
EUROPEAN UNION RULE OF LAW MISSION IN KOSOVO

EULEX KOSOVO

Ndertesë Farmëd
“Muharrem Fejza” p.n.
Lagja e Spitalit
10000 Pristina, Kosovo
www.eulex-kosovo.eu

Pristina, 14 April 2015

Our ref.: **PROC/555/15/ Spare Parts and Maintenance of Vehicles under Framework Contract No. 4 (EuropeAid/136776/IH/SUP/XK)**

Dear Sirs,

SUBJECT: INVITATION TO TENDER FOR “Spare Parts and Maintenance of Vehicles under Framework Contract No. 4”

This tender procedure is launched under suspensive clause i.e. provision of the supplies concerned is subject to availability of the budget funds.¹

This is an invitation to tender for the above mentioned supply contract. Please find enclosed the following documents, which constitute the tender dossier:

- A. Instructions to tenderers
- B. Draft contract and special conditions, including annexes
 - Draft contract
 - Special conditions
 - Annex I: general conditions
 - Annex II +III: technical specifications + technical offer (to be tailored to the specific project)
 - Annex IV: budget breakdown (model financial offer)
 - Annex V: forms
 - Annex VI a: Purchase Order and Annex VI b: Work Order
 - Annex VII: Provisional/Final Acceptance Certificate
- C. Further information
 - Administrative compliance grid
 - Evaluation grid
- D. Tender form for a supply contract

¹ See paragraph 2.4.12, of the Practical Guide to Contract procedures for EU external actions

For full information about procurement procedures please consult the Practical Guide and its annexes, which can be downloaded from the following web page:
<http://ec.europa.eu/europeaid/prag/document.do?locale=en>

We look forward to receiving your tender and the accompanying tender guarantee before **25 June 2015 at 15:00hrs** at the address specified in the documents.

Yours sincerely,

Gabriele Meucci
Head of EULEX Kosovo

A. INSTRUCTIONS TO TENDERERS

PUBLICATION REF.: PROC/555/15/ Spare Parts and Maintenance of Vehicles under Framework Contract No. 4 (EuropeAid/136776/IH/SUP/XK)

By submitting a tender, tenderers fully and unreservedly accept the special and general conditions governing the contract as the sole basis of this tendering procedure, whatever their own conditions of sale may be, which they hereby waive. 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 remarks in the tender relating to the tender dossier; remarks 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 Practical Guide (available on the Internet at:

http://ec.europa.eu/europeaid/work/procedures/index_en.htm).

1 Supplies to be provided

- 1.1 The subject of the framework contract is the supply and delivery of spare parts for vehicles, as well as the performance of some ancillary services (installation of spare parts, maintenance, repair of vehicles, etc.) by the Contractor (*see the draft contract, special clauses, and Annex II and III of the Tender Dossier for the relevant description of the items and ancillary services and the estimated quantities that may be ordered during the duration of the framework contract*): in 2 (two) lots at EULEX Kosovo, Pristina, DAP2.

Lot 1	Nissan
Lot 2	Heavy, Specialized Vehicles & Other Makes

Deliveries of spare parts and performance of ancillary services shall ONLY take place following the issuance of “Purchase Order/Work Orders” to be issued by the Contracting Authority during the duration of this framework contract.

Deliveries of spare parts shall take place within **20 (twenty) days** after the receipt by the contractor of a “Purchase Order/Work Order”. Exceptionally, based on thoroughly justified Contractor’s request and upon approval of the Project Manager, this deadline may be extended to **45 (forty five) days**.

Ancillary services shall be performed in accordance with the terms of the special conditions of the contract, (see also the “sequence of events and description of ancillary services” attached to the technical specifications, annex II+III).

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

² DAP (delivery at place) - Incoterms 2010 International Chamber of [Commerce - http://www.iccwbo.org/incoterms/id3040/index.html](http://www.iccwbo.org/incoterms/id3040/index.html)

2 Timetable

	DATE	TIME*
Clarification meeting / site visit (if any)	Not applicable	Not applicable
Deadline for requesting clarifications from the Contracting Authority	04 June 2015	17:00 hrs
Last date on which clarifications are issued by the Contracting Authority	12 June 2015	-
Deadline for submission of tenders	25 June 2015	15:00 hrs
Tender opening session	25 June 2015	15:30 hrs
Notification of award to the successful tenderer	July/Aug 2015 *	-
Signature of the contract	July/Aug 2015 *	-

* All times are in the time zone of the country of the Contracting Authority Provisional date

3 Participation

- 3.1 Participation is open to all natural persons who are nationals of and legal persons participating either individually or in a grouping (consortium) of tenderers which are effectively established in a the Member State of the European Union, in an official candidate country or a 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 as amended by JA 2009/445/CFSP and Council Decision 2010/322/CFSP, Council Decision 2012/291/CFSP, Council Decision 2013/241/CFSP, Council Decision 2014/349/CFSP and Council Decision 2014/685/CFSP of 29 September 2014. 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 above states and to all legal entities, companies or partnerships established in the above states. For the purposes of proving compliance with this rule, tenderers being legal persons, must present the documents required under that country's law. In case of doubt, the Contracting Authority may ask the tenderer to provide evidence demonstrating actual compliance with the "establishment" criteria. For this purpose, legal person have to demonstrate that their legal person is formed under the law of an eligible State and that its real seat is within an eligible State. "Real seat" must be understood as the place where its managing board and its central administration are located or its principal place of business.
- 3.3 These rules apply to:
- tenderers
 - members of a consortium
 - any subcontractors.
- 3.4 Natural persons, companies or undertakings falling into one of the situations set out in section 2.3.3 of the Practical Guide are excluded from participation in and the award of contracts. Tenderers must provide declarations that they are not in any of these exclusion situations. The declarations must cover all the members of a joint venture/consortium. Tenderers who make false declarations may also incur financial penalties and exclusion in accordance with section 2.3.4 of the Practical Guide.

The exclusion situations referred to above also apply to subcontractors. When requested by the Contracting Authority, tenderers/contractors must submit declarations from the intended subcontractors that they are not in any of the exclusion situations. In cases of doubt over declarations, the Contracting Authority will request documentary evidence that subcontractors are not in a situation that excludes them.

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

4 Origin

- 4.1 No rule of origin is applied.

5 Type of contract

- 5.1 Framework contract with unit-price per itemised expenditure.
- 5.2 The quantities estimated and specified in ANNEX II +III are only indicative quantities and do NOT compel the contracting authority to buy any of them. The contracting authority may at its own discretion purchase fewer or more quantities than the estimated quantities per item. I.e. the contracting authority may purchase fewer quantities than those estimated for some items while in the meantime purchasing more quantities than those estimated for other items. The overall financial ceiling of purchase being the maximum budget available for the framework contract.
- 5.3 The contractor shall NOT be entitled to compensation and shall NOT be allowed to claim for changes of the unit prices, in case the contracting authority decides to purchase fewer or more quantities than the indicative ones specified per item in Annex II + III and/or in case the contracting authority decides NOT to purchase ANY of these quantities.
- 5.4 Payments and/or pre-financing will only be made by the Contracting Authority on the basis of the actual amount of the Purchase Order/Work Orders to be issued during the duration of the framework contract. Actually, no pre-financing or payment shall be made on the only basis of the signature of this framework contract.
- 5.5 The framework contract shall be concluded for a period of **1 (one) year**, with effect on the date on which it enters into force, (although the Framework contract may be terminated at short notice. See article 36 of the special conditions of the draft contract).
- 5.6 The contracting authority may, at its own discretion extend this framework contract. Such extension shall be made under negotiated procedure. The contract may only be extended once, such that the duration of extension does not exceed the duration of the initial framework contract. Any extension will be conditioned and limited by the Mission's mandate, the availability of corresponding budgetary funds and the satisfactory fulfillment of its obligations by the contractor.

6 Currency

Tenders must be presented in euro.³

³ The currency of tender shall be the currency of the contract and of payment.

