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EULEX KOSOVO**

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Pristina, 02 March 2011

Our ref.: **PROC/245/10/New Heating System**  
**EuropeAid/131122/M/WKS/XK**

**SUBJECT: INVITATION TO TENDER FOR “New Heating System”**

Further to your enquiry regarding the publication of the above-mentioned invitation to tender, please find enclosed the following documents, which constitute the tender dossier:

**VOLUME 1**

SECTION 1: INSTRUCTIONS TO TENDERERS

SECTION 2: TENDER FORM

Appendix to the Tender

SECTION 3: TENDER GUARANTEE FORM

SECTION 4 : QUESTIONNAIRE

Additional notice to tenderers

General information about the tenderer ..... Form 4.1

Organisation chart..... Form 4.2

Power of attorney..... Form 4.3

Financial statement ..... Form 4.4

Financial identification form ..... Forms 4.5 a) + b)

Technical qualifications:

Overview of the tenderer’s personnel .....Form 4.6.1.1

Personnel to be employed on the contract ..... Form 4.6.1.2

Professional experience of key personnel

Curriculum vitae ..... Form 4.6.1.3

Plant ..... Form 4.6.2

Workplan and programme ..... Form 4.6.3

Experience as contractor ..... Form 4.6.4

Data on joint ventures ..... Form 4.6.5

Litigation history..... Form 4.6.6

Quality assurance system(s)..... Form 4.6.7

Accommodation for the supervisor..... Form 4.6.8

Further information.....Form 4.6.9

SECTION 5: ADMINISTRATIVE COMPLIANCE GRID AND EVALUATION GRID

Administrative compliance grid

Evaluation grid

## **VOLUME 2**

- SECTION 1: CONTRACT FORM
- SECTION 2: GENERAL CONDITIONS FOR WORKS CONTRACTS
- SECTION 3: SPECIAL CONDITIONS
- SECTION 4: SPECIMEN PERFORMANCE GUARANTEE
- SECTION 5: SPECIMEN PREFINANCING PAYMENT GUARANTEE
- SECTION 6: SPECIMEN RETENTION GUARANTEE

## **VOLUME 3**

- TECHNICAL SPECIFICATIONS

## **VOLUME 4**

- MODEL FINANCIAL BID
- BREAKDOWN OF THE OVERALL PRICE IN LUMP SUM CONTRACTS
- BILL OF QUANTITIES IN UNIT PRICE CONTRACTS
- BREAKDOWN OF THE OVERALL PRICE
- BILL OF QUANTITIES

## **VOLUME 5**

- DESIGN DOCUMENTS, INCLUDING DRAWINGS

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

We look forward to receiving your tender and the accompanying tender guarantee **before 10 May 2011 at 15:00hrs**. 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 sincerely,

**Xavier de Marnhac**  
**Head of EULEX Kosovo**

# VOLUME 1

## SECTION I INSTRUCTIONS TO TENDERERS

**PUBLICATION REF.: PROC/245/10/New Heating System**

*EuropeAid/131122/M/WKS/XK*

**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)).**

## CONTENTS

<b>GENERAL PART -----</b>	<b>5</b>
1 GENERAL INSTRUCTIONS-----	5
2 FINANCING-----	5
3 PARTICIPATION -----	5
4 ONLY ONE TENDER PER TENDERER -----	6
5 TENDER EXPENSES-----	6
<b>6 SITE INSPECTION -----</b>	<b>6</b>
<b>TENDERS DOCUMENTS -----</b>	<b>7</b>
7 CONTENT OF TENDER DOCUMENTS -----	7
8 EXPLANATIONS CONCERNING TENDER DOCUMENTS -----	8
9 MODIFICATIONS TO TENDER DOCUMENTS -----	8
<b>TENDERS PREPARATION -----</b>	<b>8</b>
10 LANGUAGE OF TENDERS -----	8
11 CONTENT AND PRESENTATION OF TENDER -----	9
12 INFORMATION/DOCUMENTS TO BE SUPPLIED BY THE TENDERER -----	9
13 TENDER PRICES-----	12
14 PERIOD OF VALIDITY OF TENDERS -----	13
15 TENDER GUARANTEE -----	13
16 VARIANT SOLUTIONS -----	13
<b>SUBMISSION OF TENDERS -----</b>	<b>13</b>
17 SEALING, MARKING AND SUBMISSION OF TENDERS -----	13
18 EXTENSION OF THE DEADLINE FOR SUBMISSION OF TENDERS-----	14
19 LATE TENDERS -----	14
20 ALTERATION AND WITHDRAWAL OF TENDERS-----	14
<b>OPENING AND EVALUATION OF TENDERS -----</b>	<b>15</b>
21 OPENING OF TENDERS -----	15
22 EVALUATION OF TENDERS -----	15
23 CORRECTION OF ERRORS -----	16
<b>CONTRACT AWARD -----</b>	<b>17</b>
24 AWARD CRITERIA -----	17
25 NOTIFICATION OF AWARD, CONTRACT CLARIFICATIONS-----	17
26 CONTRACT SIGNING AND PERFORMANCE GUARANTEE -----	17
27 CANCELLATION OF THE TENDER PROCEDURE -----	18
28 ETHICS CLAUSES-----	18
29 APPEALS -----	20
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## GENERAL PART

### 1 GENERAL INSTRUCTIONS

- 1.1. Tenderers must tender for the whole of the works required by the dossier. Tenders will not be accepted for incomplete lots.
- 1.2 Timetable:

	DATE	TIME*
<b>Clarification meeting (optional)</b>	Not applicable	Not applicable
<b>MANDATORY Site visit</b>	14 April 2011	10:30hrs
<b>Deadline for request for any additional information from the Contracting Authority</b>	19 April 2011	18:00 hrs
<b>Last date on which additional information are issued by the Contracting Authority</b>	29 April 2011	18:00 hrs
<b>Deadline for submission of tenders</b>	10 May 2011	15:00 hrs
<b>Tender opening session</b>	10 May 2011	15:30 hrs
<b>Notification of award to the successful tenderer</b>	June/July 2011 <sup>3</sup>	-
<b>Signature of the contract</b>	June/July 2011 <sup>3</sup>	-

\* All times are in the time zone of Kosovo.

<sup>3</sup> Provisional date

### 2 FINANCING

CFSP/2010/46/ EULEX Kosovo – BOUT de MARNHAC

### 3 PARTICIPATION

- 3.1 Participation in tendering is open to all legal persons participating either individually or in a grouping (consortium) or 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 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. Tenderers must provide evidence of their status.

- 3.3 The eligibility requirement detailed in subclause 3.1 and 3.2 applies to all members of a joint venture/consortium, all subcontractors and all suppliers to tenderers. Every tenderer, member of a joint venture/consortium, every subcontractor providing more than 10% of the works and every supplier providing more than 10% of the works must certify that they meet these conditions and prove their eligibility by a document dated less than 1 year earlier than the deadline for the submission of tenders, drawn up in accordance with their national law or practice or by copies of the original documents defining the constitution and/or legal status and establishing the place of registration and/or statutory seat and, if it is different, the place of central administration. The Contracting Authority may accept other satisfactory evidence that these conditions are met.
- 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 the exclusion situations listed in section 2.3.3 of the Practical Guide to contract procedures for EC external actions. 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.
- 3.5 The exclusion situation referred to in subclause 3.4 applies to all members of a joint venture/consortium, all subcontractors and all suppliers to tenderers.
- 3.6 The upper limit authorised for subcontracting is **30%** of the value of the tender.<sup>1</sup>
- 3.7 No rule of origin is applied.

#### **4 ONLY ONE TENDER PER TENDERER**

A company may not tender for a given contract both individually and as a member of a joint venture/consortium. Submission or participation by a tenderer in more than one tender for a contract will result in the disqualification of all those tenders for that contract in which the party is involved. The same company may only participate as subcontractor in different tenders if that is justified by the specific nature of the market and cleared by the contracting authority.

#### **5 TENDER EXPENSES**

- 5.1. The tenderer will bear all costs associated with the preparation and submission of the tender. The Contracting Authority will in no case be responsible or liable for such costs, whatever the conduct or outcome of the procedure.
- 5.2. The Contracting Authority will neither be responsible for, nor cover, any expenses or losses incurred by the tenderer through site visits and inspections or any other aspect of its tender.

#### **6 SITE INSPECTION**

- 6.1. The tenderer **is obliged to** visit and inspect the site of the works and its surroundings for the purpose of assessing, at its own responsibility, expense and risk, factors necessary for the preparation of its tender and the signing of the contract for the works on **14 April 2011 at 10:30 hrs at EULEX Camp Alpha Bravo- in, Prishtina- Kosovo.**

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<sup>1</sup> 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.

- 6.2. No clarification meeting planned.
- 6.3. The minutes of the site visit will be published on the EULEX website at <http://www.eulex-kosovo.eu/en/tenders>. As proof of participation the tenderers will receive a certificate of their site visit.

## **TENDERS DOCUMENTS**

### **7 CONTENT OF TENDER DOCUMENTS**

The set of tender documents comprises the following documents and should be read in conjunction with any modification issued in accordance with Clause 9:

#### **VOLUME 1**

- SECTION 1: INSTRUCTIONS TO TENDERERS
- SECTION 2: TENDER FORM
- SECTION 3: TENDER GUARANTEE FORM
- SECTION 4 : QUESTIONNAIRE
- SECTION 5: ADMINISTRATIVE COMPLIANCE GRID AND EVALUATION GRID

#### **VOLUME 2**

- SECTION 1: CONTRACT FORM
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#### **VOLUME 3**

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- BREAKDOWN OF THE OVERALL PRICE
- BILL OF QUANTITIES

#### **VOLUME 5**

- DESIGN DOCUMENTS, INCLUDING DRAWINGS

Tenderers bear sole liability for examining with appropriate care the tender documents, including those design documents available for inspection and any modification to the tender documents issued during the tendering period, and for obtaining reliable information with respect to any and all conditions and obligations that may in any way affect the amount or nature of the tender or the execution of the works. In the event that the tenderer is successful, no claim for alteration of the tender amount will be entertained on the grounds of errors or omissions in the obligations of the tenderer described above.

## 8 EXPLANATIONS CONCERNING TENDER DOCUMENTS

- 8.1. Tenderers may submit questions in writing 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 additional information after this date.

The Contracting Authority must reply to all tenderers' questions at least 11 days before the deadline for receipt of tenders.

- 8.2. The questions and answers will be published on the EULEX website at <http://www.eulex-kosovo.eu>.

## 9 MODIFICATIONS TO TENDER DOCUMENTS

- 9.1. The Contracting Authority may amend the tender documents by publishing modifications up to 11 days before the deadline for submission of tenders.
- 9.2. Each modification published will constitute a part of the tender documents and will be published on the EULEX website at <http://www.eulex-kosovo.eu>
- 9.3. The Contracting Authority may, as necessary and in accordance with Clause 18, extend the deadline for submission of tenders to give tenderers sufficient time to take modifications into account when preparing their tenders.

## TENDERS PREPARATION

### 10 LANGUAGE OF TENDERS

- 10.1. The tender and 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. All correspondence relating to payments, including invoices and interim and final payment certificates, must also be sent to the Contracting Authority in English.
- 10.2. 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.

## **11 CONTENT AND PRESENTATION OF TENDER**

- 11.1. Tenders must satisfy the following conditions:
- 11.1.1. Tenders must comprise the documents and information in clause 12 below.
  - 11.1.2. The tender must be signed by a person or persons empowered by the power of attorney submitted in accordance with Form 4.3 of Volume 1, Section 4 of the tender dossier.
  - 11.1.3. The relevant pages of the documents specified in clause 12 must be signed as indicated.
  - 11.1.4. The tenderer must provide all documents required by the provisions of the tender dossier. All such documents, without exception, must comply strictly with these conditions and provisions and contain no alterations made by the tenderer. Tenders which do not comply with the requirements of the tender dossier may be rejected.
- 11.2. The works are not divided into lots. The tenderer must offer the whole of the quantity or quantities indicated. Under no circumstances will tenders for part of the quantities required be taken into consideration.

## **12 INFORMATION/DOCUMENTS TO BE SUPPLIED BY THE TENDERER**

- 12.1 All tender must comprise the following information and duly completed documents:
- 12.1.1 Tender form and appendix, in accordance with the forms provided in Volume 1, section 2;
  - 12.1.2 Documentation as required in the questionnaire in Volume 1, Section 4, including all forms attached;
  - 12.1.3 Bill of quantities/Breakdown of the overall price, detailed breakdown of prices, in the form provided in Volume 4;
    - 12.1.3.1 The prices filled in the detailed breakdown of prices section of the volume 4 are deemed to have been determined on the basis of the conditions in force 30 days prior to the latest date fixed for submission of tenders. The price breakdown shall be used when required for any purpose under the contract, notably to provide the coefficients for the application of the price revision formula referred to in article 48.2 of the Special Conditions).
  - 12.1.4 Cashflow statements;
  - 12.1.5. Copies of the most recent documents showing the organisation chart, legal status and place of registration of the headquarters of the tenderer, a power of attorney empowering the person signing the tender and all related documentation. These documents must correspond to the forms in Volume 1, Section 4 of the tender dossier:  
To be completed in accordance with the questionnaire in Volume 1, Section 4
    - general information about the tenderer (Form 4.1)
    - organisation chart (Form 4.2)
    - power of attorney (Form 4.3).

- 12.1.6. Evidence showing that the liquid assets and access to credit facilities are adequate for this contract, confirmed by a financial statement for the last 3 years verified by a chartered accountant. This evidence must be provided using Form 4.4, Financial statement, in Volume 1, Section 4 of the tender documents.
- 12.1.7. Financial projections for the two years ahead. This information must follow Form 4.4, Financial statement, provided in accordance with Volume 1, Section 4 of the tender documents.
- 12.1.8. Financial identification form (Form 4.5a, Volume 1) and Legal Entity File (Form 4.5b, Volume 1). Where the tenderer has already signed another contract financed by the European Union, it may provide instead of the forms and its supporting documents either the file numbers received or copies of the forms provided on that occasion, unless a change occurred in the meantime.
- 12.1.9. Information about the tenderer's technical qualifications. This information must follow the forms in Volume 1, Section 4 of the tender documents and include:
- a presentation of the tenderer's organisation, including the total number of staff employed (Form 4.6.1.1),
  - a list of the staff proposed for the execution of the contract, with the CVs of key staff (Forms 4.6.1.2 and 4.6.1.3),
  - a list of machines and equipment, which are meant to be used to fulfil the contract.
  - a list of materials and any supplies intended for use in the works.
  - a work plan with brief descriptions of major activities (Form 4.6.3), showing the sequence and proposed timetable for the implementation of the tasks. In particular, the proposal shall detail the temporary and permanent works to be constructed. The tenderer must take account of the prevailing weather conditions and the requirement to prepare designs and obtain building permits prior to the execution of construction works. The tenderer must also submit a comprehensive method statement, with drawings if necessary, showing the methods by which it proposes to carry out the works. In particular, the tenderer must indicate the numbers, types and capacities of the plant and personnel it proposes to use on the major activities of work;
  - a critical milestone bar chart showing times and duties allocated for employees for this contract (Form 4.6.3);
  - data concerning subcontractors and the percentage of works to be subcontracted (Form 4.6.3);
  - evidence of relevant experience in execution of works of a similar nature, including the nature and value of the relevant contracts, as well as works in hand and contractually committed (Form 4.6.4). The evidence shall include successful experience as the prime contractor in construction of at least **3 projects** of the same nature and complexity comparable to the works concerned by the tender during the last **5 years**;
  - information regarding the proposed main site office (Form 4.6.3);
  - if applicable, information about tenderers involved in a joint venture/consortium (Form 4.6.5);
  - details of their litigation history over the last 3 years (Form 4.6.6);
  - an outline of the quality assurance system(s) to be used (Form 4.6.7);
  - any other information (Form 4.6.9).

- 12.1.10. Proof documents, declarations and undertakings according to clauses 3.1-3.6 above. These documents should cover all members of a joint venture/consortium, all subcontractors and all suppliers to tenderers as specified.
- 12.1.11 No rule of origin is applied.
- 12.1.12 Modifications (if any);
- 12.1.13 Tender guarantee of **3,000.00 Euros**, in the form provided in Volume 1, Section 3
- 12.1.14. All tenderers must include the certificate of their site visit in their tender provided in accordance with above clause 6.3.
- 12.2 In order to be considered eligible for the award of the contract, tenderers must provide evidence that they meet the selection criteria. This evidence must be provided by tenderers in the form of the information and documents described in Subclause 12.1 above and in whatever additional form tenderers may wish to utilise.

In the case of a tender submitted by a consortium, unless specified, these selection criteria will be applied to the consortium as a whole:

The selection criteria for each tenderer are as follows:

- 1) **Economic and financial capacity :**
  - a) The average annual turnover of the tenderer in the past 3 years (2010, 2009 and 2008) must be at least equivalent to the amount of its financial offer.
- 2) **Professional capacity :**
  - a) The tenderer (consortium as a whole or sole tenderer) must have the capacity to carry out at least 70% of the Contract Works by his own resources, which means that it must have the equipment, materials, technical expertise, know-how and the human and financial resources necessary to enable him to carry out this percentage of the Contract.
- b) The tenderer shall have employed on a permanent or temporary basis, the following key personnel:
  - **One Civil Engineer** : shall possess qualification in architecture or closely related field plus experience in at least **4 projects** of similar complexity on camp facility.
  - **One mechanical engineer**: shall possess qualification in the installation of central heating system or closely related field plus experience in at least **4 projects** of similar complexity on camp facility.
  - **One Site Manager** shall possess qualification in engineering or closely related field plus **10 years** of experience in managing construction and or refurbishment sites.

**The tenderer shall submit along with its offer the CV's and copies of diplomas, and relevant proof documents related to the professional experience of the key personnel (e.g. contracts of employment, reference letters etc).**

- c). the tenderer shall be **registered** in accordance with its National Legislation for the type of works foreseen.

### 3) Technical capacity

- a) The tenderer (consortium as a whole or sole tenderer) has successfully completed at least **3 projects** of similar nature and complexity (comparable to the works to be carried out under this tender) over the last **5 years**.

**The Tenderer shall supply copies of the respective certificates of provisional or final acceptance issued by the Supervisors/Contracting Authority of the projects concerned or a written letter of satisfaction from the Employer, Clients of that Contract.**

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.

- 12.3 Tenders submitted by companies in partnerships forming a joint venture/consortium must also fulfil the following requirements:
- The tender must include all the information required by Subclause 12.1 above for each member of the joint venture/consortium and the summary data for execution of works by the tenderer.
  - The tender must be signed in a way that legally binds all members. One member must be appointed lead member and that appointment confirmed by submission of powers of attorney signed by legally empowered signatories representing all the individual members. See Form 4.6.5 in Volume 1 and the tender form.
  - All members of the joint venture/consortium are bound to remain in the joint venture/consortium for the whole execution period of the contract. See the declaration in the tender form.

## 13 TENDER PRICES

- 13.1. The currency of the tender is the Euro<sup>2</sup>.
- 13.2. The tenderer must provide a Bill of Quantities/breakdown of the overall price in Euro. The tender price must cover the whole of the works as described in the tender documents. All sums in the bill of quantities/breakdown of the overall price, the questionnaire and other documents must also be expressed in this currency, with the exception of originals of bank and annual financial statements.
- 13.3. Tenderers must quote all components of the Bill of Quantities/breakdown of the overall price exclusive of taxes and customs and import duties. No payment will be made for items which have not been costed; such items will be deemed to be covered by other items on the bill of quantities.
- 13.4. Separately, tenderers must quote, in Euro, the taxes, customs and import duties applicable at the time of submission.
- 13.5. If a discount is offered by the tenderer, it must be clearly specified in the Bill of Quantities/breakdown of the overall price in Volume 4 and indicated in the tender form in

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<sup>2</sup> The currency of tender shall be the currency of the contract and of payment.

Volume 1, Section 1.2. The discount must be quoted for the price excluding taxes and for the whole of the works.

- 13.6. If the tenderer offers a discount, the discount must be included on each interim payment certificate and calculated on the same basis as in the tender.

#### **14 PERIOD OF VALIDITY OF TENDERS**

- 14.1. Tenders must remain valid for a period of 90 days after the deadline for submission of tenders indicated in the procurement notice, the invitation to tender or as modified in accordance with Clauses 9 and/or 18.
- 14.2. In exceptional circumstances the Contracting Authority may, before the period of validity expires, request that tenderers extend the validity of tenders for a specific period, which may not exceed 40 days. Such requests and the responses to them must be made in writing. A tenderer may refuse to comply with such a request without forfeiting its tender guarantee. If the tenderer decides to accede to such a request, it may not modify its tender and it is bound to extend the validity of its tender guarantee for the revised period of validity of the tender.
- 14.3. The successful tenderer must maintain its tender for a further 60 days. The further period is added to the validity period irrespective of the date of notification.

#### **15 TENDER GUARANTEE**

- 15.1. The tenderer must provide, as a part of its tender, a tender guarantee in the form set out in Volume 1, Section 3 of the tender dossier, or in another form acceptable to the Contracting Authority and meeting the essential requirements set out therein. The tender guarantee must be for an amount of **3,000.00 Euros**. The original guarantee must be included in the original tender.
- 15.2. It may be provided in the form of a bank guarantee, a banker's draft, a certified cheque, a guarantee provided by an insurance and/or guarantee company or an irrevocable letter of credit made out to the Contracting Authority.
- 15.3. The tender guarantee must remain valid for 45 days beyond the period of validity of the tender, including any extensions, and be issued to the Contracting Authority for the requisite amount.
- 15.4. The tender guarantees of unsuccessful tenderers will be returned together with the information letter that the tenderer has been unsuccessful.
- 15.5. The tender guarantee of the successful tenderer shall be released when the tenderer has signed the contract and provided the requisite performance guarantee.

#### **16 VARIANT SOLUTIONS**

Variant solutions will not be taken into consideration.

#### **SUBMISSION OF TENDERS**

#### **17 SEALING, MARKING AND SUBMISSION OF TENDERS**

- 17.1. The complete tender must be submitted in 1 (one) original, clearly marked "original" and 3 (three) copies, also clearly marked "copy". In the event of any discrepancy between them the original will prevail.

- 17.2. The technical and financial offers must be placed together in a sealed envelope. The envelopes should then be placed in another sealed envelope/package, All tenders must be received by the Contracting Authority before the deadline **10 May 2011 at 15:00 hrs**, by registered letter with acknowledgement of receipt or hand-delivered against receipt signed by Contracting Authority or its representative.

The tender shall be sent to the following address:

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

- 17.4. 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/245/10/New Heating System**);
  - (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 otvarajuće sesiju”.
  - (d) the name of the tenderer.

