article 16 Tax and customs arrangements
- Article 17 Patents and licences

#### **COMMENCEMENT OF IMPLEMENTATION OF THE TASKS AND DELAYS**

- Article 18 Commencement order
- Article 19 Period of implementation of the tasks
- Article 20 Extension of period of implementation of the tasks
- Article 21 Delays in implementation of the tasks
- Article 22 Variations

#### **MATERIALS AND WORKMANSHIP**

- Article 24 Quality of supplies
- Article 25 Inspection and testing

#### **PAYMENTS**

- Article 26 General principles
- Article 27 Payment to third parties
- Article 28 Delayed payments

#### **ACCEPTANCE AND MAINTENANCE**

- Article 29 Delivery
- Article 30 Verification operations
- Article 31 Provisional acceptance
- Article 32 Warranty obligations
- Article 33 After-sales service
- Article 34 Final acceptance

#### **BREACH OF CONTRACT AND TERMINATION**

- Article 35 Breach of contract
- Article 36 Termination by the Contracting Authority
- Article 37 Termination by the Contractor
- Article 38 Force majeure
- Article 39 Decease

#### **DISPUTE SETTLEMENT**

- Article 40 Dispute settlement

#### **ETHICS CLAUSES**

- Article 41 Ethics clauses
- Article 42 Administrative and financial penalties
- Article 43 Checks and audits by Community bodies

## **PRELIMINARY PROVISIONS**

### **Article 1 - Definitions**

1.1. The headings and titles in these General Conditions shall not be taken as part thereof or be taken into consideration in the interpretation of the contract.

1.2. Where the context so permits, words in the singular shall be deemed to include the plural and vice versa, and words in the masculine shall be deemed to include the feminine and vice versa.

1.3. Words designating persons or parties shall include firms and companies and any organization having legal capacity.

1.4. The definitions of the terms used throughout this General Conditions are laid down in the "Glossary of terms", annex A1 to the Practical Guide to contract procedures for EC external actions, which forms an integral part of this contract.

### **Article 2 - Law and language of the contract**

2.1. The Special Conditions shall specify the law governing all matters not covered by the contract.

2.2. The contract and all written communications between the parties will be drafted in the language of the procedure.

### **Article 3 - Order of precedence of contract documents**

3.1. Save where otherwise provided in the special conditions, the contract is made up of the following documents, in order of precedence:

- a) the contract agreement;
  - b) the Special Conditions;
  - c) the General Conditions (Annex I);
  - d) the Technical Specifications (Annex II) including clarifications before the deadline for submission of tenders and minutes from the information meeting/site visit;
  - e) the Technical Offer (Annex III), including clarifications from the Contractor provided during tender evaluation;
  - f) the budget breakdown (Annex IV);
  - g) specified forms and other relevant documents (Annex V)
- Addenda have the order of precedence of the document they are modifying.

3.2. The various documents making up the contract shall be deemed to be mutually explanatory; in cases of ambiguity or divergence, they should be read in the order in which they appear above.

### **Article 4 - Communications**

4.1. Communications between the Contracting Authority and/or the Project Manager on the one hand, and the Contractor on the other, shall be exclusively in writing. Unless otherwise specified in the Special Conditions, communications between the Contracting Authority and/or the Project Manager on the one hand, and the Contractor on the other hand, shall be sent by post, cable, telex, fax transmission, or delivered by hand, to the addresses designated by the Parties for that purpose.

4.2. If the person sending a communication requires acknowledgement of receipt, he/she shall indicate this in his communication. Whenever there is a deadline for the receipt of a written communication, the sender should ask for an acknowledgement of receipt of his communication. In any event, the sender shall take all necessary measures to ensure receipt of his communication.

4.3. Wherever the contract provides for the giving or issue of any notice, consent, approval, certificate or decision, unless otherwise specified such notice, consent, approval, certificate or decision shall be in writing and the words "notify", "certify", "approve" or "decide" shall be construed accordingly. Any such consent, approval, certificate or decision shall not unreasonably be withheld or delayed.

## **Article 5 - Assignment**

5.1. An assignment shall be valid only if it is a written agreement by which the Contractor transfers his contract or part thereof to a third party.

5.2. The Contractor may not, without the prior written consent of the Contracting Authority, assign the contract or any part thereof, or any benefit or interest thereunder, except in the following cases:

a) a charge, in favour of the Contractor's bankers, of any monies due or to become due under the contract; or

b) the assignment to the Contractor's insurers of the Contractor's right to obtain relief against any other person liable in cases where the insurers have discharged the Contractor's loss or liability.

5.3. For the purpose of Article 5.2, the approval of an assignment by the Contracting Authority shall not relieve the Contractor of his obligations for the part of the contract already performed or the part not assigned.

5.4. If the Contractor has assigned his contract without authorisation, the Contracting Authority may, without giving formal notice thereof, apply as of right the sanctions for breach of contract provided for in Article 35 and 36.

5.5. Assignees must satisfy the eligibility criteria applicable for the award of the contract and they can not be in any of the situations excluding them from participating in contracts which are listed in Section 2.3.3 of the Practical Guide to contract procedure for EC external actions.

## **Article 6 - Subcontracting**

6.1. A subcontract shall be valid only if it is a written agreement by which the Contractor entrusts implementation of a part of the tasks to a third party.

6.2. The Contractor shall not subcontract without the prior written authorisation of the Contracting Authority. The elements of the contract to be subcontracted and the identity of the subcontractors shall be notified to the Contracting Authority. The Contracting Authority shall notify the Contractor of its decision within 30 days of receiving the notification, stating its reasons if authorisation is withheld.

6.3. Subcontractors must satisfy the eligibility criteria applicable for the award of the contract and they can not be in any of the situations excluding them from participating in contracts which are listed in Section 2.3.3 of the Practical Guide to contract procedure for EC external actions.

6.4. The Contracting Authority recognises no contractual link between itself and the subcontractors.

6.5. The Contractor shall be responsible for the acts, defaults and negligence of his subcontractors and their agents or employees, as if they were the acts, defaults or negligence of the Contractor, his agents or employees. The approval by the Contracting Authority of the subcontracting of any part of the contract or of the subcontractor shall not relieve the Contractor of any of his obligations under the contract.

6.6. If a subcontractor has undertaken any continuing obligation extending for a period exceeding that of the warranty period under the contract towards the Contractor in respect of the supplies provided by the subcontractor, the Contractor must, at any time after the expiration of the warranty period, transfer immediately to the Contracting Authority, at the Contracting Authority's request and cost, the benefit of such obligation for the unexpired duration thereof.

6.7. If the Contractor enters into a subcontract without approval, the Contracting Authority may, without giving formal notice thereof, apply as of right the sanctions for breach of contract provided for in Article 35.

## **OBLIGATIONS OF THE CONTRACTING AUTHORITY**

### **Article 7 - Supply of documents**

7.1. If necessary, within 30 days of the signing of the contract, the Project Manager shall, where necessary, provide the Contractor, free of charge, with a copy of the drawings prepared for the implementation of the tasks and a copy of the specifications and other contract documents. The Contractor may purchase additional copies of these drawings, specifications and other documents, in so far as they are available. Upon the issue of the warranty certificate, or upon final acceptance, the Contractor shall return to the Project Manager all drawings, specifications and other contract documents.

7.2. Unless it is necessary for the purposes of the contract, the drawings, specifications and other documents provided by the Project Manager shall not be used or communicated to a third party by the Contractor without the prior consent of the Project Manager.

7.3. The Project Manager shall have authority to issue to the Contractor administrative orders incorporating such supplementary documents and instructions as are necessary for the proper execution of the contract and the remedying of any defects therein.

7.4. The special conditions must indicate the procedure used, if necessary, by the Contracting Authority and the Project Manager to approve drawings and other documents provided by the Contractor.

### **Article 8 - Assistance with local regulations**

8.1. The Contractor may request the assistance of the Contracting Authority in obtaining copies of laws, regulations and information on local customs, orders or bye-laws of the country where the supplies are to be delivered which may affect the Contractor in the performance of his obligations under the contract. The Contracting Authority may provide the assistance requested to the Contractor at the Contractor's cost.

8.2. If necessary, the Contractor shall duly notify the Contracting Authority of details of the supplies so that the Contracting Authority can obtain the requisite permits or import licences.

8.3. If necessary, the Contracting Authority will undertake to obtain, in accordance with the Special Conditions, the requisite permits or import licences within a reasonable period, taking account of the implementation dates for the tasks.

8.4. Subject to the provisions of the laws and regulations on foreign labour of the states in which the supplies are to be delivered, the Contracting Authority shall make every effort to help the Contractor obtain all the visas and permits required for the personnel whose services the Contractor and the Contracting Authority consider necessary and residence permits for their families.

## **OBLIGATIONS OF THE CONTRACTOR**

### **Article 9 - General Obligations**

9.1. The Contractor shall implement the contract with due care and diligence including, where specified, the design, manufacture, delivery to site, erecting, testing and commissioning of the supplies and carrying out of any other work including the remedying of any defects in the supplies. The Contractor shall also provide all necessary equipment, supervision, labour and facilities required for the implementation of the tasks.

9.2. Contractor considers that the requirement of an administrative order goes beyond the scope of the contract, it shall, on pain of breach of contract, notify the Project Manager thereof, giving his reasons, within 30 days of receipt of the order. Execution of the administrative order shall not be suspended because of this notice.

9.3. For matters not governed by the contract, the Contractor shall respect and abide by all laws and regulations in force according to article 2 of the Special Conditions and shall ensure that his personnel, their dependants, and his local employees also respect and abide by all such laws and regulations. The Contractor shall indemnify the Contracting Authority against any claims and proceedings arising from any infringement by the Contractor, his employees and their dependants of such laws and regulations. The Contractor shall respect internationally agreed core labour standards, e.g. the ILO core labour standards, conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation, and the abolition of child labour.

9.4. The Contractor shall treat all documents and information received in connection with the contract as private and confidential. He shall not, save in so far as may be necessary for the purposes of the contract's execution, publish or disclose any particulars of the contract without the prior consent in writing of the Contracting Authority or the Project Manager. If any disagreement arises as to the necessity for any publication or disclosure for the purpose of the contract, the decision of the Contracting Authority shall be final.

9.5. If the Contractor is a joint venture or consortium of two or more persons, all such persons shall be jointly and severally bound to fulfil the terms of the contract according to the law of the state of the Contracting Authority and shall, at the request of the Contracting Authority, designate one of such persons to act as leader with authority to bind the joint venture or consortium. The composition of the joint venture or consortium shall not be altered without the prior consent in writing of the Contracting Authority.

9.6. Save where the European Commission requests or agrees otherwise, the Contractor shall take the necessary measures to ensure the visibility of the European Union financing or cofinancing. These measures must comply with the rules in the Communication and Visibility Manual for EU External Actions published by the European Commission.

## **Article 10 - Origin**

10.1. Save where otherwise provided for in the Special Conditions, supplies must originate in a Member State of the European Union or in an eligible country as stated in the invitation to tender.

10.2. The Contractor must certify that the goods tendered comply with this requirement, specifying their countries of origin. He may be required to provide more detailed information in this respect.

10.3. The Contractor shall present an official certificate of origin on provisional acceptance. Failure to comply with this obligation shall lead, after formal notice, to termination of the contract.

## **Article 11 - Performance guarantee**

11.1. The Contractor shall, together with the return of the countersigned contract, furnish the Contracting Authority with a guarantee for the full and proper execution of the contract. The amount of the guarantee shall be specified in the Special Conditions. It shall be in the range of 5 and 10% of the amount of the contract price, including any amounts stipulated in addenda to the contract.

11.2. The performance guarantee shall be held against payment to the Contracting Authority for any loss resulting from the Contractor's failure to perform his contractual obligations fully and properly.

11.3. The performance guarantee shall be in the format given in Annex V and may be provided in the form of a bank guarantee, a banker's draft, a certified cheque, a bond provided by an insurance and/or bonding company or an irrevocable letter of credit.

11.4. The performance guarantee shall be denominated in the currency in which the contract is payable. No payments shall be made in favour of the Contractor prior to the provision of the guarantee. The guarantee shall continue to remain valid until the contract has been fully and properly performed.