7 Lots

- 7.1 The tenderer may submit a tender for one lot, several or all of the lots.
- 7.2 Each lot will form a separate contract and the quantities indicated for different lots will be indivisible. The tenderer must offer the whole of the quantity or quantities indicated for each lot. Under no circumstances must tenders be considered for part of the quantities required. If the tenderer is awarded more than one lot, a single contract may be concluded covering all those lots.
- 7.3 A tenderer may include in its tender the overall discount it would grant in the event of some or all of the lots for which it has submitted a tender being awarded. The discount should be clearly indicated for each lot in such a way that it can be announced during the public tender opening session.
- 7.4 Contracts will be awarded lot by lot, but the Contracting Authority may select the most favourable overall solution after taking account of any discounts offered.

8 Period of validity

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

9 Language of tenders

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

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

10 Submission of tenders

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

**EULEX Kosovo – Procurement Section
Ndertesa Farmed
“Muharrem Fejza” p.n.
Lagja e Spitalit
10000 Pristina, Kosovo**

Tenders must comply with the following conditions:

- 10.2 All tenders must be submitted in **one original**, marked ‘original’, and **three copies** signed in the same way as the original and marked ‘copy’.

- 10.3 All tenders must be received before the deadline **25 June 2015 at 15:00hrs** at EULEX Kosovo - Procurement Section, Ndertesë Farmëd, "Muharrem Fejza" p.n. Lagja e Spitalit, 10000 Pristina, Kosovo by registered letter with acknowledgement of receipt or hand-delivered against receipt signed by Contracting Authority or its representative.
- 10.4 All tenders, including annexes and all supporting documents, must be submitted in a sealed envelope bearing only:
- the above address;
 - the reference code of this tender procedure (i.e. PROC/555/15/ Spare Parts and Maintenance of Vehicles under Framework Contract No. 4 (EuropeAid/136776/IH/SUP/XK));
 - the words 'Not to be opened before the tender opening session' in the language of the tender dossier and "Te mos hapet para sesionit te hapjes" and "Ne otvori pre otvarajuce sesiju".
 - the name of the tenderer.

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

11 Content of tenders

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

Part 1: Technical offer:

- a **detailed description of the supplies** tendered in conformity with the technical specifications, including any documentation required (*they must be genuine spare parts or (OEM) original equipment manufacturer*)
- a fully **detailed technical proposal related to all ancillary services**, based on the terms of the special conditions and of the "sequence of events and description of ancillary services" attached to the technical specifications.

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

Part 2: Financial offer:

- A financial offer calculated on a basis of DAP⁴ for the supplies and ancillary services tendered;

Please note that the cost of the pick up and drop off of vehicles from/to EULEX Transport Compound shall NOT be mentioned as a cost in the financial offer and that it shall never appear on any invoice during the implementation period of the contract, neither added to the number of hours of labor. i.e. the estimated cost for the pick-up and drop off of all vehicles shall be deemed to have been estimated by the contractor at the time of the submission of its financial offer and integrated into its financial proposals related to the unit price for the working hours, and/or for the spare parts.

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

⁴ DAP (delivery at place) - Incoterms 2010 International Chamber of [Commerce - http://www.iccwbo.org/incoterms/id3040/index.html](http://www.iccwbo.org/incoterms/id3040/index.html)

- **An electronic version of the financial offer**

Part 3: Documentation:

To be supplied using the templates attached*:

- The tender guarantee, for

Lot 1	Nissan	€3600
Lot 2	Heavy, Specialized Vehicles & Other Makes	€1400

- The ‘**Tender Form for a Supply Contract**’, duly completed, which includes the tenderer’s declaration, point 7, (from each member if a consortium):
- The details of the bank account into which payments should be made (**financial identification form**) (Tenderers that have already signed another contract with the European Commission, may provide their financial identification form number instead of the financial identification form, or a copy of the financial identification form provided on that occasion, if no change has occurred in the meantime.)
- **The legal entity file** and the supporting documents (Tenderers that have already signed another contract with the European Commission, may provide their legal entity number instead of the legal entity sheet and supporting documents, or a copy of the legal entity sheet provided on that occasion, if no change in legal status has occurred in the meantime).

To be supplied in free-text format:

- A **description of the warranty conditions**, which must be in accordance with the conditions laid down in Article 32 of the General Conditions.
- A **description of the organisation of the commercial warranty** tendered in accordance with the conditions laid down in Article 32 of the Special Conditions.
- **Duly authorised signature**: an official document (statutes, power of attorney, notary statement, etc.) proving that the person who signs on behalf of the company/joint venture/consortium is duly authorised to do so.
- **For Lot 1**: An official document attesting that the tenderer is authorised by Manufacturer Nissan for selling genuine spare parts and servicing vehicles of the make.
- The tenderer must have at least the following qualified employees currently work for the tenderer in fields related to this contract:

Lot 1 (6 employees):

1 senior mechanic/technician with minimum 7 years’ experience in the field
 4 general mechanics/technicians with minimum 5 years’ experience in the field
 1 after sales service manager with 7 years’ experience in the field

Lot 2 (5 employees):

1 senior mechanic/technician with minimum 7 years’ experience in the field
 3 general mechanics/technicians with minimum 5 years’ experience in the field
 1 after sales service manager with 7 years’ experience in the field

Tenderer must provide the CVs of each of the above qualified employees including (see Annex V of the Draft Contract):

- A copy of the diplomas mentioned in their CVs,

- A copy of the employers' certificates or references proving the professional experience indicated in their CVs

- **For LOT 1** - The tenderer must have the following minimum equipment requirements: well lit and ventilated workshop, 4 (four) vehicle post lifts and hardware programmed in accordance to Nissan standards allowing full diagnosis of the Nissan vehicles. Software used must be continuously updated and authorized by Nissan. As well as wheel balancer, air compressor, specialized mechanical and electrical tools enabling professional maintenance and repair of the Nissan vehicles – **the tenderer should provide a description of the workshop and a list of equipment along with corresponding pictures.**
- **For LOT 2** - The tenderer must have the following minimum equipment requirements: well-lit and ventilated workshop, 2 (two) vehicle post lifts, truck lift (ramp or inspection pit), diagnostic tools allowing full identification and repair of the mechanical, electrical and electronic faults of the vehicles specified in the Annex II+III Technical Specifications for LOT 2 – **the tenderer should provide a description of the workshop and a list of equipment along with corresponding pictures.**
- The tenderer must be in possession of guarded parking lot, allowing safe and secure parking of Eulex vehicles - **A plan of the tenderer's maintenance facilities must be provided**

Remarks:

Tenderers are requested to follow this order of presentation.

Annex* refers to templates attached to the tender dossier. These templates are also available on: http://ec.europa.eu/europeaid/work/procedures/index_en.htm

12 Taxes and other charges

The applicable tax and customs arrangements are the following:

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

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

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

13 Additional information before the deadline for submission of tenders

The tender dossier should be so clear that tenderers do not need to request additional information during the procedure. If the Contracting Authority, on its own initiative or in response to a request from a prospective tenderer, provides additional information on the tender dossier, it must send such information in writing to all other prospective tenderers at the same time.

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

EULEX Kosovo – Procurement Section
Ndertesa Farmed
“Muharrem Fejza” p.n.
Lagja e Spitalit
10000 Pristina, Kosovo
E-mail: tenders@eulex-kosovo.eu

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

Any clarification of the tender dossier will be published on the EuropeAid website at <https://webgate.ec.europa.eu/europeaid/online-services/index.cfm?do=publi.welcome&nbPubliList=15&orderby=upd&orderbyad=Desc&searchtype=RS&aofr=136776> and EULEX website at <http://www.eulex-kosovo.eu/?page=2.6> at the latest 11 days before the deadline for submission of tenders.

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

14 Clarification meeting / site visit

No clarification meeting / site visit planned. Visits by individual prospective tenderers during the tender period cannot be organised.

15 Alteration or withdrawal of tenders

15.1 Tenderers may alter or withdraw their tenders by written notification prior to the deadline for submission of tenders referred to in Article 10.1. No tender may be altered after this deadline. Withdrawals must be unconditional and will end all participation in the tender procedure.