## **18 EXTENSION OF THE DEADLINE FOR SUBMISSION OF TENDERS**

The Contracting Authority may, on its own discretion, extend the deadline for submission of tenders by issuing a modification in accordance with Clause 9. In such cases, all rights and obligations of the Contracting Authority and the tenderer regarding the original date specified in the procurement notice will be subject to the new date.

## **19 LATE TENDERS**

- 19.1. 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.
- 19.2. No liability can be accepted for late delivery of tenders. Late tenders will be rejected and will not be evaluated.

## **20 ALTERATION AND WITHDRAWAL OF TENDERS**

- 20.1. Tenderers may alter or withdraw their tenders by written notification prior to the above deadline. No tender may be altered after the deadline for submission. Withdrawals must be unconditional and will end all participation in the tender procedure.
- 20.2. Any such notification of alteration or withdrawal must be prepared and submitted in accordance with Clause 17, and the envelope must also be marked with "alteration" or "withdrawal" as appropriate.
- 20.3. The withdrawal of a tender in the period between the deadline for submission and the date of expiry of the validity of the tender will result in forfeiture of the tender guarantee.

## **OPENING AND EVALUATION OF TENDERS**

### **21 OPENING OF TENDERS**

- 21.1 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.
- 21.2 Tenders will be opened in public session on **10 May 2011 at 15:30** at EULEX, Procurement Section, Ndërtesa Farmed, "Muharrem 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 shall be available to tenderers on request.
- 21.3 At the tender opening, the tenderers' names, the tender prices, any discounts offered, written notifications of alteration and withdrawal, the presence of the tender guarantee (if required) and such other information the Contracting Authority may consider appropriate may be announced.
- 21.4 After the public opening of the tenders, no information relating to the examination, clarification, evaluation or comparison of tenders or recommendations concerning the award of contract can be disclosed until after the contract has been awarded.

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.

### **22 EVALUATION OF TENDERS**

The Contracting Authority reserves the right to ask a tenderer to clarify any part of this offer that the evaluation committee may consider necessary for the evaluation of the offer. Such requests and the responses to them must be made in writing. They may in no circumstances alter or try to change the price or content of the tender, except to correct arithmetical errors discovered by the evaluation committee when analysing tenders.

The Contracting Authority reserves the right to check information submitted by the tenderer if the evaluation committee considers it necessary.

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

The aim at this stage is to check that tenders comply with the 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.

The evaluation committee will check that each tender:

- has been properly signed;
- includes a correct tender guarantee (if required);
- all the elements in the administrative compliance grid are acceptable;

- has complete documentation and information;
- substantially complies with the requirements of these tender documents.

If a tender does not comply with the requirements of the administrative compliance grid, it may be rejected by the evaluation committee when checking admissibility.

## 22.2 Technical evaluation

The evaluation committee must evaluate only those tenders considered substantially compliant in accordance with Clause 22.1.

The purpose of the evaluation process is to identify the tenderer which for the lowest cost is most likely to enable the Contracting Authority to achieve its objectives of having a facility that is completed on time, meets the published criteria and is within the budget available. The evaluation of tenders may take into account not only the construction costs but, if necessary, the operating costs and resources required (ease of operation and maintenance), in line with the technical specifications. The Contracting Authority will examine in detail all the information supplied by the tenderers and will formulate its judgement on the basis of the lowest total cost, including additional costs.

At this step of the evaluation procedure the committee will analyse the tenders technical conformity in relation to the technical specifications, classifying them technically compliant or non-compliant.

## 22.3 Financial evaluation

Once the technical evaluation has been completed the evaluation committee checks that the financial offers contain no arithmetical errors. If the tender procedure contains several lots, financial offers are compared for each lot. The financial evaluation will have to identify the best financial offer for each lot, taking due account of any discounts offered.

When analysing the tender, the evaluation committee will determine the final tender price after adjusting it on the basis of Clause 23.

## 23 CORRECTION OF ERRORS

23.1. Possible errors in the financial offer 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 prevail;
- 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 prevail.

23.2. The amount stated in the tender will be adjusted by the evaluation committee in the event of error, and the tenderer will be bound by that adjusted amount. If the tenderer does not accept the adjustment, its tender will be rejected and its tender guarantee forfeited.

## CONTRACT AWARD

### 24 AWARD CRITERIA

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

### 25 NOTIFICATION OF AWARD, CONTRACT CLARIFICATIONS

Prior to the expiration of the period of validity of tenders, the Contracting Authority will notify the successful tenderer, in writing, that its tender has been selected and draw its attention to any arithmetical errors corrected during the evaluation process. This notification may take the form of an invitation to clarify certain contractual questions raised therein, to which the tenderer must prepare himself to reply. This clarification will be confined to issues that had no direct bearing on the choice of the successful tender. The outcome of such clarifications will be set out in a memorandum of clarifications, to be signed by both parties and incorporated into the contract.

Documentary evidence required from the successful tenderer:

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 any of 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. The above mentioned documents must be submitted for the tenderer, every member of a joint venture/consortium, all subcontractors providing more than 10% of the works and every supplier providing more than 10% of the works. For any other sub-contractor or supplier the successful tenderer must submit a declaration from the intended subcontractor or supplier 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 they are not in a situation of exclusion.

Furthermore evidence of the financial and economic capacity as well as the technical and professional capacity according to the selection criteria specified in subsection 12.2 above will be requested unless satisfactory documents are already included in the tender.

If the successful tenderer fails to provide this documentary proof or statement 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.

After the contract has been signed and the performance guarantee has been provided by the successful tenderer, in accordance with Clause 26, the Contracting Authority will promptly notify the other tenderers that their tenders have not been successful and release their tender guarantees.

### 26 CONTRACT SIGNING AND PERFORMANCE GUARANTEE

26.1. 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.

26.2. 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.

- 26.3. The performance guarantee referred to in the General Conditions is set at **10%** of the amount of the contract and must be presented in the form specified in the annex to the tender dossier. It will be released in accordance with the Special Conditions.

## **27 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 valid response at all;
- the economic or technical parameters of the project have been fundamentally altered;
- exceptional circumstances or force majeure render normal execution 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;
- the award is not in compliance with sound financial management, i.e. does not respect the principles of economy, efficiency and effectiveness (e.g. the price proposed by the tenderer to whom the contract is to be awarded is objectively disproportionate with regard to the price of the market.

**In no event will the Contracting Authority be liable for 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 informed of the possibility of damage. The publication of a procurement notice does not commit the Contracting Authority to implement the programme or project announced.**

## **28 ETHICS CLAUSES**

- 28.1. 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.
- 28.2. Without the Contracting Authority's prior written authorisation, the 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 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.
- 28.3. When putting forward a candidacy or tender, the candidate or tenderer must declare that it is affected by no conflict of interest, and that it 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.
- 28.4. The Contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of its profession. It must 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.

- 28.5. For the duration of the contract, the Contractor and its staff must respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary state.
- 28.6. 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.
- 28.7. The Contractor and its staff are 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 are confidential.
- 28.8. The contract governs the Parties' use of all reports and documents drawn up, received or presented by them during the execution of the contract.
- 28.9. 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.
- 28.10. 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.
- 28.11. All tenders will be rejected or contracts terminated if it emerges that the award or execution 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.
- 28.12. 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.
- 28.13. Contractors found to have paid unusual commercial expenses on projects funded by the European Union are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving EU funds.
- 28.14. 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.

## 29 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 to contract procedures for EC external actions.

# VOLUME 1

## SECTION 2:

### TENDER FORM FOR A WORKS CONTRACT

**Publication reference:** PROC/245/10/New Heating System

*EuropeAid/131122/M/WKS/XK*

**Name of contract:** New Heating System

<Place and date>

**A: Xavier de Marnhac, Head of EULEX Kosovo**, and address at EULEX Kosovo, Ndertesë Farmëd, str. "Muharrem Fejza" p.n., Lagja e Spitalit, 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. **All data included in this form must concern only the legal entity or entities making the application.** 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.

Any additional documentation (brochure, letter, etc) sent with the form will not be taken into consideration. Applications being submitted by a **consortium** (i.e., 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.

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>3</sup></b>
<b>Leader<sup>4</sup></b>		
<b>Member 2*</b>		
<b>Etc ...</b>		

**2 CONTACT PERSON (for this tender)**

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

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<sup>3</sup> Country in which the legal entity is registered.

<sup>4</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. 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).

### 3 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.**

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/245/10/New Heating System of 02 March 2011. We hereby accept its provisions in their entirety, without reservation or restriction.
2. We offer to execute, in accordance with the terms of the tender dossier and the conditions and time limits laid down, without reserve or restriction, the following works:

Lot No 1: [*description of works*]

3. The price of our tender [*excluding the discounts described under point 4*] is:

Lot No 1: [.....]

4. We will grant a discount of [%], or [.....] [*in the event of our being awarded Lot No 1.*].
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 13 of the Special Conditions.
7. Our firm/company [*and our subcontractors*] has/have the following nationality:

<.....>

8. We are making this tender [on an individual basis/as member of 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 of 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 in section 2.3.3 of the Practical Guide to contract procedures 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 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 understand that if we fail to provide this proof 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 28 of the instructions to tenderers and, in particular, have no conflict of interests or any equivalent relation in that respect with other candidates or other parties in the tender procedure at the time of the submission of this application. We have no interest of any nature whatsoever in any other tender in this procedure.
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 contract. 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 EU/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 2.3.4 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]

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*]

**APPENDIX TO TENDER FOR A WORKS CONTRACT**  
[.....]

**Publication reference: PROC/245/10/New Heating System**

***EuropeAid/131122/M/WKS/XK***

**Title of contract: New Heating System**

*(Note: Tenderers are required to fill in the blank spaces in this Appendix)*

	<b>Subclauses of General Conditions or Special Conditions</b>	
Name and address of the Contracting Authority.	EULEX Kosovo Ndërtesa Farmed “Muharren Fejza” p.n. Lagja e Spitalit 10000 Pristina, Kosovo	
Name and address of the tenderer	To be completed by the tenderer	
Name and address of the representative of the Contracting Authority.	EULEX Kosovo Project Manager Ndërtesa Farmed “Muharren Fejza” p.n. Lagja e Spitalit 10000 Pristina, Kosovo	
Financing authority	CFSP/2010/46/ EULEX Kosovo – Bout de Marnhac.	
Deadline for notice to commence	Within 15 days of contract signature	
Period of Implementation	90 calendar days, plus a Defects Liability Period of 24 months.	
Currency	EURO	
Law of the contract	EU law is the law which applies to the contract, complemented, where necessary, by Belgian law	
Language of the contract	English	
Language for communications	English	

Period of access to the site	The period of access to the site will be limited by the Contracting Authority, but however not less than 8 working hours per working day. The Supervisor might extend such period upon Contractor's request by issuing an Administrative Order.	
Amount of performance guarantee	10% of the Contract Price	
Deadline for submission of programme	With 10 days from the signature of the contract	
Normal working hours	08:00hrs-18:00hrs	
Period after the effective date during which the Contracting Authority's representative must issue notice to commence the works	Within 10 days from the contract signature	
Liquidated damages for the works	(3/1000) of the contract value per day of delay.	
Limit of liquidated damages for delay	10% of Contract Price	
Percentage of retention monies	10% of each interim payment	
Minimum amount of interim payment certificates	10% of the Contract price	
Percentage for adjustment of provisional sums	N/A	
Amount of insurance for design	N/A	
Amount of third-party insurance	Insurance with regard to risks and damages to facilities or plant are limited to the Contract Value twice times etc and the number of incidents shall be unlimited.	
Periods for submission of insurance	7 days prior to possession of the site	

	<b>Subclauses of General Conditions or Special Conditions</b>	
Number of members of dispute-settlement committee	Refer to General Conditions of the Contract	
Member of dispute-settlement committee (if not agreed) to be nominated by	Refer to General Conditions of the Contract	
Arbitration rules	Refer to General Conditions of the Contract	
Number of arbitrators	Refer to General Conditions of the Contract	
Language of arbitration	Refer to General Conditions of the Contract	
Place of arbitration	Refer to General Conditions of the Contract	
.....		

Signature \_\_\_\_\_

Capacity \_\_\_\_\_

duly authorised to sign for and on behalf of \_\_\_\_\_

# VOLUME 1

## SECTION 3: TENDER GUARANTEE FORM

### Works contract

(To be completed on paper bearing the letterhead of the financial institution)

For the attention of **Xavier de Marnhac, Head of EULEX Kosovo**, and address at EULEX Kosovo, Ndertesa Farmed, str. "Muharrem Fejza" p.n., Lagja e Spitalit, 10000 Pristina, Kosovo

referred to below as the "Contracting Authority"

Title of contract: **New Heating System**

Identification number: **PROC/245/10/New Heating System, EuropeAid/131122/M/WKS/XK**

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 15 of the Instructions to Tenderers [and in any case at the latest on (1 year after the deadline for submission of tenders)]<sup>5</sup>.

The law applicable to this guarantee shall be that of <enter Belgium or / 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 from the submission deadline of the tender.

Done at ....., ..../..

Name and first name: ..... On behalf of: .....

Signature: .....

*[stamp of the body providing the guarantee]*

---

<sup>5</sup> This mention has to be inserted only where required, for example where the law applicable to the guarantee imposes a precise expiry date

# **VOLUME 1**

## **SECTION 4: QUESTIONNAIRE**

### **CONTENTS**

#### **ADDITIONAL NOTICE TO TENDERERS**

**FORM 4.1 GENERAL INFORMATION ABOUT THE TENDERER**

**FORM 4.2 ORGANISATION CHART**

**FORM 4.3 POWER OF ATTORNEY**

**FORM 4.4 FINANCIAL STATEMENT**

**FORM 4.5 a) FINANCIAL IDENTIFICATION FORM  
b) LEGAL ENTITY FILES**

**FORM 4.6 TECHNICAL QUALIFICATIONS**

- 4.6.1 PERSONNEL
- 4.6.2 PLANT
- 4.6.3 WORKPLAN AND PROGRAMME
- 4.6.4 EXPERIENCE AS CONTRACTOR
- 4.6.5 INFORMATION ON JOINT VENTURES
- 4.6.6 LITIGATION HISTORY
- 4.6.7 QUALITY ASSURANCE SYSTEM(S)
- 4.6.9 FURTHER INFORMATION

## **VOLUME 1**

### **SECTION 4:**

#### ***ADDITIONAL NOTICE TO TENDERERS***

1. All questions contained in the forms must be answered by the tenderer.
2. Additional sheets may be attached as necessary.
3. If a question does not apply to the tenderer, "not applicable" should be entered alongside with a brief explanation of why.
4. Every single page of each form must be numbered consecutively in the bottom right-hand corner.
5. Financial data and declarations presented by the tenderer must be given in euro or national currency. Original bank statements may be also attached for reference.
6. If the requested supporting documents/certificates 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.
7. Each member of a joint venture/consortium must fill in and submit every form.
8. Firms applying as a joint venture/consortium must also complete Form 4.6.5 concerning joint ventures/consortia.
9. The person signing this questionnaire guarantees the truthfulness and accuracy of all the statements made.
10. The accuracy of the answers to the questionnaire, their completeness and the attached documentation will be taken into account in the tender evaluation. The attention of tenderers is also drawn to the fact that the absence of some data may cause their non-compliance in the related item of evaluation.

**VOLUME 1**

**SECTION 4:**

**FORM 4.1  
GENERAL INFORMATION ABOUT THE TENDERER**

- 4.1.1. Name of company  
.....  
.....
- 4.1.2. Registered address  
.....  
..... Telephone .....
- Fax..... Telex..... E-mail.....
- 4.1.3. Names and nationalities of principals/directors and  
    associates.....  
.....  
.....
- 4.1.4. Type of company (natural person, partnership, corporation,  
    etc.).....
- 4.1.5. Description of company (e.g. general civil engineering contractor)
- 4.1.6. Company's nationality.....
- 4.1.7. Number of years experience as contractor  
    - in own country.....  
    - internationally.....
- 4.1.8. Registration details  
.....  
.....  
    Please attach copy of the registration certificate
- 4.1.9. Equity in the company  
    Shares (%).....  
.....
- 4.1.10. Name(s) and address(es) of companies involved in the project and whether  
    parent/subsidiary/subcontractor/other:.....  
.....  
.....
- 4.1.11. If the company is a subsidiary, what involvement, if any, will the parent company have in the  
    project?  
.....
- 4.1.12. Foreign companies must state whether they are established in the state of the Contracting  
    Authority in accordance with applicable regulations (for information only)

Signature: .....  
(a person or persons authorised to sign on behalf of the tenderer)

Date:.....

**VOLUME 1**

**SECTION 4:**

**FORM 4.2  
ORGANISATION CHART**

Please give details here below of the organisation chart of your company, showing the position of directors, key personnel and functions.

Signature.....

*(a person or persons authorised to sign on behalf of the tenderer)*

Date.....

**VOLUME 1**

**SECTION 4:**

**FORM 4.3  
POWER OF ATTORNEY**

Please attach here the power of attorney empowering the signatory of the tender and all related documentation.

Signature: .....

*(a person or persons authorised to sign on behalf of the tenderer)*

Date: .....

# VOLUME 1

## SECTION 4:

### FORM 4.4 FINANCIAL STATEMENT

Please provide all of the information required by this form in euro or national currency (NC) equivalent.

#### 4.4.1 Basic capital

Amount..... Euro or NC  
 Currency..... Euro or NC  
 Authorised..... Euro or NC  
 Issued..... Euro or NC

#### 4.4.2 Annual value of construction work undertaken for each of the last three years, and projected for the next two years

Euro or NC	Year-3	Year-2	Last year	Current year	Year +1	Year +2
At home						
Abroad						
Total						

#### 4.4.3 Approximate value of works in hand (at home and abroad)

..... (euro or national currency)

#### 4.4.4<sup>6</sup> Please attach copies of the company's previous 3 years certified statements of account (with translations into the language of the procedure if necessary) from which the following basic data will be abstracted; and provide the same information projected forward for the next two years.

Euro or NC	Year-2	Year-1	Last year	Current year	Year+1	Year+2
1.Total assets	.....	.....	.....	.....	.....	.....
2.Total liabilities	....	.....	.....	.....	...	...
<i>Net Value (1 minus 2)</i>	<u>.....</u> ....	<u>.....</u> .....	<u>.....</u> .....	<u>.....</u> .....	<u>.....</u> ...	<u>.....</u> ...
3.Liquid assets	.....	.....	.....	.....	.....	.....
4.Short-term debts	....	.....	.....	.....	...	...
<i>Working capital (3 minus 4)</i>	<u>.....</u> ....	<u>.....</u> .....	<u>.....</u> .....	<u>.....</u> .....	<u>.....</u> ...	<u>.....</u> ...

<sup>6</sup> Please see point 4 in Instructions to Tenders if documentary evidence/proofs are needed.

5.Pre-tax profits	.....	.....	.....	.....	.....	.....
6.Losses	.....	.....	.....	.....	.....	.....
	.....	.....	.....	.....	.....	.....
	....	....		....	..	....
				....		

4.4.5 Name and address of banks (principal/others):

.....  
.....  
.....

4.4.6 Please enclose a reference/certificate about the financial situation of the company and its access to credit facilities (maximum amount of credit facility to be stated in euro or NC equivalent)

Signature: .....

*(a person or persons authorised to sign on behalf of the tenderer)*

Date: .....



# 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:**

BANK STAMP + SIGNATURE OF BANK REPRESENTATIVE (Both Obligatory)(3)

DATE + SIGNATURE ACCOUNT HOLDER : (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)

### 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	



## 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"/>		
ABBREVIATION	<input type="text"/>		
ADDRESS OF HEAD OFFICE	<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"/> D D	<input type="text"/> M M	<input type="text"/> 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

# VOLUME 1

## SECTION 4:

### TECHNICAL QUALIFICATIONS

#### FORM 4.6.1.1

#### OVERVIEW OF THE TENDERER'S PERSONNEL

i - Overview

- a - Directors and management .....
- b - Administrative staff .....
- c - Technical staff
  - Engineers .....
  - Surveyors .....
  - Foremen .....
  - Mechanics .....
  - Technicians .....
  - Machine operators .....
  - Drivers .....
  - Other skilled staff .....
  - Labourers and unskilled staff .....

---

Total =====

ii - Site operatives to be employed on the contract (if relevant)

- a - Site management .....
- b - Administrative staff .....
- c - Technical staff
  - Engineers .....
  - Surveyors .....
  - Foremen .....
  - Mechanics .....
  - Technicians .....
  - Machine operators .....
  - Drivers .....
  - Other skilled staff .....
  - Labourers and unskilled staff .....

---

Total =====

Signature .....  
(a person or persons authorised to sign on behalf of the tenderer)

Date .....

# VOLUME 1

## SECTION 4

### FORM 4.6.1.2

#### PERSONNEL TO BE EMPLOYED ON THE CONTRACT

Position/Name	Nationality	Age	Education	Years of experience (with the company/in construction)	Major works for which responsible (project/value)
<b>Quality control</b> ..... .....				/	
<b>Others responsible for</b> ..... .....				/	
<b>Others responsible for</b> ..... ..... ..... .....				/	

Signature .....

*(a person or persons authorised to sign on behalf of the tenderer)*

Date.....

# VOLUME 1

## SECTION 4:

### FORM 4.6.1.3

#### PROFESSIONAL EXPERIENCE OF KEY PERSONNEL

#### CURRICULUM VITAE

(Maximum 3 pages + 3 pages of annexes)

Proposed position in the contract:

1. Surname:
2. Name:
3. Date and place of birth:
4. Nationality:
5. Civil status:  
Address (phone/fax/e-mail):
6. Education:

<i>Institutions:</i>	
<i>Date:</i>	
<i>From (month/year)</i>	
<i>To (month/year)</i>	
<i>Degree:</i>	

7. Language skills

Indicate on a scale of 1 to 5 (1 – excellent; 5 – basic):

<i>Language</i>	<i>Level</i>	<i>Passive</i>	<i>Spoken</i>	<i>Written</i>
	<i>Mother tongue</i>			

8. Membership of professional bodies:
9. Other skills (e.g. computer literacy, etc.):
10. Present position:
11. Years of professional experience:
12. Key qualifications:
13. Specific experience in non-industrialised countries:

<i>Country</i>	<i>Date: from (month/year) to (month/year)</i>	<i>Name and brief description of the project</i>

14. Professional experience:

<i>Date: from (month/year) to (month/year)</i>	
Place	
Company/organisation	
Position	
Job description	

15. Others:

15a. Publications and seminars:

15b. References:

Signature .....

*(a person or persons authorised to sign on behalf of the tenderer)*

Date.....



	DESCRIPTION (type/make/model)	Power/ capacity	No of units	Age (years)	Owned (O) or hired (H)/ and percentage of ownership	Origin (country)	Present approximate value in euro or national currency
<b>B)</b>	<b>VEHICLES AND TRUCKS</b>						
					/		
					/		
					/		
					/		
					/		
<b>C)</b>	<b>OTHER PLANT</b>				/		
					/		
					/		
					/		
					/		
					/		
					/		
					/		
					/		
					/		
					/		
					/		
					/		
					/		
					/		
					/		

Signature .....