11.5. During the execution of the contract, if the natural or legal person providing the guarantee is not able to abide by his commitments, the guarantee shall cease to be valid. The Contracting Authority shall give formal notice to the Contractor to provide a new guarantee on the same terms as the previous one. Should the Contractor fail to provide a new guarantee, the Contracting Authority may terminate the contract. Before so doing, the Contracting Authority shall send a registered letter with acknowledgement of receipt, which shall set a new deadline of no less than 15 days from the day of delivery of the letter.

11.6. The Contracting Authority shall demand payment from the guarantee of all sums for which the guarantor is liable under the guarantee due to the Contractor's default under the contract, in accordance with the terms of the guarantee and up to the value thereof. The guarantor shall, without delay, pay those sums upon demand from the Contracting Authority and may not raise any objection for any reason whatsoever. Before making any claim under the performance guarantee, the Contracting Authority shall notify the Contractor stating the nature of the default in respect of which the claim is to be made.

11.7. Except for such part as may be specified in the Special Conditions in respect of after-sales service, the performance guarantee shall be released within 45 days of the issue of the final acceptance certificate.

## **Article 12 - Insurance**

12.1. An insurance policy may be required to cover the carriage of supplies; the conditions of this insurance policy may be specified in Article 12 of the Special Conditions, which may also specify other types of insurance to be taken out by the Contractor.

12.2. Notwithstanding the Contractor's insurance obligations under Article 12.1, the Contractor shall bear sole liability for, and indemnify the Contracting Authority and the Project Manager against, any claims by third parties for damage to property or personal injuries arising from the execution of the contract by the Contractor, his subcontractors and their employees.

### **Article 13 - Programme of implementation of the tasks**

13.1. If the Special Conditions so require, the Contractor shall submit a programme of implementation of the tasks for the approval of the Project Manager. The programme shall contain at least the following:

- a) the order in which the Contractor proposes to perform the contract including design, manufacture, delivery to place of receipt, installation, testing and commissioning;
- b) the deadlines for submission and approval of the drawings;
- c) a general description of the methods which the Contractor proposes to adopt for executing the contract; and
- d) such further details and information as the Project Manager may reasonably require.

13.2. The Special Conditions shall specify the time limit within which the programme of implementation of the tasks must be submitted to the Project Manager for approval. They may set time limits within which the Contractor must submit all or part of the detailed drawings, documents and items. They shall also state the deadline for the Project Manager's approval or acceptance of the programme of implementation, detailed drawings, documents and items. The approval of the programme by the Project Manager shall not relieve the Contractor of any of his obligations under the contract.

13.3. No material alteration to the programme shall be made without the approval of the Project Manager. If, however, the progress of the implementation of the tasks does not conform to the programme, the Project Manager may instruct the Contractor to revise the programme and submit the revised programme to him/her for approval.

### **Article 14 - Contractor's drawings**

14.1. If the Special Conditions so provide, the Contractor shall submit to the Project Manager for approval:

- a) the drawings, documents, samples and/or models, according to the time limits and procedures laid down in the Special Conditions;
- b) such drawings as the Project Manager may reasonably require for the implementation of the tasks.

14.2. If the Project Manager fails to notify his decision of approval referred to in Article 14.1 within the deadlines referred to in the contract or the approved programme of implementation of the tasks, such drawings, documents, samples or models shall be deemed to be approved on expiry of the deadlines. If no deadline is specified, they shall be deemed to be approved 30 days after receipt.

14.3. Approved drawings, documents, samples and models shall be signed or otherwise identified by the Project Manager and may only be departed from on the Project Manager's instructions. Any of the Contractor's drawings, documents, samples or models which the Project Manager refuses to approve shall immediately be modified to meet the requirements of the Project Manager and resubmitted by the Contractor for approval.

14.4. The Contractor shall supply additional copies of approved drawings in the form and numbers stated in the contract or in subsequent administrative orders.

14.5. The approval of the drawings, documents, samples or models by the Project Manager shall not relieve the Contractor from any of his obligations under the contract.

14.6. The Project Manager shall have the right to inspect all drawings, documents, samples or models relating to the contract at the Contractor's premises at all reasonable times.

14.7. Before provisional acceptance of the supplies, the Contractor shall supply operation and maintenance manuals together with drawings, which shall be in such detail as will enable the Project Manager to operate, maintain, adjust and repair all parts of the supplies. Unless otherwise stated in the Special Conditions, the manuals and drawings shall be in the language of the contract and in such forms and numbers as stated in the contract. The supplies shall not be considered completed for the purpose of provisional acceptance until such manuals and drawings have been supplied to the Contracting Authority.

### **Article 15 - Sufficiency of tender prices**

15.1. Subject to any provisions which may be laid down in the Special Conditions, the Contractor shall be deemed to have satisfied himself before submitting his tender as to the correctness and sufficiency of the tender and to have taken account of all that is required for the full and proper implementation of the tasks and to have included in his rates and prices all costs related to the supplies, in particular:

- a) the costs of transport;
- b) the costs of handling, packing, loading, unloading, transit, delivery, unpacking, checking, insurance and other administrative costs in connection with the supplies. The packaging shall be the property of the Contracting Authority unless otherwise provided in the Special Conditions;
- c) the cost of documents relating to the supplies where such documents are required by the Contracting Authority;
- d) execution and supervision of on-site assembly and/or commissioning of the delivered supplies;
- e) furnishing of tools required for assembly and/or maintenance of the delivered supplies;
- f) furnishing of detailed operation and maintenance manuals for each unit of the delivered supplies, as specified in the contract;
- g) supervision or maintenance and/or repair of the supplies, for a period of time stated in the contract, with the stipulation that this service shall not release the Contractor from any warranty obligations under the contract;
- h) training of the Contracting Authority's personnel, at the Contractor's factory and/or elsewhere as specified in the contract.

15.2. Since the Contractor is deemed to have determined its prices on the basis of its own calculations, operations and estimates, it shall, at no additional charge, carry out any work that is the subject of any item in its tender for which it indicates neither a unit price nor a lump sum.

### **Article 16 - Tax and customs arrangements**

Provisions regarding tax and customs arrangements are laid down in the Special Conditions.

### **Article 17 - Patents and licences**

Save where otherwise provided in the Special Conditions, the Contractor shall indemnify the Contracting Authority and the Project Manager against any claim resulting from the use as specified in the contract of patents, licences, drawings, models, or brand or trade marks, unless such infringement results from compliance with the design or specification provided by the Contracting Authority and/or the Project Manager.

# **COMMENCEMENT OF IMPLEMENTATION OF THE TASKS AND DELAYS**

## **Article 18 - Commencement order**

18.1. The Contracting Authority shall fix the date on which implementation of the tasks is to commence and advise the Contractor thereof either in the notice of award of the contract or by administrative order issued by the Project Manager.

18.2. Save where the Parties agree otherwise, implementation of the tasks shall begin no later than 90 days after notification of award of contract. After that date the Contractor shall be entitled not to implement the contract and to obtain its termination or compensation for the damage it has suffered. The Contractor shall forfeit this right unless it exercises it within 30 days of the expiry of the 90-day period.

## **Article 19 - Period of implementation of the tasks**

19.1. The period of implementation of tasks shall commence on the date fixed in accordance with Article 18 and shall be as stated in the contract, without prejudice to extensions of the period which may be granted under Article 20.

19.2. If provision is made for distinct periods of implementation of the tasks for separate lots, in cases where one Contractor is awarded more than one lot per contract, the periods of implementation of the tasks for the separate lots will not be accumulated.

## **Article 20 - Extension of period of implementation of the tasks**

20.1. The Contractor may request an extension to the period of implementation of the tasks if his implementation of the contract is delayed, or expected to be delayed, for any of the following reasons:

- a) extra or additional supplies ordered by the Contracting Authority;
- b) exceptional weather conditions in the country of the Contracting Authority which may affect installation or erection of the supplies;
- c) physical obstructions or conditions which may affect delivery of the supplies, which could not reasonably have been foreseen by a competent contractor;
- d) administrative orders affecting the date of completion other than those arising from the Contractor's default;
- e) failure of the Contracting Authority to fulfil its obligations under the contract;
- f) any suspension of the delivery and/or installation of the supplies which is not due to the Contractor's default;
- g) force majeure;
- h) any other causes referred to in these General Conditions which are not due to the Contractor's default.

20.2. Within 15 days of realising that a delay might occur, the Contractor shall notify the Project Manager of his intention to make a request for extension of the period of implementation of the tasks to which it considers himself entitled and, save where otherwise agreed between the Contractor and the Project Manager, within 30 days provide the Project Manager with comprehensive details so that the request can be examined.

20.3. Within 30 days the Project Manager shall, by written notice to the Contractor after due consultation with the Contracting Authority and, where appropriate, the Contractor, grant such extension of the period of implementation of the tasks as may be justified, either prospectively or retrospectively, or inform the Contractor that it is not entitled to an extension.

## **Article 21 - Delays in implementation of the tasks**

21.1. If the Contractor fails under his own responsibility to deliver any or all of the goods or perform the services within the time limit(s) specified in the contract, the Contracting Authority shall, without formal notice and without prejudice to its other remedies under the contract, be entitled, for every day which shall elapse between the expiry of the implementation period of the tasks and the actual date of completion, to liquidated damages equal to 5/1000 of the value of the undelivered supplies to a maximum of 15% of the total value of the contract.

21.2. If the non-delivery of any of the goods prevents the normal use of the supplies as a whole, the liquidated damages provided for in paragraph 21.1 shall be calculated on the basis of the total contract value.

21.3. If the Contracting Authority has become entitled to claim at least 15% of the contract value it may, after giving written notice to the Contractor:

- seize the performance guarantee;

- terminate the contract, in which case the Contractor will have no right to compensation;

and

- enter into a contract with a third party for the provision of the balance of the supplies. The

Contractor shall not be paid for this part of the contract. The Contractor shall also be liable for the additional costs and damages caused by his failure.

## **Article 22 - Variations**

22.1. Subject to the limits set in the Practical Guide to contract procedures for EC external actions, the Contracting Authority reserves the right, to vary the quantities as stated in the Special Conditions. The total value of the supplies may not rise or fall as a result of the variation in the quantities by more than 25% of the tender price. The unit prices used in the tender shall be applicable to the quantities procured under the variation. Substantial modifications to the contract, including modifications to the total contract amount, must be made by means of an addendum.

22.2. The Project Manager shall have the power to order any variation to any part of the supplies necessary for the proper completion and/or functioning of the supplies. Such variations may include additions, omissions, substitutions, changes in quality, quantity, form, character, kind, as well as drawings, designs or specifications where the supplies are to be specifically manufactured for the Contracting Authority, method of shipment or packing, place of delivery, and in the specified sequence, method or timing of implementation of the tasks. No order for a variation may result in the invalidation of the contract, but the financial effect of any such variation shall be valued in accordance with Article 22.6.

22.3. No variation shall be made except by administrative order, subject to the following provisions:

- a)** if, for whatever reason, the Project Manager believes it necessary to give an order orally, he/she shall confirm the order by an administrative order as soon as possible;

- b)** if the Contractor confirms in writing an oral order given for the purpose of Article 22.3.a and the confirmation is not contradicted in writing forthwith by the Project Manager, an administrative order shall be deemed to have been issued for the variation;

- c)** an administrative order for a variation shall not be required when increasing or decreasing the quantity of any work because the estimates in the budget breakdown were too high or too low.

22.4. Save where Article 22.2 provides otherwise, prior to issuing an administrative order for a variation, the Project Manager shall notify the Contractor of the nature and form of that variation. As soon as possible, after receiving such notice, the Contractor shall submit to the Project Manager a proposal containing:

- a description of the tasks, if any, to be performed or the measures to be taken and a programme of implementation of the tasks;
- any necessary modifications to the programme of implementation of the tasks or to any of the Contractor's obligations under the contract;
- any adjustment to the contract price in accordance with the rules set out in Article 22.

22.5. Following the receipt of the Contractor's submission referred to in Article 22.4, the Project Manager shall, after due consultation with the Contracting Authority and, where appropriate, the Contractor, decide as soon as possible whether or not the variation should be carried out.

If the Project Manager decides that the variation is to be carried out, he/she shall issue an administrative order stating that the variation is to be made at the prices and under the conditions given in the Contractor's submission referred to in Article 22.4 or as modified by the Project Manager in accordance with Article 22.6.