15.2 Any such notification of alteration or withdrawal must be prepared and submitted in accordance with Article 10. The outer envelope must be marked 'Alteration' or 'Withdrawal' as appropriate.

15.3 No tender may be withdrawn in the interval between the deadline for submission of tenders referred to in Article 10.1 and the expiry of the tender validity period. Withdrawal of a tender during this interval may result in forfeiture of the tender guarantee.

16 Costs of preparing tenders

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

17 Ownership of tenders

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

18 Joint venture or consortium

18.1 If a tenderer is a joint venture or consortium of two or more persons, the tender must be a single one with the object of securing a single contract, each person must sign the tender and will be jointly and severally liable for the tender and any contract. Those persons must designate one of their members to act as leader with authority to bind the joint venture or consortium. The composition of the joint venture or consortium must not be altered without the prior written consent of the Contracting Authority.

18.2 The tender may be signed by the representative of the joint venture or consortium only if it has been expressly so authorised in writing by the members of the joint venture or consortium, and the authorising contract, notarial act or deed must be submitted to the Contracting Authority in accordance with point 11 of these Instructions to Tenderers. All signatures to the authorising instrument must be certified in accordance with the national laws and regulations of each party comprising the joint venture or consortium together with the powers of attorney establishing, in writing, that the signatories to the tender are empowered to enter into commitments on behalf of the members of the joint venture or consortium. Each member of such joint venture or consortium must provide the proof required under Article 3.5 as if it, itself, were the tenderer.

19 Opening of tenders

- 19.1 The opening and examination of tenders is for the purpose of checking whether the tenders are complete, whether the requisite tender guarantees have been furnished, whether the required documents have been properly included and whether the tenders are generally in order.
- 19.2 The tenders will be opened in public session on **25 June 2015 at 15:30hrs** at EULEX Kosovo - Procurement Section, Nderresa 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 will be available on request.
- 19.3 At the tender opening, the tenderers' names, the tender prices, any discount offered, written notifications of alteration and withdrawal, the presence of the requisite tender guarantee (if required) and such other information as the Contracting Authority may consider appropriate may be announced.
- 19.4 After the public opening of the tenders, no information relating to the examination, clarification, evaluation and comparison of tenders, or recommendations concerning the award of the contract can be disclosed until after the contract has been awarded.
- 19.5 Any attempt by tenderers 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 their tenders.
- 19.6 All tenders received after the deadline for submission specified in the contract notice or these instructions will be kept by the Contracting Authority. The associated guarantees will be returned to the tenderers. No liability can be accepted for late delivery of tenders. Late tenders will be rejected and will not be evaluated.

20 Evaluation of tenders

20.1 Examination of the administrative conformity of tenders

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

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

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

20.2 Technical evaluation

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

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

Where contracts include after-sales service and/or training, the technical quality of such services will also be evaluated by using yes/no criteria as specified in the tender dossier.

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

20.4 Financial evaluation

a) Tenders found to be technically compliant will be checked for any arithmetical errors in computation and summation. Errors will be corrected by the evaluation committee as follows:

- where there is a discrepancy between amounts in figures and in words, the amount in words will be the amount taken into account;
- except for lump-sum contracts, where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will be the price taken into account.

b) Amounts corrected in this way will be binding on the tenderer. If the tenderer does not accept them, its tender will be rejected.

20.5 Variant solutions

Variant solutions will not be taken into consideration.

20.6 Award criteria

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

21 Signature of the contract and performance guarantee

21.1 The successful tenderer will be informed in writing that its tender has been accepted (notification of award). Before the Contracting Authority signs the contract with the successful tenderer, the successful tenderer must provide the **documentary proof** or statements required under the law of the country in which the company (or each of the companies in case of a consortium) is established, to show that it is not in any of the exclusion situations listed in section 2.3.3 of the Practical Guide. This evidence or these documents or statements must carry a date not earlier than one year before the date of submission of the tender. In addition, a statement must be provided that the situations described in these documents have not changed since then.

21.2 The successful tenderer must also provide evidence of financial and economic standing and technical and professional capacity according to the selection criteria for this call for tenders specified in the contract notice, point 16. The documentary proofs required are listed in section 2.4.11 of the Practical Guide.

21.3 If the successful tenderer fails to provide the documentary proof or statement or the evidence of financial and economic standing and technical and professional capacity within 15 calendar days following the notification of award or if the successful tenderer is found to have provided false information, the award will be considered null and void. In such a case, the Contracting Authority may award the tender to the next lowest tenderer or cancel the tender procedure.

21.4 Within 30 days of receipt of the contract signed by the Contracting Authority, the selected tenderer must sign and date the contract and return it, with the performance guarantee (if applicable), to the Contracting Authority. On signing the contract, the successful tenderer will become the Contractor and the contract will enter into force.

- 21.5 If it fails to sign and return the contract and any financial guarantee required within 30 days after receipt of notification, the Contracting Authority may consider the acceptance of the tender to be cancelled without prejudice to the Contracting Authority's right to seize the guarantee, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the Contracting Authority.
- 21.7 The performance guarantee referred to in the General Conditions is set at **5 %** 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 within 45 days of the issue of the final acceptance certificate by the Contracting Authority, except for the proportion assigned to after-sales service.

22 Tender guarantee

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

Lot 1	Nissan	€3600
Lot 2	Heavy, Specialized Vehicles & Other Makes	€1400

23 Ethics clauses

- 23.1 Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee or the Contracting Authority during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of their candidacy or tender and may result in administrative penalties.
- 23.2 Without the Contracting Authority's prior written authorisation, a Contractor and its staff or any other company with which the Contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for the project. This prohibition also applies to any other projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the Contractor.
- 23.3. When submitting a tender, tenderers must declare that they are not affected by a conflict of interest and have no equivalent relation in that respect with other tenderers or parties involved in the project. Should such a situation arise during execution of the contract, the Contractor must immediately inform the Contracting Authority.
- 23.4 Contractors must at all times act impartially and as faithful advisers in accordance with the code of conduct of their profession. They will refrain from making public statements about the project or services without the Contracting Authority's prior approval. They may not commit the Contracting Authority in any way without its prior written consent.
- 23.5 For the duration of the contracts Contractors and their staff must respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary state. In particular and in accordance with the legal basic act concerned, tenderers that have been awarded contracts must abide by core labour standards as defined in the relevant International Labour Organisation conventions (such as the Conventions on freedom of association and collective bargaining; Abolition of forced and compulsory labour; Elimination of forced and compulsory labour; Abolition of child labour).
- 23.6 Contractors may accept no payment connected with the contracts other than that provided for therein. Contractors and their staff must not exercise any activity nor receive any advantage inconsistent with their obligations to the Contracting Authority.

- 23.7 Contractors and their staff are obliged to maintain professional secrecy for the entire duration of contracts and after their completion. All reports and documents drawn up or received by Contractors will be confidential.
- 23.8 The contract governs the Contracting Parties' use of all reports and documents drawn up, received or presented by them during the implementation of the contract.
- 23.9 Contractors must refrain from any relationship likely to compromise their independence or that of their staff. If the Contractor ceases to be independent, the Contracting Authority may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation.
- 23.10 The Commission reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process and if the Contracting Authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, 'corrupt practices' are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or implementation of a contract already concluded with the Contracting Authority.
- 23.11 All tenders will be rejected or contracts terminated if it emerges that the award or implementation of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has any appearance of being a front company.
- 23.12 The Contractor undertakes to supply the Commission on request with all supporting documents relating to the conditions of the contract's execution. The Commission may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected unusual commercial expenses.
- 23.13 Contractors found to have paid unusual commercial expenses on projects funded by the EU are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving EU funds.
- 23.14 The Contracting Authority reserves the right to suspend or cancel the procedure, if the award procedure proves to have been subject to substantial errors, irregularities or fraud. Where such substantial errors, irregularities or fraud are discovered after the award of the Contract, the Contracting Authority may refrain from concluding the Contract.