*(a person or persons authorised to sign on behalf of the tenderer)*

Date.....

# VOLUME 1

## SECTION 4:

### FORM 4.6.3

#### WORKPLAN AND PROGRAMME

- 4.6.3.1 State the proposed location of your main office on the site, stations (steel/concrete/asphalt structures), warehouses, laboratories, accommodation, etc. (sketches to be attached as required)
- 4.6.3.2 Give a brief outline of your programme for the completion of the works in accordance with the required method of construction and stated time of completion
- 4.6.3.3 Attach a critical milestone bar chart (schedule of execution) representing the construction programme and detailing the relevant activities, dates, allocation of labour and plant resources, etc.
- 4.6.3.4 If the tenderer plans to subcontract part of the works, he must provide the following details:

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

Signature .....

*(a person or persons authorised to sign on behalf of the tenderer)*

Date .....



Name of project/kind of works	Total value of works the Contractor was responsible for <sup>8</sup>	Period of contract	Starting date	Percentage of works completed	Contracting authority and place	Prime contractor (P) or subcontractor (S)	Final acceptance issued? - Yes - Not yet (current contracts) - No
<b><i>B) Abroad</i></b>							

**4.6.4.2<sup>9</sup>** Please attach here available references and certificates from the relevant Contracting Authorities

Signature .....

*(a person or persons authorised to sign on behalf of the tenderer)*

Date .....

<sup>8</sup> Amounts actually paid, without the effect of inflation.

<sup>9</sup> Please see point 4 in Instructions to Tenders if documentary evidence/proofs are needed.

# VOLUME 1

## SECTION 4:

### FORM 4.6.5

#### DATA ON JOINT VENTURES

- 4.6.5.1** Name .....
- 4.6.5.2** Managing board's address .....
- .....
- Telex .....
- Telephone ..... Fax..... E-mail.....
- 4.6.5.3** Agency in the state of the Contracting Authority, if any (in the case of a joint venture/consortium with a foreign lead member )
- Office address .....
- .....
- Telex .....
- Telephone ..... Fax.....
- 4.6.5.4** Names of members
- i) .....
- ii) .....
- iii) .....
- Etc. ....
- 4.6.5.5** Name of lead member
- .....
- .....
- 4.6.5.6** Agreement governing the formation of the joint venture/consortium
- i) Date of signature: .....
- ii) Place: .....
- iii) Enclosure - joint venture/consortium agreement
- 4.6.5.7** Proposed proportion of responsibilities between members (in %) with indication of the type of the works to be performed by each
- .....
- .....
- .....
- .....
- .....

Signature: .....

*(a person or persons authorised to sign on behalf of the tenderer)*

Date: .....

# VOLUME 1

## SECTION 4:

### FORM 4.6.6

#### LITIGATION HISTORY

Please provide information on any history of litigation or arbitration resulting from contracts executed during the last X years or currently under execution.

A separate sheet should be used for each partner of a joint venture/consortium.

Year	Award FOR or AGAINST tenderer	Name of client, cause of litigation, and matter in dispute	Disputed amount (current value in euro or NC)

Signature .....  
(a person or persons authorised to sign on behalf of the tenderer)

Date .....

# VOLUME 1

## SECTION 4:

### FORM 4.6.7

#### QUALITY ASSURANCE SYSTEM(S)

Please provide hereunder details of the quality assurance system(s) it is proposed to use to ensure successful completion of the works.

Signature .....

*(a person or persons authorised to sign on behalf of the tenderer)*

Date .....

# VOLUME 1

## SECTION 4:

### FORM 4.6.9

#### FURTHER INFORMATION

Tenderers may add here any further information that they deem useful for the evaluation of their tenders.

Signature .....

*(a person or persons authorised to sign on behalf of the tenderer)*

Date .....

**VOLUME 1**

**SECTION 5:**

**ADMINISTRATIVE COMPLIANCE GRID**

<b>Contract title:</b>	<b>PROC/245/10/New Heating System</b>	<b>Publication reference:</b>	<b>EuropeAid/131122/M/WKS/XK</b>
------------------------	---------------------------------------	-------------------------------	----------------------------------

Tender envelope number	Tenderer's name	Nationality of tenderer (consortium) <sup>10</sup> (Yes/No)	Documentation complete? (Yes/No)	Language as required? (Yes/No)	Tender submission form duly completed, including signed declarations? (Yes/No)	Consortium agreement signed by all partners? (Yes/No/Not applicable)	Sub-contracting statement acceptable? (Yes/No/Not applicable)	Other administrative requirements in 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>10</sup> If the tender is from a consortium, **all its members** must be of an eligible nationality.

# EVALUATION GRID

<b>Contract title:</b>	<b>PROC/245/10/New Heating System</b>	<b>Publication reference:</b>	<b>EuropeAid/131122/M/WKS/XK</b>
------------------------	---------------------------------------	-------------------------------	----------------------------------

Tender envelope N°	Tenderer's name	Rules of origin respected? (Yes/No)	Economic and 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)	Nationalities of subcontractors eligible? (Yes/No)	Other technical requirements in tender dossier? (Yes/No/Not applicable)	Technical compliance? (Yes/No)	Observations

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

## VOLUME 2

### SECTION 1: CONTRACT FORM

#### WORKS CONTRACT FOR EUROPEAN UNION

#### EXTERNAL ACTIONS

#### FINANCED FROM THE EU GENERAL BUDGET

**Xavier De Marnhac, Head of EULEX Kosovo**, and address at EULEX Kosovo, Ndertesa Farmed, str. "Muharrem Fejza" p.n., Lagja e Spitalit, 10000 Pristina, Kosovo

("The Contracting Authority"),

and

of the one part,

<Full official Name of Contractor>

[Legal status/title]<sup>11</sup>

[Official registration number]<sup>12</sup>

[Full official address]

[VAT number]<sup>13</sup>,

("the Contractor")

of the other part,

have agreed as follows:

**PROJECT: New Heating System**

**CONTRACT: PROC/245/10/New Heating System**  
*EuropeAid/131122/M/WKS/XK*

Whereas the Contracting Authority is desirous that certain works should be executed by the Contractor, viz.:

**New Heating System .**

and has accepted a tender by the Contractor for the execution and completion of such works and the remedying of any defects therein.

**It is hereby agreed as follows:**

Article 1. In this contract words and expressions shall have the meanings assigned to them in the contractual conditions set out below.

---

<sup>11</sup> Where the contracting party is an individual.

<sup>12</sup> Where applicable.

<sup>13</sup> Except where the contracting party is not VAT registered.  
PROC/245/10/New Heating System

Article 2. The following documents shall be deemed to form and be read and construed as part of this contract, in the following order of precedence:

- (a) the contract,
- (b) the Special Conditions,
- (c) the General Conditions,
- (d) the technical specifications,
- (e) the design documentation (drawings),
- (f) the bill of quantities (after arithmetical corrections)/breakdown,
- (g) the tender with appendix,
- (h) any other documents forming part of the contract.

Addenda shall have the order of precedence of the document they are modifying.

Article 3. In consideration of the payments to be made by the Contracting Authority to the Contractor as hereinafter mentioned, the Contractor undertakes to execute and complete the works and remedy defects therein in full compliance with the provisions of the contract.

Article 4. The Contracting Authority hereby agrees to pay the Contractor in consideration of the execution and completion of the works and remedying of defects therein the amount of:

- Contract price (in words) **excluding VAT/duties/other taxes** ..... Euro

*The contract shall be exempt from all duties and taxes, including VAT.*

Article 5. In witness whereof the parties hereto have signed the contract. This contract shall take effect on the date on which it is signed by the last party, namely the Contractor.

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

**For the Contractor**

**For the Contracting Authority**

Name:

Name:

Title:

Title:

Signature:

Signature:

Date:

Date:

# VOLUME 2

## SECTION 2

### GENERAL CONDITIONS FOR WORKS CONTRACTS FINANCED BY THE EUROPEAN DEVELOPMENT FUND (EDF) OR THE EUROPEAN UNION

#### CONTENTS

#### **PRELIMINARY PROVISIONS**

- Article 1: Definitions
- Article 2: Law and language of the contract
- Article 3: Order of precedence of contract documents
- Article 4: Communications
- Article 5: Supervisor and Supervisor's representative
- Article 6: Assignment
- Article 7: Sub-contracting

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

- Article 8: Supply of documents
- Article 9: Access to site
- Article 10: Assistance with local regulations
- Article 11: Delayed payments to the Contractor's staff

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

- Article 12: General obligations
- Article 13: Superintendence of the works
- Article 14: Staff
- Article 15: Performance guarantee
- Article 16: Insurance
- Article 17: Programme of implementation of tasks
- Article 18: Detailed breakdown of prices
- Article 19: Contractor's drawings
- Article 20: Sufficiency of tender prices
- Article 21: Exceptional risks
- Article 22: Safety on sites
- Article 23: Safeguarding adjacent properties
- Article 24: Interference with traffic
- Article 25: Cables and conduits
- Article 26: Setting-out
- Article 27: Demolished materials
- Article 28: Discoveries
- Article 29: Temporary works
- Article 30: Soil studies
- Article 31: Overlapping contracts
- Article 32: Patents and licenses

#### **COMMENCEMENT AND DELAYS**

- Article 33: Commencement orders
- Article 34: Period of implementation of tasks
- Article 35: Extension of the period of implementation of tasks
- Article 36: Delays in implementation of tasks
- Article 37: Modifications
- Article 38: Suspension

#### **MATERIALS AND WORKMANSHIP**

- Article 39: Work register
- Article 40: Origin and quality of works and materials
- Article 41: Inspection and testing
- Article 42: Rejection
- Article 43: Ownership of plant and materials

#### **PAYMENTS**

- Article 44:** General principles
- Article 45:** Provisional price contracts
- Article 46:** Pre-financing
- Article 47:** Retention monies
- Article 48:** Revision of prices
- Article 49:** Measurement
- Article 50:** Interim payments
- Article 51:** Final statement of account
- Article 52:** Direct payments to sub-contractors
- Article 53:** Delayed payments
- Article 54:** Payments to third parties
- Article 55:** Claims for additional payment
- Article 56:** End date

#### **ACCEPTANCE AND DEFECTS LIABILITY**

- Article 57:** General principles
- Article 58:** Tests on completion
- Article 59:** Partial acceptance
- Article 60:** Provisional acceptance
- Article 61:** Defects liability
- Article 62:** Final acceptance

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

- Article 63:** Breach of contract
- Article 64:** Termination by the Contracting Authority
- Article 65:** Termination by the Contractor
- Article 66:** Force majeure
- Article 67:** Decease

#### **SETTLEMENT OF DISPUTES**

- Article 68:** Settlement of disputes

#### **FINAL PROVISIONS**

- Article 69:** Ethics clauses
- Article 70:** Administrative and financial penalties
- Article 71:** Checks and audits by European Union bodies

## **PRELIMINARY PROVISIONS**

### ***Article 1: Definitions***

- 1.1. 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.
- 1.2. 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.
- 1.3. Where the context so permits words importing the singular shall be deemed to include the plural and vice versa and words importing the masculine shall be deemed to include the feminine and vice versa.
- 1.4. Words importing persons or parties shall include firms and companies and any organization having legal capacity.

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

- 2.1. The law of the contract shall be the law of the State of the Contracting Authority unless otherwise stated in the Special Conditions.
- 2.2. In all matters which are not covered by these General Conditions, the law of the contract shall apply.
- 2.3. The language of the contract and of all communications between the Contractor, Contracting Authority and Supervisor or their representatives shall be as stated in the Special Conditions.

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

The order of precedence of the contract documents shall be as stated in the Special Conditions.

### ***Article 4: Communications***

- 4.1. Unless otherwise specified in the Special Conditions, communications between the Contracting Authority and/or the Supervisor on the one hand, and the Contractor on the other hand, shall be sent by post, cable, telex, facsimile transmission, e-mail or personal delivery, to the appropriate addresses designated by those parties for that purpose.
- 4.2. If the sender requires evidence of receipt, he shall state such requirement in his communication and shall demand such evidence of receipt whenever there is a deadline for the receipt of the communication. In any event, the sender shall take all the necessary measures to ensure receipt of his communication.
- 4.3. Wherever in the contract provision is made 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: Supervisor and Supervisor's representative***

- 5.1. The Supervisor shall carry out the duties specified in the contract. Except as expressly stated in the contract, the Supervisor shall not have authority to relieve the Contractor of any of his obligations under the contract.
- 5.2. The Supervisor may, from time to time, while retaining ultimate responsibility, delegate to the Supervisor's representative any of the duties and authority vested in the Supervisor and he may at any time revoke such delegation or replace the representative. Any such delegation, revocation or replacement shall be in writing and shall not take effect until a copy thereof has been delivered to the Contractor. The administrative order which determines the duties, authority and identity of the Supervisor's representative shall be issued at the moment of the commencement order. The role of the Supervisor's representative shall be to supervise and inspect works and to test and examine the materials employed and the quality of workmanship. Under no circumstances will the Supervisor's representative be empowered to relieve the Contractor of its obligations under the contract or – save where express instructions to that effect are given below or in the contract – order works resulting in an extension of the period of implementation of tasks or additional costs to be paid by the Contracting Authority or introduce variants in the nature or scale of the works.
- 5.3. Any communication given by the Supervisor's representative to the Contractor in accordance with the terms of such delegation shall have the same effect as though it had been given by the Supervisor, provided that:
  - (a) any failure on the part of the Supervisor's representative to disapprove any work, materials or plant shall not prejudice the authority of the Supervisor to disapprove such work, materials or plant and to give the instructions necessary for the rectification thereof;
  - (b) the Supervisor shall be at liberty to reverse or vary the contents of such communication.
- 5.4. Instructions and/or orders issued by the Supervisor shall be by way of administrative orders. Such orders shall be dated, numbered and entered by the Supervisor in a register, and copies thereof delivered by hand, where appropriate, to the Contractor's representative.

### ***Article 6: Assignment***

- 6.1. 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.
- 6.2. The Contractor shall 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) 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.
- 6.3. For the purpose of Article 6.2 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.

- 6.4. If the Contractor has assigned his contract without authorization, the Contracting Authority may, without giving formal notice thereof, apply as of right the sanctions for breach of contract provided for in Articles 63 and 64.
- 6.5. 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 7: Sub-contracting***

- 7.1. A sub-contract shall be valid only if it is a written agreement by which the Contractor entrusts performance of a part of his contract to a third party.
- 7.2. The Contractor shall not sub-contract without the prior written authorization of the Contracting Authority. The work to be sub-contracted and the identity of the subcontractors shall be notified to the Contracting Authority. The Contracting Authority shall with due regard to the provisions of Article 4.3 within 30 days of receipt of the notification, notify the Contractor of his decision, stating reasons should he withhold such authorization.
- 7.3. Sub-contractors 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 EU external actions.
- 7.4. Subject to Article 52, the Contracting Authority shall have no contractual relations with the sub-contractors.
- 7.5. The Contractor shall be responsible for the acts, defaults and negligence of his sub-contractors 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 sub-contracting of any part of the contract or of the sub-contractor to perform any part of the works shall not relieve the Contractor of any of his obligations under the contract.
- 7.6. If a sub-Contractor has undertaken any continuing obligation for a period exceeding that of the defects liability period under the contract towards the Contractor in respect of the work executed or the goods, materials, plant or services supplied by the sub-contractor, the Contractor shall, at any time after the expiration of the defects liability 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.
- 7.7. If the Contractor enters into a sub-contract without approval, the Contracting Authority may apply, as of right without giving formal notice thereof, the sanctions for breach of contract provided for in Articles 63 and 64.

## **OBLIGATIONS OF THE CONTRACTING AUTHORITY**

#### ***Article 8: Supply of documents***

- 8.1. Save where otherwise provided in the Special Conditions, within 30 days of the signing of the contract, the Supervisor shall provide to the Contractor, free of charge, a copy of the drawings prepared for the implementation of tasks as well as two copies of the specifications and other contract documents. The Contractor may purchase additional copies of these drawings, specifications and other documents, insofar as they are available. Upon the final acceptance, the Contractor shall return to the Supervisor all drawings, specifications and other contract documents.

- 8.2. Unless it is necessary for the purposes of the contract, the drawings, specifications and other documents provided by the Contracting Authority shall not be used or communicated to a third party by the Contractor without the prior consent of the Supervisor.
- 8.3. The Supervisor shall have authority to issue to the Contractor administrative orders incorporating such supplementary documents and instructions as shall be necessary for the proper and adequate execution of the works and the remedying of any defects therein.

***Article 9: Access to site***

- 9.1. The Contracting Authority shall, in due time and in conformity with the progress of the works, place the site and access thereto at the disposal of the Contractor in accordance with the programme of implementation of tasks referred to in these General Conditions. The Contractor shall afford all reasonable opportunities to other persons concerned for carrying out their work as set out in the Special Conditions or as required by administrative orders.
- 9.2. Any land procured for the Contractor by the Contracting Authority shall not be used by the Contractor for purposes other than the implementation of tasks.
- 9.3. The Contractor shall preserve any premises placed at his disposal in a good state while he is in occupation and shall, if so required by the Contracting Authority or the Supervisor, restore them to their original state on completion of the contract, taking into account normal wear and tear.
- 9.4. The Contractor shall not be entitled to any payment for improvements resulting from work carried out on his own initiative.

***Article 10: Assistance with local regulations***

- 10.1. The Contractor may request the assistance of the Contracting Authority in obtaining copies of laws, regulations and information on local customs, orders or by-laws of the country where the works are located, 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.
- 10.2. Subject to the provisions of the laws and regulations on foreign labour of the State in which the works are to be carried out, the Contracting Authority shall make all efforts necessary to facilitate the procurement by the Contractor of all required visas and permits, including work and residence permits, for the personnel whose services the Contractor and the Contracting Authority consider necessary as well as residence permits for their families.

***Article 11: Delayed payments to the Contractor's staff***

Where there is a delay in the payment to the Contractor's employees of wages and salaries owing and of the allowances and contributions laid down by the law of the State in which the works are located, the Contracting Authority may give notice to the Contractor that within 15 days of the notice he intends to pay such wages, salaries, allowances and contributions direct. Should the Contractor contest that such payments are due, he shall make representations to the Contracting Authority with reasons, within the 15 day period. If the Contracting Authority, having considered such representations, is of the opinion that payment of the wages and salaries should be made, it may pay such wages, salaries, allowances and contributions out of amounts due to the Contractor. Failing this, he may obtain a contribution under any of the guarantees provided for in these General Conditions. Any action taken by the Contracting Authority under this Article shall not relieve the Contractor of his obligations to his employees, except to the extent that any obligation may be satisfied by this action. The Contracting Authority shall not assume any responsibility towards the Contractor's employees by this action.

## **OBLIGATIONS OF THE CONTRACTOR**

### ***Article 12: General obligations***

- 12.1. The Contractor shall, with due care and diligence, and in accordance with the provisions of the contract, design the works to the extent stated in the contract, and execute, complete and remedy any defects in the works. The Contractor shall provide all superintendence, personnel, materials, plant, equipment and all other items, whether of a temporary or permanent nature required in and for such design, execution, completion and remedying of any defects, insofar as specified in, or can be reasonably inferred from, the contract.
- 12.2. The Contractor shall take full responsibility for the adequacy, stability and safety of all operations and methods of construction under the contract.
- 12.3. The Contractor shall comply with any administrative orders given to him. Where the Contractor considers that the requirements of an administrative order go beyond the authority of the Supervisor or of the scope of the contract he shall, on pain of being time-barred, give notice, with reasons, to the Supervisor within 30 days after receipt thereof. Execution of the administrative order shall not be suspended because of this notice.
- 12.4. The Contractor shall respect and abide by all laws and regulations in force in the State of the Contracting Authority 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.
- 12.5. If the Contractor or any of his sub-contractors, agents or servants offers to give or agrees to offer or to give or gives to any person, any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any act in relation to the contract or any other contract with the Contracting Authority; or for showing favour or disfavour to any person in relation to the contract or any other contract with the Contracting Authority, then the Contracting Authority may, without prejudice to any accrued rights of the Contractor under the contract, terminate the contract in which case the provisions of Articles 63 and 64 hereof shall apply.
- 12.6. The Contractor shall treat all documents and information received in connection with the contract as private and confidential, and shall not, save insofar as may be necessary for the purposes of the execution thereof, publish or disclose any particulars of the contract without the prior consent in writing of the Contracting Authority or the Supervisor after consultation with the Contracting Authority. 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.
- 12.7. 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 or the constitution of the joint venture or consortium shall not be altered without the prior consent of the Contracting Authority.
- 12.8. 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 co-financing as laid down in the rules published by the Commission on the visibility of external operations.
- 12.9. 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.

- 12.10. The execution of the contract shall not give rise to unusual commercial expenses. If such unusual commercial expenses emerge, the contract will be terminated. Unusual commercial expenses are commissions not mentioned in the contract or not stemming from a properly concluded contract referring to the 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 commission paid to a company which has every appearance of being a front company.
- 12.11 Any records must be kept for a 7-year period after the final payment made under the contract. Failure to maintain such records constitutes a breach of contract and may result in the termination of the contract.

***Article 12a: Design and build contracts***

For design and build contracts only, the Contractor shall carry out, and assume responsibility for, the design of the works with the help of experienced designers satisfying the criteria laid down by the Contracting Authority. He shall draw up the requisite technical documents according to the provisions laid down in the Special Conditions and technical specifications. These documents must be submitted to the Supervisor for approval, in accordance with the Special Conditions, and may be corrected at the Contractor's expense to satisfy the Contracting Authority's contractual requirements and eliminate errors, omissions, ambiguities, inconsistencies and other drafting defects. The Contractor shall train the Contracting Authority's personnel and deliver and update the set of detailed documents and operating and maintenance manuals, in accordance with the Special Conditions.

***Article 13: Superintendence of the works***

- 13.1. The Contractor shall himself superintend the works or shall appoint a representative to do so. Such appointment shall be submitted to the Supervisor for approval. The approval may at any time be withdrawn. Should the Supervisor refuse to approve, or withdraw approval of the appointment, he shall set out the grounds on which his decision is based, and the Contractor shall submit an alternative appointment without delay. The address of the Contractor's representative shall be deemed to be the address for service given by the Contractor.
- 13.2. If the Supervisor withdraws his approval of the Contractor's representative, the Contractor shall, as soon as is practicable, after receiving notice of such withdrawal, remove the representative from the works and replace him with another representative approved by the Supervisor.
- 13.3. The Contractor's representative shall have full authority to make any decision necessary for the execution of the works, to receive and carry out administrative orders and to countersign the work register referred to in Article 39 or attachment, where appropriate. In any event, the Contractor shall be responsible for ensuring that the works are carried out satisfactorily including ensuring that the specifications and administrative orders are adhered to by his own employees and by his sub-contractors and their employees.