22.6. The prices for all variations ordered by the Project Manager in accordance with Articles 22.3 and 22.5 shall be ascertained by the Project Manager in accordance with the following principles:

- where the task is of similar character and implemented under similar conditions to an item priced in the budget breakdown, it shall be valued at such rates and prices contained therein;
- where the task is not of similar character or is not implemented under similar conditions, the rates and prices in the contract shall be used as the basis for valuation in so far as is reasonable, failing which a fair valuation shall be made by the Project Manager;
- if the nature or amount of any variation relative to the nature or amount of the whole of the contract or to any part thereof is such that, in the opinion of the Project Manager, any rate or price contained in the contract for any item of work is by reason of such variation rendered unreasonable, then the Project Manager shall fix such rate or price as he/she thinks reasonable and proper in the circumstances;
- where a variation is necessitated by a default or breach of contract by the Contractor, any additional cost attributable to such variation shall be borne by the Contractor.

22.7. On receipt of the administrative order requesting the variation, the Contractor shall proceed to carry out the variation and be bound by that order in so doing as if such variation were stated in the contract. The supplies shall not be delayed pending the granting of any extension of implementation period of tasks or adjustment to the contract price. Where the order for a variation precedes the adjustment to the contract price, the Contractor shall keep records of the costs of undertaking the variation and of the time expended thereon. Such records shall be open to inspection by the Project Manager at all reasonable times.

22.8. Contractual variations not covered by an administrative order must be formalised through an addendum to the contract signed by all parties. Changes of address or bank account may simply be notified in writing by the Contractor to the Contracting Authority. Any contractual variations must respect the general principles defined in the Practical Guide to contract procedures for EC external actions.

## **Article 23 - Suspension**

23.1. The Project Manager may, by administrative order, at any time, instruct the Contractor to suspend:

- a) the manufacture of the supplies; or
- b) the delivery of supplies to the place of acceptance at the time specified for delivery in the programme of implementation of the tasks or, if no time specified, at the time appropriate for it to be delivered; or
- c) the installation of the supplies which have been delivered to the place of acceptance.

23.2. The Contractor shall, during suspension, protect and secure the supplies affected at the Contractor's warehouse or elsewhere, against any deterioration, loss or damage to the extent possible and as instructed by the Project Manager, even if supplies have been delivered to the place of acceptance in accordance with the contract but their installation has been suspended by the Project Manager.

23.3. Additional expenses incurred in connection with such protective measure shall be added to the contract price. The Contractor shall not be paid any additional expenses if the suspension is:

- a) dealt with differently in the contract; or
- b) necessary by reason of normal climatic conditions at the place of acceptance; or
- c) necessary owing to some default of the Contractor; or
- d) necessary for the safety or the proper execution of the contract or any part thereof insofar as such necessity does not arise from any act or default by the Project Manager or the Contracting Authority.

23.4. The Contractor shall not be entitled to such additions to the contract price unless it notifies the Project Manager, within 30 days of receiving the order to suspend progress of delivery, of his intention to make a claim for them.

23.5. The Project Manager, after consultation with the Contracting Authority and the Contractor, shall determine such extra payment and/or extension of the period of implementation of the tasks to be made to the Contractor in respect of such claim as shall, in the opinion of the Project Manager, be fair and reasonable.

23.6. If the period of suspension exceeds 180 days, and the suspension is not due to the Contractor's default, the Contractor may, by notice to the Project Manager, request to proceed with the supplies within 30 days, or terminate the contract.

23.7. Where the award procedure or implementation of the contract is vitiated by substantial errors or irregularities or by fraud, the Contracting Authority shall suspend execution of the contract. Where such errors, irregularities or fraud are attributable to the Contractor, the Contracting Authority may also refuse to make payments or may recover monies already paid, in proportion to the seriousness of the errors, irregularities or fraud. The Contracting Authority may also suspend payments in cases where there are suspected or established errors, irregularities or fraud committed by the Contractor in the performance of another contract funded by the general budget of the European Community or by budgets managed by it or by EDF, which are likely to affect the performance of the present contract.

23.8. The purpose of suspending the contract shall be to verify whether presumed substantial errors and irregularities or fraud have actually occurred. If they are not confirmed, implementation of the contract shall resume as soon as possible. A substantial error or irregularity shall be any infringement of a contract or regulatory provision resulting from an act or an omission that causes or might cause a loss to the Community budget or EDF

## **MATERIALS AND WORKMANSHIP**

### **Article 24 - Quality of supplies**

24.1. The supplies must in all respects satisfy the technical specifications laid down in the contract and conform in all respects to the drawings, surveys, models, samples, patterns and other requirements in the contract, which must be held at the disposal of the Contracting Authority or the Project Manager for the purposes of identification throughout the period of execution.

24.2. Any preliminary technical acceptance stipulated in the Special Conditions should be the subject of a request sent by the Contractor to the Project Manager. The request shall specify the materials, items and samples submitted for such acceptance according to the contract and indicate the lot

number and the place where acceptance is to take place, as appropriate. The materials, items and samples specified in the request must be certified by the Project Manager as meeting the requirements for such acceptance prior to their incorporation in the supplies.

24.3. Even if materials or items to be incorporated in the supplies or in the manufacture of components to be supplied have been technically accepted in this way, they may still be rejected if a further examination reveals defects or faults, in which case they must immediately be replaced by the Contractor. The Contractor may be given the opportunity to repair and make good materials and items which have been rejected, but such materials and items will be accepted for incorporation in the supplies only if they have been repaired and made good to the satisfaction of the Project Manager.

## **Article 25 - Inspection and testing**

25.1. The Contractor shall ensure that the supplies are delivered to the place of acceptance in time to allow the Project Manager to proceed with acceptance of the supplies. The Contractor is deemed to have fully appreciated the difficulties which it might encounter in this respect, and it shall not be permitted to advance any grounds for delay.

25.2. The Project Manager shall be entitled, from time to time, to inspect, examine, measure and test the components, materials and workmanship, and check the progress of preparation, fabrication or manufacture of anything being prepared, fabricated or manufactured for delivery under the contract, in order to establish whether the components, materials and workmanship are of the requisite quality and quantity. This shall take place at the place of manufacture, fabrication, preparation or at the place of acceptance or at such other places as may be specified in the Special Conditions.

25.3. For the purposes of such tests and inspections, the Contractor shall:

- a) provide the Project Manager, temporarily and free of charge, with such assistance, test samples or parts, machines, equipment, tools, labour, materials, drawings and production data as are normally required for inspection and testing;
- b) agree, with the Project Manager, the time and place for tests;
- c) give the Project Manager access at all reasonable times to the place where the tests are to be carried out.

25.4. If the Project Manager is not present on the date agreed for tests, the Contractor may, unless otherwise instructed by the Project Manager, proceed with the tests, which shall be deemed to have been made in the Project Manager's presence. The Contractor shall immediately send duly certified copies of the test results to the Project Manager, who shall, if he/she has not attended the test, be bound by the test results.

25.5. When components and materials have passed the above-mentioned tests, the Project Manager shall notify the Contractor or endorse the Contractor's certificate to that effect.

25.6. If the Project Manager and the Contractor disagree on the test results, each shall state his views to the other within 15 days of such disagreement. The Project Manager or the Contractor may require such tests to be repeated on the same terms and conditions or, if either Party so requests, by an expert selected by common consent. All test reports shall be submitted to the Project Manager, who shall communicate the results of these tests without delay to the Contractor. The results of retesting shall be conclusive. The cost of retesting shall be borne by the Party whose views are proved wrong by the retesting.

25.7. In the performance of their duties, the Project Manager and any person authorised by him/her shall not disclose to unauthorised persons information concerning the undertaking's methods of manufacture and operation obtained through inspection and testing.

## ***PAYMENTS***

### **Article 26 - General principles**

26.1. Payments shall be made in euro or national currency. The Special Conditions shall lay down the administrative or technical conditions governing payments of pre-financing, interim and/or final payments made in accordance with the General Conditions. Where payment is in the national currency, it shall be converted into euro at the rate published on the Infor-Euro on the first working day of the month in which the payment is made.

26.2. Payments due by the Contracting Authority shall be made to the bank account mentioned on the financial identification form completed by the Contractor. The same form, annexed to the payment request, must be used to report changes of bank account.

26.3. Sums due shall be paid within no more than 45 days from the date on which an admissible payment request is registered by the competent department specified in the Special Conditions. The date of payment shall be the date on which the institution's account is debited. The payment request shall not be admissible if one or more essential requirements are not met.

26.4. The 45-day period may be suspended by notifying the Contractor that the payment request cannot be fulfilled because the sum is not due, because appropriate substantiating documents have not been provided or because there is evidence that the expenditure might not be eligible. In the latter case, an inspection may be carried out on the spot for the purpose of further checks. The Contractor shall provide clarifications, modifications or further information within 30 days of being asked to do so. The payment period shall continue to run from the date on which a properly drawn-up payment request is registered.

26.5. The payments shall be made as follows:

- a) 60% of the contract price after the signing of the contract, against provision of the performance guarantee. If the pre-financing payment exceeds EUR 150.000, or if no proof documents have been provided for the selection criteria, the Contractor must provide a financial guarantee for the full amount of the pre-financing payment. This financial guarantee must remain valid until it is released 45 days at the latest after the provisional acceptance of the goods. Where the contractor is a public body the obligation for a financial guarantee may be waived depending on a risk assessment made;
- b) 40% of the contract price, as payment of the balance outstanding, following provisional acceptance of the supplies;

26.6. Where only part of the supplies have been delivered, the 40% payment due following partial provisional acceptance shall be calculated on the value of the supplies which have actually been accepted and the security shall be released accordingly.

26.7. For supplies not covered by a warranty period, the payments listed above shall be aggregated. The conditions to which the payments of pre-financing, interim and/or final payments are subject, shall be as stated in the Special Conditions.

26.8. The payment obligations of the EC under this Contract shall cease at most 18 months after the end of the period of implementation of the tasks, unless the Contract is terminated in accordance with these General Conditions.

26.9. Unless otherwise stipulated in the Special Conditions, contracts shall be at fixed prices, which shall not be revised.

26.10. The Contractor undertakes to repay any amounts paid in excess of the final amount due to the Contracting Authority before the deadline indicated in the debit note which is 45 days from the issuing of that note. Should the Contractor fail to make repayment within the deadline set by the Contracting Authority, the Contracting Authority may (unless the Contractor is a government department or public body of a Member State of the Community) increase the amounts due by adding interest:

- at the rediscount rate applied by the central bank of the country of the Contracting Authority if payments are in the currency of that country;
- at the rate applied by the European Central Bank to its main refinancing transactions in euro where payments are in euro, on the first day of the month in which the time-limit expired, plus seven percentage points.

The default interest shall be incurred over the time which elapses between the date of the payment deadline set by the Contracting Authority, and the date on which payment is actually made. Any partial payments shall first cover the interest thus established.

Amounts to be repaid to the Contracting Authority may be offset against amounts of any kind due to the Contractor. This shall not affect the Parties' right to agree on payment in instalments. Bank charges incurred by the repayment of amounts due to the Contracting Authority shall be borne entirely by the Contractor. Where necessary the European Community may as a donor subrogate itself to the Contracting Authority.

### **Article 27 - Payment to third parties**

27.1. Orders for payments to third parties may be carried out only after an assignment made in accordance with Article 5. The Contracting Authority shall be notified of the assignment.

27.2. Notification of beneficiaries of the assignment shall be the sole responsibility of the Contractor.

27.3. In the event of a legally binding attachment of the property of the Contractor affecting payments due to it under the contract, and without prejudice to the time limit laid down in the Special Conditions, the Contracting Authority shall have 30 days, starting from the day on which it receives notification of the definitive lifting of the obstacle to payment, to resume payments to the Contractor.

### **Article 28 - Delayed payments**

28.1. The Contracting Authority shall pay the Contractor sums due within 45 days of the date on which an admissible payment is registered, in accordance with Article 26 of these General Conditions. This period shall begin to run from the approval of these documents by the competent department referred to in Article 26 of the Special Conditions. These documents shall be approved either expressly or tacitly, in the absence of any written reaction in the 45 days following their receipt accompanied by the requisite documents.

28.2. Once the deadline laid down in Article 28.1 has expired, the Contractor may, within two months of late payment, claim late-payment interest:

- at the rediscount rate applied by the issuing institution of the country of the Contracting Authority where payments are in national currency;
- at the rate applied by the European Central Bank to its main refinancing transactions in euro, as published in the Official Journal of the European Union, where payments are in euro, on the first day of the month in which the deadline expired, plus seven percentage points.