24 Cancellation of the tender procedure

If a tender procedure is cancelled, 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, for example, if:

- 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 changed fundamentally;
- exceptional circumstances or *force majeure* render normal implementation of the project impossible;
- all technically compliant tenders exceed the financial resources available;
- there have been irregularities in the procedure, in particular where these have prevented fair competition;

- 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 any damages whatsoever including, without limitation, damages for loss of profits, in any way connected with the cancellation of a tender procedure even if the Contracting Authority has been advised of the possibility of damages. The publication of a contract notice does not commit the Contracting Authority to implement the programme or project announced.

25 Appeals

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

26 Early Warning System and Central Exclusion Database

The tenderers and, if they are legal entities, persons who have powers of representation, decision-making or control over them, are informed that, should they be in one of the situations mentioned in:

- the European Commission Decision of 16.12.2008 on the Early Warning System (EWS) for the use of authorising officers of the Commission and the executive agencies (OJ, L 344, 20.12.2008, p.125) or
- the European Commission Regulation of 17.12.2008 on the Central Exclusion Database (CED) (OJ L344, 20.12.2008, p.12),

their personal details (name, given name if natural person, address, legal form and name and given name of the persons with powers of representation, decision-making or control, if legal person) may be registered in the EWS only, or in both the EWS and CED, and communicated to the persons and entities listed in the above-mentioned Decision and Regulation, in relation to the award or the execution of a procurement contract.

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

DRAFT FRAMEWORK CONTRACT

SUPPLY FRAMEWORK CONTRACT FOR EUROPEAN UNION EXTERNAL ACTIONS

No. PROC/555/15/ SPARE PARTS AND MAINTENANCE OF VEHICLES No. 4

FINANCED FROM THE EU GENERAL BUDGET

European Union Rule of Law Mission in Kosovo (EULEX), with its address at Ndertesa Farmed “Muharrem Fejza” p.n. Lagja e Spitalit 10000 Pristina, Kosovo, represented by Head of Mission, Mr. Gabriele Meucci

("The Contracting Authority"),

of the one part,

and

<Full official name of Contractor>
[Legal status/title]⁵
[Official registration number]⁶
[Full official address]
[VAT number]⁷, (“the Contractor”)

of the other part,

have agreed as follows:

CONTRACT TITLE: Spare Parts and Maintenance of Vehicles No. 4

Identification number: PROC/555/15 (EuropeAid/136776/IH/SUP/XK)

Article 1 Subject

1.1 The subject of the framework contract is the supply and delivery of spare parts for vehicles, as well as the performance of some ancillary services (installation of spare parts, maintenance, repair of vehicles, etc.) by the Contractor (*see the draft contract, special*

⁵ Where the contracting party is an individual.

⁶ Where applicable. For individuals, mention their ID card or passport or equivalent document - number

⁷ Except where the contracting party is not VAT registered.

clauses, and Annex II and III of the Tender Dossier for the relevant description of the items and ancillary services and the estimated quantities that may be ordered during the duration of the framework contract): in 2 (two) lots at EULEX Kosovo, Pristina, DAP8.

Lot 1	Nissan
Lot 2	Heavy, Specialized Vehicles & Other Makes

- 1.2 The framework contract will be implemented by “Purchase Order/Work Order”. i.e. whenever the Contracting Authority intends to acquire items pursuant to this framework contract and/or request the performance of ancillary services, it shall send a “Purchase Order/Work Order” to the contractor, specifying the quantities of items to be supplied and/or specifying the scope of services to be performed. Deliveries and performance of ancillary services shall take place in accordance with the terms and conditions of the special and general conditions, supplemented and/or amended by the specific terms for each particular delivery or performance of ancillary services as set out in the “Purchase Order/Work Order”.
- 1.3 The quantities estimated and specified in ANNEX II +III are only indicative quantities and do NOT compel the contracting authority to buy any of them The contracting authority may at its own discretion purchase fewer or more quantities than those estimated quantities per item. The overall financial ceiling being the maximum budget available for this framework contract as expressed in article 3.1 below.
- 1.4 The contractor shall NOT be entitled to compensation and shall NOT be allowed to claim for changes of the unit prices, in case the contracting authority decides to purchase fewer or more quantities than the indicative ones specified per item in Annex II + III and/or in case the contracting authority decides NOT to purchase ANY of these quantities.
- 1.5 The framework contract shall be concluded for a period of **1 (one) year**, with effect on the date on which it enters into force, (although the Framework contract may be terminated at short notice. See article 36 of the special conditions).
- 1.6 The contracting authority may, at its own discretion extend this framework contract. Such extension shall be made under negotiated procedure. The contract may only be extended once, such that the duration of extension does not exceed the duration of the initial framework contract. Any extension will be conditioned and limited by the Mission’s mandate, the availability of corresponding budgetary funds and the satisfactory fulfillment of its obligations by the contractor.
- 1.7 The Contractor shall comply strictly with the terms of the Special Conditions and the technical annex.

Article 2 Origin

- 2.1 No rule of origin is applied.

Article 3 Price

3.1. Price for Spare parts for both Lot 1 and 2.

Price for Spare parts shall be as following:

⁸ DAP (delivery at place) - Incoterms 2010 International Chamber of [Commerce - http://www.iccwbo.org/incoterms/id3040/index.html](http://www.iccwbo.org/incoterms/id3040/index.html)

- 3.1.1. a. Genuine Spare Parts listed in the financial offer: the prices in the financial offer shall be the sole remuneration owed by the Contracting Authority to the Contractor under the framework contract.
A price revision clause, in article 15 of the special conditions, may be applied after the first year, should the Contracting Authority decide to extend this Framework Contract in accordance with Article 1.6 of the contract.
- 3.1.1. b. Genuine Spare Parts NOT listed in the financial offer: the unit price shall be the one calculated as an arithmetic product of the Contractor's purchase price indicated in the invoice attached to Contractor's Customs declarations multiplied by a commercial index (**GCI**) clearly indicated in tenderer's financial offer (prices may not be higher than the ones referred to in the manufacturer's price list in force at the time of the issuance of the Purchase Order/Work Order on the territory of Kosovo), in Euros.
- 3.1.2. c. OEM (Original Equipment Manufacturer) Spare Parts (see article 24.8 of the special conditions): the unit price shall be the one calculated as an arithmetic product of the Contractor's purchase price indicated in the invoice attached to Contractor's Customs declarations multiplied by a commercial index (**OCI**) clearly indicated in tenderer's financial offer, in Euros.

3.2. Price for Labour.

- 3.2.1. For Labor the cost shall be determined by multiplying the unit price per working hour as specified in the financial offer with the amount of working hours specified on the invoice (as approved by the project manager), in Euros.
- 3.2.2. The number of hours of labor shall be calculated using the Manufacturer's Flat Rate Schedule. Wherever Manufacturer's Flat Rate Schedule is not available, the Contracting Authority will request a quotation for repair work in writing. The quotation will be sent to EULEX Transport HQ for approval in advance of any repair taking place.
- 3.2.4. The price per hour of labour shall be firm and shall not be subject to revision for Purchase Order/Work Order placed during the period of implementation of the framework contract. A price revision clause in article 15 of the special conditions may be applied should the Contracting Authority decide to extend this Framework Contract in accordance with Article 1.6 of the contract.

3.3. Technical examination (MOT).

- 3.3.1. The price for technical examination (MOT) shall be flat rate for all type of the vehicles serviced under that contract, in euro per vehicle.
- 3.4 The price of the supplies shall be that shown on the financial offer (specimen in Annex IV). The total yearly maximum contract price shall be **xxxxx euros**.
- 3.5 Payments shall be made in accordance with the General and/or Special Conditions (Articles 26 to 28).

Article 4 Order of precedence of contract documents

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

- the contract agreement;
- the Special Conditions
- the General Conditions (Annex I);

- the Technical Specifications (Annex II [including clarifications before the deadline for submission of tenders and minutes from the information meeting/site visit];
- the Technical Offer (Annex III [including clarifications from the tenderer provided during tender evaluation];
- the budget breakdown (Annex IV);
- Specified forms and other relevant documents (Annex V);
- Purchase Order (Annex VIa) and Work Order (Annex VIb);
- Provisional/Final Acceptance Certificate (Annex VII).