***Article 14: Staff***

- 14.1. The persons employed by the Contractor must be sufficient in number, and permit the optimum use of the human resources of the State in which the works are located. Such employees must have the skills and experience necessary to ensure due progress and

satisfactory execution of the works. The Contractor shall immediately replace all employees indicated by the Supervisor, in a letter stating reasons, as likely to jeopardize the satisfactory execution of the works.

- 14.2. The Contractor shall make his own arrangements for the engagement of all staff and labour. The rates of remuneration and the general working conditions, as laid down by the law of the State of the Contracting Authority, shall apply as a minimum to employees on the site.

#### ***Article 15: Performance guarantee***

- 15.1. Unless otherwise specified in the Special Condition, the Contractor shall, together with the return of the countersigned contract, furnish to the Contracting Authority a guarantee for the full and proper performance of the contract. The amount of the guarantee shall be as specified in the Special Conditions and 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.
- 15.2. The performance guarantee shall be held against payment to the Contracting Authority for any loss resulting from the Contractor's failure to fully and properly perform his obligations under the contract.
- 15.3. The performance guarantee shall be in the format provided for in the contract 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, an irrevocable letter of credit or a cash deposit made with the Contracting Authority. If the performance guarantee is to be provided in the form of a bank guarantee, a banker's draft, a certified cheque or a bond, it shall be issued by a bank or bonding and/or insurance company approved by the Contracting Authority.
- 15.4. Unless stated otherwise in the Special Conditions, the performance guarantee shall be denominated in the types and proportions of currencies in which the original contract is payable.
- 15.5. 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 implemented.
- 15.6. During the performance 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.
- 15.7. 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. Prior to 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.
- 15.8. Unless the contract provides otherwise the performance guarantee shall be released within 45 days of the issuing of the signed final statement of account referred to in Article 51, for its total amount except for amounts which are the subject of amicable settlement, arbitration or litigation.

#### ***Article 16: Insurance***

- 16.1. The Contractor shall insure in the joint names of the Contracting Authority and himself against loss or damage for which he is liable under the contract. Such insurance shall, unless the Special Conditions provide otherwise, cover:
- (a) the works, together with materials and plant for incorporation therein, to the full replacement cost against all loss or damage from whatever cause arising other than from *force majeure* or risks attributable under the contract to the Contracting Authority;
  - (b) an additional sum of 15% of such replacement cost, or as may be specified in the Special Conditions, to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the works and of removing debris of whatever nature;
  - (c) the Contractor's equipment and other things brought onto the site by the Contractor, for a sum sufficient to provide their replacement at the site.
- 16.2. The Contractor may substitute the insurance provided for in Article 16.1 by a global policy of insurance which covers, *inter alia*, the elements of Article 16.1 (a), (b) and (c). In such case, the Contractor shall notify the insurer of the Contracting Authority's interest.
- 16.3. The Contractor shall take out insurance covering his liability with regard to industrial accidents and civil liabilities to any person employed by him on the works, to the Contracting Authority and any employee of that authority, arising from the execution of the works. Such liability shall be unlimited in the case of personal injuries.
- 16.4. The Contractor shall take out insurance covering liability with regard to risks and civil liability resulting from an act or omission attributed to him, to his legal successors or agents. Such insurance shall be for at least the amount stated in the Special Conditions. Furthermore, he shall ensure that all his sub-contractors have taken out a similar insurance.
- 16.5. All the insurance referred to in this Article shall be taken out within 30 days of the notification of the award of the contract, and shall be subject to approval by the Contracting Authority. Such insurance shall take effect from the commencement of the works and remain in force until final acceptance of the works. The Contractor shall produce to the Contracting Authority the insurance policy and shall furnish proof of regular payment of premiums without delay whenever he is required to do so by the Contracting Authority or the Supervisor.
- 16.6. Notwithstanding the obligations of the Contractor to insure in accordance with Article 16, the Contractor shall be solely liable and shall indemnify the Contracting Authority and the Supervisor against any claims by third parties for damage to property or personal injuries arising from the execution of the works by the Contractor, his sub-contractors and employees in connection with the works.

***Article 17: Programme of implementation of tasks***

- 17.1. Completing the work programme given as part of the offer, the Contractor shall within 30 days of receipt of the notification of the award of contract provide the Supervisor with a programme of implementation of the tasks, broken down by activity and by month and include the following information::
- (a) the order in which the Contractor proposes to carry out the works;
  - (b) the time limits within which submission and approval of the drawings are required;
  - (c) an organization chart containing the names, qualifications and curricula vitae of the staff responsible for the site,
  - (d) a general description of the method including the sequence, by month and by nature which the Contractor proposes to carry out the works;
  - (e) a plan for the setting out and organization of the site, and
  - (f) such further details and information as the Supervisor may reasonably require.

- 17.2. The Supervisor shall return these documents to the Contractor with his approval or any relevant remarks within ten days of receipt, save where the Supervisor, within those ten days, notifies the Contractor of his wish for a meeting. The approval of the programme by the Supervisor shall not relieve the Contractor from any of his obligations under the contract.
- 17.3. No material alteration to the programme shall be made without the approval of the Supervisor. If, however, the progress of the works does not conform to the programme, the Supervisor may instruct the Contractor to revise the programme and submit the revised programme to him for approval.

***Article 18: Detailed breakdown of prices***

- 18.1. If not provided in his tender and where necessary for the purposes of the contract, the Contractor shall provide a detailed breakdown of his rates and prices within no more than 20 days following the Supervisor's reasoned request.
- 18.2. Within 30 days of notification of the award of contract, the Contractor shall provide to the Supervisor for his information only, a detailed cash flow estimate, in quarterly periods, of all payments which may be due to the Contractor under the contract. The Contractor shall subsequently supply revised cash flow estimates at quarterly intervals, if so required by the Supervisor. The communication shall not impose any liability whatsoever on the Contracting Authority or the Supervisor.

***Article 19: Contractor's drawings***

- 19.1. The Contractor shall submit to the Supervisor for approval:
- (a) such drawings, documents, samples and /or models as may be specified in the contract within the time limits laid down therein or in the programme of implementation of tasks;
  - (b) such drawings as the Supervisor may reasonably require for the implementation of tasks.
  - (c) In the case of bridges and other reinforced concrete structures, the Contractor shall carry out the requisite soil surveys before commencing work on the foundations. The Contractor must submit the results of these surveys and the calculations for the foundations, in triplicate, to the Supervisor at least one month before commencing construction of the works in question.
  - (d) The Contractor shall prepare, at its own expense, all design and construction drawings and other documents and objects necessary for the proper execution of the contract, and in particular drawings and design calculations and the reinforcement drawings for reinforced concrete structures. The Contractor shall submit, in triplicate, construction, design and reinforcement drawings, design calculations and any other documents or objects it is to provide for the Supervisor's approval at least one month before commencing construction of the works in question.

Within 15 days of receiving the drawings, design calculations, objects and other documents required under (c) and (d), the Supervisor shall return them to the Contractor with either his endorsement or his remarks.

- 19.2. If the Supervisor fails to notify his decision of approval referred to in Article 19.1 within the time limits referred to in the contract or the approved programme of implementation of tasks, such drawings, documents, samples or models shall be deemed to be approved at the end of the time limits specified. If no time limit is specified, they shall be deemed to be approved 30 days after receipt.
- 19.3. Approved drawings, documents, samples and models shall be signed or otherwise identified by the Supervisor and shall not be departed from except as otherwise instructed by the Supervisor. Any Contractor's drawings, documents, samples or models which the Supervisor fails to approve, shall be forthwith modified to meet the requirements of the Supervisor and resubmitted by the Contractor for approval. Within 15 days of being notified of the

Supervisor's remarks, the Contractor shall make the requisite corrections, adjustments etc. to the documents, drawings, design calculations etc. The corrected or adjusted documents, drawings, design calculations etc. shall be resubmitted for the Supervisor's approval under the same procedure.

- 19.4. The Contractor shall supply additional copies of approved drawings in the form and number stated in the contract or in subsequent administrative orders.
- 19.5. The approval of the drawings, documents, samples or models by the Supervisor shall not relieve the Contractor from any of his obligations under the contract.
- 19.6. The Supervisor shall have the right at all reasonable times to inspect all contract drawings, documents, samples or models at the Contractor's premises.
- 19.7. Before provisional acceptance of the works, the Contractor shall supply operation and maintenance manuals together with drawings, which shall be in such detail as will enable the Contracting Authority to operate, maintain, adjust and repair all parts of the works. Unless otherwise stated in the Special Conditions, the manuals and drawings shall be in the language of the contract. The works shall not be considered to be completed for the purpose of provisional acceptance until such manuals and drawings have been supplied to the Contracting Authority.

**Article 20: Sufficiency of tender prices**

- 20.1. The Contractor shall be deemed to have inspected and examined the site and its surroundings and to have satisfied himself before submitting his tender, as to the nature of the ground and sub-soil, and to have taken into account the form and nature of the site, the extent and nature of the work and materials necessary for the completion of the works, the means of communication with and access to the site, the accommodation he may require and in general to have obtained for himself all necessary information as to risks, contingencies and all other circumstances influencing or affecting his tender.
- 20.2. The Contractor shall be deemed to have satisfied himself before submitting his tender as to the correctness and sufficiency of the tender and of the rates and prices stated in the bill of quantities or price schedule which shall, except in so far as it is otherwise provided in the contract, cover all his obligations under the contract.
- 20.3. Since the Contractor is deemed to have determined his prices on the basis of his own calculations, operations and estimates, he shall carry out without additional charge any work which is the subject of any item whatsoever in his tender for which he neither indicates a unit price nor a firm sum.

**Article 21: Exceptional risks**

- 21.1. If during the execution of the works the Contractor encounters artificial obstructions or physical conditions which could not reasonably have been foreseen by an experienced Contractor, and if the Contractor is of the opinion that additional costs will be incurred and/or an extension of the period of implementation of the tasks will be necessary as a result of this, he shall give notice to the Supervisor in accordance with Articles 35 and/or 55. The Contractor shall specify in such notice the artificial obstructions and/or physical conditions, giving details of the anticipated effects thereof, the measures he is taking or intends to take and the extent of the anticipated delay in or interference with the execution of the works.
- 21.2. Following receipt of the notice, the Supervisor may *inter alia*:
  - (a) require the Contractor to provide an estimate of the cost of the measures he is taking or intends to take;
  - (b) approve measures referred to in Article 21.2 (a) with or without modification;

- (c) give written instructions as to how the artificial obstructions or physical conditions are to be dealt with;
  - (d) order a modification, a suspension, or termination of the contract.
- 21.3. To the extent that the Supervisor shall decide that the whole or part of the said artificial obstructions or physical conditions could not reasonably have been foreseen by an experienced Contractor, the Supervisor shall:
  - (a) take into account any delay suffered by the Contractor as a result of such obstructions or conditions in determining any extension of the period of implementation of tasks to which the Contractor is entitled under Article 35; and/or
  - (b) in case of artificial obstructions or physical conditions other than weather conditions, determine additional payments due to the Contractor in accordance with Article 55.
- 21.4. Weather conditions shall not entitle the Contractor to claims under Article 55.
- 21.5. If the Supervisor decides that the artificial obstructions or physical conditions could, in whole or in part, have been reasonably foreseen by an experienced Contractor, he shall so inform the Contractor as soon as practicable.

***Article 22: Safety on sites***

- 22.1. The Contractor shall have the right to forbid access to the site to any person not involved in the performance of the contract, with the exception of persons authorized by the Supervisor or the Contracting Authority.
- 22.2. The Contractor shall ensure the safety on sites during the whole period of execution and shall be responsible for taking the necessary steps, in the interests of his employees, agents of the Contracting Authority and third parties, to prevent any loss or accident which may result from carrying out the works.
- 22.3. The Contractor shall take all essential steps, on his own responsibility and at his expense, to ensure that existing structures and installations are protected, preserved and maintained. He shall be responsible for providing and maintaining at his expense all lighting, protection, fencing and security equipment which proves necessary for the proper implementation of the tasks or which may reasonably be required by the Supervisor.
- 22.4. If, during the implementation of the tasks, urgent measures are necessary to obviate any risk of accident or damage or to ensure security following any accident or damage, the Supervisor shall give formal notice to the Contractor to do what is necessary. If the Contractor is unwilling or unable to undertake the necessary measures, the Supervisor may carry out the work at the expense of the Contractor to the extent that the Contractor is liable.

***Article 23: Safeguarding adjacent properties***

- 23.1. On his own responsibility and at his expense, the Contractor shall take all the precautions required by good construction practice and by the prevailing circumstances to safeguard adjacent properties and avoid causing any abnormal disturbance therein.
- 23.2. The Contractor shall indemnify the Contracting Authority against the financial consequences of all claims by neighbouring landowners or residents to the extent that the Contractor is liable and to the extent that the damage to adjacent properties is not the result of a hazard created through the design or method of construction imposed by the Contracting Authority or the Supervisor upon the Contractor.

***Article 24: Interference with traffic***

- 24.1. The Contractor shall ensure that the works and installations do not cause damage to, or obstruct traffic on, communication links such as roads, railways, waterways and airports,

save as permitted under the Special Conditions. He shall, in particular, take account of weight restrictions when selecting routes and vehicles.

- 24.2. Any special measures which the Contractor considers necessary or which are specified in the Special Conditions or which are required by the Contracting Authority in order to protect or strengthen sections of roads, tracks or bridges, shall be at the expense of the Contractor, whether or not they are carried out by the Contractor. The Contractor shall inform the Supervisor of any special measures he intends to take before carrying them out. The repair of any damage caused to roads, tracks or bridges by the transport of materials, plant or equipment shall be at the expense of the Contractor.

**Article 25: Cables and conduits**

- 25.1. Where, in the course of carrying out the works, the Contractor encounters bench-marks indicating the course of underground cables, conduits and installations, he shall keep such bench-marks in position or replace them, should execution of the works have necessitated their temporary removal. Such related operations require the authorization of the Supervisor.
- 25.2. The Contractor shall be responsible for the preservation, removal and replacement, as the case may be, of the cables, conduits and installations specified by the Contracting Authority in the contract and for the cost thereof.
- 25.3. Where the presence of cables, conduits and installations has not been specified in the contract but is revealed by bench-marks and references, the Contractor shall be under a general duty of care and similar obligations regarding preservation, removal and replacement to those set out above. In this case, the Contracting Authority shall compensate him for expenditure, to the extent that such work is necessary for the execution of the contract.
- 25.4. However, the obligations to remove and replace cables, conduits and installations and the expenditure resulting therefrom shall not be the responsibility of the Contractor if the Contracting Authority decides to accept that responsibility. The same shall apply where this obligation and the expenditure resulting therefrom devolve upon another specialist administration or an agent.
- 25.5. When any work on the site is likely to cause disturbances in or damage to a public utility service, the Contractor shall immediately inform the Supervisor in writing, giving a reasonable period of notice so that suitable measures can be taken in time to allow work to continue normally.

**Article 26: Setting-out**

- 26.1. The Contractor shall be responsible for:
- (a) the accurate setting-out of the works in relation to original marks, lines and levels of reference given by the Supervisor;
  - (b) the correctness, of the position, levels, dimensions and alignment of all parts of the works; and
  - (c) the provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities.
- 26.2. If, at any time during the execution of the works, any error appears in the position, levels, dimensions or alignment of any part of the works, the Contractor, shall, if the Supervisor so requires, at the Contractor's cost, rectify such error to the satisfaction of the Supervisor, unless such error is based on incorrect data supplied by the Supervisor, in which case the Contracting Authority shall be responsible for the cost of rectification.
- 26.3. The checking of any setting-out or of any line or level by the Supervisor shall not in any way relieve the Contractor of his responsibility for the accuracy thereof and the Contractor

shall carefully protect and preserve all bench-marks, sight-rails, pegs and other items used in setting-out the works.

***Article 27: Demolished materials***

- 27.1. Where the contract includes demolition work, materials and articles obtained therefrom shall, unless the Special Conditions and /or the law of the state of the Contracting Authority otherwise provide and subject to the provisions of Article 28, be the property of the Contractor.
- 27.2. Should the Special Conditions reserve to the Contracting Authority the right of ownership of materials or all or part of the articles obtained from the demolition work, the Contractor shall take all the necessary precautions to ensure that these are preserved. He shall be liable for any destruction of, or damage to, such materials or articles caused by him or his agents.
- 27.3. Irrespective of the use to which the Contracting Authority intends to put the materials or articles, in respect of which he reserves the right of ownership, all costs incurred in transporting and storing them and all warehouse charges at the place indicated by the Supervisor shall be borne by the Contractor for any carriage not exceeding 100 meters.
- 27.4. Save where the Special Conditions provide otherwise, the Contractor shall, at his expense, progressively remove rubble and other demolition materials, rubbish and debris from the site.

***Article 28: Discoveries***

- 28.1. Discoveries of any interest whatsoever made during excavation or demolition work shall be brought immediately to the attention of the Supervisor. The Supervisor shall decide how such discoveries are to be dealt with, taking due account of the law of the State of the Contracting Authority.
- 28.2. The Contracting Authority reserves the right of ownership of materials found during the excavation and demolition work carried out on land belonging to him, subject to compensating the Contractor for any special efforts.
- 28.3. Artifacts, antiquities and natural, numismatic, or other objects which are of scientific interest, and also rare objects or objects made of precious metals found during excavation or demolition work shall be the property of the Contracting Authority.
- 28.4. In the event of disagreements, the Contracting Authority shall have sole authority to decide as to the qualifications set out in Articles 28.1 and 28.3.

***Article 29: Temporary works***

- 29.1. The Contractor shall carry out at his expense all the temporary works to enable the works to be carried out. He shall submit to the Supervisor the drawings for temporary works which he intends to use, such as cofferdams, scaffolding, trusses and shuttering. He shall take into account any observations made to him by the Supervisor while assuming responsibility for these drawings.
- 29.2. Where the design of particular temporary works is specified in the Special Conditions to be the responsibility of the Contracting Authority, the Supervisor shall provide the Contractor with all drawings necessary in reasonable time to enable the Contractor to undertake the temporary works in accordance with his programme. In such cases, the Contracting Authority shall be solely responsible for the safety and adequacy of the design. However, the Contractor shall be responsible for the proper construction.

***Article 30: Soil studies***

Subject to the Special Conditions and to the technical specifications, the Contractor shall make available to the Supervisor, the personnel and equipment necessary for carrying out any soil survey which the Supervisor considers reasonably necessary. The Contractor shall be compensated for the actual cost of the manpower and equipment used or made available in such work, if not already provided for in the contract.

***Article 31: Overlapping contracts***

- 31.1. The Contractor shall, in accordance with the requirements of the Supervisor, afford all reasonable opportunities for carrying out their work to any other Contractors employed by the Contracting Authority and their workmen, to the workmen of the Contracting Authority and of any other public authorities who may be employed on or near the site in the execution of any work not included in the contract, or of any contract which the Contracting Authority may enter into in connection with, or ancillary to, the works.
- 31.2. If, however, the Contractor, on the written request of the Supervisor, makes available to any such Contractor, or public authority, or to the Contracting Authority, any roads or ways for the maintenance of which the Contractor is responsible, or permits the use by any such other persons of the Contractor's temporary works, scaffolding or other equipment on the site, or provides any other service of whatsoever nature, which was not provided for in the contract, the Contracting Authority shall pay to the Contractor in respect of such use or service, such sums and/or grant such extension of time, as shall, in the opinion of the Supervisor, be reasonable.
- 31.3. The Contractor shall not by reason of Article 31 be relieved of any of his obligations under the contract nor shall he be entitled to any claims other than those provided for in Article 31.2.
- 31.4. In no circumstances may difficulties arising with regard to one contract entitle the Contractor to modify or delay implementation of other contracts. Similarly, the Contracting Authority may not take advantage of such difficulties to suspend payments due under another contract.

***Article 32: Patents and licenses***

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

## **COMMENCEMENT AND DELAYS**

***Article 33: Commencement orders***

- 33.1. The Contracting Authority shall fix the date on which implementation of the tasks is to commence, and advise the Contractor either in the notification of award of contract or by administrative order issued by the Supervisor.
- 33.2. The date for commencing implementation of the tasks shall be not later than 180 days following notification of award of contract unless agreed otherwise by the parties.

***Article 34: Period of implementation of tasks***

- 34.1. The period of implementation of tasks shall commence on the date fixed in accordance with Article 33.1 and shall be as laid down in the Special Conditions, without prejudice to

extensions of the period which may be granted under Article 35.

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

***Article 35: Extension of the period of implementation of tasks***

- 35.1. The Contractor may request an extension to the period of implementation of tasks if he is or will be delayed in completing the contract by any of the following causes:
- (a) exceptional weather conditions in the State of the Contracting Authority;
  - (b) artificial obstructions or physical conditions which could not reasonably have been foreseen by an experienced Contractor;
  - (c) administrative orders affecting the date of completion other than those arising from the Contractor's default;
  - (d) failure of the Contracting Authority to fulfil his obligations under the contract;
  - (e) any suspension of the works which is not due to the Contractor's default;
  - (f) force majeure;
  - (g) any other causes referred to in these General Conditions which are not due to the Contractor's default.
- 35.2. The Contractor shall, within 15 days of becoming aware that delay may occur, notify the Supervisor of his intention to make a request for extension of the period of implementation of tasks to which he may consider himself entitled, and shall, unless otherwise agreed between the Contractor and the Supervisor, within 30 days from the notification deliver to the Supervisor full and detailed particulars of the request, in order that such request may be investigated at the time.
- 35.3. Within 30 days from receipt of the Contractor's detailed particulars of the request, the Supervisor 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 tasks as may be justified, either prospectively or retrospectively, or inform the Contractor that he is not entitled to an extension.

***Article 36: Delays in implementation of tasks***

- 36.1. If the Contractor fails to complete the works within the time period(s) specified in the contract the Contracting Authority shall, without formal notice and without prejudice to his other remedies under the contract be entitled to liquidated damages for every day or part thereof which shall elapse between the end of the period specified for implementation of tasks or extended period of implementation of tasks under Article 35 and the actual date of completion, at the rate and up to the maximum amount specified in the Special Conditions. If the works have been the subject of partial acceptance in accordance with Article 59, the liquidated damages specified in the Special Conditions may be reduced in the proportion which the value of the accepted part bears to the value of the whole of the works.
- 36.2. If the Contracting Authority has become entitled to the maximum claim under Article 36.1 he may, after giving notice to the Contractor:
- (a) seize the performance guarantee; and /or
  - (b) terminate the contract; and
  - (c) enter into a contract with a third party at the Contractor's cost for the provision of the balance of the works.

***Article 37: Modifications by administrative order***

37.1. The Supervisor shall have power to order any modification to any part of the works necessary for the proper completion and /or functioning of the works. Such modifications may include additions, omissions, substitutions, changes in quality, quantity, form, character, kind, position, dimension, level or line and changes in the specified sequence, method or timing of execution of the works. No order for a modification shall have the effect of invalidating the contract, but the financial effect, if any, of all such modifications shall be valued in accordance with Articles 37.5 and 37.7.