The late-payment interest shall apply to the time which elapses between the date of the payment deadline (exclusive) and the date on which the Contracting Authority's account is debited (inclusive).

28.3. Any default in payment of more than 90 days from the expiry of the period laid down in Article 28.1 shall entitle the Contractor either not to perform the contract or to terminate it, with 30 days' prior notice to the Contracting Authority and the Project Manager.

## **ACCEPTANCE AND MAINTENANCE**

### **Article 29 - Delivery**

29.1. The Contractor shall deliver the supplies in accordance with the conditions of the contract. The supplies shall be at the risk of the Contractor until their provisional acceptance.

29.2. The Contractor shall provide such packaging of supplies as is required to prevent their damage or deterioration in transit to their destination as indicated in the contract. The packaging shall be sufficient to withstand, without limitation, rough handling, exposure to extreme temperatures, salt and precipitation during transit and open storage. Package size and weight shall take into consideration, where appropriate, the remoteness of the final destination of the supplies, and the possible absence of heavy handling facilities at all points in transit.

29.3. The packaging, marking and documentation inside and outside the packages shall comply with such requirements as shall be expressly provided for in the Special Conditions, subject to any variations subsequently ordered by the Project Manager.

29.4. No supplies shall be shipped or delivered to the place of acceptance until the Contractor has received a delivery order from the Project Manager. The Contractor shall be responsible for the delivery at the place of acceptance of all supplies and supplier's equipment required for the purpose of the contract. If the Project Manager fails either to issue the certificate of provisional acceptance or to reject the Contractor's application within the period of 30 days, he/she shall be deemed to have issued the certificate on the last day of that period.

29.5. Each delivery must be accompanied by a statement drawn up by the Contractor. This statement shall be as specified in the Special Conditions.

29.6. Each package shall be clearly marked in accordance with the Special Conditions.

29.7. Delivery shall be deemed to have been made when there is written evidence available to both Parties that delivery of the supplies has taken place in accordance with the terms of the contract, and the invoice(s) and all such other documentation specified in the Special Conditions, have been submitted to the Contracting Authority. Where the supplies are delivered to an establishment of the Contracting Authority, the latter shall bear the responsibility of bailee, in accordance with the requirements of the law applicable to the contract, during the time which elapses between delivery for storage and acceptance.

### **Article 30 - Verification operations**

30.1. The supplies shall not be accepted until the prescribed verifications and tests have been carried out at the expense of the Contractor. The inspections and tests may be conducted before shipment, at the point of delivery and/or at the final destination of the goods.

30.2. The Project Manager shall, during the progress of the delivery of the supplies and before the supplies are taken over, have the power to order or decide:

- a) the removal from the place of acceptance, within such time or times as may be specified in the order, of any supplies which, in the opinion of the Project Manager, are not in accordance with the contract;
- b) their replacement with proper and suitable supplies;
- c) the removal and proper re-installation, notwithstanding any previous test thereof or interim payment therefore, of any installation which in respect of materials, workmanship or design for which the Contractor is responsible, is not, in the opinion of the Project Manager, in accordance with the contract;

d) that any work done or goods supplied or materials used by the Contractor is or are not in accordance with the contract, or that the supplies or any portion thereof do not fulfil the requirements of the contract.

30.3. The Contractor shall, with all speed and at his own expense, make good the defects so specified. If the Contractor does not comply with such order, the Contracting Authority shall be entitled to employ other persons to carry out the orders and all expenses consequent thereon or incidental thereto shall be deducted by the Contracting Authority from any monies due or which may become due to the Contractor.

30.4. Supplies which are not of the required quality shall be rejected. A special mark may be applied to the rejected supplies. This shall not be such as to alter them or affect their commercial value. Rejected supplies shall be removed by the Contractor from the place of acceptance, if the Project Manager so requires, within a period which the Project Manager shall specify, failing which they shall be removed as of right at the expense and risk of the Contractor. Any works incorporating rejected materials shall be rejected.

30.5. The provisions of Article 30 shall not affect the right of the Contracting Authority to claim under Article 21, nor shall it in any way release the Contractor from any warranty or other obligations under the contract.

### **Article 31 - Provisional acceptance**

31.1. The supplies shall be taken over by the Contracting Authority when they have been delivered in accordance with the contract, have satisfactorily passed the required tests, or have been commissioned as the case may be, and a certificate of provisional acceptance has been issued or is deemed to have been issued.

31.2. The Contractor may apply, by notice to the Project Manager, for a certificate of provisional acceptance when supplies are ready for provisional acceptance. The Project Manager shall within 30 days of receipt of the Contractor's application either:

- issue the certificate of provisional acceptance to the Contractor with a copy to the Contracting Authority stating, where appropriate, his reservations, and, inter alia, the date on which, in his opinion, the supplies were completed in accordance with the contract and ready for provisional acceptance; or
- reject the application, giving his reasons and specifying the action which, in his opinion, is required of the Contractor for the certificate to be issued.

31.3. Should exceptional circumstances make it impossible to proceed with the acceptance of the supplies during the period fixed for provisional or final acceptance, a statement certifying such impossibility shall be drawn up by the Project Manager after consultation, where possible, with the Contractor. The certificate of acceptance or rejection shall be drawn up within 30 days following the date on which such impossibility ceases to exist. The Contractor shall not invoke these circumstances in order to avoid the obligation of presenting the supplies in a state suitable for acceptance.

31.4. If the Project Manager fails either to issue the certificate of provisional acceptance or to reject the supplies within the period of 30 days, he/she shall be deemed to have issued the certificate on the last day of that period, except where the certificate of provisional acceptance is deemed to constitute a certificate of final acceptance. In this case, Article 34.2 below does not apply. If the supplies are divided by the contract into lots, the Contractor shall be entitled to apply for a separate certificate for each lot.

31.5. In case of partial delivery, the Contracting Authority reserves the right to give partial provisional acceptance.

31.6. Upon provisional acceptance of the supplies, the Contractor shall dismantle and remove temporary structures and materials no longer required for use in connection with the implementation of the contract. He shall also remove any litter or obstruction and redress any change in the condition of the place of acceptance as required by the contract.

## **Article 32 - Warranty obligations**

32.1. The Contractor shall warrant that the supplies are new, unused, of the most recent models and incorporate all recent improvements in design and materials, unless otherwise provided in the contract. The Contractor shall further warrant that all supplies shall have no defect arising from design, materials or workmanship, except insofar as the design or materials are required by the specifications, or from any act or omission, that may develop under use of the supplies in the conditions obtaining in the country of the Contracting Authority. This warranty shall remain valid as specified in the Special Conditions.

32.2. The Contractor shall be responsible for making good any defect in, or damage to, any part of the supplies which may appear or occur during the warranty period and which:

- a) results from the use of defective materials, faulty workmanship or design of the Contractor; or
- b) results from any act or omission of the Contractor during the warranty period; or
- c) appears in the course of an inspection made by, or on behalf of, the Contracting Authority.

32.3. The Contractor shall at his own cost make good the defect or damage as soon as practicable. The warranty period for all items replaced or repaired shall recommence from the date on which the replacement or repair was made to the satisfaction of the Project Manager. If the contract provides for partial acceptance, the warranty period shall be extended only for the part of the supplies affected by the replacement or repair.

32.4. If any such defect appears or such damage occurs during the warranty period, the Contracting Authority or the Project Manager shall notify the Contractor. If the Contractor fails to remedy a defect or damage within the time limit stipulated in the notification, the Contracting Authority may:

- a) remedy the defect or the damage itself, or employ someone else to carry out the work at the Contractor's risk and cost, in which case the costs incurred by the Contracting Authority shall be deducted from monies due to or guarantees held against the Contractor or from both; or
- b) terminate the contract.

32.5. In emergencies, where the Contractor cannot be reached immediately or, having been reached, is unable to take the measures required, the Contracting Authority or the Project Manager may have the work carried out at the expense of the Contractor. The Contracting Authority or the Project Manager shall as soon as practicable inform the Contractor of the action taken.

32.6. The warranty obligations shall be stipulated in the Special Conditions and technical specifications. If the duration of the warranty period is not specified, it shall be 365 days.

The warranty period shall commence on the date of provisional acceptance and may recommence in accordance with Article 32.3.

## **Article 33 - After-sales service**

An after-sales service, if required by the contract, shall be provided in accordance with the details stipulated in the Special Conditions. The Contractor shall undertake to carry out or have carried out the maintenance and repair of supplies and to provide a rapid supply of spare parts. The Special Conditions may specify that the Contractor must provide any or all of the following materials, notifications and documents pertaining to spare parts manufactured or distributed by the Contractor:

- a) such spare parts as the Contracting Authority may choose to purchase from the Contractor, it being understood that this choice shall not release the Contractor from any warranty obligations under the contract;
- b) in the event of termination of production of the spare parts, advance notification to the Contracting Authority to allow it to procure the parts required and, following such termination, provision at no cost to the Contracting Authority of the blueprints, drawings and specifications of the spare parts, if and when requested.

### **Article 34 - Final acceptance**

34.1. Upon expiry of the warranty period or, where there is more than one such period, upon expiry of the latest period, and when all defects or damage have been rectified, the Project Manager shall issue the Contractor a final acceptance certificate, with a copy to the Contracting Authority, stating the date on which the Contractor completed his obligations under the contract to the Project Manager's satisfaction. The final acceptance certificate shall be issued by the Project Manager within 30 days of the expiry of the warranty period or as soon as any repairs ordered under Article 32 have been completed to the satisfaction of the Project Manager.

34.2. The contract shall not be considered to have been performed in full until the final acceptance certificate has been signed or is deemed to have been signed by the Project Manager.

34.3. Notwithstanding the issue of the final acceptance certificate, the Contractor and the Contracting Authority shall remain liable for the fulfilment of any obligation incurred under the contract prior to the issue of the final acceptance certificate which remains unperformed at the time that final acceptance certificate is issued. The nature and extent of any such obligation shall be determined by reference to the provisions of the contract.

## **BREACH OF CONTRACT AND TERMINATION**

### **Article 35 - Breach of contract**

35.1. A Party shall be in a breach of contract if it fails to discharge any of its obligations under the contract.

35.2. Where a breach of contract occurs, the injured Party shall be entitled to the following remedies:

- a) damages; and/or
- b) termination of the contract.

35.3. In addition to the above-mentioned measures, damages may be awarded. They may be either:

- a) general damages; or
- b) liquidated damages.

35.4. Recovery of damages, disbursements or expenses resulting from the application of measures provided for in this Article shall be effected by deduction from the sums due to the Contractor, from the deposit, or by payment under the guarantee.

### **Article 36 - Termination by the Contracting Authority**

36.1. The Contracting Authority may, after giving the Contractor seven days' notice, terminate the contract in any of the following cases:

- a) the Contractor substantially fails to perform his obligations under this contract;

- b) the Contractor fails to comply within a reasonable time with a notice given by the Project Manager requiring it to make good any neglect or failure to perform his obligations under the contract which seriously affects the proper and timely implementation of the tasks;
- c) the Contractor refuses or neglects to carry out administrative orders given by the Project Manager;
- d) the Contractor assigns the contract or subcontracts without the authorisation of the Contracting Authority;
- e) the Contractor is bankrupt or being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- f) the Contractor has been convicted of an offence concerning professional conduct by a judgment which has the force of res judicata;
- g) the Contractor has been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;
- h) the Contractor has been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- i) the Contractor, following another procurement procedure or grant award procedure financed by the Community budget or EDF has been declared to be in serious breach of contract for failure to perform its contractual obligations;
- j) any organisational modification occurs involving a change in the legal personality, nature or control of the Contractor, unless such modification is recorded in an addendum to the contract;
- k) any other legal disability hindering implementation of the contract occurs;
- l) the Contractor fails to provide the required guarantee or insurance, or if the person providing the earlier guarantee or insurance required under the present contract is not able to abide by his commitments;
- m) where after the award of the contract, the award procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud.

36.2. Termination shall be without prejudice to any other rights or powers of the Contracting Authority and the Contractor under the contract. The Contracting Authority may, thereafter, conclude any other contract with a third party on behalf of the Contractor. The Contractor's liability for delay in completion shall immediately cease upon termination without prejudice to any liability thereunder that may already have occurred.