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

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

For the Contractor		For the Contracting Authority	
Name:		Name:	Gabriele Meucci
Title:		Title:	Head of EULEX Kosovo
Signature:		Signature:	
Date:		Date:	

SPECIAL CONDITIONS

CONTENTS

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

Article 2 Language of the Contract

2.1 The language used shall be English.

Article 4 Communications

4.1 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:

Name:	European Union Rule of Law Mission in Kosovo Attn: xxxxx
Address:	European Union Rule of Law Mission in Kosovo xxxxxxxxxxx Ndërtesa Farmed “Muharrem Fejza” p.n. Lagja e Spitalit 10000 Pristina, Kosovo
Telephone:	
Fax:	

For the Contractor:

Name:	
Address:	
Telephone:	
Fax:	
e-mail:	

Article 10 Origin

10.1 The rule of origin does not apply.

Article 11 Performance guarantee

11.1 The amount of the performance guarantee shall be Euros equivalent to **5 %** of the total Contract price, including any amounts stipulated in addenda to the Contract.

Article 12 Liabilities and Insurance

- 12.1 The contractor shall insure for replacement value of the goods until delivery.
- 12.2 The contractor will be wholly responsible for the vehicles while they are on their premises and must be insured accordingly. Any damage incurred will be rectified by the contractor at his own cost.
- 12.3 The contractor must ensure that all his staff carrying out the pick up, drop off and roads tests of the vehicles are fully insured and hold a valid driving license for the category of vehicle being driven.

Article 15 Sufficiency of tender prices

Tender prices of spare parts for both Lot 1 and 2.

15.1. Tender prices for genuine spare parts listed in the financial offer.

The unit prices in the financial offer shall be the sole remuneration owed by the Contracting Authority to the Contractor under the framework contract.

Should the Contracting Authority decide to extend this Framework Contract in accordance with Article 1.6 of the contract, for the spare parts listed per vehicle, in the financial offer; prices may be revised upwards or downwards, where such revision is requested by one of the contracting parties by registered letter. Purchase Order/Work Orders shall be placed on the basis of the prices in force on the date on which they are signed. Such prices shall not be subject to revision.

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

Revision shall be calculated in accordance with the following formula:

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

Where :

Pr = revised price.

Po = price in the original tender.

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

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

15.2. Tender prices for spare parts NOT listed in the financial offer.

The unit price shall be the one calculated as an arithmetic product of the Contractor’s purchase price indicated in the invoice attached to Contractor’s Customs declarations multiplied by a commercial index (**GCI**) clearly indicated in tenderer’s financial offer (prices may not be higher than one referred to in the manufacturer’s price list in force at the time of the issuance of the Purchase Order/Work Order on the territory of Kosovo), in Euros.

15.3 Tender prices for OEM (Original Equipment Manufacturer) spare parts – see article 24.8 below.

The unit price shall be the one calculated as an arithmetic product of the Contractor’s purchase price indicated in the invoice attached to Contractor’s Customs declarations multiplied by a commercial index (**OCI**) clearly indicated in tenderer’s financial offer, in Euros.

15.4. Tender prices for labour.

Should the Contracting Authority decide to extend this Framework Contract in accordance with Article 1.6 of the contract, prices for labour, for all lots, may be revised upwards or downwards, where such revision is requested by one of the contracting parties by registered letter. Purchase Order/Work Orders shall be placed on the basis of the prices in force on the date on which they are signed. Such prices shall not be subject to revision.

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

Revision shall be calculated in accordance with the following formula:

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

Where :

Pr = revised price.

Po = price in the original tender.

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

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

15.4. Tender prices for technical examination (MOT).

The unit prices (the flat rate per vehicle) in the financial offer shall be the sole remuneration owed by the Contracting Authority to the Contractor under the framework contract.

Article 16 Tax and customs arrangements

16.1 The terms of delivery of the goods shall be DAP (Delivered At Place) - Incoterms 2010 International Chamber of commerce

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

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

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

Article 18 Commencement order

18.1. The framework contract shall enter into force **on the date/day of its signature by both parties.**

18.2. The framework contract will be implemented by means of “Purchase Order/Work Order” which implementation date (governing the delivery period of spare parts or the performance of the ancillary services), will start on the date of reception by the Contractor of the “Purchase Order/Work Order”.

18.3. The Contracting authority will request a quotation for repair work in writing. The quotation will be sent to EULEX Transport HQ for approval in advance of any repair taking place.

- 18.4. Under no circumstances may Purchase Order/Work Order be placed before the date on which the framework contract enters into force and/or after the framework contract expires.

Article 19 Period of implementation of the tasks

- 19.1 The framework contract shall be concluded for a period of **1 (one) year**, with effect on the date on which it commences, (although the Framework contract may be terminated at short notice. See article 36 of the special conditions).
- 19.3 The contracting authority may, at its own discretion extend this framework contract. Such extension shall be made under negotiated procedure. The contract may only be extended once, such that the duration of extension does not exceed the duration of the initial framework contract. Any extension will be conditioned and limited by the Mission's mandate, the availability of corresponding budgetary funds and the satisfactory fulfillment of its obligations by the contractor.

Article 22 Amendments

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

Article 24 Quality of supplies and ancillary services

A. Quality of Ancillary Services.

24.1 The contractor will perform all services to the highest quality and at least to a level that is in accordance with the vehicle manufacturer's Workshop Manual and any changes or alteration as defined by the Contracting authority.

24.2 Where no specific instructions are provided by the manufacturer, the Service Provider will maintain a standard in keeping with the highest levels in the automotive industry, based on the vehicle road worthiness testing to Belgium acceptable standards.

24.3 The interior of the vehicles will be protected at all times using seat covers and other protection to ensure that the interior furnishings are not damaged or soiled in any way.

24.4 Basic Scheduled service:

Areas to be covered during a basic scheduled service (provisional list):

- All Oils and Fluids
- All Filters
- Electrical System
- Brakes
- Steering Suspension
- Transmission
- Full inspection of the chassis, body and safety features of the vehicle must be incorporated into each scheduled maintenance.
- The Basic Schedule Service also includes the transport of the vehicle to the contractor's premises and the drop off after completion of the services (the transport and drop off apply to all vehicles except trucks).

24.5 The contractor will not touch or tamper with any part of a vehicle that does not require inspection as part of the provision of any service under this contract. The contractor will be responsible for the repair or replacement of any parts that are damaged through such unauthorized tampering.

24.6 The contractor will be responsible for returning the vehicle to the Contracting Authority's facilities after completion of repairs or service, except trucks. As such, the Contractor must

ensure that all his staff carrying out these functions are fully insured and hold a valid driving license for the category of vehicle being driven.

B. Quality of spare parts.

- 24.7 Genuine Manufacturer's parts and materials shall be used unless OEM parts are requested and/or accepted by Project Manager.
- 24.8 Eulex Project Manager, based on review and opinion of EULEX technical experts, may decide upon installation of equivalent high standard parts as OEM (Original Equipment Manufacturer).

Article 25 Inspection and testing

- 25.1 Inspection and testing will take place upon delivery of spare parts or return of serviced/repaired vehicles (and in accordance with Article 25 of the General Conditions at the delivery address specified in the Purchase Order/Work Order).
- 25.2. All service and repair work must be approved by a EULEX Quality Control (QC) personnel. Any unsatisfactory work as identified by the EULEX QC will be rectified by the Contractor at its own expenses.
- 25.3. The Certificate of Provisional Acceptance must be issued and signed by both the contractor and the Contracting Authority after delivery of the spare parts to EULEX Transport HQ.
- 25.4. EULEX has the right to independently test the spare parts provided by the contractor to ascertain they are vehicle's Genuine Manufacturer's parts and materials. Should an independent test reveal these standards are not met, EULEX has the right to request the removal of such spare-part and have them replaced at no cost to EULEX, including any transportation or handling costs.
- 25.5 Eulex project manager, based on review and opinion of EULEX technical experts, may decide upon installation of equivalent high standard parts as OEM (Original Equipment Manufacturer). Should an independent test reveal these standards are not met, EULEX has the right to request the removal of such spare-part and have them replaced at no cost to EULEX, including any transportation or handling costs.