37.2. All administrative order shall be issued in writing, it being understood that:

- (a) if for any reason, the Supervisor shall find it necessary to give an order orally, he shall as soon as possible thereafter confirm the order by an administrative order;
- (b) if the Contractor shall confirm in writing an oral order given for the purpose of Article 37.2 (a) and the confirmation shall not be contradicted in writing forthwith by the Supervisor, an administrative order shall be deemed to have been issued for the modification.

An administrative order for modification shall not be required for increase or decrease in the quantity of any work where such increase or decrease is the result of the quantity exceeding or being less than that stated in the bill of quantities or price schedule, as the result of measurement laid down in article 49.

37.3. Save as provided by Article 37.2 prior to any administrative order for modification, the Supervisor shall notify the Contractor of the nature and form of such modification. As soon as possible, after receiving such notice, the Contractor shall submit to the Supervisor a proposal containing:

- (a) a description of the tasks, if any, to be implemented or the measures to be taken and a programme for execution; and
- (b) any necessary modifications to the programme of implementation of tasks or to any of the Contractor's obligations under the contract; and
- (c) any adjustment to the contract price in accordance with the rules as set out in Article 37.

37.4. Following the receipt of the Contractor's submission referred to in Article 37.3, the Supervisor shall, after due consultation with the Contracting Authority and, where appropriate, the Contractor, decide as soon as possible whether or not the modification shall be carried out. If the Supervisor decides that the modification shall be carried out he shall issue the administrative order stating that the modification shall be carried out at the prices and under the conditions given in the Contractor's submission referred to in Article 37.3 or as modified by the Supervisor in accordance with Article 37.5.

37.5. The prices for all modifications ordered by the Supervisor in accordance with Article 37.2 and 37.4 shall be ascertained by the Supervisor in accordance with the following principles:

- (a) where work is of similar character and executed under similar conditions to work priced in the bill of quantities or price schedule it shall be valued at such rates and prices contained therein;
- (b) where work is not of a similar character or is not executed under similar conditions, the rates and prices in the contract shall be used as the basis for valuation so far as is reasonable, failing which, as fair valuation shall be made by the Supervisor;
- (c) if the nature or amount of any modification relative to the nature or amount of the whole of the contract or to any part thereof shall be such that in the opinion of the Supervisor any rate or price contained in the contract for any item of work is by reason of such modification rendered unreasonable, then the Supervisor shall fix such rate or price as in the circumstances he shall think reasonable and proper;
- (d) where a modification is necessitated by default or breach of contract by the Contractor, any additional cost attributable to such modification shall be borne by the Contractor.

- 37.6. On receipt of the administrative order requesting the modification, the Contractor shall proceed to carry out the modification and be bound by these General Conditions in so doing as if such modification were stated in the contract. The works shall not be delayed pending the granting of any extension of time for completion or adjustment to the contract price. Where the order for a modification precedes the adjustment to the contract price, the Contractor shall keep records of the costs of undertaking the modification and of time expended thereon. Such records shall be open to inspection by the Supervisor at all reasonable times.
- 37.7. Where on provisional acceptance an increase or reduction in the total value of the works resulting from an administrative order, or from some other circumstance which is not caused by the Contractor's default, exceeds 15% of the initial contract price (or as modified by addendum), the Supervisor shall, after consultation with the Contracting Authority and the Contractor determine any additions to or reduction from the contract price as a consequence of the application of Article 37.5. The sum so determined shall be based on the amount by which the increase or decrease in value of the works exceeds 15%. The sum shall be notified by the Supervisor to the Contracting Authority and the Contractor and the contract price adjusted accordingly.
- 37.8. Contract modifications 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. All contract modifications have to respect the general principles defined in the *Practical Guide to contract procedures for EC external actions*.

#### **Article 38: Suspension**

- 38.1. The Contractor shall, on the order of the Supervisor, suspend the progress of the works or any part thereof for such time or times and in such manner as the Supervisor may consider necessary.
- 38.2. During the period of suspension, the Contractor shall take such protective measures as may be necessary to safeguard the works, plant, equipment and site against any deterioration, loss or damage. Additional expenses incurred in connection with such protective measures shall be added to the contract price, unless such suspension is:
- (a) otherwise provided for in the contract; or
  - (b) necessary by reason of some default of the Contractor; or
  - (c) necessary by reason of normal climatic conditions on site; or
  - (d) necessary for the safety or the proper execution of the works or any part thereof insofar as such necessity does not arise from any act or default by the Supervisor or the Contracting Authority or from any of the exceptional risks referred to in Article 21.
- 38.3. The Contractor shall not be entitled to such additions to the contract price unless he notifies the Supervisor, within 30 days after receipt of the order to suspend the works, of his intention to make a claim for them.
- 38.4. The Supervisor, after consultation with the Contracting Authority and the Contractor, shall determine such extra payment and/or extension of the period of performance to be made to the Contractor in respect of such claim as shall, in the opinion of the Supervisor, be fair and reasonable.
- 38.5. 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 Supervisor, request permission to proceed within 30 days or terminate the contract.

38.6 .Where the award procedure or implementation of the contract is vitiated by substantial errors or irregularities or by suspected or proven fraud, the payments and/or implementation of the contract shall be suspended. 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 payments may also be suspended 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 Union or by EDF, which are likely to affect the performance of the present contract.

## **MATERIALS AND WORKMANSHIP**

### ***Article 39: Work register***

- 39.1. A work register shall, unless otherwise provided by the Special Conditions, be kept on the site by the Supervisor, who shall enter in it at least the following information:
- (a) the weather conditions, interruptions of work owing to inclement weather, hours of work, number and type of workmen employed on the site, materials supplied, equipment in use, equipment not in working order, tests carried out *in situ*, samples dispatched, unforeseen circumstances, as well as orders given to the Contractor;
  - (b) detailed statements of all the quantitative and qualitative elements of the work done and the supplies delivered and used, capable of being checked on the site and relevant in calculating payments to be made to the Contractor.
- 39.2. The statements shall form an integral part of the work register but may, where appropriate, be recorded in separate documents. The technical rules for drawing up the statements shall be as set out in the Special Conditions.
- 39.3. The Contractor shall ensure that statements are drawn up, in good time and in accordance with the Special Conditions, in respect of work, services and supplies which cannot be measured or verified subsequently; failing this, he shall accept the decisions of the Supervisor, unless, at his own expense, he provides evidence to the contrary.
- 39.4. Entries made in the work register as work progresses shall be signed by the Supervisor and countersigned by the Contractor or his representative. If the Contractor objects, he shall communicate his views to the Supervisor within 15 days following the date on which the entry or the statements objected to are recorded. Should he fail to countersign or to submit his views within the period allowed, the Contractor shall be deemed to agree with the notes shown in the register. The Contractor may examine the work register at any time and may, without removing the document, make or receive a copy of entries which he considers necessary for his own information.
- 39.5. The Contractor shall, on request, provide the Supervisor with the information needed to keep the work register in good order.

### ***Article 40: Origin and quality of works and materials***

- 40.1. All supplies and material to be incorporated in or required for the works shall have their origin in any eligible source country as defined in the Invitation to Tender and the Special Conditions.
- 40.2. The works, components and materials shall conform to the specifications, drawings,

surveys, models, samples, patterns and other requirements in the contract which shall be held at the disposal of the Contracting Authority or the Supervisor for the purposes of identification throughout the period of performance.

- 40.3. Any preliminary technical acceptance stipulated in the Special Conditions shall be the subject of a request sent by the Contractor to the Supervisor. The request shall indicate the reference to the contract, the lot number and the place where such acceptance is to take place, as appropriate. The components and materials specified in the request must be certified by the Supervisor as meeting the requirements for such acceptance prior to their incorporation in the works.
- 40.4. Even if materials or items to be incorporated in the works or in the manufacture of components have been technically accepted in this way, they may still be rejected and must be replaced immediately by the Contractor if a further examination reveals defects or faults. 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 works only if they have been repaired and made good to the satisfaction of the Supervisor.

***Article 41: Inspection and testing***

- 41.1. The Contractor shall ensure that the components and materials are delivered to the site in time to allow the Supervisor to proceed with acceptance of the components and materials. The Contractor is deemed to have fully appreciated the difficulties which he might encounter in this respect, and he shall not be permitted to advance any grounds for delay in fulfilling his obligations.
- 41.2. The Supervisor shall be entitled, either by himself or his agent, 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 on the site or at such other places as may be specified in the contract.
- 41.3. For the purposes of such tests and inspections, the Contractor shall:
  - (a) provide to the Supervisor, temporarily and free of charge, such assistance, test samples, parts, machines, equipment, tools or materials and labour as are normally required for inspection and testing;
  - (b) agree, with the Supervisor, on the time and place for tests;
  - (c) provide access for the Supervisor at all reasonable times to the place where the tests are to be carried out.
- 41.4. If the Supervisor is not present on the date agreed for tests, the Contractor may, unless otherwise instructed by the Supervisor, proceed with the tests, which shall be deemed to have been made in the Supervisor's presence. The Contractor shall forthwith forward duly certified copies of the test results to the Supervisor, who shall, if he has not attended the test, be bound by the test results.
- 41.5. When components and materials have passed the tests referred to in Article 41, the Supervisor shall notify the Contractor or endorse the procedure's certificate to that effect.
- 41.6. If the Supervisor and the Contractor disagree on the test results, each shall give a statement of his views to the other within 15 days after such disagreement arises. The Supervisor 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 to be selected by common consent. All test reports shall be submitted to the Supervisor who shall communicate the results of these tests without

delay to the Contractor. The results of the re-testing shall be conclusive. The cost of the re-testing shall be borne by the party whose views are proved wrong by the re-testing.

- 41.7. In the performance of his duties, the Supervisor and all persons authorized by him shall disclose only to those persons who are entitled to know of it information which he has obtained by reason of his inspection and testing of the methods of manufacture and operation of the undertaking.

#### ***Article 42: Rejection***

- 42.1. Components and materials which are not of the specified quality shall be rejected. A special mark may be applied to the rejected components or materials. This shall not be such as to alter them or affect their commercial value. Rejected components and materials shall be removed by the Contractor from the site within a period which the Supervisor shall specify, failing which they shall be removed by the Supervisor as of right at the expense and risk of the Contractor. Any work incorporating rejected components or materials shall be rejected.
- 42.2. The Supervisor shall, during the progress of the works and before the works are taken over, have the power to order or decide:
- (a) the removal from the site, within such time limits as may be specified in the order, of any components or materials which, in the opinion of the Supervisor, are not in accordance with the contract;
  - (b) the substitution of proper and suitable components or materials; or
  - (c) the demolition and proper re-execution, or satisfactory repair, notwithstanding any previous test thereof or interim payment therefore, of any work which, in respect of components, materials, workmanship or design by the Contractor for which he is responsible, is not, in the opinion of the Supervisor, in accordance with the contract.
- 42.3. The Supervisor shall, as soon as reasonably practicable, give to the Contractor notice in writing of his decision specifying particulars of the alleged defects.
- 42.4. The Contractor shall with all speed and at his 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 same and all expenses consequent thereon or incidental thereto may be deducted by the Contracting Authority from any monies due or which may become due to the Contractor.
- 42.5. The provisions of Article 42 shall not affect the right of the Contracting Authority to claim under Articles 36 and 63.

#### ***Article 43: Ownership of plant and materials***

- 43.1. All equipment, temporary works, plant and materials provided by the Contractor shall, when brought on the site, be deemed to be exclusively intended for the execution of the works and the Contractor shall not remove the same or any part thereof, except for the purpose of moving it from one part of the site to another, without the consent of the Supervisor. Such consent shall, however, not be required for vehicles engaged in transporting any staff, labour, equipment, temporary works, plant or materials to or from the site.
- 43.2. The Special Conditions may provide that all equipment, temporary works, plant and materials on site owned by the Contractor or by any company in which the Contractor has a controlling interest shall, for the duration of the execution of the works, be:
- (a) vested in the Contracting Authority; or
  - (b) made subject to a lien in favour of the Contracting Authority; or
  - (c) made subject to any other arrangement regarding priority interest or security.

- 43.3. In the event of termination of the contract in accordance with Article 63 due to the Contractor's breach of contract, the Contracting Authority shall be entitled to use the equipment, temporary works, plant and materials on site in order to complete the works.
- 43.4. Any agreement for the hire by the Contractor of equipment, temporary works, plant and materials brought onto the site, shall contain a provision that on request in writing made by the Contracting Authority within 7 days after the date on which the termination under Article 64 becomes effective, and on the Contracting Authority undertaking to pay all hire charges in respect thereof from such date, the owner thereof will hire such equipment, temporary works, plant or materials to the Contracting Authority on the same terms as they were hired by the Contractor, save that the Contracting Authority shall be entitled to permit the use thereof by any other Contractor employed by him for completing the works under the provisions of Article 64.3.
- 43.5. Upon termination of the contract before completion of the works, the Contractor shall deliver to the Contracting Authority any plant, temporary works, equipment or materials the property in which has vested in the Contracting Authority or been made subject to a lien by virtue of Article 43.2. If he fails to do so, the Contracting Authority may take such appropriate action as it deems fit in order to obtain possession of such plant, temporary works, equipment and materials and recover the cost of so doing from the Contractor.

## **PAYMENTS**

### ***Article 44: General principles***

- 44.1. Payments shall be made in euro or national currency as specified in the Special Conditions. 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.
- 44.2. 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.
- 44.3. Payments to the Contractor of the amounts due under each of the interim payment certificates and the final statement of account issued by the Supervisor shall be made by the Contracting Authority within 90 days of such certificate of statement being delivered to the Contracting Authority. The date of payment shall be the date on which the paying institution's account is debited. The payment certificate shall not be admissible if one or more essential requirements are not met.
- 44.4. The period referred to in 44.3 may be suspended by notifying the Contractor that the payment certificate 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. Within 30 days of receipt of the clarification, the Supervisor shall decide and issue if need be a revised final statement of account and the payment period shall continue to run from this date.
- 44.5. 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 European Union) 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, as published in the Official Journal of the European Union, C series, where payments are in euro,

on the first day of the month in which the time-limit expired, plus three and a half 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 involved in the repayment of amounts due to the Contracting Authority shall be borne entirely by the Contractor.

- 44.6 Where necessary the European Union may as a donor subrogate itself to the Contracting Authority.

#### ***Article 45: Provisional price contracts***

- 45.1. In exceptional cases, where a provisional price contract has been awarded, the amounts payable under the contract shall be calculated as follows:
- (d) as for cost-plus contracts in Article 49.1 (c); or
  - (e) initially on the basis of provisional prices and, after the conditions for performing the contract are known, as for lump-sum contracts or unit price contracts in Article 49.1 (a) and (b) respectively, or as in a hybrid contract.
- 45.2. The Contractor shall supply such information as the Contracting Authority or the Supervisor may reasonably require in respect of any matter relating to the contract for the purpose of the calculation. Where agreement cannot be reached on the valuation of the works, the amounts payable shall be determined by the Supervisor.

#### ***Article 46: Pre-financing***

- 46.1. If the Special Conditions so provide, pre-financing shall be granted to the Contractor, at his request, for operations connected with the implementation of the tasks, in the cases listed hereinafter:
- (a) as a lump-sum advance enabling him to meet expenditure resulting from the commencement of the contract;
  - (b) if he affords proof of the conclusion of a contract for the purchase or order of materials, plant, equipment, machines and tools, necessary for the execution of the contract, and of any other substantial prior expenses such as the acquisition of patents or study costs.
- 46.2. The Special Conditions shall state the amount of the pre-financing which shall not exceed 10% of the original contract price for the lump-sum referred to in Article 46.1 (a) and 20 %

of the contract price for all other pre-financing referred to in Article 46.1 (b).

- 46.3. No pre-financing shall be granted until:
- (a) the conclusion of the contract;
  - (b) provision to the Contracting Authority by the procedure of the performance guarantee in accordance with Article 15; and by
  - (c) provision to the Contracting Authority by the Contractor of a separate directly liable guarantee, in the format provided for in the contract, for the full amount of the pre-financing, if this payment exceeds EUR 150.000, by the institutions referred to in Article 15.3, which shall remain effective until the pre-financing has been completely repaid by the Contractor out of interim payments under the contract. Where the Contractor is a public body the obligation for a separate directly liable guarantee may be waived depending on a risk assessment.
- 46.4. The Contractor shall use the pre-financing exclusively for operations connected with the implementation of the tasks. Should the Contractor misuse any portion of the pre financing, it shall become due and repayable immediately and no further pre-financing payments will be made to him.
- 46.5. Should the pre-financing guarantee cease to be valid and the Contractor fail to re-validate it, either a deduction equal to the amount of the pre-financing may be made by the Contracting Authority from future payments due to the Contractor under the contract, or the Contracting Authority may apply the provisions of Article 15.6.
- 46.6. If the contract is terminated for any reason whatsoever, the guarantees securing the pre-financing may be invoked forthwith in order to repay the balance of the pre-financing still owed by the Contractor, and the guarantor shall not delay payment or raise objection for any reason whatever.
- 46.7. The pre-financing guarantee provided for in Article 46 shall be released as and when pre-financing is repaid.
- 46.8. Further conditions and procedures for granting and repaying pre-financing shall be as laid down in the Special Conditions.

***Article 47: Retention monies***

- 47.1. The sum which shall be retained from interim payments by way of guarantee to meet the Contractor's obligations during the defects liability period, and the detailed rules governing that guarantee, shall be stipulated in the Special Conditions, provided that it shall, in no case, exceed 10% of the contract price.
- 47.2. Subject to the approval of the Contracting Authority, the Contractor may, if he so wishes, substitute, not later than the date fixed for the commencement of the works, these retention sums by a retention guarantee issued in accordance with Article 15.3.
- 47.3. The sum retained or the retention guarantee shall be released within 45 days of the issuing of the signed final statement of account referred to in Article 51.

***Article 48: Revision of prices***

- 48.1. Unless otherwise stipulated in the Special Conditions, and except as provided in Article 48.4 the contract shall be at fixed prices which shall not be revised.
- 48.2. Where prices may be revised under the contract, such revision shall take into account variations in the prices of significant local or external elements which serve as a basis for the

calculation of the tender price, such as manpower, services, materials and supplies, as well as charges laid down by law or regulation. The detailed rules for the revision shall be as laid down in the Special Conditions.

48.3. Prices contained in the Contractor's tender shall be deemed:

- (a) to have been arrived at on the basis of the conditions in force 30 days prior to the latest date fixed for submission of tenders; or in the case of direct agreement contracts, on the date of the contract;
- (b) to have taken account of the legislation and the relevant tax arrangements applicable at the reference date fixed in Article 48.3 (a).

48.4. In the event of changes to, or introduction of, any national or State statute, ordinance, decree or other law, or any regulation or by-law of any local or other public authority, after the date stated in Article 48.3 which causes a change in the contractual relationship between the parties to the contract, the Contracting Authority and the Contractor shall consult on how best to proceed further under the contract, and may as a result of such consultation decide:

- (a) to modify the contract; or
- (b) on payment of compensation for the resulting imbalance by one party to the other; or
- (c) to terminate the contract by mutual agreement.

48.5. In the event of a delay in the implementation of the tasks for which the Contractor is responsible, the indices to be considered for the revision of prices during the period of delay shall be the most advantageous to the Contracting Authority between those applied to the last interim certificate issued for tasks implemented during the period of implementation of tasks and those revised up to the provisional acceptance of the tasks.

#### ***Article 49: Measurement***

49.1. The following methods shall apply to the valuation of works contracts:

- (a) For lump-sum contracts, the amount due under the contract shall be determined on the basis of the breakdown of the overall contract price, or on the basis of a breakdown expressed as a percentage of the contract price corresponding to completed stages of the works. Where items are accompanied by quantities, these shall be firm quantities for which the Contractor has submitted his all-in price, and shall be paid for irrespective of the quantities of work actually carried out.
- (b) For unit price contracts:
  - (i) the amount due under the contract shall be calculated by applying the unit rates to the quantities actually executed for the respective items, in accordance with the contract;
  - (ii) the quantities set out in the bill of quantities shall be the estimated quantities of the works, which shall not be taken as the actual and correct quantities of the works to be executed by the Contractor in fulfillment of his obligations under the contract;
  - (iii) the Supervisor shall determine by measurement the actual quantities of the works executed by the Contractor, and these shall be paid for in accordance with Article 50. Unless otherwise provided in the Special Conditions no additions shall be made to the items in the bill of quantities except as a result of a modification in accordance with Article 37 or another provision of the contract entitling the Contractor to additional payment;
  - (iv) the Supervisor shall, when he requires any parts of the works to be measured, give reasonable notice to the Contractor to attend, or to send a qualified agent to represent him. The Contractor or his agent shall assist the Supervisor in making

such measurements and shall furnish all particulars required by the Supervisor. Should the Contractor not attend, or omit to send such agent, the measurement made by the Supervisor or approved by him shall be binding on the Contractor;

(v) the works shall be measured net, notwithstanding any general or local custom, except where otherwise provided for in the contract.

(c) For cost-plus contracts, the amount due under the contract shall be determined on the basis of actual costs with an agreed addition for overheads and profit. The Special Conditions shall stipulate the information which the Contractor is required to submit to the Supervisor for the purpose of Article 49.1 (c) and the manner in which it should be submitted.

49.2. Where an item in the contract is indicated as 'provisional' the provisional sum set aside for it shall not be taken into account in calculating the percentages referred to in Article 37.

#### ***Article 50: Interim payments***

50.1. Unless otherwise specified in the Special Conditions, the Contractor shall submit an application for interim payment to the Supervisor at the end of each period referred to in Article 50.7 in a form approved by the Supervisor. The application shall include the following items, as applicable:

- (a) the estimated contract value of the permanent works implemented up to the end of the period in question;
- (b) an amount reflecting any revision of prices pursuant to Article 48;
- (c) an amount to be withheld as retention sum under Article 47;
- (d) any credit and/or debit for the period in question in respect of plant and materials on site intended for, but not yet incorporated in, the permanent works in the amount and under the conditions set out in Article 50.2;
- (e) an amount to be deducted on account of the pre-financing repayment under the provisions of Article 46; and
- (f) any other sum to which the Contractor may be entitled under the contract.

50.2. The Contractor shall be entitled to such sums as the Supervisor may consider proper in respect of plant and materials intended for, but not yet incorporated in, the permanent works provided that:

- (a) the plant and materials conform with the specifications for the permanent works and are set out in batches in a way that they may be recognized by the Supervisor;
- (b) such plant and materials have been delivered to the site, and are properly stored and protected against loss or damage or deterioration to the satisfaction of the Supervisor;
- (c) the Contractor's record of requirements, orders, receipts and use of plant and materials under the contract are kept in a form approved by the Supervisor and such records are available for inspection by the Supervisor;
- (d) the Contractor submits with his statement, the estimated value of the plant and materials on site together with such documents as may be required by the Supervisor for the purpose of valuation of the plant and materials and providing evidence of ownership and payment therefor; and
- (e) where the Special Conditions so provide, ownership of the plant and materials referred to in Article 43 shall be deemed to be vested in the Contracting Authority.