36.3. The Project Manager shall, upon the issue of the notice of termination of the contract, instruct the Contractor to take immediate steps to bring the implementation of the tasks to a close in a prompt and orderly manner and to reduce expenditure to a minimum.

36.4. In the event of termination, the Project Manager shall, as soon as possible and in the presence of the Contractor or his representatives or having duly summoned them, draw up a report on the supplies delivered and the work performed and take an inventory of the materials supplied and unused. A statement shall also be drawn up of monies due to the Contractor and of monies owed by the Contractor to the Contracting Authority as at the date of termination of the contract.

36.5. The Contracting Authority shall not be obliged to make any further payments to the Contractor until the supplies are completed, whereupon the Contracting Authority shall be entitled to recover from the Contractor the extra costs, if any, of providing the supplies or shall pay any balance due to the Contractor prior to the termination of the contract.

36.6. If the Contracting Authority terminates the contract it shall be entitled to recover from the Contractor any loss it has suffered under the contractual conditions set out in Article 2 of the Special Conditions.

36.7. This contract shall be automatically terminated if it has given risen to no payment in the three years following its signing.

36.8. The Contracting Authority may, at any time and after giving the Contractor seven days' notice, terminate the contract, in addition to what is already provided for in Article 36.1.

36.9. Where the termination is not due to an act or omission of the Contractor, force majeure or other circumstances beyond the control of the Contracting Authority, the Contractor shall be entitled to claim in addition to sums owing to it for work already performed, an indemnity for loss suffered.

### **Article 37 - Termination by the Contractor**

37.1. The Contractor may, after giving 14 days notice to the Contracting Authority, terminate the contract if the Contracting Authority:

- fails to pay the Contractor the amounts due under any certificate issued by the Project Manager after the expiry of the deadline stated in the Special Conditions;
- consistently fails to meet its obligations after repeated reminders; or
- suspends the delivery of the supplies, or any part thereof, for more than 180 days, for reasons not specified in the contract or not attributable to the Contractor.

37.2. Termination shall be without prejudice to any other rights or powers under the contract of the Contracting Authority and the Contractor.

37.3. In the event of such termination, the Contracting Authority shall pay the Contractor for any loss or damage the Contractor may have suffered.

### **Article 38 - Force majeure**

38.1. Neither Party shall be considered to be in default or in breach of its obligations under the contract if the performance of such obligations is prevented by any event of force majeure arising after the date of notification of award or the date when the contract becomes effective

38.2. For the purposes of this Article, the term "force majeure" means acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars whether declared or not, blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosions and any other similar unforeseeable events which are beyond the Parties' control and cannot be overcome by due diligence.

38.3. Notwithstanding the provisions of Articles 21 and 36, the Contractor shall not be liable to forfeiture of his performance guarantee, liquidated damages or termination for default if, and to the extent that, his delay in implementation of the tasks or other failure to perform his obligations under the contract is the result of an event of force majeure. Nor, notwithstanding the provisions of Articles 28 and 37, shall the Contracting Authority be liable for the payment of interest on delayed payments, for non-implementation of tasks or for termination by the Contractor for default if, and to the extent that, the Contracting Authority's delay or other failure to perform its obligations is the result of force majeure.

38.4. If either Party considers that any circumstances of force majeure have occurred which may affect performance of its obligations, it shall promptly notify the other Party and the Project Manager, giving details of the nature, the probable duration and the likely effect of the circumstances. Unless otherwise directed by the Project Manager in writing, the Contractor shall continue to perform his obligations under the contract as far as is reasonably practicable, and shall employ every reasonable alternative means to perform any obligations that the event of force majeure does not prevent it from

performing. The Contractor shall not employ such alternative means unless directed to do so by the Project Manager.

38.5. If the Contractor incurs additional costs in complying with the Project Manager's directions or using alternative means under Article 38.4, the amount thereof shall be certified by the Project Manager.

38.6. If circumstances of force majeure have occurred and continue for a period of 180 days then, notwithstanding any extension of time for completion of the contract that the Contractor may by reason thereof have been granted, either Party shall be entitled to serve the other with 30 days' notice to terminate the contract. If, on the expiry of the period of 30 days, the situation of force majeure still applies, the contract shall be terminated and, by virtue of the law governing the contract, the Parties shall be released from further execution of the contract.

### **Article 39 – Decease**

39.1. Where the Contractor is a natural person, the contract shall be automatically terminated if that person dies. However, the Contracting Authority shall examine any proposal made by the heirs or beneficiaries if they have notified their wish to continue the contract. The decision of the Contracting Authority shall be notified to those concerned within 30 days of receipt of such proposal.

39.2. Where the Contractor consists of a number of natural persons and one or more of them die, a report shall be agreed between the Parties on the progress of the contract, and the Contracting Authority shall decide whether to terminate or continue the contract in accordance with the undertaking given by the survivors and by the heirs or beneficiaries, as the case may be.

39.3. In the cases provided for in Articles 39.1 and 39.2, persons offering to continue to perform the contract shall notify the Contracting Authority thereof within 15 days of the date of decease.

39.4. Such persons shall be jointly and severally liable for the proper execution of the contract to the same extent as the original Contractor. Continuation of the contract shall be subject to the rules relating to establishment of the guarantee provided for in Article 11.

## **DISPUTE SETTLEMENT**

### **Article 40 - Dispute settlement**

40.1. The Parties shall make every effort to settle amicably any dispute relating to the contract which may arise between them.

40.2. Once a dispute has arisen, a Party shall notify the other Party in writing of the dispute, stating its position on the dispute and any solution which it envisages, and requesting an amicable settlement. The other Party shall respond to this request for amicable settlement within 30 days, stating its position on the dispute. Unless the Parties agree otherwise, the maximum time period laid down for reaching an amicable settlement shall be 120 days from the date of the notification requesting such a procedure. Should a Party not agree to the other Party's request for amicable settlement, should a Party not respond in time to that request or should no amicable settlement be reached within the maximum time period, the amicable settlement procedure is considered to have failed.

40.3. In the absence of an amicable settlement, a Party may notify the other Party in writing requesting a settlement through conciliation by a third person. If the European Commission is not a Party to the contract, the Commission can accept to intervene as such a conciliator.

The other Party shall respond to the request of conciliation within 30 days. Unless the Parties agree otherwise, the maximum time period laid down for reaching a settlement through conciliation shall be 120 days from the notification requesting such a procedure. Should a Party not agree to the other Party's request for conciliation, should a Party not respond in time to that request or should no settlement be reached within the maximum time period, the conciliation procedure is considered to have failed.

40.4. If amicable settlement procedure and, if so requested, the conciliation procedure fails, each party may refer the dispute to either the decision of a national jurisdiction or arbitration, as specified in Article 40 of the Special Conditions.

## **ETHICS CLAUSES**

### **Article 41 - Ethic clauses**

41.1. Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee or the Contracting Authority during the process of examining, clarifying, evaluating and comparing tenders shall lead to the rejection of his candidacy or tender.

41.2. Without the Contracting Authority's prior written authorisation, a Contractor and his staff or any other company with which the Contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for the project.

41.3. This prohibition also applies to any other programmes or projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the Contractor.

41.4. When putting forward a candidacy or tender, the candidate or tenderer shall declare that it is affected by no potential conflict of interest and has no particular link with other tenderers or parties involved in the project. Should such a situation arise during execution of the contract, the Contractor must immediately inform the Contracting Authority.

41.5. The Contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of his profession. He shall refrain from making public statements about the project or services without the Contracting Authority's prior approval. He may not commit the Contracting Authority in any way without its prior written consent.

41.6. For the duration of the contract the Contractor and his staff shall respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary state.

41.7. The Contractor may accept no payment connected with the contract other than that provided for therein. The Contractor and his staff must not exercise any activity or receive any advantage inconsistent with their obligations to the Contracting Authority.

41.8. The Contractor and his staff shall be obliged to maintain professional secrecy for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the Contractor shall be confidential.

41.9. The contract shall govern the Parties' use of all reports and documents drawn up, received or presented by them during the execution of the contract.

41.10. The Contractor shall refrain from any relationship likely to compromise his independence or that of his staff. If the Contractor ceases to be independent, the Contracting Authority may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to

compensation. The Commission reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process and if the Contracting Authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, "corrupt practices" are 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.

41.11. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

41.12. The Contractor undertakes to supply the Commission on request with all supporting documents relating to the conditions of the contract's execution. The Commission may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected unusual commercial expenses.

## **Article 42 - Administrative and financial penalties**

42.1. Without prejudice to the application of penalties laid down in the contract, a Contractor who has been guilty of making false declarations, has made substantial errors or committed irregularities and fraud, or has been found in serious breach of its contractual obligations, may be excluded from all contracts and grants financed by the Community budget or EDF for a maximum of five years from the time when the infringement is established, as confirmed after an adversarial procedure with the Contractor. The Contractor may present his arguments against this penalty within 30 days of notification of the penalty by registered letter with acknowledgement of receipt or any equivalent means. In the absence of any reaction on the part of the Contractor, or of withdrawal of the penalty by the Commission within 30 days of receipt of the Contractor's arguments against it, the decision imposing the penalty shall become enforceable. That period may be increased to ten years in the event of a repeat offence within five years of the first infringement.

42.2. If the Contractor is found to have seriously failed to meet its contractual obligations, it shall incur financial penalties representing 2-10% of the total value of the contract in question. That rate may be increased to 4-20% in the event of a repeat offence within five years of the first infringement.

42.3. Where, after the award of the contract, the award procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud, and where this is attributable to the Contractor, the Contracting Authority may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with this Contractor, in proportion to the seriousness of the errors, irregularities or fraud.

## **Article 43 - Checks and audits by Community bodies**

43.1. The Contractor will allow the European Commission, the European Anti-Fraud Office and the European Court of Auditors to verify, by examining the documents or by means of on-the-spot checks, the implementation of the project and conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document relevant to the financing of the project. These inspections may take place up to 7 years after the final payment.

43.2. Furthermore, the Contractor will allow the European Anti-Fraud Office to carry out checks and verification on the spot in accordance with the procedures set out in the European Community legislation for the protection of the financial interests of the European Communities against fraud and other irregularities.

43.3. To this end, the Contractor undertakes to give appropriate access to staff or agents of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors to the sites and locations at which the Contract is carried out, including its information systems, as well as all documents and databases concerning the technical and financial management of the project and to take all steps to facilitate their work. Access given to agents of the European Commission, European Anti-Fraud Office and the European Court of Auditors shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject. Documents must be easily accessible and filed so as to facilitate their examination and the Consultant must inform the Contracting Authority of their precise location.

43.4. The Contractor guarantees that the rights of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors to carry out audits, checks and verification will be equally applicable, under the same conditions and according to the same rules those set out in this Article, to any sub-contractor or any other party benefiting from EC or EDF funds.

# ***ANNEX II + III: TECHNICAL SPECIFICATIONS + TECHNICAL OFFER***

**Contract title: Framework Contract for the Supply of Drinking Water.  
Publication reference: PROC/150/09/ Drinking Water FWC II**

p 1 /...

**Column 1-2 should be completed by the Contracting Authority**

**Column 3-4 should be completed by the tenderer**

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

Annex III - the Contractor's technical offer

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

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

The eventual documentation supplied should clearly indicate (highlight, mark) the models offered and the options included, if any, so that the evaluators can see the exact configuration. Offers that do not permit to identify precisely the models and the specifications may be rejected by the evaluation committee.