Article 26 General principles for payments

- 26.1 Payments shall be made in Euros.

Payments shall be authorised and made by the Contracting Authority.

- 26.2 No pre-financing shall be made.

- 26.3 Request for payments shall be made only on the basis of the amount value of a valid Purchase Order/Work Order issued by the contracting authority.

In order to obtain payments, the Contractor must forward to the authority referred to in paragraph 26.1 above, (in addition to the performance guarantee), the invoice(s) in triplicate following provisional acceptance of the supplies and/or ancillary services.

Invoices will be paid on a monthly basis in arrears of the work being completed. Invoices should be submitted by the 5th of the following month. Each monthly bill should include all the documents enabling Contracting Authority identifying Contractor's purchase price.

- 26.4. Invoicing.

- i. All invoicing must include original and copy along with the Purchase (Work) Order number and all relevant supporting documents.
- ii. Invoices shall clearly separate the spare parts from the Labour/MOT cost and must include (as applicable):
 - The complete list of parts that have been replaced
 - The cost of these parts, in accordance with the terms of article 3.1. of the draft framework contract, specified in the financial offer (annex II and III).
 - The total cost of labour.
 - Any other charges for services performed.(MOT)
 - The cost of the pick up and drop off of vehicles from/to EULEX Transport Compound shall NOT be mentioned as a cost in the financial offer and that it shall never appear on any invoice during the implementation period of the contract, neither added to the number of hours of labor. i.e. the estimated cost for the pick up and drop off of all vehicles shall be deemed to have been estimated by the contractor at the time of the submission of its financial offer and integrated into its financial proposals related to the unit price for the working hours, and/or for the spare parts.

26. 9 Subject to the extension of the framework contract under 1.6 above, prices may be revised upwards or downwards, where such revision is requested by one of the contracting parties by registered letter no later than three months before the ending of the Framework Contract. Purchase orders shall be placed on the basis of the prices in force on the date on which they are signed. Such prices shall not be subject to revision.

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

Revision shall be calculated in accordance with the following formula:

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

Where:

Pr = revised price.

Po = price in the original tender.

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

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

Article 29 Delivery

29.1 Delivery of Spare Parts

29.1.1 The place of acceptance of the supplies shall be EULEX Transport HQ, Pristina, Kosovo, and the Incoterm applicable shall be DAP (delivery at place).

The implementation shall run from the date of signature of the contract by both parties. The time limits for the delivery of items shall be within **20 (twenty) days** after the receipt by the contractor of a “Purchase Order”. Exceptionally, based on thoroughly justified Contractor’s request and upon approval of the Project Manager, this deadline may be extended to 45 (forty five) days. The delivery date (as beyond 45 days) might be indicated by Project Manager in the Purchase Order.

- 29.1.2 The Contractor shall bear all risks relating to the goods until provisional acceptance at destination. The supplies shall be packaged so as to prevent their damage or deterioration in transit to their destination.
- 29.1.3 The delivery shall take place on a working day and during the normal working hours of the EULEX Transport; the “working hour schedule” shall be accurately specified at the time of the signature of the contract.
- 29.1.4 Use of Standard European “Euro-Pallets” and other mandatory requirements, where applicable.
- 29.1.4.a. The contractor shall deliver the goods on standard European “Euro-pallets”. The packaging shall become the property of the recipient subject to respect for the environment.
- 29.1.4.b. Every ‘Euro-Pallet” has to be labelled with its exact content and total weight.
- 29.1.4.c. The maximum load per standard “Euro-pallet” (including the pallet) shall be up to 400 kg. For new certified pallets the maximum load (including the pallet) may be up to 1, 2 t maximum.
- 29.1.4.d. Height of packing shall be up to maximum 1.6 m.
- 29.1.4.e. Items shall be packed into boxes with like items packed together. Every box should have individual labelling indicating clearly the content, weight and dimensions, including but not limited to labelling for dangerous goods in accordance with IATA/ADR dangerous goods labelling and in accordance with REGULATION (EC) No 1272/2008 of 16 December 2008.
- 29.1.4.f. Should the nature of the goods make it impossible to meet a requirement set under this article 29, variations may be authorised by the Project manager, following the receipt, before the actual delivery, of a detailed request letter from the Contractor.
- 29.1.4.g. Unless, duly authorised by the Project manager before the actual delivery, any shipment delivered in violation of the contractual obligations set under this article 29 will be rejected and remain under the custody and exclusive responsibility of the contractor or the carrier appointed by it. The Contractor or carrier shall NOT be entitled to claim for any compensation or indemnity for loss suffered in case the shipment was rejected by the Contracting Authority due to the violation of a contractual obligation set under article 29 of these special conditions

29.2. Schedule for the performance of ancillary services.

- 29.2.1. The Contracting Authority will make available, at a pre-booked time and date (at least 2 days in advance), to the contractor any vehicle that is due to have scheduled maintenance or servicing. The Contracting Authority will endeavor to make the vehicles available for scheduled maintenance and servicing at staggered intervals to avoid overbooking. However, for operational reasons, some vehicles may not be available for scheduled maintenance and the Contracting Authority is under no obligation to make the vehicle available.
- 29.2.2. The contractor will be notified by EULEX Transport section when a vehicle is due for maintenance or repair. The contractor will be responsible for the collection of the vehicle from the Contracting Authority’s Transport HQ in Pristina and he will transport the vehicle to his own premises and drop it off after completion of the services.

- 29.2.3. The pick-up and drop off of vehicles does not apply to trucks (more than 3.5 tons).
- 29.2.4. Repairs will be completed in the shortest possible time using, where available, parts that are held in stock by the contractor. When spare parts are not in stock, the contractor will confirm in writing to the Contracting Authority when the part will be available (availability the latest within forty five calendar days)
- 29.2.5. The Service Provider should give priority to EULEX vehicles that are waiting for repair or maintenance.
- 29.2.6 The service provider is obliged to return all used spare parts or units' uninstalled from the serviced or repaired vehicle to Eulex Transport.

Article 31 Provisional acceptance

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

31.1. Provisional acceptance of Spare parts.

The Certificate of Provisional Acceptance must be issued and signed by the Contracting Authority after delivery of the spare parts to EULEX Transport HQ.

31.2. Provisional acceptance of Ancillary services.

- a. All invoicing must be presented to the Project Manager, when the vehicle is returned after works, as proof that this work has been carried out satisfactorily, using the format specified in article 26.4).
- b. All service and repair work must be approved by a EULEX Quality Control (QC) personell. Any unsatisfactory work as identified by the EULEX QC will be rectified at the Contractor's expense.
- c. The Certificate of Service Acceptance must be issued and signed by the Contracting Authority after the serviced vehicle has been delivered back to the EULEX facilities.

Article 32 Warranty

- 32.1 The Contractor shall warrant that the supplies are new, unused, of the most recent models and incorporate all recent improvements in design and materials. The Contractor shall further warrant that none of the supplies have any defect arising from design, materials or workmanship. This warranty shall remain valid for **1 (one) year** after provisional acceptance.
- 32.2 The commercial warranty as shown in the technical offer must be valid for **1 (one) year** after provisional acceptance.

Article 36 - Termination by the Contracting Authority

1. The framework contract is of one year duration starting from its signature by both parties. In addition to the grounds for termination defined in the General Conditions, the Contracting Authority may terminate the contract after giving **30 days' notice** to the Contractor, in case EULEX's mandate was not to be prolonged and/or in case of budgetary issues affecting the financing of the project.
2. In case of termination of the framework contract on such grounds, the Contractor shall NOT be entitled to claim any indemnity for loss suffered.
3. The Contractor shall only be entitled to claim for sums owing to it for supplies already delivered and/or for supplies pending delivery following the receipt by the Contractor

(before the date of notification of the termination of the framework contract) of a valid Purchase (Work) Order issued by the Contracting Authority.