50.3. Approval by the Supervisor of any interim payment certified by him in respect of plant and materials pursuant to Article 50 shall be without prejudice to the exercise of any power of the Supervisor under the contract to reject any plant or materials which are not in

accordance with the provisions of the contract.

- 50.4. The Contractor shall be responsible for any loss or damage to, and for the cost of storing and handling of, such plant and materials on site and shall effect such additional insurance as may be necessary to cover the risk of such loss or damage from any cause.
- 50.5. Within 30 days of receipt of the said application for interim payment, it shall be approved or amended in such manner that, in the Supervisor's opinion, the application reflects the amount due to the Contractor in accordance with the contract. In cases where there is a difference of opinion as to the value of an item, the Supervisor's view shall prevail. On determination of the amount due to the Contractor, the Supervisor shall, within the same 30 days deadline, issue and transmit to the Contracting Authority for payment and to the Contractor for information, an interim payment certificate for the amount due to the Contractor and shall inform the Contractor of the works for which payment is being made.
- 50.6. The Supervisor may, by an interim payment certificate, make any corrections or modifications to any previous certificate issued by him and shall have power to modify the valuation in or withhold the issue of, any interim payment certificate if the works or any part thereof is not being carried out to his satisfaction.
- 50.7. Unless the Special Conditions provide otherwise, the frequency shall be one interim payment per month.

***Article 51: Final statement of account***

- 51.1. Unless otherwise agreed in the Special Conditions, the Contractor shall not later than 90 days after the issue of the final acceptance certificate referred to in Article 62, submit to the Supervisor a draft final statement of account with supporting documents showing in detail the value of the work done in accordance with the contract, together with all further sums which the Contractor considers to be due to him under the contract in order to enable the Supervisor to prepare the final statement of account.
- 51.2. Within 90 days after receipt of the draft final statement of account and of all information reasonably required for its verification, the Supervisor shall prepare the final statement of account, which determines:
  - (a) the amount which in his opinion is finally due under the contract; and
  - (b) after establishing the amounts previously paid by the Contracting Authority and all sums to which the Contracting Authority is entitled under the contract, the balance, if any, due from the Contracting Authority to the Contractor, or from the Contractor to the Contracting Authority, as the case may be.
- 51.3. The Supervisor shall issue to the Contracting Authority or to its duly authorized representative, and to the Contractor, the final statement of account showing the final amount to which the Contractor is entitled under the contract. The Contracting Authority or its duly authorized representative and the Contractor shall sign the final statement of account as an acknowledgement of the full and final value of the work implemented under the contract and shall promptly submit a signed copy to the Supervisor. However, the final statement of account shall not include amounts in dispute which are the subject of negotiations, conciliation, arbitration or litigation.
- 51.4. The final statement of account signed by the Contractor shall constitute a written discharge of the Contracting Authority confirming that the total in the final statement of account represents full and final settlement of all monies due to the Contractor under the contract, other than those amounts which are the subject of amicable settlement, arbitration or litigation. However, such discharge shall become effective only after any payment due in accordance with the final statement of account has been made and the performance

guarantee referred to in Article 15 has been returned to the Contractor.

- 51.5. The Contracting Authority shall not be liable to the Contractor for any matter or thing whatsoever arising out of, or in accordance with, the contract or execution of the works, unless the Contractor shall have included a claim in respect thereof in his draft final statement of account.

***Article 52: Direct payments to sub-contractors***

- 52.1. When the Supervisor receives a claim from a sub-Contractor duly approved under Article 7 to the effect that the Contractor has not met his financial obligations so far as the sub-Contractor is concerned, the Supervisor shall give notice to the Contractor either to pay the sub-Contractor or to inform him of the reasons why payment should not be made. Should such payment not be made, or reasons not be given within the period of notice, the Supervisor may, after satisfying himself that the work has been carried out, certify, and the Contracting Authority shall meet the debt claimed by the sub-Contractor out of the sums remaining due to the Contractor. The Contractor shall remain entirely responsible for the work in respect of which direct payment has been made.
- 52.2. If the Contractor gives adequate reasons for refusing to meet all or part of the debt claimed by the sub-contractor, the Contracting Authority shall only pay to the subcontractor such sums as are not in dispute. Sums claimed by the sub-Contractor in respect of which the Contractor has given adequate reasons for his refusal to pay shall be paid by the Contracting Authority only after the parties have come to an amicable settlement, or after the decision of an arbitrating authority or after a judgment of a court has been duly notified to the Supervisor.
- 52.3. Direct payments to sub-contractors shall not exceed the value at contract prices of the services performed by the sub-contractors for which they request payment; the value at contract prices shall be calculated or assessed on the basis of the bill of quantities, the price schedule or the breakdown of the lump sum price.
- 52.4. Direct payments to sub-contractors shall be made entirely in the national currency of the country in which the contract is performed, or partly in such national currency and partly in foreign currency, in accordance with the contract.
- 52.5. Where direct payments to sub-contractors are made in foreign currency, they shall be calculated in accordance with Article 56. They shall not result in any increase in the total amount payable in foreign currency, as stipulated in the contract.
- 52.6. The provisions of Article 52 shall apply subject to the requirements of the law applicable by virtue of Article 54 concerning the right to payment of creditors who are beneficiaries of an assignment of credit or of a collateral security.

***Article 53: Delayed payments***

- 53.1. If the period laid down for payment in article 44 has been exceeded, the Contractor shall qualify for interest calculated pro rata on the basis of the number of days delay at the rate specified in the Special Conditions, subject to a maximum period, also specified therein. The Contractor shall be entitled to such payment without prejudice to any other right or remedy under the contract. In the case of the final statement of account, the interest for the delayed payment shall be calculated on a daily basis at the rate specified in the Special Conditions.
- 53.2. Any default in payment of more than 120 days from the expiry of the period laid down in Article 53.1 shall entitle the Contractor either not to perform the contract or to terminate it.

***Article 54: Payments to third parties***

- 54.1. All orders for payments to third parties may be carried out only after an assignment made in accordance with Article 6. The assignment shall be notified to the Contracting Authority.
- 54.2. Notification of beneficiaries of the assignment shall be the sole responsibility of the Contractor.
- 54.3. In the event of a legally binding attachment of the property of the Contractor affecting payments due to him under the contract, without prejudice to the time limit laid down in Article 53, the Contracting Authority shall have 30 days, starting from the day when it receives notification of the definitive lifting of the obstacle to payment, to resume payments to the Contractor.

***Article 55: Claims for additional payment***

- 55.1. If under the contract there are circumstances which the Contractor considers entitle him to additional payment, the Contractor shall:
  - (a) if he intends to make any claim for additional payment, give to the Supervisor notice of his intention or make such claim within 15 days after the said circumstances become known to the Contractor, stating the reason for his claim; and
  - (b) submit full and detailed particulars of his claim as soon as it is reasonably practicable, but no later than 60 days after the date of such notice, unless otherwise agreed by the Supervisor. In case the Supervisor agrees to another deadline than the said 60 days, the agreed upon deadline will in any event, require that such particulars shall be submitted no later than the date of submission of the draft final statement of account. The Contractor shall thereafter promptly submit such further particulars as the Supervisor may reasonably require assessing the validity of the claim.
- 55.2. When the Supervisor has received the full and detailed particulars of the Contractor's claim that he requires, he shall, without prejudice to Article 21.4, after due consultation with the Contracting Authority and, where appropriate, the Contractor, determine whether the Contractor is entitled to additional payment and notify the parties accordingly.
- 55.3. The Supervisor may reject any claim for additional payment which does not comply with the requirements of Article 55.

***Article 56: End date***

The payment obligations of the EC under this Contract shall cease at most 18 months after the end of the period of implementation of tasks, unless the contract is terminated in accordance with these General Conditions. In the event of co-financing, this date shall be laid down in the Special Conditions.

## **ACCEPTANCE AND DEFECTS LIABILITY**

***Article 57: General principles***

- 57.1. Verification of the works by the Supervisor with a view to provisional or final acceptance shall take place in the presence of the Contractor. The absence of the Contractor shall not be a bar to verification on condition that the Contractor has been summoned in due form at least 30 days prior to the date of verification.
- 57.2. Should exceptional circumstances make it impossible to ascertain the state of the works or otherwise proceed with their acceptance during the period fixed for provisional or final acceptance, a statement certifying such impossibility shall be drawn up by the Supervisor

after consultation, where possible, with the Contractor. The verification shall take place and a statement of acceptance or rejection shall be drawn up by the Supervisor within 30 days following the date on which such impossibility ceases to exist. The Contractor shall not invoke these circumstances in order to avoid his obligation to present the works in a state suitable for acceptance.

**Article 58: Tests on completion**

- 58.1. The works shall not be accepted until the prescribed verifications and tests have been carried out at the expense of the Contractor. The Contractor shall notify the Supervisor of the date on which such verification and tests may commence.
- 58.2. Works which do not satisfy the terms and conditions of the contract, or in the absence of such terms and conditions, which are not carried out in accordance with trade practices in the State where the works are located, shall, if required, be demolished and rebuilt by the Contractor or repaired to the satisfaction of the Supervisor, otherwise this shall be done as of right after due notice at the expense of the Contractor, by order of the Supervisor. The Supervisor may also require the demolition and reconstruction by the Contractor, or repair to the satisfaction of the Supervisor, under the same conditions of work, in which unacceptable materials have been used, or carried out in the periods of suspension provided for in Article 38.

**Article 59: Partial acceptance**

- 59.1. The Contracting Authority may make use of the various structures, parts of structures or sections of the works forming part of the contract as and when they are completed. Any taking over of the structures, parts of structures or sections of the works by the Contracting Authority shall be preceded by their partial provisional acceptance. However, works may in cases of urgency be taken over prior to acceptance provided an inventory of outstanding work is drawn up by the Supervisor and agreed to by the Contractor and the Supervisor beforehand. Once the Contracting Authority has taken possession of a structure, a part thereof or section of the works, the Contractor shall no longer be required to make good any damage resulting otherwise than from faulty construction or workmanship.
- 59.2. The Supervisor may, at the request of the Contractor and if the nature of the works so permits, proceed with partial provisional acceptance, provided that the structures, parts of structures or sections of the works are completed and suited to the use as described in the contract.
- 59.3. In the cases of partial provisional acceptance referred to in Article 59.1 and 59.2 the defects liability period provided for in Article 62 shall, unless the Special Conditions provide otherwise, run as from the date of such partial provisional acceptance.

**Article 60: Provisional acceptance**

- 60.1. The works shall be taken over by the Contracting Authority when they have satisfactorily passed the tests on completion and a certificate of provisional acceptance has been issued or is deemed to have been issued.
- 60.2. The Contractor may apply, by notice to the Supervisor, for a certificate of provisional acceptance not earlier than 15 days before the works, in the Contractor's opinion, are complete and ready for provisional acceptance. The Supervisor shall within 30 days after the receipt of the Contractor's application either:
  - (a) 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 works were completed in accordance with the

contract and ready for provisional acceptance; or

- (b) 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.

- 60.3. If the Supervisor fails either to issue the certificate of provisional acceptance or to reject the Contractor's application within the period of 30 days, he shall be deemed to have issued the certificate on the last day of that period. The certificate of provisional acceptance shall not be deemed to be an admission that the works have been completed in every respect. If the works are divided by the contract into sections, the Contractor shall be entitled to apply for separate certificates for each of the sections.
- 60.4. Upon provisional acceptance of the works, the Contractor shall dismantle and remove temporary structures as well as materials no longer required for use in connection with the performance of the contract. He shall also remove any litter or obstruction and redress any change in the condition of the site as required by the contract.
- 60.5. Immediately after provisional acceptance, the Contracting Authority may make use of all the works as completed.

#### ***Article 61: Defects liability***

- 61.1. The Contractor shall be responsible for making good any defect in, or damage to, any part of the works which may appear or occur during the defects liability period and which arises either from:
  - (a) the use of defective plant or materials or faulty workmanship or design of the Contractor; and/or
  - (b) any act or omission of the Contractor during the defects liability period.
- 61.2. The Contractor shall at his own cost make good the defect or damage as soon as practicable. The defects liability period for all items replaced or renewed shall recommence from the date when the replacement or renewal was made to the satisfaction of the Supervisor. If the contract provides for partial acceptance, the defects liability period shall be extended only for the part of the works affected by the replacement or renewal.
- 61.3. If any such defect appears or such damage occurs, during the period referred to in Article 61.1, the Contracting Authority or the Supervisor 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) carry out the works himself, or employ someone else to carry out the works, 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 from guarantees held against, the Contractor, or from both; or
  - (b) terminate the contract.
- 61.4. If the defect or damage is such that the Contracting Authority has been deprived substantially of the whole or a part of the benefit of the works, the Contracting Authority shall, without prejudice to any other remedy, be entitled to recover all sums paid in respect of the parts of the works concerned together with the cost of dismantling such parts and clearing the site.
- 61.5. In case of emergency, where the Contractor cannot be reached immediately or, having been reached, is unable to take the measures required, the Contracting Authority or the Supervisor may have the work carried out at the expense of the Contractor. The Contracting Authority or the Supervisor shall as soon as practicable inform the Contractor of the action taken.

- 61.6. Where the Special Conditions stipulate that the maintenance work, necessitated by normal wear and tear, shall be carried out by the Contractor, such work shall be paid for from a provisional sum. Deterioration resulting from the circumstances provided for in Article 21 or from abnormal use shall be excluded from this obligation unless it reveals a fault or defect justifying the request for repair or replacement under Article 61.
- 61.7. The defects liability shall be stipulated in the Special Conditions and technical specifications. If the duration of the defects liability period is not specified, it shall be 365 days. The defects liability period shall commence on the date of provisional acceptance.
- 61.8. After provisional acceptance and without prejudice to the defects liability referred to in Article 61, the Contractor shall no longer be responsible for risks which may affect the works and which result from causes not attributable to him. However, the Contractor shall be responsible as from the date of provisional acceptance for the soundness of the construction, as laid down in the in the law of the state of the Contracting Authority.

***Article 62: Final acceptance***

- 62.1. Upon the expiration of the defects liability period, or where there is more than one such period, upon the expiration of the latest period, and when all defects or damage have been rectified, the Supervisor shall issue to the Contractor a final acceptance certificate and a copy thereof to the Contracting Authority stating the date on which the Contractor completed his obligations under the contract to the Supervisor's satisfaction. The final acceptance certificate shall be given by the Supervisor within 30 days after the expiration of the above stated period, or as soon as any works ordered under Article 61 have been completed to the satisfaction of the Supervisor.
- 62.2. The works shall not be considered as completed until the final acceptance certificate has been signed by the Supervisor and delivered to the Contracting Authority, with a copy to the Contractor.
- 62.3. Notwithstanding the issue of the final acceptance certificate, the Contractor and the Contracting Authority shall remain liable for the fulfillment of any obligation incurred under the contract prior to the issue of the final acceptance certificate, which remains unperformed at the time such 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 63: Breach of contract***

- 63.1. Either party commits a breach of contract where he fails to discharge any of his obligations under the contract.
- 63.2. Where a breach of contract occurs, the party injured by the breach shall be entitled to the following remedies:
  - (a) damages; and/or
  - (b) termination of the contract.
- 63.3. Damages may be either:
  - (a) general damages; or
  - (b) liquidated damages.
- 63.4. In any case where the Contracting Authority is entitled to damages, he may deduct such damages from any sums due to the Contractor or from the appropriate guarantee.

**Article 64: Termination by the Contracting Authority**

- 64.1. The Contracting Authority may, at any time and with immediate effect, terminate the contract, except as provided for under Article 64.2.
- 64.2. Except as otherwise provided in these General Conditions, the Contracting Authority may, after giving seven days notice to the Contractor, terminate the contract and expel the Contractor from the site in any of the cases where:
- (a) the Contractor fails to carry out the works substantially in accordance with the provisions of the contract;
  - (b) the Contractor fails to comply within a reasonable time with a notice given by the Supervisor requiring him to make good any neglect or failure to perform his obligations under the contract which seriously affects the proper and timely performance of the works;
  - (c) the Contractor refuses or neglects to carry out administrative orders given by the Supervisor;
  - (d) the Contractor assigns the contract or sub-contracts without the authorization of the Contracting Authority;
  - (e) the Contractor becomes bankrupt or insolvent, or has a receiving order made against him, or compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or goes into liquidation;
  - (f) a judgment which has the force of res judicata is made in respect of an offence relating to the professional conduct of the Contractor;
  - (g) any other legal disability hindering performance of the contract occurs;
  - (h) any organizational modification occurs involving a change in the legal personality, nature or control of the Contractor, unless such modification is recorded in an endorsement to the contract;
  - (i) the Contractor fails to provide the required guarantee or insurance, or if the person providing the earlier guarantee or insurance is not able to abide by his commitments;
  - (j) the Contractor has been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;
  - (k) 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 European Union's financial interests;
  - (l) the Contractor, following another procurement procedure or grant award procedure financed by the EU budget/EDF, has been declared to be in serious breach of contract for failure to perform its contractual obligations;
  - (m) 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.
- 64.3. Termination shall be without prejudice to any other rights or powers under the contract of the Contracting Authority and the Contractor. The Contracting Authority may, thereafter, complete the works himself or conclude any other contract with a third party for the account of the Contractor. The Contractor's liability for delay in completion shall immediately cease when the Contracting Authority expels him from the site without prejudice to any liability thereunder that may have already occurred.
- 64.4. The Supervisor shall, upon the issue of the notice of termination of the contract, instruct the

Contractor to take immediate steps to bring the works to a close in a prompt and orderly manner and to reduce expenditure to a minimum.

64.5. The Supervisor shall, as soon as is possible after termination, certify the value of the works and all sums due to the Contractor as at the date of termination.

64.6. In the event of termination:

(a) a report of work performed by the Contractor shall be drawn up by the Supervisor as soon as possible after inspection of the works, and inventory taken of temporary structures, materials, plant and equipment. The Contractor shall be summoned to be present during the inspection and the taking of the inventory. The Supervisor shall also draw up statements of emoluments still owed by the Contractor to workers employed by him in relation to the contract and of sums owed by the Contractor to the Contracting Authority;

(b) the Contracting Authority shall have the option of acquiring in whole or in part temporary structures which have been approved by the Supervisor, plant and materials specifically supplied or manufactured in connection with the execution of work under the contract;

(c) the purchase price of the temporary structures, equipment, plant and materials referred to above shall not exceed the unpaid portion of the expenditure incurred by the Contractor, such expenditure being limited to that required for the performance of the contract under normal conditions;

(d) the Contracting Authority may purchase, at market prices, the materials and items supplied or ordered by the Contractor and not already paid for by the Contracting Authority on such conditions as the Supervisor considers appropriate.

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

64.8. If the Contracting Authority terminates the contract, it shall be entitled, in addition to the extra costs for completion of the works, to recover from the Contractor any loss it has suffered up to 10% of the contract price.

64.9. 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 him for work already performed, an indemnity for loss suffered.

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

#### ***Article 65: Termination by the Contractor***

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

(a) fails to pay the Contractor the amounts due under any certificate issued by the Supervisor after the expiry of the time limit stated in Article 53.2; or

(b) consistently fails to meet his obligations after repeated reminders; or

(c) suspends the progress of the works or any part thereof for more than 180 days, for reasons not specified in the contract, or not due to the Contractor's default.

65.2. Such termination shall be without prejudice to any other rights of the Contracting Authority

or the Contractor under the contract. Upon such termination, the Contractor shall, subject to the law of the State of the Contracting Authority, be entitled to immediately remove his equipment from the site.

- 65.3. In the event of such termination, the Contracting Authority shall pay the Contractor for any loss or damage the Contractor may have suffered. The maximum amount shall be 10% of the contract price.

**Article 66: Force majeure**

- 66.1. Neither party shall be considered to be in default or in breach of his obligations under the contract if the performance of such obligations is prevented by any circumstances of *force majeure* which arises after the date of notification of award or the date when the contract becomes effective.
- 66.2. The term *force majeure*, as used herein shall mean acts of God, strikes, lock-outs 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, not within the control of either party and which by the exercise of due diligence neither party is able to overcome.
- 66.3. Notwithstanding the provisions of Articles 36 and 64, 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 performance or other failure to perform his obligations under the contract is the result of an event of *force majeure*. The Contracting Authority shall similarly not be liable, notwithstanding the provisions of Articles 53 and 65, to payment of interest on delayed payments, for non-performance 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*.
- 66.4. If either party considers that any circumstances of *force majeure* have occurred which may affect performance of his obligations, he shall promptly notify the other party and the Supervisor, giving details of the nature, the probable duration and the likely effect of the circumstances. Unless otherwise directed by the Supervisor in writing, the Contractor shall continue to perform his obligations under the contract as far as is reasonably practicable, and shall seek all reasonable alternative means for performance of his obligations which are not prevented by the *force majeure* event. The Contractor shall not put into effect such alternative means unless directed so to do by the Supervisor.
- 66.5. If the Contractor incurs additional costs in complying with the Supervisor's directions or using alternative means under Article 66.4, the amount thereof shall be certified by the Supervisor.
- 66.6. 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 works that the Contractor may be reason thereof have been granted, either party shall be entitled to serve upon the other 30 days' notice to terminate the contract. If, at the expiry of the period of 30 days, *force majeure* still continues, the contract shall terminate and, in consequence thereof under the law governing the contract, the parties shall be released from further performance of the contract.

**Article 67: Decease**

- 67.1. 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.

- 67.2. Where the Contractor consists of natural persons and one or more of them die, a report shall be agreed between the parties on the progress of the works 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.
- 67.3. In the cases provided for in Article 67.1 and 67.2, persons offering to continue to perform the contract shall notify the Contracting Authority thereof within 15 days of the date of decease.
- 67.4. Such persons shall be jointly and severally liable, or as otherwise stated in the Special Conditions, for the proper performance of the contract to the same extent as the deceased Contractor. Continuation of the contract shall be subject to the rules relating to establishment of the guarantee provided for in Article 15.

## **SETTLEMENT OF DISPUTES**

### ***Article 68: Settlement of disputes***

- 68.1. The Parties shall make every effort to settle amicably disputes relating to the contract which may arise between them, or between the Supervisor and the Contractor.
- 68.2. 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 notification requesting such a procedure. Should a Party not agree to the other Party's request for an 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.
- 68.3. 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 this request for 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.
- 68.4. If the 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 the Special Conditions.

## **FINAL PROVISIONS**

### ***Article 69: Ethics clauses***

- 69.1. 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.
- 69.2. 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.