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

## MANDATORY ANCILLARY SERVICES.

### A. Delivery of Drinking Water at EULEX Facilities.

1. Drinking Water in plastic bottles and 19.5 litres containers, will have to be delivered by the contractor at EULEX Facilities
2. The cost of the deliveries shall NOT be divided from the cost of the water i.e. the delivery costs shall be incorporated into the unit-prices for the water as below specified under annex IV (financial offer). **No additional cost than the unit-prices specified in the tenderer's financial offer (annex IV) may be later invoiced to EULEX Kosovo.**
3. The deliveries shall be at EULEX Kosovo Regional Centres (Peja/Pec; Mitrovice/Mitrovica; Gjilan/Gnjilane, Ferizaj/Urosevac and Prizren) and in several locations; up to twelve (12) in Pristina region.
4. Empty 19.5 litres containers shall be removed from EULEX locations at the same time as fresh supplies are delivered

### B. Supply of Water Dispensers.

1. The contractor will have to provide, maintain and service (for the entire duration of the framework contract), **up to 150 water dispensers** for the 19.5 litres containers. **All dispensers shall be installed within 21 days after the date of signature of the contract.**
2. Water dispensers shall be placed in EULEX Regional Centres (Peja/Pec; Mitrovice/Mitrovica; Gjilan/Gnjilane, Ferizaj/Urosevac and Prizren) and in various locations in Pristina (up to 12).
3. The cost for installing, servicing, maintaining, repairing and replacing (as required) these 150 water dispensers shall be integrated into the unit-price of the water in 19.5 litres containers. **No additional cost than the unit-prices specified in the tenderer's financial offer (Annex IV) may be later invoiced to EULEX Kosovo.**
4. The contractor will service, maintain, repair and in case replace all water dispensers during the entire duration of the framework contract to the highest standards and at least to a level that is in accordance with the manufacturer's instructions. Failure to have the water dispensers accordingly serviced would be constitutive of a breach of contract (see article 35 of the general conditions) and may lead to damages and/or to the termination of the framework contract.

## LOT 1. Drinking Water

Item Number	Specifications *	Specifications Offered (incl. brand/model) APPROXIMATE/ESTIMATED QUANTITIES	Notes, remarks, ref to documentation	Evaluation Committee's notes
1.	Still water in 19.5 litres bottled containers.	<b>250,000 litres.*</b>		
2.	Still water in plastic bottles of 1.5 or 2 litres	<b>12,000 litres.*</b>		
3.	Sparkling (carbonated) water in plastic bottles of 1.5 or 2 litres	<b>4,000 litres.*</b>		
4.	Still water in plastic bottles of 0.5 litre.	<b>4,000 litres.*</b>		
5.	Sparkling (carbonated) water in plastic bottles of 0.5 litre.	<b>4,000 litres.*</b>		

**\*all quantities are approximate ones; these are estimations only; the contracting authority is not compelled to purchase any of these estimated quantities.**

**ANNEX IV : Budget breakdown (Model financial offer)**

**PUBLICATION REFERENCE: PROC/150/09/ Drinking Water FWC II      NAME OF TENDERER: [.....]**

- 1. The cost of all above listed ancillary services shall be incorporated into the below unit-prices. No other costs than the below unit-prices may be later invoiced to EULEX Kosovo.**
- 2 All below quantities are approximate ones. The contracting authority is not compelled to purchase any of them.**

<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
<b>ITEM NUMBE R</b>	<b>QUANTITY</b>	<b>SPECIFICATIONS OFFERED (INCL BRAND/MODEL)</b>	<b>UNIT COSTS WITH DELIVERY AND ALL ANCILLIARY SERVICES DDU<sup>10</sup> &lt;PLACE OF ACCEPTANCE&gt; EUROS</b>	<b>TOTAL EUROS</b>
1	250,000			
2	12,000			
3	4,000			
4	4,000			
5	4,000			
			TOTAL	

<sup>10</sup> <DDP (Delivered Duty Paid) /DDU (Delivered Duty Unpaid)> - Incoterms 2000 International Chamber of Commerce - <http://www.iccwbo.org/incoterms/id3040/index.html>

# TENDER GUARANTEE FORM

Specimen tender guarantee

< To be completed on paper bearing the letterhead of the financial institution >

For the attention of Yves De Kermabon, Head of EULEX Kosovo, referred to below as the  
“Contracting Authority”

<Date>

Title of contract: **Framework Contract for the Supply of Drinking Water.**

Identification number: **PROC/150/09/ Drinking Water FWC II**

We, the undersigned, <name and address of financial institution>, hereby irrevocably declare that we will guarantee as primary obligor, and not merely as a surety on behalf of <Tenderer's name and address> the payment to the Contracting Authority of <amount of the tender guarantee>, this amount representing the guarantee referred to in article 11 of the Procurement Notice.

Payment shall be made without objection or legal proceedings of any kind, upon receipt of your first written claim (sent by registered letter with confirmation of receipt) if the Tenderer does not fulfil all obligations stated in its tender. We shall not delay the payment, nor shall we oppose it for any reason whatsoever. We shall inform you in writing as soon as payment has been made.

We note that the guarantee will be released at the latest within 45 days of the expiry of the tender validity period, including any extensions, in accordance with Article 8 of the Instructions to Tenderers [and in any case at the latest on (1 year after the deadline for submission of tenders)]<sup>1</sup>.

The law applicable to this guarantee shall be that of <country of the Contracting Authority/ country in which the financial institution issuing the guarantee is established>. Any dispute arising out of or in connection with this guarantee shall be referred to the courts of <name of the country of the Contracting Authority>.

The guarantee will enter into force and take effect from the submission deadline of the tender.

Name: ..... Position: .....

Signature: .....

Date:

”.

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<sup>1</sup> This mention has to be inserted only where the law applicable to the guarantee imposes a precise expiry date

## ANNEX V: MODEL PERFORMANCE GUARANTEE

<To be completed on paper bearing the letterhead of the financial institution >  
For the attention of  
<Name and address of the Contracting Authority>  
referred to below as the “Contracting Authority”

Subject: Guarantee No...

Performance Guarantee for the full and proper execution of contract **PROC/150/09/ Drinking Water FWC II** (please quote number and title in all correspondence)

We the undersigned, <name and address of financial institution>, hereby irrevocably declare that we guarantee as primary obligor, and not merely as a surety on behalf of <Contractor's name and address>, hereinafter referred to as “the Contractor”, payment to the Contracting Authority of <amount of the performance guarantee>, representing the performance guarantee mentioned in Article 11 of the Special Conditions of the contract **PROC/150/09/ Drinking Water FWC II** concluded between the Contractor and the Contracting Authority, hereinafter referred to as “the Contract”.

Payment shall be made without objection or legal proceedings of any kind, upon receipt of your first written claim (sent by registered letter with confirmation of receipt) stating that the Contractor has failed to perform its contractual obligations fully and properly and that the Contract has been terminated. We shall not delay the payment, nor shall we oppose it for any reason whatsoever. We shall inform you in writing as soon as payment has been made.

We accept notably that no amendment to the terms of the Contract can release us from our obligation under this guarantee. We waive the right to be informed of any change, addition or amendment to the Contract.

We note that the guarantee will be released within 45 days of the issue of the final acceptance certificate (except for such part as may be specified in the Special Conditions in respect of after sales service). [and in any case at the latest on (at the expiry of 18 months after the implementation period of the Contract)]<sup>1</sup>.

The law applicable to this guarantee shall be that of <country of the Contracting Authority/country in which the financial institution issuing the guarantee is established>. Any dispute arising out of or in connection with this guarantee shall be referred to the courts of Brussels (Belgium).

This guarantee shall enter into force and take effect upon its signature.

Name: ..... Position: .....

<sup>2</sup> Signature: ..... Date: <Date>

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<sup>1</sup> This mention has to be inserted only where the law applicable to the guarantee imposes a precise expiry date

<sup>2</sup> The name(s) and position(s) of the persons signing on behalf of the guarantor must be shown in printed characters.

## ANNEX V: PRE-FINANCING GUARANTEE FORM

<To be completed on paper bearing the letterhead of the financial institution >  
For the attention of  
<Name and address of the Contracting Authority>  
referred to below as the “Contracting Authority”

Subject: Guarantee No...

Financing Guarantee for the repayment of pre-financing payable under contract **PROC/150/09/ Drinking Water FWC II** (please quote number and title in all correspondence)

We, the undersigned, <name, and address of financial institution>, hereby irrevocably declare that we guarantee as primary obligor, and not merely as surety on behalf of <Contractor's name and address>, hereinafter referred to as “the Contractor”, the payment to the Contracting Authority of <indicate the amount of the pre-financing>, corresponding to the pre-financing as mentioned in Article 26.1 of the Special Conditions of the contract **PROC/150/09/ Drinking Water FWC II** concluded between the Contractor and the Contracting Authority, hereinafter referred to as “the Contract”.

Payment shall be made without objection or legal proceedings of any kind, upon receipt of your first written claim (sent by registered letter with confirmation or receipt) stating that the Contractor has not repaid the pre-financing on request or that the Contract has been terminated. We shall not delay the payment, nor shall we oppose it for any reason whatsoever. We shall inform you in writing as soon as payment has been made.

We accept notably that no amendment to the terms of the Contract can release us from our obligation under this guarantee. We waive the right to be informed of any change, addition or amendment of the Contract.

We note that the guarantee will be released 45 days at the latest after the provisional acceptance of the goods [and in any case at the latest on (at the expiry of 18 months after the implementation period of the Contract)]<sup>1</sup>.

The law applicable to this guarantee shall be that of <country of the Contracting Authority/country in which the financial institution issuing the guarantee is established>. Any dispute arising out of or in connection with this guarantee shall be referred to the courts of Brussels, Belgium.

The guarantee will enter into force and take effect on receipt of the pre-financing payment in the account designated by the Contractor to receive payments.

Name: ..... Position: .....  
<sup>2</sup>Signature: ..... Date: <Date>

<sup>1</sup> This mention has to be inserted only where the law applicable to the guarantee imposes a precise expiry date

<sup>2</sup> The name(s) and position(s) of the persons signing on behalf of the guarantor must be shown in printed characters.

## ADMINISTRATIVE COMPLIANCE GRID

<b>Contract title :</b>	<b>Framework Contract for the Supply of Drinking Water</b>	<b>Publication reference :</b>	<b>PROC/150/09/ Drinking Water FWC II</b>
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Tender envelope number	Name of Tenderer	Is tenderer (consortium) nationality <sup>1</sup> eligible? (Y/N)	Is documentation complete? (Y/N)	Is language as required? (Y/N)	Is tender submission form complete? (Y/N)	Is tenderer's declaration signed (by all consortium members if a consortium)? (Yes/No/ Not Applicable)	Other administrative requirements of the tender dossier? (Yes/No/Not applicable)	Overall decision? (Accept / Reject)
1								
2								
3								
4								
5								

<b>Chairperson's name</b>	
<b>Chairperson's signature</b>	
<b>Date</b>	

<sup>1</sup> If the tender has been submitted by a consortium, the nationalities of **all** the consortium members must be eligible

## EVALUATION GRID

<b>Contract title :</b>	<b>Framework Contract for the Supply of Drinking Water</b>	<b>Publication reference :</b>	<b>PROC/150/09/ Drinking Water FWC II</b>
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Tender envelope No	Name of Tenderer	Rules of origin respected? (Y/N)	Economic & financial capacity? (OK/a/b/...)	Professional capacity? (OK/a/b/...)	Technical capacity? (OK/a/b/...)	Compliance with technical specifications? (OK/a/b/...)	Ancillary services as required? (OK/a/b/.../NA)	Subcontracting statement in accordance with art 6 of the General Conditions? (Y/N)	Other technical requirements in tender dossier? (Yes/No/Not applicable)	Technically compliant? Y/N)	Notes:
1											
2											
3											
4											

<b>Evaluator's name &amp; signature</b>	
<b>Evaluator's name &amp; signature</b>	
<b>Evaluator's name &amp; signature</b>	
<b>Date</b>	

## **D. TENDER FORM FOR A SUPPLY CONTRACT**

**Publication reference: PROC/150/09/ Drinking Water FWC II**

**Title of contract: Framework Contract for the Supply of Drinking Water.**

<Place and date>

**A: Yves de Kermabon, Head of EULEX Kosovo**, and address at EULEX KOSOVO, St. Mbretëresha Teutë 21, Tauk Bashqe, Gërmia, P.O. Box 268, 10000 Pristina-Kosovo

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**One signed** form must be supplied (for each lot, if the tender procedure is divided into lots), together with the number of copies specified in the Instruction to Tenderers. The form must include a signed declaration using the annexed format from each legal entity making the application. Any additional documentation (brochure, letter, etc) sent with the form will not be taken into consideration. Applications being submitted by a consortium (ie, either a permanent, legally-established grouping or a grouping which has been constituted informally for a specific tender procedure) must follow the instructions applicable to the consortium leader and its members. The attachments to this submission form (i.e. declarations, statements, proofs) may be in original or copy. If copies are submitted, the originals must be dispatched to the Contracting Authority upon request. For economical and ecological reasons, we strongly recommend that you submit your files on paper-based materials (no plastic folder or divider). We also suggest you use double-sided print-outs as much as possible.