Article 40 Settlement of disputes

40.4 Any disputes arising out of or relating to this Contract which cannot be settled amicably shall be referred to the exclusive jurisdiction of the courts of Brussels, Belgium.

* * *

ANNEX I: GENERAL CONDITIONS

FOR SUPPLY CONTRACTS FINANCED BY THE EUROPEAN UNION OR BY THE EUROPEAN DEVELOPMENT FUND

CONTENT

PRELIMINARY PROVISIONS

- ARTICLE 1 - DEFINITIONS
- ARTICLE 2 - LANGUAGE OF THE CONTRACT
- ARTICLE 3 - ORDER OF PRECEDENCE OF CONTRACT DOCUMENTS
- ARTICLE 4 - COMMUNICATIONS
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PRELIMINARY PROVISIONS

Article 1 - Definitions

- 1.1. The headings and titles in these General Conditions shall not be taken as part thereof or be taken into consideration in the interpretation of the contract.
- 1.2. Where the context so permits, words in the singular shall be deemed to include the plural and vice versa, and words in the masculine shall be deemed to include the feminine and vice versa.
- 1.3. Words designating persons or parties shall include firms and companies and any organisation having legal capacity.
- 1.4. The definitions of the terms used throughout this General Conditions are laid down in the "Glossary of terms", annex A1 to the Practical Guide, which forms an integral part of the contract.

Article 2 - Language of the Contract

- 2.1. The language of the contract and of all communications between the Contractor Contracting Authority and Project Manager or their representatives shall be as stated in the Special Conditions.

Article 3 - Order of precedence of Contract documents

- 3.1. The order of precedence of the contract documents shall be stated in the contract.

Article 4 - Communications

- 4.1. Any written communication relating to this Contract between the Contracting Authority or the Project Manager, and the Contractor shall state the contract title and identification number, and shall be sent by post, cable, telex, facsimile transmission, e-mail or personal delivery, to the appropriate addresses designated by the parties for that purpose in the Special Conditions.
- 4.2. If the sender requires evidence of receipt, it shall state such requirement in its 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 timely receipt of its communication.
- 4.3. Wherever the contract provides for the giving or issue of any notice, consent, approval, certificate or decision, unless otherwise specified such notice, consent, approval, certificate or decision shall be in writing and the words "notify", "consent", "certify", "approve" or "decide" shall be construed accordingly. Any such consent, approval, certificate or decision shall not unreasonably be withheld or delayed.
- 4.4. Any oral instructions or orders shall be confirmed in writing.

Article 5 - Assignment

- 5.1. An assignment shall be valid only if it is a written agreement by which the contractor transfers its Contract or part thereof to a third party.
- 5.2. The Contractor shall not, without the prior consent of the Contracting Authority, assign the contract or any part thereof, or any benefit or interest thereunder, except in the following cases:
 - a) a charge, in favour of the Contractor's bankers, of any monies due or to become due under the Contract; or
 - b) the assignment to the Contractor's insurers of the Contractor's right to obtain relief against any other person liable in cases where the insurers have discharged the Contractor's loss or liability.
- 5.3. For the purpose of Article 5.2, the approval of an assignment by the Contracting Authority shall not relieve the Contractor of its obligations for the part of the contract already performed or the part not assigned.
- 5.4. If the Contractor has assigned the contract without authorisation, the Contracting Authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Articles 35 and 36.
- 5.5. Assignees shall satisfy the eligibility criteria applicable for the award of the contract and they shall not fall under the exclusion criteria described in the tender dossier.

Article 6 - Subcontracting

- 6.1. A subcontract shall be valid only if it is a written agreement by which the Contractor entrusts performance of a part of the contract to a third party.
- 6.2. The Contractor shall request to the Contracting Authority the authorisation to subcontract. The request must indicate the elements of the contract to be subcontracted and the identity of the subcontractors. The Contracting Authority shall notify the Contractor of its decision within 30 days of receipt of the request, stating reasons should it withhold such authorisation.
- 6.3. Subcontractors shall satisfy the eligibility criteria applicable for the award of the contract and shall not fall under the exclusion criteria described in the tender dossier.
- 6.4. No subcontract creates contractual relations between any subcontractor and the Contracting Authority.
- 6.5. The Contractor shall be responsible for the acts, defaults and negligence of its subcontractors and their agents or employees, as if they were the acts, defaults or negligence of the Contractor, its agents or employees. The approval by the Contracting Authority of the subcontracting of any part of the contract or of the subcontractor to perform any part of the tasks shall not relieve the Contractor of any of its obligations under the contract.

- 6.6. If a subcontractor has undertaken any continuing obligation extending for a period exceeding that of the warranty period under the contract towards the Contractor in respect of the supplies provided by the subcontractor, the Contractor must, at any time after the expiration of the warranty period, transfer immediately to the Contracting Authority, at the Contracting Authority's request and cost, the benefit of such obligation for the unexpired duration thereof.
- 6.7. If the Contractor enters into a subcontract without approval, the Contracting Authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Articles 35 and 36.
- 6.8. If a subcontractor is found by the Contracting Authority or the Project Manager to be incompetent in discharging its duties, the Contracting Authority or the Project Manager may request the Contractor forthwith, either to provide a subcontractor with qualifications and experience acceptable to the Contracting Authority as a replacement, or to resume the implementation of the tasks itself.

OBLIGATIONS OF THE CONTRACTING AUTHORITY

Article 7 - Supply of documents

- 7.1. Save where otherwise provided in the Special Conditions, within 30 days of the signing of the Contract, the Contracting Authority shall provide the Contractor, free of charge, with a copy of the drawings prepared for the implementation of the tasks and a copy of the specifications and other Contract documents. The Contractor may purchase additional copies of these drawings, specifications and other documents, in so far as they are available. Upon final acceptance, the Contractor shall return to the Contracting Authority all drawings, specifications and other Contract documents.
- 7.2. The Contracting Authority shall co-operate with the Contractor to provide information that the latter may reasonably request in order to perform the contract.
- 7.3. The Contracting Authority shall notify the Contractor of the name and address of the Project Manager.
- 7.4. 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 Contracting Authority.
- 7.5. The Project Manager shall have authority to issue to the Contractor administrative orders incorporating such supplementary documents and instructions as are necessary for the proper execution of the contract and the remedying of any defects therein.
- 7.6. The Special Conditions must indicate the procedure used, if necessary, by the Contracting Authority and the Project Manager to approve drawings and other documents provided by the Contractor.

Article 8 - Assistance with local regulations

- 8.1. The Contractor may request the assistance of the Contracting Authority in obtaining copies of laws, regulations and information on local customs, orders or bye-laws of the country where the supplies are to be delivered which may affect the Contractor in the performance of its obligations under the contract. The Contracting Authority may provide the assistance requested to the Contractor at the Contractor's cost.
- 8.2. The Contractor shall duly notify the Contracting Authority of details of the supplies so that the Contracting Authority can obtain the requisite permits or import licences.
- 8.3. The Contracting Authority will undertake to obtain, in accordance with the Special Conditions, the requisite permits or import licences within a reasonable period, taking account of the implementation dates for the tasks.
- 8.4. Subject to the provisions of the laws and regulations on foreign labour of the country in which the supplies are to be delivered, the Contracting Authority provides reasonable assistance to the Contractor, at its request, for its application for any visas and permits required by the law of the Country in which the supplies are to be delivered, 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.