- 69.3. 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.
- 69.4. 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 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.
- 69.5. 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.
- 69.6. 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.
- 69.7. 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.
- 69.8. 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.
- 69.9. 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.
- 69.10. 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.
- 69.11. 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.
- 69.12. 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.
- 69.13. 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 70: Administrative and financial penalties***

- 70.1. 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 EU budget/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.

- 70.2. 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.
- 70.3. 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 71: Checks and audits by European Union bodies***

- 71.1. 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 tasks 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.
- 71.2. 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 Union legislation for the protection of the financial interests of the European Union against fraud and other irregularities.
- 71.3. 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 Contractor must inform the Contracting Authority of their precise location.
- 71.4. 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 as those set out in this Article, to any sub-Contractor or any other party benefiting from EU/EDF funds.

## VOLUME 2

### SECTION 3: 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.

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

**2.1** EU law is the law which applies to the contract, complemented, where necessary, by Belgian law.

**2.3** The language used shall be English.

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

The following documents shall be deemed to form and be read and construed as part of this contract, in the following order of precedence:

- (a) the contract,
- (b) the Special Conditions,
- (c) the General Conditions,
- (d) the technical specifications,
- (e) the design documentation (drawings),
- (f) the Bill of Quantities and Price Schedule, possibly after arithmetical corrections;
- (g) the tender with the appendix,
- (h) any other document forming part of the contract.

#### **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: XXXX
<b>Address:</b>	EULEX Kosovo Project Manager Ndërtesa Farmed “Muharren Fejza” p.n. Lagja e Spitalit 10000 Pristina, Kosovo
<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 5: Supervisor and Supervisor's representative**

- 5.1** Administrative orders issued by the Supervisor shall be dated, numbered and delivered to the Contractor or its representative as specified under Article 4 of GCC.
- 5.2** With reference to the documentation and test required in the technical specifications, the Contractor must provide any technical documentation or sample as may be requested by the Supervisor, prior to delivery on site. As and when requested by the Supervisor such technical documentation or samples may be considered to be tested to verify the correctness of the information provided.

**Article 7: Sub-contracting**

Subcontracting is allowed up to **30%** of the value of the Contract Works.

**Article 8: Documents to be provided**

- 8.1** All the drawings and documents related to this contract must strictly be treated as confidential by the Contractor, unless otherwise approved by the Contracting Authority in written.
- 8.2** Drawings and related documents that the Contractor must provide to the Supervisor upon his request must be prepared and submitted within 7 days from the date of such request. The Supervisor must approve, ask modifications or reject the presented documentation within 7 days from the receiving date. Production of any documentation as may be requested from the Contractor shall be no subject to any additional claims in cost or extension of performance.

**Article 9: Access to the site**

- 9.1** The staff needed for the implementation of the works will be issued special permission for access to the site. For this purpose, the staff assigned for the site will have to go through « Security » clearance procedures. .
- 9.2** The period of access to the site will be limited by the Contracting Authority, but however not less than 8 working hours per working day. The Supervisor might extend such period upon Contractor's request by issuing an Administrative Order.

**Article 10: Assistance with local regulations**

- 10.1** The Contracting Authority will assist the Contractor with legislation regarding customs clearance and VAT tax exclusions.

**Article 15: Performance guarantee**

**15.1** The amount of the performance guarantee shall be **10%** of the amount of the Contract and any addenda thereto.

**Article 16: Insurance**

**16.1** Insurance with regard to risks and damages to facilities or plant are limited to two times of the Contract Value and the number of incidents shall be unlimited.

**16.2** The insurance will also be required to cover all subcontractors unless similar insurance has been taken out by the subcontractors.

**16.3** Insurance shall be submitted after the contract signature but not later than 7 days prior to possession of the site by the Contractor.

**Article 17: Programme of implementation of tasks**

**17.1** The Contractor shall submit to the Supervisor for approval a detailed implementation programme within **10** days from the contract signature.

**Article 19: Contractor's drawings**

**19.1** Any requirements for drawings, documents, samples and or models related to this article are specified in the Technical Specifications.

**19.2.** Manuals, drawing and any other document related to the performance of this contract must be in English.

**Article 20: Sufficiency of tender prices**

**20.4** The contractor will calculate and present the amount for each item, based on the quantities of materials and works presented in the Volume 4 Bill of Quantities.

The unit price for unforeseen works, to be recognized throughout the project and ordered by the Contracting Authority shall be derived from the Contract's Unit Prices of a same or similar type of works or extracted from referent recent similar contracts.

**Article 24: Interference with traffic**

**24.1** The Contractor shall liaise closely with all relevant authorities in relation to the traffic control. Traffic around the building is to remain unhindered during workdays. Access to the court building is to remain open and free to the public at all times. Due to the nature of the activities within the building, the worksite is to be kept as tidy as possible.

**Article 27: Demolished materials**

**27.1** Materials and items from the demolition will be property of the Contracting Authority, unless the Supervisor agrees otherwise by means of an administrative order.

**27.2** The demolition, removal of materials and site clearance must be completed by the Contractor daily and to be disposed off in the municipal dump according to city regulations and standards of good practice.

**27.3.** Unless otherwise instructed by the Supervisor, the Contractor shall not re use any of the demolished material.

**Article 29: Temporary works**

**29.2** Should the Contractor need any additional information or drawings apart from those being part of the Tender Dossier, he will put his request to the Supervisor. Final decision will be on the side of the supervisor.

**Article 33: Commencement order**

**33.1** The date of commencement shall be within **15 days** after signature of the contract by both parties, the contractor shall be notified by means of an Administrative Order.

**Article 34: Period of implementation of tasks**

**34.1** The period of the execution of the tasks will be 90 calendar days from the date of signature of the contract by both parties, plus a Defect Liability Period of 24 months.

**Article 36: Delays in implementation of tasks**

**36.1** The liquidated damages will be calculated as 0.1% (3/1000) of the contract value per day of delay, up to a maximum of 10 %(ten %) of the total contract price.

**Article 37: Variations and modifications**

**37.1** The possibility for other variations is excluded.

**Article 39: Work register**

**39.1** The works register shall as a minimum include all decisions, notifications, instructions, quantitative and qualitative measurements communicated between the Contractor and the Supervisor and a daily detailed site calendar.

**Article 40: Origin and quality of works and materials**

**40.1** No rule of origin is applied.

**Article 41: Inspection and testing**

The Supervisor will specify by means of administrative order the practical arrangements for inspection and testing.

**Article 44: General principles for payments**

**44.1** Payments shall be made in Euro.

**44.2** Requests for payment shall be accompanied with an original invoice and must be addressed to the Contracting Authority through the Supervisor.

**44.3** Payments shall be authorized and made by the Contracting Authority.

**Article 46: Pre-financing**

**46.(1) and (2)** The total amount of the pre-financing must not exceed 10% of the original contract price.

In order to obtain pre-financing payment, the Contractor must forward to the Contracting Authority, the payment request and the performance guarantee. If a pre-financing is requested the Contractor must provide a financial guarantee for the full amount of the pre-financing payment.

**Article 47: Retention monies**

**47.1** The sum to be retained from interim payments to guarantee implementation of the Contractor's obligations during the maintenance period is **10%** of each instalment.

**Article 48: Price revision**

Prices and rates in the Bills of Quantities are firm and fixed during the contract performance and are not subject to revisions.

**Article 50 – Interim payments**

**50.1.** The minimum amount of each interim payment shall be 10% of the contract price, corresponding to the completion rate of the works confirmed by the Supervisor

**Article 51: Final statement of account**

**51.1** The draft final statement of account shall be submitted at the latest at the moment of the Contractor's application for the provisional acceptance certificate.

**51.2** The Supervisor shall prepare and sign the final statement of account within 30 days from the issue of the certificate of final acceptance referred to in article 62.

**Article 53: Delayed payments**

**53.1** Once the deadline laid down in Article 44.3 of the General Conditions has expired, the Contractor shall receive late-payment interest:

- 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, C series, where payments are in euro,
- at the rediscount rate applied by the central bank of the beneficiary country if payments are in the currency of that country,

on the first day of the month in which the deadline expired, plus three and a half percentage points. The late-payment interest shall apply to the time which elapses between the date of the payment deadline, and the date on which the Contracting Authority's account is debited. By way of exception, when the interest calculated in accordance with this provision is lower than or equal to EUR 200, it shall be paid to the Contractor only upon a demand submitted within two months of receiving late payment. The Member States are not entitled to late-payment interest.

**Article 60: Provisional acceptance**

**60.1** The works shall be taken over by the Contracting Authority when they have satisfactorily passed the tests on completion and a certificate of provisional acceptance has been issued or is deemed to have been issued (Form in Volume 6).

**Article 61: Defects liability**

**61.1** As stated in the glossary of terms in general annexes, the defects liability period is defined as the period stated in the contract immediately following the date of provisional acceptance, during which the Contractor is required to complete the works and to remedy defects or faults as instructed by the Supervisor. The rights and obligations of the parties with regard to this defects liability period are laid down in Article 61 of the General Conditions.

**61.2** The duration of the defects liability period is 24 months. The defects liability period shall commence on the date of provisional acceptance.

**Article 68: Dispute settlement**

**68.1** Any dispute 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 EU law, complemented, where necessary, by Belgian law.

**VOLUME 2**

**SECTION 4:  
SPECIMEN PERFORMANCE GUARANTEE**

(To be completed on paper bearing the letterhead of the financial institution)

For the attention of

**Xavier de Marnhac, Head of EULEX Kosovo**, and address at EULEX Kosovo, Ndertesa Farmed, str. "Muharrem Fejza" p.n., Lagja e Spitalit, 10000 Pristina, Kosovo

referred to below as the "Contracting Authority"

Subject: Guarantee No...

Performance Guarantee for the full and proper execution of contract (contract number and title) (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 15 of the Special Conditions of the contract (contract number and title) 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 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 to the Contract.

We note that the guarantee will be released in accordance with article 15.8 of the General Conditions to the Contract [and in any case at the latest on (at the expiry of 18 months after the implementation period of the Contract)]<sup>14</sup>.

The law applicable to this guarantee shall be that of <enter Belgium, / 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 shall enter into force and take effect upon its signature.

Done at ....., ././..

Name and first name: ..... On behalf of: .....

Signature: .....

*[stamp of the body providing the guarantee]*

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<sup>14</sup> This mention has to be inserted only where required, for example where the law applicable to the guarantee imposes a precise expiry date

**VOLUME 2**  
**SECTION 5:**  
**SPECIMEN PREFINANCING PAYMENT GUARANTEE**

(To be completed on paper bearing the letterhead of the financial institution)

For the attention of

**Xavier de Marnhac, Head of EULEX Kosovo**, and address at EULEX Kosovo, Ndertesa Farmed, str. "Muharrem Fejza" p.n., Lagja e Spitalit, 10000 Pristina, Kosovo

Referred to below as the "Contracting Authority"

Subject: Guarantee No...

Financing Guarantee for the repayment of pre-financing payable under contract (Contract number and title) (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 46 of the Special Conditions of the contract (Contract number and title) 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 in accordance with the article 46.7 of the General Conditions. [and in any case at the latest on (at the expiry of 18 months after the implementation period of the Contract) ]<sup>15</sup>.

The law applicable to this guarantee shall be that of <enter Belgium, or / 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.

Done at ....., ..../../..

Name and first name: ..... On behalf of: .....

Signature: .....

[Stamp of the body providing the guarantee]

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<sup>15</sup> This mention has to be inserted only where required, for example where the law applicable to the guarantee imposes a precise expiry date.

**VOLUME 2**

**SECTION 6:  
SPECIMEN RETENTION GUARANTEE**

(To be completed on paper bearing the letterhead of the financial institution)

For the attention of

**Xavier de Marnhac, Head of EULEX Kosovo**, and address at EULEX Kosovo, Ndertesa Farmed, str. "Muharrem Fejza" p.n., Lagja e Spitalit, 10000 Pristina, Kosovo

referred to below as the "Contracting Authority"

Subject: Guarantee No...

Retention Guarantee for contract (contract number and title) (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 retention guarantee], representing the retention guarantee mentioned in Article 47 of the Special Conditions of the contract (contract number and title) 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 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 to the Contract.

We note that the guarantee will be released in accordance with article 47.3 of the General Conditions to the Contract [and in any case at the latest on (at the expiry of 18 months after the implementation period of the Contract) ]<sup>16</sup>.

The law applicable to this guarantee shall be that of <enter Belgium, / 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 shall enter into force and take effect upon its signature.

Done at ....., ..../..

Name and first name: ..... On behalf of: .....

Signature: .....

[Stamp of the body providing the guarantee]

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<sup>16</sup> This mention has to be inserted only where required, for example where the law applicable to the guarantee imposes a precise expiry date

**VOLUME 3**

**TECHNICAL SPECIFICATIONS**

## **1. GENERAL INFORMATION**

### **1.1 INTRODUCTION**

Provision and installation of Heating System is required for EULEX Camp Alpha Bravo-in Prishtinë/Prishtina. The Camp consists of two blocks, block Alpha and block Bravo. Both blocks consist of several office containerized buildings already occupied by EULEX. The provision/installation shall be done as per designs and technical specifications presented herewith.

### **1.2 LOCATION OF THE SITE**

The Camp is located in Industrial Zone of Prishtinë/Prishtina, road Prishtinë/Prishtina- Fushë Kosovë/Kosovo Polje.

## **2. SECURITY CONDITIONS**

Security Conditions – that have to be considered - for the performing companies:

- Initially a list of workers and their tools that they will use during their work will be asked from the contractor.
- Before every entry/exit to the institution they will be asked for their ID Cards.
- The appointed supervisor will meet the contractor's representative before they start with works and they will consider the security procedures.
- Contractor's tools which are not going to be used during the weekend will be asked to be taken away (except if they have a request to work during the weekends).
- Only tools which are presented in the inventory list (mentioned above) will be allowed in the facility. Procedures can be applied in occasions of adding or removing a tool.
- All the tools shall be locked in tool boxes when not in use (during weekdays).
- The supervisor will check all the working places before the works start and after the works are finished for that particular day (every day).

## **3. SCOPE OF WORKS**

The works to be carried out under this contract shall include the following:

- Provision and installation of Heating System for the whole Camp Alpha and Bravo.

The Project has been prepared based on the architectural designs of the existing and planned buildings of the location, on climatic conditions of Prishtinë/Prishtina, and based on technical standards for designing of central heating installations for similar office buildings.

System with forced water circulation with two pipes has been applied (pump system).

Steel radiators are to be used as heating bodies - type 22x600.

The buildings shall be heated by water at temperature of 90 / 70 C°, prepared in containerized mobile furnace (stove), from the diesel furnace-stove of heating water until 90 C°.

The project has been prepared taking into consideration the applicable technical standards for this type of installation.

#### 4. CONTRACTOR'S RESPONSIBILITIES

Tenders will be given the opportunity to visit the sites and familiarize themselves with existing conditions. All tenders will assume to have satisfied themselves concerning all relevant details pertaining to the contract.

**Site visit is mandatory. Tenders that have not attended site visit will not be taken into consideration for application.**

##### 4.1 TECHNICAL SUBMISSION AND TIME SCALE

Tenders are obliged to include sufficient technical information to allow EULEX to assess the quality of proposal.

**Tenders are obliged to state the implementation period in their submission and submit a time schedule in the form of bar chart with regards to the work that needs to be carried out on the site. Maximum period of implementation is 90 calendar days from works commencement date, plus a Defects Liability Period of 24 months after Acceptance of Works.**

##### 4.2 PRIOR TO COMMENCING OF ANY WORK:

- The contractor shall provide the samples of all materials with the manufactures specifications that he intends to use, for approval by EULEX or his designated Representative.
- The contractor shall submit a complete program which specifies his intended Procedure for executing the work in compliance with the above- mentioned requirements.
- The contractor shall take his own measurements in accordance with the physical status on the ground before starting of any productions.

##### 4.3 WHEN THE CONTRACTOR HAS OBTAINED APPROVAL FROM EULEX

- All work has to be carried out to the complete satisfaction of the delegated representative in accordance with relevant standards and good working practices.
- The Contractor shall notify the designated representative, prior to covering any part of the work, which will then be inaccessible for subsequent inspection. Failure to do so will result in exposure of the afore-said works and subsequently reinstatement at the contractor's expense.
- It is essential to have an English speaking supervisor with direct authority over the workforce on site during all working hours. In the absence of an English-speaking supervisor, a translator will be required to presence at all times.

##### 4.4 GENERAL WORK REQUIREMENTS

###### 4.4.1 Security and Fire Fighting

The Contractor shall provide and maintain adequate fire extinguishers on the Site and areas of high fire risk shall be fenced and signs posted and supplied with specialized fire extinguishers, if necessary. Generators and their batteries and water pumps shall be adequately protected against vandalism and theft. Unless otherwise provided by the Supervisor, the Contractor shall not by his operations obstruct any road or access to other buildings nor break down any fence nor obstruct any drains or water courses, but if such blockages occur he shall at once remove the blockages and repair the breakages.

###### 4.4.2 Construction Equipment

The Contractor shall provide adequate lighting where work is being executed at night and shall provide and install any additional lighting which the Supervisor may require in order to watch and supervise the Works and carry any testing and examination of materials. Materials available on the Site or materials made available or supplied by the Contractor shall be used solely for the execution of the Works. The Contractor shall minimize the pollution of and disturbance to roads and other places on and around the Site. No trees or other vegetation shall be removed except with the express permission of the Supervisor. The Contractor shall ensure that access is provided to all buildings and properties adjacent to the Site for the duration of the Contract. All temporary buildings erected by the Contractor upon the Sites and the

layout of the buildings and the site, shall comply with Laws and all local byelaws in so far as they are applicable. The Contractor shall be absolutely and solely responsible for the safety and security of Temporary Works and for the equipment in connection therewith which may be erected or provided for the carrying out of the Contract and for the execution of the Works. This provision shall be applicable to all temporary works and equipment whenever provided and erected by the Contractors for the purpose of or in connection with the Works. Examination and acceptance by the Supervisor of the Contractor's Temporary Works or of the drawings connected therewith shall not absolve the Contractor from his responsibility for those works and his liability for the consequences of any failure.

#### 4.4.3 Water Supply

EULEX shall allow use of water within the Camp during the construction works; however connection points shall be previously authorized by the contracting authority. Water consumptions during the works shall not be charged. Contractor shall undertake all arrangements if provision of pumps, storage tanks etc is required.

#### 4.4.4 Electric Power Supply

EULEX shall allow the contractor the connection of electricity during their works to a specific connection points within Block 1 &2. Power consumption during the works shall not be charged. However the contractor shall provide all wiring, lamps, switches, fuses, receptacles, etc., as may be required for his work. Temporary power and light circuits shall be thoroughly insulated and waterproof. The temporary power and light system shall be subject to the inspection and approval of the appropriate Authority. All the used electrical material for the temporary connection established by the contractor shall be CE mark.

#### 4.4.5 Use of the Site

The Contractor shall restrict his activities to within the Sites and shall avoid entry on to any other lands except where the Contractor has made his own arrangements for such entry or the owner has arranged for this entry. Any trespass, damage or claims arising from such entry shall be the sole responsibility of the Contractor, who shall hold the Contracting Authority indemnified against all claims arising from such trespass or damage.

#### 4.4.6 Weather Conditions

Without limiting his liabilities, the Contractor shall make suitable arrangements to protect the works and the temporary works, against the effects of the weather.

#### 4.4.7 Protection of Existing Works and Services

The Contractor shall explain himself with the position of all existing services such as sewers, surface water drains, cables for electricity and telephone, telephone and lighting, poles, water mains, heating supply pipes and the like, before commencing any excavation or other works likely to affect the existing services. The Contractor will be held liable for all damages to road, main pipes, electrical cables, lines or services of any kind caused by him or his Sub-Contractors in the execution of the works. The Contractor shall make good any damage without delay and, if necessary, carry out any further work ordered by the Supervisor. The Contractor shall indemnify the Contracting Authority against any claims in this respect. In all case where such works or services are exposed, they shall be properly shored, hung up or otherwise protected. Special care shall be exercised in filling and compacting the ground under mains, cables, etc., and not to cover up any water meters, stopcock boxes and similar items. Installations adjacent to the Works shall be kept securely in place until the work is completed and shall then be made as safe and permanent as before.

#### 4.4.8 Temporary Buildings for Use by the Contractor

The Contractor shall provide and maintain in a perfectly usable and watertight condition on land in possession of the Beneficiary, or such lands as he may acquire for the purposes of the Works with the approval of the Supervisor, such temporary buildings of timber, galvanized iron, or other suitable material as may be necessary for his general use in connection with the Works as well as buildings for the temporary accommodation of any labor, and for the use of the persons employed by him and before

constructing such buildings he shall supply to the Supervisor a plan or plans showing their positions and nature which shall be in all respects to the approval of the Supervisor. Prior to preparing his Tender, the Contractor shall satisfy himself as to what will be required especially with regard to labor accommodation. The cost of providing temporary buildings for use by the Contractor shall be spread over the works and included in the Breakdown of Prices for those works.

#### 4.4.9 Health, Safety and Accidents

The Contractor is also obliged to observe all the stipulated measures pertaining to fire protection, protection at work as well as hygienic and technical conditions such as Fire Protection Regulations Rule Book on general Measures and Normative of Protection at work concerning building facilities intended for the work and other subsidiary premises. The Contractor shall ensure, so far as is reasonably practicable and to the satisfaction of the Contracting Authority, the health, safety and welfare at work of his employees including those of his sub-Contractors and of all other persons on the Site. His responsibilities shall include: the provision and maintenance of equipment and systems of work must be safe and without risks to health; the execution of suitable arrangements for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances; the provision of protective clothing and equipment, first aid stations with such personnel and equipment as are necessary and such information, instruction, training and supervision as are necessary to ensure the health and safety at work of all persons employed on the Works all in accordance with Laws and all local Bye- Laws; designation as safety Officer of one of his senior staff who shall have specific knowledge of safety regulations, and experience of safety precautions on similar works and who shall advise on all matters affecting the safety of workman and on measures to be taken to promote such safety; the provision and maintenance of access to all places on the Site in a condition that is safe and without risk of injury; the provision of adequate water-borne sanitation, refuse collection and disposal, complying with the Laws and all local Bye-Laws and to the satisfaction of the Supervisor, for all site offices, workshops erected on the camp site; the provision of suitable latrines and other sanitary arrangements at the site where work is in progress to the satisfaction of the Medical Officer in the area and of the Supervisor; the execution of appropriate measures in consultation with the appropriate Public Health Authority to control within the site; reporting details of any accident to the Supervisor as soon as possible after its occurrence; the provision and maintenance of adequately equipped first aid station on the site of the works.

#### 4.4.10 A short guide to the personal protective equipment at work (PPE)

Employers have basic duties concerning the provision and use of personal protective equipment (PPE) at work and this document, explains what you need to do to meet the requirements of the Personal Protective Equipment at Work Regulations.