An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal. Such entities, for instance the parent company of the economic operator, must respect the same rules of eligibility and notably that of nationality, as the economic operator.

### **1 SUBMITTED BY**

	<b>Name(s) of tenderer(s)</b>	<b>Nationality<sup>1</sup></b>
<b>Leader<sup>2</sup></b>		
<b>Member</b>		
<b>Etc ...</b>		

<sup>1</sup> Country in which the legal entity is registered

<sup>2</sup> add/delete additional lines for members as appropriate. Note that a subcontractor is not considered to be a member for the purposes of this tender procedure. Subsequently, the data of the subcontractor must not appear in the data related to the economic, financial and professional capacity. If this tender is being submitted by an individual tenderer, the name of the tenderer should be entered as '**leader**' (and all other lines should be deleted)

## 2 CONTACT PERSON (for this tender)

<b>Name</b>	
<b>Address</b>	
<b>Telephone</b>	
<b>Fax</b>	
<b>E-mail</b>	

## 3 ECONOMIC AND FINANCIAL CAPACITY<sup>1</sup>

Please complete the following table of financial data<sup>2</sup> based on your annual accounts and your latest projections. If annual accounts are not yet available for this year or last year, please provide your latest estimates, clearly identifying estimated figures in italics. Figures in all columns must be on the same basis to allow a direct, year-on-year comparison to be made (or, if the basis has changed, an explanation of the change must be provided as a footnote to the table). Any clarification or explanation which is judged necessary may also be provided.

<b>Financial data</b>	<b>2 years before last year<sup>3</sup></b> €	<b>Year before last year</b> €	<b>Last year</b> €	<b>Average<sup>4</sup></b> €	<b>This year</b> €
Annual turnover <sup>5</sup> , excluding this contract					
Cash and cash equivalents <sup>6</sup> at beginning of year					

<sup>1</sup> Natural persons have to prove their capacity in accordance with the selection criteria and by the appropriate means.

<sup>2</sup> if this application is being submitted by a consortium, the data in the table above must be the sum of the data in the corresponding tables in the declarations provided by the consortium members – see point 7 of this tender form for a supply contract.

<sup>3</sup> Last year=last accounting year for entity.

<sup>4</sup> Amounts entered in the 'Average' column must be the mathematical average of the amounts entered in the four preceding columns of the same row.

<sup>5</sup> The gross inflow of economic benefits (cash, receivables, other assets) arising from the ordinary operating activities of the enterprise (such as sales of goods, sales of services, interest, royalties, and dividends) during the year.

<sup>6</sup> Cash and cash equivalents comprise cash on hand and demand deposits, together with short-term, highly liquid investments that are readily convertible to a known amount of cash, and that are subject to an insignificant risk of changes in value. An investment normally meets the definition of a cash equivalent when it has a maturity of three months or less from the date of acquisition. Equity investments are normally excluded, unless they are in substance a cash equivalent (e.g. preferred shares acquired within three months of their specified redemption date). Bank overdrafts which are repayable on demand and which form an integral part of an enterprise's cash management are also included as a component of cash and cash equivalents.

Net cash from / (used in) operating, investing & financing activities <sup>1</sup> excluding future contracts					
Net forecast cash from/ (used in) future contracts, excluding this contract					
Cash and cash equivalents <sup>6</sup> at end of year [ie, the sum of the above three rows]					

<sup>1</sup> Operating activities are the main revenue-producing activities of the enterprise that are not investing or financing activities, so operating cash flows include cash received from customers and cash paid to suppliers and employees. Investing activities are the acquisition and disposal of long-term assets and other investments that are not considered to be cash equivalents. Financing activities are activities that alter the equity capital and borrowing structure of the enterprise. Interest and dividends received and paid may be classified as operating, investing, or financing cash flows, provided that they are classified consistently from period to period. Cash flows arising from taxes on income are normally classified as operating, unless they can be specifically identified with financing or investing activities.

#### 4 STAFF RESOURCES

Please provide the following personnel statistics for the current year and the two previous years<sup>1</sup>.

Average manpower	Year before last		Last year		This year	
	Overall	Total for fields related to this contract <sup>2</sup>	Overall	Total for fields related to this contract <sup>2</sup>	Overall	Total for fields related to this contract <sup>2</sup>
Permanent staff <sup>3</sup>						
Other staff <sup>4</sup>						
Total						
Permanent staff as a proportion of total staff (%)	%	%	%	%	%	%

<sup>1</sup> if this tender is being submitted by a consortium, the data in the table above must be the sum of the data in the corresponding tables in the declarations provided by the consortium members – see point 7 of this tender form for a supply contract.

<sup>2</sup> Corresponding to the relevant specialisms identified in point 5 below.

<sup>3</sup> staff directly employed by the Tenderer on a permanent basis (ie, under indefinite contracts)

<sup>4</sup> other staff not directly employed by the Tenderer on a permanent basis (ie, under fixed-term contracts)

## 5 FIELDS OF SPECIALISATION

Please use the table below whose objective is to indicate the **relevant specialisms related to this contract** of each legal entity making this tender, by using the names of these specialisms as the row headings and the name of the legal entity as the column headings. Show the relevant specialism(s) of each legal entity by placing a tick (✓) in the box corresponding to those specialisms in which the legal entity has significant experience. [**Maximum 10 specialisms**]

	Leader	Member 2	Member 3	Etc ...
Relevant specialism 1				
Relevant specialism 2				
Etc ... <sup>1</sup>				

<sup>1</sup> add / delete additional lines and/or rows as appropriate. If this tender is being submitted by an individual legal entity, the name of the legal entity should be entered as 'Leader' (and all other columns should be deleted)

## 6 EXPERIENCE

Please complete a table using the format below to summarise the **major relevant supplies** carried out in the course of the past 3 years<sup>1</sup> by the legal entity or entities making this tender. The number of references to be provided must not exceed **15** for the entire tender

<b>Ref # (maximum 15)</b>	<b>Project title</b>		...					
<b>Name of legal entity</b>	<b>Country</b>	<b>Overall supply value (EUR)<sup>2</sup></b>	<b>Proportion supplied by legal entity (%)</b>	<b>No of staff provided</b>	<b>Name of client</b>	<b>Origin of funding</b>	<b>Dates</b>	<b>Name of members if any</b>
...	...	...	...	...	...	...	...	...
<b>Detailed description of supply</b>						<b>Related services provided</b>		
...						...		

<sup>1</sup> In the case of framework contracts (without contractual value), only specific contracts corresponding to assignments implemented under such framework contracts shall be considered.

<sup>2</sup> Amounts actually paid, without the effect of inflation.

## 7 TENDERER'S DECLARATION(S)

**As part of their tender, each legal entity identified under point 1 of this form, including every consortium member, must submit a signed declaration using this format. The declaration may be in original or in copy. If copies are submitted the originals must be dispatched to the Contracting Authority upon request.**

In response to your letter of invitation to tender for the above contract,

we, the undersigned, hereby declare that:

1 We have examined and accept in full the content of the dossier for invitation to tender No **PROC/150/09/ Drinking Water FWC II of 05 October 2009**. We hereby accept its provisions in their entirety, without reservation or restriction.

2 We offer to deliver, in accordance with the terms of the tender dossier and the conditions and time limits laid down, without reserve or restriction:

Lot No 1: [*description of supplies with indication of quantities and origin*]

3 The price of our tender **excluding** spareparts and consumables, if applicable [*excluding the discounts described under point 4*] is:

Lot No 1: [.....]

4 We will grant a discount of [%], or [..... EUROS] in the event of our being awarded the contract.

5 This tender is valid for a period of 90 days from the final date for submission of tenders.

6 If our tender is accepted, we undertake to provide a performance guarantee as required by Article 11 of the Special Conditions.

7 Our firm/company [*and our subcontractors*] has/have the following nationality:  
<.....>

8 We are making this tender in our own right [as member in the consortium led by < name of the leader / ourselves > ]\*. We confirm that we are not tendering for the same contract in any other form. [We confirm, as a member in the consortium, that all members are jointly and severally liable by law for the execution of the contract, that the lead member is authorised to bind, and receive instructions for and on behalf of, each member, that the execution of the contract, including payments, is the responsibility of the lead member, and that all members in the joint venture/consortium are bound to remain in the joint venture/consortium for the entire period of the contract's execution].

- 9 We are not in any of the situations excluding us from participating in contracts which are listed section 2.3.3 of the Practical Guide to contract procedure for EC external actions. In the event that our tender is successful, we undertake, if required, to provide the proof usual under the law of the country in which we are established that we do not fall into these exclusion situations. The date on the evidence or documents provided will be no earlier than 1 year before the date of submission of the tender and, in addition, we will provide a statement that our situation has not altered in the period which has elapsed since the evidence in question was drawn up.

We also undertake, if required, to provide evidence of the financial and economic standing and the technical and professional capacity according to the selection criteria for this call for tender specified in the procurement notice, point 16. The documentary proofs required are listed in section 2.4.12.1.3 and 2.4.12.1.4 of the Practical Guide.

We also understand that if we fail to provide the proof/evidence required, within 15 calendar days after receiving the notification of award, or if the information provided is proved false, the award may be considered null and void.

- 10 We agree to abide by the ethics clauses in Clause 23 of the instructions to tenderers and, in particular, have no conflict of interests or any equivalent relation in that respect with other tenderers or other parties in the tender procedure at the time of the submission of this application.
- 11 We will inform the Contracting Authority immediately if there is any change in the above circumstances at any stage during the implementation of the tasks. We also fully recognise and accept that any inaccurate or incomplete information deliberately provided in this application may result in our exclusion from this and other contracts funded by the EC/EDF.
- 12 We note that the Contracting Authority is not bound to proceed with this invitation to tender and that it reserves the right to award only part of the contract. It will incur no liability towards us should it do so.
- 13 We fully recognise and accept that we may be excluded from tender procedures and contract, in accordance with the Section 2.3.5 of the Practical Guide to contract procedures for EC external actions, for a maximum period of 5 years from the date on which the infringement is established and up to 10 years in the event of a repeated offence within the 5 years of the above-mentioned date. Furthermore, we acknowledge that, should we made false declarations, committed substantial errors, irregularities or fraud, we shall also be subject to financial penalties representing 2 % to 10 % of the total estimated value of the contract being awarded. This rate may be increased to 4% to 20% in the event of a repeat offence within 5 years of the first infringement.
- 14 We are aware that, for the purposes of safeguarding the financial interests of the Communities, our personal data may be transferred to internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel or to the European Anti-Fraud Office.

[\* Delete as applicable]

**If this declaration is being completed by a consortium member:**

The following table contains our financial data as included in the consortium's tender form. These data are based on our annual audited accounts and our latest projections. Estimated figures (ie, those not included in annual audited accounts) are given in italics. Figures in all columns have been provided on the same basis to allow a direct, year-on-year comparison to be made <except as explained in the footnote to the table>.

<b>Financial data</b>	<b>2 years before last <sup>1</sup> €</b>	<b>Year before last year €</b>	<b>Last year €</b>	<b>Average<sup>2</sup> €</b>	<b>This year €</b>
Annual turnover <sup>3</sup> , excluding this contract					
Cash and cash equivalents <sup>4</sup> at beginning of year					
Net cash from / (used in) operating, investing & financing activities <sup>5</sup> excluding future contracts					
Net forecast cash from/ (used in) future contracts, excluding this contract					
Cash and cash equivalents <sup>4</sup> at end of year (ie, the sum of the above three rows)					

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<sup>1</sup> Last year=last accounting year for entity.

<sup>2</sup> Amounts entered in the 'Average' column must be the mathematical average of the amounts entered in the four preceding columns of the same row.

<sup>3</sup> The gross inflow of economic benefits (cash, receivables, other assets) arising from the ordinary operating activities of the enterprise (such as sales of goods, sales of services, interest, royalties, and dividends) during the year.

<sup>4</sup> Cash and cash equivalents comprise cash on hand and demand deposits, together with short-term, highly liquid investments that are readily convertible to a known amount of cash, and that are subject to an insignificant risk of changes in value. An investment normally meets the definition of a cash equivalent when it has a maturity of three months or less from the date of acquisition. Equity investments are normally excluded, unless they are in substance a cash equivalent (e.g. preferred shares acquired within three months of their specified redemption date). Bank overdrafts which are repayable on demand and which form an integral part of an enterprise's cash management are also included as a component of cash and cash equivalents.