##### **What is PPE?**

PPE is defined in the Regulations as ‘all equipment (including clothing affording protection against the weather) which is intended to be worn or held by a person at work and which protects him against one or more risks to his health or safety’, e.g. safety helmets, gloves, eye protection, high-visibility clothing, safety footwear and safety harnesses. Hearing protection and respiratory protective equipment provided for most work situations are not covered by these Regulations because other regulations apply to them. However, these items need to be compatible with any other PPE provided. Cycle helmets or crash helmets worn by employees on the roads are not covered by the Regulations. Motorcycle helmets are legally required for motorcyclists under road traffic legislation.

##### **What do the Regulations require?**

The main requirement of the PPE at Work Regulations is that personal protective equipment is to be supplied and used at work wherever there are risks to health and safety that cannot be adequately controlled in other ways. The Regulations also require that PPE:

- is properly assessed before use to ensure it is suitable;
- is maintained and stored properly;

- is provided with instructions on how to use it safely; and
- is used correctly by employees.

### **Can I charge for providing PPE?**

An employer cannot ask for money from an employee for PPE, whether it is returnable or not. This includes agency workers if they are legally regarded as your employees. If employment has been terminated and the employee keeps the PPE without the employer's permission, then, as long as it has been made clear in the contract of employment, the employer may be able to deduct the cost of the replacement from any wages owed.

### **Assessing suitable PPE**

To allow the right type of PPE to be chosen, carefully consider the different hazards in the workplace. This will enable you to assess which types of PPE are suitable to protect against the hazard and for the job to be done. Ask your supplier for advice on the different types of PPE available and how suitable they are for different tasks. It may be necessary in a few particularly difficult cases to obtain advice from specialist sources and from the PPE manufacturer. Another useful source of information is the **British Safety Industry** Federation. Consider the following when assessing whether PPE is suitable:

- Is it appropriate for the risks involved and the conditions at the place where exposure to the risk may occur? For example, eye protection designed for providing protection against agricultural pesticides will not offer adequate face protection for someone using an angle grinder to cut steel or stone.
- Does it prevent or adequately control the risks involved without increasing the overall level of risk?
- Can it be adjusted to fit the wearer correctly?
- Has the state of health of those who will be wearing it been taken into account?
- What are the needs of the job and the demands it places on the wearer? For example, the length of time the PPE needs to be worn, the physical effort required to do the job and the requirements for visibility and communication.
- If more than one item of PPE is being worn, are they compatible? For example, does a particular type of respirator make it difficult to get eye protection to fit properly?

### **The hazards and types of PPE**

#### **Eyes**

**Hazards:** chemical or metal splash, dust, projectiles, gas and vapors, radiation.

**Options:** safety spectacles, goggles, face shields, visors.



### **Head**

**Hazards:** impact from falling or flying objects, risk of head bumping, hair entanglement.

**Options:** a range of helmets and bump caps.



### **Breathing**

**Hazards:** dust, vapor, gas, oxygen-deficient atmospheres.

**Options:** disposable filtering face piece or respirator, half- or full-face respirators, air-fed helmets, breathing apparatus.



### **Protecting the body**

**Hazards:** temperature extremes, adverse weather, chemical or metal splash, spray from pressure leaks or spray guns, impact or penetration, contaminated dust, excessive wear or entanglement of own clothing. **Options:** conventional or disposable overalls, boiler suits, specialist protective clothing, e.g. chain-mail aprons, high-visibility clothing.



### ***Hands and arms***

**Hazards:** abrasion, temperature extremes, cuts and punctures, impact, chemicals, electric shock, skin infection, disease or contamination.

**Options:** gloves, gauntlets, mitts, wrist cuffs, armllets.

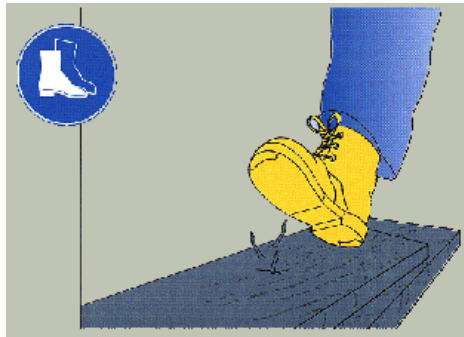


### ***Feet and legs***

**Hazards:** wet, electrostatic build-up, slipping, cuts and punctures, falling objects, metal and chemical splash, abrasion.

**Options:** safety boots and shoes with protective toe caps and penetration-resistant mid-sole, gaiters, leggings, spat.





### **Training**

- Make sure anyone using PPE is aware of why it is needed, when it is to be used, repaired or replaced and its limitations.
- Train and instruct people how to use it properly and make sure they are doing this.
- Because PPE is the last resort after other methods of protection have been considered, it is important that users wear it all the time they are exposed to the risk. Never allow exemptions for those jobs which take ‘just a few minutes’.
- Check regularly that PPE is being used and investigate fully any reasons why it is not. Safety signs can be useful reminders to wear PPE.

### **Maintenance**

Make sure equipment is:

- well looked after and properly stored when it is not being used, for example in a dry, clean cupboard, or in the case of smaller items, such as eye protection, in a box or case;
- kept clean and in good repair - follow the manufacturer’s maintenance schedule (including recommended replacement periods and shelf lives). Simple maintenance can be carried out by the trained wearer, but more intricate repairs should only be done by specialists. Make sure suitable replacement PPE is always readily available.

### **CE marking**

Ensure any PPE you buy is ‘CE’ marked and complies with the requirements of the Personal Protective Equipment Regulations 2002. The CE marking signifies that the PPE satisfies certain basic safety requirements and in some cases will have been tested and certified by an independent body.

### **Other regulations**

The PPE at Work Regulations do not apply where the following six sets of regulations require the provision and use of PPE against these hazards. For example, gloves used to prevent dangerous chemicals penetrating the skin would be covered by the Control of Substances Hazardous to Health Regulations 2002 (as amended). The regulations are:

- The Control of Lead at Work Regulations 2002.
- The Ionizing Radiations Regulations 1999.
- The Control of Asbestos at Work Regulations 2002.
- The Control of Substances Hazardous to Health Regulations 2002.
- The Noise at Work Regulations 1989.
- The Construction (Head Protection) Regulations 1989.

### **Key points to remember**

Are there ways (other than PPE) in which the risk can be adequately controlled, e.g. engineering controls? If not, check that:

- PPE is provided;
- it offers adequate protection for its intended use;
- those using it are adequately trained in its safe use;
- it is properly maintained and any defects are reported;
- it is returned to its proper storage after use.

### Standards Directory

This document is designed as a simple reference to the European Harmonized Standards [EN's] currently applicable to Safety Equipment.

#### General PPE Standards

EN 348				
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#### Clothing [Protective] Standards

EN 340	EN 373	EN 381-1	EN 381-2	EN 381-3
EN 381-5	EN 381-8	EN 381-9	EN 412	EN 463
EN 464	EN 465	EN 465/A1	EN 466	EN 466/A1
EN 467	EN 467/A1	EN 468	EN 469	EN 470-1
EN 470-1/A1	EN 471	EN510	EN 530	EN 351
EN 531/A1	EN 532	EN 533	EN 863	EN 1073-1
EN 1049-1	EN 1049-2	EN 1050	EN 1082-1	EN 1421-1
EN 1486	EN 60895	EN 60984	EN 60984/A11	

#### Ergonomic Standards for PPE

EN 13921-1	EN 13921-3	EN 13921-4	EN 13921-6	
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#### Eyewear [Protective] and Face Protection Standards

EN 165	EN 166	EN 153-1	EN 168	EN 169
EN 170	EN 171	EN 172	EN 174	EN 175
EN 207	EN 208	EN379	EN 379/A1	EN 1731
EN 1731/A1	EN 1836	EN 1868	EN 1938	EN 13178

#### Fall Arrest Standards

EN 341	EN 341/A1	EN 381-1	EN 353-2	EN 354
EN 355	EN 358	EN 360	EN 361	EN 362
EN 363	EN 364	EN 365	EN 568	EN 795
EN 813	EN 892	EN 958	EN 1095	EN 1891
EN 12277	EN 12278			

#### Floataion Devices Standards

EN ISO 12402-4	EN ISO 12402-9			
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### Footwear [Protective] Standards

EN 344	EN 344/A1	EN 344-2	EN 345	EN 345A
EN 345-2	EN 346	EN 346/A1	EN 346-2	EN 347
EN 347/A1	EN 347-2	EN 341	EN 12568	

### Gloves [Protective] Standards

EN 374-1	EN 374-2	EN 374-3	EN 388	EN 407
EN 420	EN 659	EN ISO 10819	EN 50237	EN 60903
EN 60903/A11				

### Head Protection Standards

EN 397	EN 433	EN 812	EN 960	EN 960/A1
EN 966	EN 967	EN 1077	EN 1078	EN 1080
EN 1384	EN 1385			

### Hearing Protection Standards

EN 352-1	EN 352-2	EN 352-3	EN 458	EN ISO 4869-2
EN 24869-1	EN 24869-3			

### Heat and Flam Protection Standards

EN 366	EN 367			
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### Life Jackets [Protective] Standards

EN 393	EN 393/A1	EN 394	EN 395	EN 395/A1
EN 396	EN 396/A1	EN 399	EN 399/A1	

### Liquid Chemical Protection Standards

EN 368	EN 369			
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### Respiratory Protection Standards

EN 132	EN 133	EN 134	EN 135	EN 136
EN 137	EN 138	EN 139	EN 140	EN 141
EN 142	EN 143	EN 144-1	EN 144-2	EN 145
EN 146	EN 147	EN 148-1	EN 148-2	EN 148-3
EN 149	EN 250	EN 269	EN 270	EN 271
EN 371	EN 372	EN 400	EN 401	EN 402
EN 403	EN 404	EN 405	EN 1061	EN 1146
EN 1146/A1	EN 12941	EN 12942		

#### 4.4.11 Final Clearance

Upon completion of each section of the Works, the Contractor shall clean up the site; remove all temporary buildings, plant if any, and debris. He shall level off and fine grade all excavated materials which is surplus to requirements. The whole of the site shall be left in a clean and Workmanlike condition to the satisfaction of the Supervisor.

## 5. DESCRIPTION OF WORKS AND MATERIALS

### 5.1 General Description

The main project of the central heating installation has been developed based on architectural drawings of the Camp, data and the requirements of the Investor.

The facility is located in Prishtinë/Prishtina (Industrial Zone) and its structure consists of office containerized buildings.

As a whole the camp consist of buildings maximum G+1 (ground plus first floor), divided in two blocks – two containerized furnaces have been planned for the camp, one for each block.

#### 5.1.1 Heating Bodies

Radiators have been adopted taking into the consideration the calculations for the amount of heat needed for each space, and the destination of the containers.

Radiators 22/600 have been selected for the offices, whereas for other premises were chosen radiators of adequate length and heating strength.

Heating of bathrooms is organized with radiators 22/600 dimensioned as per heating needs and mounting space.

The radiators are located under the windows and on the interior walls of the outer sides. They are to be mounted close to the walls, on consoles, at the distance 40 mm from the wall and 100 mm above the floor. At the entrance of the radiators, entry valves are foreseen and on the exit of hot water, return valves, with the possibility of disconnection of heating bodies that are in the same vertical, and still perform the function of the heat.

On each vertical of offices and other premises radiators, were foreseen discharge valves R-15.

Radiators shall be provided by the contractor, radiators shall be of white color RAL 9010.

Radiators come industrial painted; therefore additional painting is not required.

Radiators in the building and sanitary are connected on the verticals by copper pipes Cu.

#### 5.1.2 Pipe Network

Due to a different destination, distance and heating power, the network pipe is divided into systems, and that:

1. Network of Block 1
2. Network of Block 2

Horizontal pipe network lies in the ceiling of the ground floor, from where derives on verticals to the first floor. Horizontal network is extended under the ground floor ceiling from where derives on verticals to the radiators on 0.3% recession towards the furnace.

Horizontal network which run spaces that will not be heated consist of pre insulated pipes, while the network in furnace space will be isolated with mineral wool of different dimensions and wrap with aluminum sheet Al-0.5 mm. on following width:

b = 30 mm - for pipes up to DN - 40

b = 50 mm - for pipes over DN - 40

Horizontal and vertical Copper tubes Cu inside the facility and the links to radiators shall be painted the same color as the radiators.

Removal of air from pipeline will be done through automatic ventilation vessels located in the ventilation pipes and airing valves located in the radiator.

While passing the horizontal pipes through partitions, the same pipes should be continued with compensation tubes. Tubes continue to the required lengths and their connection is done by welding.

### 5.1.3 Thermal Stations - The FURNACE (Stove)

The furnaces (2) shall be located inside the Compound as indicated in the layouts. Both Furnaces shall be containerized units.

For preparation of the hot water we have adopted heating water boilers of 90/70 °C working regime and capacity.

Q = 530 kW, for Block 1

Q=580 kW, for Block 2

Using fuel "diesel combustion", or similar.

Transducer capacity Q = 400 ... 600 kW,

Proposed expansion vessel is of confined type, volume V=550l.

Pumps are dimensioned for container branches calculated based on the required power.

Fuel reservoirs are selected for installation on the ground (cylinder shape), volume V = 5 m<sup>3</sup>, for the capacity of the chosen furnace.

Before placing the reservoirs on the concrete base, first they should be verified if there is any leak, and then insulate with mineral wool thickness 10cm and aluminum sheet Al-0.5. Reservoirs should be ordered as complete sets (including quantity fuel measuring device, airing and filling pipe.)

## 5.2 TECHNICAL REQUIREMENTS

Installations must be assembled according to the detailed project documentation. All the materials are to be of first class and must correspond to the destination and accepted applied EU norms on the quality of the materials.

The EN 14336 Standard– Heating Systems in Buildings is to be applied during the installation.

Any changes to the project may be allowed only after previous consultations with the designer, and all the permitted changes must be written in the construction book.

### 5.2.1 Heating Bodies

They will be fixed on appropriate holders depending on the type of the units.

The number of holders is determined by the length of the unit.

Holders with console should be placed in the walls.

Upon completion of the work and successful verification of the entire installation, all holders and consoles must be cleared of corrosion and plaster, painting should be done using primer paint and oil paint same white color as radiators, stable at temperatures up to 120 C°.

### 5.2.2 Pipeline

The pipeline will be implemented in such a manner as it is provided in the technical description and drawings.

For implementation of pipelines from the containers to the furnace (stove) steel tubes must be used, the extension of pipes should be done by welding.

Welded parts must be performed well on enough thickness layer so as the pipe diameter does not change.

Pipe links cannot be done inside the walls, but in places where intervention is easier.

Passing through walls must be done in that way that the thermal dilatation does not damage the wall. In any case on these parts cylindrical rings should be placed. Part of the pipeline that passes through walls should be painted twice with primer paint.

Horizontal pipeline should be mounted on 0.3% downfall towards furnace.

All consoles, hangers and other holders should be placed in the wall. Possible openings or drilling on all constructive elements of the object can be accomplished only with permission and guidance of the responsible authority for building works, all this for safety reasons.

All visible pipeline positions, consoles and holders should be cleaned of corrosion and plaster, and painted on oil paint resistant up to 120 C°.

Insulation of pipes should be made by mineral wool wrapped by galvanized sheet.

- pipe diameter up Ø 40 mm, thickness of insulation B = 30 mm
- pipe diameter up Ø60 mm, thickness of insulation b = 40 mm
- pipe diameter up Ø 60 ÷ 125 mm thick. Thickness of insulation b = 50 mm

### 5.2.3 The Furnace (Stove)

Two furnaces have been foreseen (containerized units), and the installation of their devices (in the container) shall be done according to the project and the schemes provided, technical descriptions, and technical conditions for furnace (stove) and pressure vessels.

Changes on the main project are allowed only with the consent of the designer.

The pipeline should be realized downward toward fluid motion.

All critical points must be performed so as to stand strains, pipe clips/fittings need to enable normal extension of pipes.

Pipeline extension is done by welding.

Water collectors get isolated according to the isolation of pipelines, however before the isolation of the pipeline is performed; examination on cold water under pressure should be carried out.

Pressure test for the substation and pipe network  $p = 4$  bar is measured by corresponding controlling manometer which must hold in duration up to 30 min. after which the same drops to the working thermal network pressure (3 bar) and that is kept during the whole time of examination.

Test is considered successful if there is no leakage and moisture, and if there are not reported significant changes to the form and pressure.

Only after the successful testing and technical assessment of the system is done painting and insulation is allowed.

### 5.3 Review and Adjustment

After completion of the pipeline for heating and heating bodies, the same will be examined with cold water up to 3 bar pressure in the presence of the responsible authority. Upon completion of installation of radiators the same get tested on cold water pressure 3 bars, also in the presence of the responsible authority. Evidences of the test must be registered in the construction book.

### 5.4 Construction Works

If testing shows to be successful the cleaning of pipes, painting, insulation, and filling of the channels as per technical specifications and BOQ can proceed.

Cutting of existing asphalt as well as digging of channels for laying the pipes has been foreseen as per BOQ and drawings provided, bringing the surface at the Camp to its previous acceptable condition.

#### 5.5 Acceptance, Handover Works

Upon completion of works the contractor is obliged to submit all the relevant documents related to the implementation phase of the project, including reports, attests, etc proving that: pipelines, equipments and devices are functioning properly, all fittings are resistant to strains in most critical points during the change of temperatures.

#### 5.6 Training of EULEX Technicians

The bid shall include provision of one (1) training course for both blocks, of one (1) day duration. The training will be conducted in English language by the Contractor's expert, and will include the training of up to 5 EULEX technicians on the functionality and maintenance of the heating plant/system. For the training session, the Contractor shall provide, free of cost to the EULEX, two instructors, along with the required course equipment/displays, test equipments and tools, as well as the requisite training literature/handouts written in English language for each technician. Training shall be organized within 10 days, after completion of works.

## **6. CALCULATIONS**

Please refer to Annex 6a. Calculation of pipes  
Please refer to Annex 6b. Calculation of Heaters

## **7. BILL OF QUANTITIES**

Please refer to Annex I

## **8. OTHER DOCUMENTS**

Please refer to Annex 8a. Matrix Technical documents  
Please refer to Annex 8b. Winter calculation

**VOLUME 4**

**BILL OF QUANTITIES**

Please refer to the ANNEX 1 to VOLUME 4 BILLS OF QUANTITIES

## **I. PREAMBLE**

Tenderers must price each item in the bill of quantities separately and follow the instructions regarding the transfer of various totals in the summary.

The bill of quantities must be read with all the other contract documents and the Contractor shall be deemed to have thoroughly acquainted himself with the detailed descriptions of the works to be done and the way in which they are to be carried out. All the works must be executed to the satisfaction of the Supervisor.

### **1.1. Quantity of items**

The quantities set forth against the items in the bill of quantities are an estimate of the quantity of each kind of the work likely to be carried out under the contract and are given to provide a common basis for bids. There is no guarantee to the Contractor that it will be required to carry out the quantities of work indicated under any one particular item in the bill of quantities or that the quantities will not differ in magnitude from those stated.

When pricing items, reference should be made to the conditions of contract, the specifications and relevant drawings for directions and descriptions of work and materials involved.

The quantities given in the bill of quantities are provisional and reflect the estimates made at the time of approval to provide a basis for this dossier and tenders. Tenderers must consider every aspect of the dossier carefully.

Any comments concerning the quantities must be made in the form of an attachment, following the system of itemisation, quoting the codes and brief descriptions, as in the present documents, including the rates and prices.

Save where the technical specifications or the bill of quantities specifically and expressly state otherwise, only permanent works are to be measured. Works will be measured net to the dimensions shown on the drawings or ordered in writing by the Supervisor, save where described or prescribed elsewhere in the contract.

In adjusting extras or variations on the contract, works will be measured on the same basis as that on which the quantities were prepared. All works not specifically mentioned in the bill of quantities will be taken as included in the prices of various items.

Where, in the opinion of the Supervisor, extra works cannot be properly measured or valued, the Contractor may, if so directed by the Supervisor, carry out the work at the daywork rates shown in the schedule of daywork. All completed daywork sheets must be signed by the Supervisor on or before the end of the week in which the works are executed.

No allowance will be made for loss of materials or volume thereof during transport or compaction.

### **1.2. Units of measurement**

The units of measurement used in the annexed technical documentation are those of the International System of Units (SI). No other units may be used for measurements, pricing, detail drawings etc. (Any units not mentioned in the technical documentation must also be expressed in terms of the SI.)

Abbreviations used in the bill of quantities are to be interpreted as follows:

mm	means	millimetre
m	means	metre

mm <sup>2</sup>	means	square millimetre
m <sup>2</sup>	means	square metre
m <sup>3</sup>	means	cubic metre
kg	means	kilogram
to	means	tonne (1000 kg)
pcs	means	pieces
h	means	hour
L.s.	means	Lump sum
km	means	kilometre
l	means	litre
%	means	per cent
N.d	means	nominal diameter
m/m	means	man-month
m/d	means	man-day

## **II. TERMS RELATING TO PAYMENTS**

The method for measuring completed works for payment must be in accordance with Clause X of the Special Conditions (net measurement), save where Section II, "Description of the items of the bill of quantities" provides otherwise.

The provisional sums in the bill of quantities must be used in whole or in part at the discretion of the Supervisor.

Each item in the bill of quantities for which payment is to be made in a lump sum, and for which no payment schedule is provided, must be paid after the work covered by the lump sum has been completed to the satisfaction of the Supervisor.

## **III. PRICING**

The prices and rates inserted in the bill of quantities are to be the full inclusive values of the works described under the items, including all costs and expenses which may be required in and for the construction of the works described together with any temporary works and installations which may be necessary and all general risks, liabilities and obligations set forth or implied in the documents on which the tender is based. It will be assumed that establishment charges, profit and allowances for all obligations are spread evenly over all the unit rates.

The rates and prices tendered in the priced bill of quantities will be quoted at the rates current prior to the date of submission.

Rates and prices must be entered against each item in the bill of quantities. The rates will cover all tax, duty or other liabilities which are not stated separately in the bill of quantities and the tender.

## **IV. TAXES**

The prices must be exclusive of custom and VAT taxes.

## **V. COMPLETING THE BILL OF QUANTITIES**

In the bill of quantities, rates and prices will be entered in the appropriate columns in euro or national currency.

Errors will be corrected as follows:

- a) where there is a discrepancy between amounts in figures and in words, the amount in words will prevail; and

- b) where there is a discrepancy between the unit rate and the total amount derived from the multiplication of the unit price and the quantity, the unit rate as quoted will prevail.

Note: All positions given in the Budget breakdown (attached excel file), include the supply of the materials and completion of described works.

EoT

**VOLUME 5**

**DESIGN DOCUMENTS, INCLUDING DRAWINGS**

**Please refer to the ANNEX 2 to VOLUME 5 DRAWINGS**