<sup>5</sup> Operating activities are the main revenue-producing activities of the enterprise that are not investing or financing activities, so operating cash flows include cash received from customers and cash paid to suppliers and employees. Investing activities are the acquisition and disposal of long-term assets and other investments that are not considered to be cash equivalents. Financing activities are activities that alter the equity capital and borrowing structure of the enterprise. Interest and dividends received and paid may be classified as operating, investing, or financing cash flows, provided that they are classified consistently from period to period. Cash flows arising from taxes on income are normally classified as operating, unless they can be specifically identified with financing or investing activities.

The following table contains our personnel statistics as included in the consortium's tender form:

Average manpower	Previous year		Last year		This year	
	Overall	Total for fields related to this contract <sup>1</sup>	Overall	Total for fields related to this contract <sup>1</sup>	Overall	Total for fields related to this contract <sup>1</sup>
Permanent staff <sup>2</sup>						
Other staff <sup>3</sup>						

Yours faithfully

Name and first name: <[.....]>

Duly authorised to sign this tender on behalf of:

<.....>

Place and date: <.....>]

Stamp of the firm/company:

This tender includes the following annexes:

*[Numbered list of annexes with titles]*

<sup>1</sup> Corresponding to the relevant specialisms identified in point 5 below.

<sup>2</sup> staff directly employed by the Tenderer on a permanent basis (ie, under indefinite contracts)

<sup>3</sup> other staff not directly employed by the Tenderer on a permanent basis (ie, under fixed-term contracts)

## C. GLOSSARY

**Administrative order:** Any instruction or order issued by the Project Manager to the Contractor in writing regarding the provision of the supplies.

**Breakdown of the overall price:** A heading-by-heading list of the rates and costs making up the price for a lump-sum contract.

**Commercial warranty:** The warranty the manufacturer provides for a defined period that the supply will be free from structural defects due to substandard material or workmanship, under conditions of normal commercial use and service. The Commercial warranty should not be confused with - and might go beyond - the warranty period of the contract.

**Conflict of interest:** Any event influencing the capacity of a candidate, tenderer or contractor to give an objective and impartial professional opinion, or preventing him, at any moment, from giving priority to the interests of the Contracting Authority. Any consideration relating to possible contracts in the future or conflict with other commitments, past or present, of a candidate, tenderer or contractor, or any conflict with his own interests. These restrictions also apply to subcontractors and employees of the candidate, tenderer or contractor.

There is a conflict of interests within the meaning of Article 52 of the Financial Regulation where the impartial and objective exercise of the functions of a player in the implementation of the budget or an internal auditor is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary.

**Contract value:** The sum stated in the contract representing the initial estimate payable for carrying out the supplies, or such other sum as ascertained at the end of the contract as due under the contract.

**Contracting Authority:** The party which concludes the contract as provided in the Financing Agreement, be it the Commission for and on behalf of the beneficiary, a country or a legal person governed by public or private law, as mentioned in the financing agreement.

**Day:** Calendar day

**Evaluation committee:** A committee made up of an odd number of voting members (at least three) appointed by the Contracting Authority and possessing the technical, linguistic and administrative capacities necessary to give an informed opinion on tenders.

**Execution period.** The period from contract signature until 18 months after the provisional acceptance of the supply. This period includes the warranty and the final acceptance of the supply.

**Foreign currency:** Any currency, other than the euro, which is permissible under the applicable provisions and regulations and has been indicated in the tender.

**Framework Contract:** agreement concluded between the parties to establish the essential terms governing a series of specific “purchase orders” to be concluded within a specific period for the supply of similar items.

**General conditions:** The general contractual provisions setting out the administrative, financial, legal and technical clauses governing the execution of contracts.

**General damages:** The sum not stated beforehand in the contract, which is awarded by a court or an arbitration tribunal, or agreed between the parties, as compensation payable to an injured party for a breach of the contract by the other party.

**Implementation period.** The period from contract signature, or alternative date if specified in the Special Conditions, until the provisional acceptance of the supply.

**In writing:** This includes any hand-written, typed or printed communication, including telex, cable, e-mail and fax transmissions.

**Liquidated damages:** The sum stated in the contract as compensation payable by the Contractor to the Contracting Authority for failure to complete the contract or part thereof within the periods under the contract, or as payable by either party to the other for any specific breach identified in the contract.

**Most economically advantageous tender:** The tender deemed to be best in terms of the specific criteria laid down for the contract in question, e.g. quality, technical properties, aesthetic and functional qualities, after-sales service and technical assistance and the price or lowest price. These criteria must be published in the procurement notice or stated in the tender dossier.

**Open procedure:** Calls for tender are open where all interested economic operators may submit a tender.

**Period:** A period begins the day after the act or event chosen as its starting point. Where the last day of a period is not a working day in the country of the Contracting Authority, the period expires at the end of the next working day.

**Project Manager:** The legal or natural person responsible for monitoring the execution of the contract on behalf of the Contracting Authority and/or the Commission, where the latter is not the Contracting Authority.

**Purchase orders:** document issued by the contracting authority in accordance with the established terms of the framework contract and determining the types of items and respective quantities to be provided by the contractor, (along with any relevant derogation to the delivery conditions set in the framework contract e.g. place and time of delivery)

**Special conditions:** The special conditions laid down by the Contracting Authority as an integral part of the tender dossier, including modifications to the general conditions, clauses specific to the contract and the terms of reference (for a service contract) or technical specifications (for a supply or works contract).

**Successful tenderer:** The tenderer selected at the end of the procedure for the award of the contract.

**Supplies:** All items which the Contractor is required to supply to the Contracting Authority, including, where necessary, services such as installation, testing, commissioning, provision of expertise, supervision, maintenance, repair, training and other such obligations connected with the items to be provided under the contract.

**Supply contract:** Supply contracts cover the purchase, leasing, rental or hire purchase, with or without option to buy, of products. A contract for the supply of products and, incidentally, for siting and installation shall be considered a supply contract.

**Tender price:** The sum stated by the tenderer in its tender for carrying out the contract.

**Tenderer:** Any natural or legal person or consortium thereof submitting a tender with a view to concluding a contract. The terms "supplier", "contractor" and "service provider" refer to three categories of economic operators, natural or legal persons, who supply products, execute works and provide services respectively.

**Warranty obligations:** The warranty of the Contractor that the supplies are new, unused, without defects, of the most recent models and incorporate all recent improvements in design and materials. This warranty must remain valid for a maximum of 1 year after provisional acceptance. See article 32 of the General Conditions.

**Written communications:** Certificates, notices, orders and instructions issued in writing under the contract.



# FINANCIAL IDENTIFICATION

PRIVACY STATEMENT

[http://ec.europa.eu/budget/execution/ftiers\\_fr.htm](http://ec.europa.eu/budget/execution/ftiers_fr.htm)

ACCOUNT NAME	
ACCOUNT NAME(1)	<input type="text"/>
	<input type="text"/>
ADDRESS	<input type="text"/>
	<input type="text"/>
TOWN/CITY	<input type="text"/>
POSTCODE	<input type="text"/>
COUNTRY	<input type="text"/>

CONTACT	<input type="text"/>
TELEPHONE	<input type="text"/>
FAX	<input type="text"/>
E - MAIL	<input type="text"/>

<u>BANK</u>	
BANK NAME	<input type="text"/>
	<input type="text"/>
BRANCH ADDRESS	<input type="text"/>
	<input type="text"/>
TOWN/CITY	<input type="text"/>
POSTCODE	<input type="text"/>
COUNTRY	<input type="text"/>
ACCOUNT NUMBER	<input type="text"/>
IBAN(2)	<input type="text"/>

REMARKS:

<b>BANK STAMP + SIGNATURE OF BANK REPRESENTATIVE</b> (Both Obligatory)(3)

<b>DATE + SIGNATURE ACCOUNT HOLDER :</b> (Obligatory)
DATE <input type="text"/>

- (1) The name or title under which the account has been opened and not the name of the authorized agent  
(2) If the IBAN Code (International Bank account number) is applied in the country where your bank is situated  
(3) It is preferable to attach a copy of recent bank statement, in which event the stamp of the bank and the signature of the bank's representative are not required. The signature of the account-holder is obligatory in all cases.



## LEGAL ENTITIES

PRIVACY STATEMENT

[http://ec.europa.eu/budget/execution/legal\\_entities\\_fr.htm](http://ec.europa.eu/budget/execution/legal_entities_fr.htm)

### PRIVATE COMPANIES

TYPE OF COMPANY	<input type="text"/>		
NGO	YES <input type="checkbox"/>	NO <input type="checkbox"/>	(Non-Governmental Organisation)
NAME(S)	<input type="text"/>		
	<input type="text"/>		
	<input type="text"/>		
	<input type="text"/>		
ABBREVIATION	<input type="text"/>		
ADDRESS OF HEAD OFFICE	<input type="text"/>		
	<input type="text"/>		
	<input type="text"/>		
POSTCODE	<input type="text"/>	P.O. BOX	<input type="text"/>
TOWN/CITY	<input type="text"/>		
COUNTRY	<input type="text"/>		
VAT (1)	<input type="text"/>		
PLACE OF REGISTRATION	<input type="text"/>		
DATE OF REGISTRATION	<input type="text"/>	<input type="text"/>	<input type="text"/>
	D D	M M	Y Y Y Y
REGISTRATION No (2)	<input type="text"/>		
PHONE	<input type="text"/>	FAX	<input type="text"/>
E-MAIL	<input type="text"/>		

**THIS "LEGAL ENTITIES" FORM SHOULD BE COMPLETED AND RETURNED TOGETHER WITH:**

**1. A COPY OF THE VAT REGISTRATION DOCUMENT IF APPLICABLE AND IF THE VAT NUMBER DOES NOT APPEAR ON THE OFFICIAL DOCUMENT REFERRED TO AT 2 BELOW.**

**2. A COPY OF SOME OFFICIAL DOCUMENT (OFFICIAL GAZETTE, COMPANY REGISTER ETC.) SHOWING THE NAME OF THE LEGAL ENTITY, THE ADDRESS OF THE HEAD OFFICE AND THE REGISTRATION NUMBER GIVEN TO IT BY THE NATIONAL AUTHORITIES.**

**DATE AND SIGNATURE OF AUTHORISED REPRESENTATIVE**



## LEGAL ENTITIES

PRIVACY STATEMENT

[http://ec.europa.eu/budget/execution/legal\\_entities\\_fr.htm](http://ec.europa.eu/budget/execution/legal_entities_fr.htm)

### PUBLIC ENTITIES

TYPE OF COMPANY	<input type="text"/>		
NGO	YES <input type="checkbox"/>	NO <input type="checkbox"/>	(Non-Governmental Organisation)
NAME(S)	<input type="text"/>		
	<input type="text"/>		
	<input type="text"/>		
	<input type="text"/>		
ABBREVIATION	<input type="text"/>		
OFFICIAL ADDRESS	<input type="text"/>		
	<input type="text"/>		
	<input type="text"/>		
POSTCODE	<input type="text"/>	P.O. BOX	<input type="text"/>
TOWN/CITY	<input type="text"/>		
COUNTRY	<input type="text"/>		
VAT**	<input type="text"/>		
PLACE OF REGISTRATION	<input type="text"/>		
DATE OF REGISTRATION	<input type="text"/>	<input type="text"/>	<input type="text"/>
	DD	MM	YYYY
REGISTRATION No	<input type="text"/>		
PHONE	<input type="text"/>	FAX	<input type="text"/>
E-MAIL	<input type="text"/>		

**THIS "LEGAL ENTITIES" FORM SHOULD BE COMPLETED, SIGNED AND RETURNED TOGETHER WITH:**  
\* A COPY OF THE RESOLUTION, LAW, DECREE OR DECISION ESTABLISHING THE ENTITY IN QUESTION;  
\* OR, FAILING THAT, ANY OTHER OFFICIAL DOCUMENT ATTESTING TO THE ESTABLISHMENT OF THE ENTITY BY THE NATIONAL AUTHORITIES  
\*\* IF THIS FIELD IS COMPLETED, PLEASE ATTACH AN OFFICIAL VAT DOCUMENT

DATE:	STAMP
NAME + FUNCTION OF AUTHORISED REPRESENTATIVE	
SIGNATURE	