OBLIGATIONS OF THE CONTRACTOR

Article 9 - General Obligations

- 9.1. The Contractor shall execute the contract with due care, efficiency and diligence in accordance with the best professional practice.
- 9.2. The Contractor shall, in accordance with the provisions of the Contract, design, manufacture, deliver to site, erect, test and commission the supplies and carry out any other work including the remedying of any defects in the supplies. The Contractor shall also provide all necessary equipment, supervision, labour and facilities required for the implementation of the tasks.
- 9.3. The Contractor shall comply with administrative orders given by the Project Manager. Where the Contractor considers that the requirement of an administrative order goes beyond the scope of the Contract, it shall, give notice with reasons to the Project Manager. If the Contractor fails to notify within 30 days period after receipt thereof, he shall be barred from so doing. Execution of the administrative order shall not be suspended because of this notice.
- 9.4. The Contractor shall supply, without delay, any information and documents to the Contracting Authority and the European Commission upon request, regarding the conditions in which the contract is being executed.
- 9.5. The Contractor shall respect and abide by all laws and regulations in force in the country where the supplies are to be delivered and shall ensure that its personnel, their dependants, and its 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, its employees and their dependants of such laws and regulations.

- 9.6. Should any unforeseen event, action or omission directly or indirectly hamper performance of the Contract, either partially or totally, the Contractor shall immediately and at its own initiative record it and report it to the Contracting Authority. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with its obligations under the contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.
- 9.7. Subject to Article 9.9, the Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to the performance of the contract without the prior consent of the Contracting Authority. The Contractor shall continue to be bound by this undertaking after completion of the tasks and shall obtain from each member of its staff the same undertaking. However, use of the contract's reference for marketing or tendering purposes does not require prior approval of the Contracting Authority, except where the Contracting Authority declares the contract to be confidential.
- 9.8. If the Contractor is a joint venture or a consortium of two or more persons, all such persons shall be jointly and severally bound in respect of the obligations under the contract, including any recoverable amount. The person designated by the consortium to act on its behalf for the purposes of the contract shall have the authority to bind the consortium and is the sole interlocutor for all contractual and financial aspects. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the Contracting Authority. Any alteration of the composition of the consortium without the prior consent of the Contracting Authority may result in the termination of the contract.
- 9.9. Save where the European Commission requests or agrees otherwise, the Contractor shall ensure the highest visibility to the financial contribution of the European Union. To ensure such publicity the Contractor shall implement among other actions the specific activities described in the Special Conditions. All measures must comply with the rules in the Communication and Visibility Manual for EU External Actions published by the European Commission.
- 9.10. Any records shall be kept for a 7-year period after the final payment made under the contract. In case of failure to maintain such records the Contracting Authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Articles 35 and 36.

Article 9a - Code of Conduct

- 9a.1 The Contractor shall at all times act impartially and as a faithful adviser in accordance with the code of conduct of its profession. It shall refrain from making public statements about the project without the prior approval of the Contracting Authority. It shall not commit the Contracting Authority in any way without its prior consent and shall, where appropriate, make this obligation clear to third parties.
- 9a.2 The Contractor and its staff shall respect human rights and undertake not to offend the political, cultural and religious practices prevailing in the country where the supplies have to be delivered.
- 9a.3 The Contractor shall respect environmental legislation applicable in the country where the supplies have to be delivered and internationally agreed core labour standards, e.g. the ILO core labour standards, conventions on freedom of association and collective

bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation, and the abolition of child labour.

- 9.a.4 The Contractor or any of its subcontractors, agents or personnel shall not abuse of its entrusted power for private gain. The Contractor or any of its subcontractors, agents or personnel shall not receive or agree to receive from any person or offer or agree to give to any person or procure for any person, gift, gratuity, commission or consideration of any kind as an inducement or reward for performing or refraining from any act relating to the performance of the contract or for showing favour or disfavour to any person in relation to the contract. The Contractor shall comply with all applicable laws and regulations and codes relating to anti-bribery and anti-corruption.
- 9.a.5 The payments to the Contractor under the contract shall constitute the only income or benefit it may derive in connection with the contract. The Contractor and its staff must not exercise any activity or receive any advantage inconsistent with their obligations under the contract.
- 9.a.6 The execution of the contract shall not give rise to unusual commercial expenses. 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. The European Commission may carry out documentary or on-the-spot checks it deems necessary to find evidence in case of suspected unusual commercial expenses.

Article 9b Conflict of Interest

- 9.b.1 The Contractor shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of the contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which may arise during performance of the contract shall be notified to the Contracting Authority without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.
- 9.b.2 The Contracting Authority reserves the right to verify that such measures are adequate and may require additional measures to be taken if necessary. The Contractor shall ensure that its staff, including its management, is not placed in a situation which could give rise to conflict of interests. Without prejudice to its obligation under the Contract, the Contractor shall replace, immediately and without compensation from the Contracting Authority, any member of its staff exposed to such a situation.
- 9.b.3 The Contractor shall refrain from any contact which would compromise its independence or that of its personnel.
- 9.b.4 The Contractor shall limit its role in connection with the project to the provision of the supplies described in the contract.
- 9.b.5 The Contractor and anyone working under its authority or control in the performance of the contract or on any other activity shall be excluded from access to other EU budget/EDF funds available under the same project. However, the Contractor may participate after approval of the Contracting Authority if the Contractor is able to prove

that its involvement in previous stages of the project does not constitute unfair competition.

Article 10 - Origin

- 10.1. All goods shall have their origin in any eligible source country as defined in the instructions to tenderers and the Special Conditions.
- 10.2. The Contractor must certify that the goods tendered comply with this requirement, specifying their countries of origin. It may be required to provide more detailed information in this respect.
- 10.3. The Contractor shall present an official certificate of origin on provisional acceptance. Failure to comply with this obligation shall lead, after formal notice, to termination of the contract.

Article 11 - Performance guarantee

- 11.1. The Contractor shall, together with the return of the countersigned Contract, furnish to the Contracting Authority with a guarantee for the full and proper execution of the contract. The amount of the guarantee shall be as specified in the Special Conditions. It shall be in the range of 5 and 10% of the total contract price, including any amounts stipulated in addenda to the contract.
- 11.2. The performance guarantee shall be held against payment to the Contracting Authority for any loss resulting from the Contractor's failure to perform its contractual obligations under the contract.
- 11.3. 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.
- 11.4. The performance guarantee shall be denominated in the currency in which the contract is payable. No payments shall be made in favour of the Contractor prior to the provision of the guarantee. The guarantee shall continue to remain valid until the contract has been fully and properly performed.
- 11.5. During the execution of the Contract, if the natural or legal person providing the guarantee is not able to abide by its 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.
- 11.6. The Contracting Authority shall demand payment from the guarantor 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.

- 11.7. Unless the Special Conditions provide otherwise, the performance guarantee shall be released within 45 days of the issuing of the signed final acceptance certificate for its total amount except for amounts which are the subject of amicable settlement, arbitration or litigation.

Article 12 - Liabilities and Insurance

12.1. Liabilities

The liability rules described below are without prejudice to the possible application of international conventions on the carriage of goods.

a) Liability for damage to supplies

Without prejudice to Article 32 (warranty obligations) and Article 38 (force majeure), the Contractor shall assume (i) full responsibility for maintaining the integrity of the supplies and (ii) the risk of loss and damage, whatever their cause, until the final acceptance as foreseen in Article 34.

Compensation for damage to the supplies resulting from the Contractor's liability in respect of the Contracting Authority is capped at an amount equal to one million euros if the contract value is less than or equal to one million euros. If the contract value is greater than one million euros, compensation for damages resulting from the Contractor's liability shall be capped to the contract value.

However, compensation for loss or damage resulting from fraud or gross negligence of the Contractor, its staff, its subcontractors and any person for which the Contractor is answerable, can in no case be capped.

b) Contractor's liability in respect of the Contracting Authority

At any time, the Contractor shall be responsible for and shall indemnify the Contracting Authority for any damage caused to the Contracting Authority by the Contractor, its staff, its subcontractors and any person for which the Contractor is answerable.

Compensation for damage resulting from the Contractor's liability in respect of the Contracting Authority is capped at an amount equal to one million euros if the contract value is less than or equal to one million euros. If the contract value is greater than one million euros, compensation for damages resulting from the Contractor's liability shall be capped to the contract value.

However, compensation for loss or damage resulting from the Contractor's liability in case of bodily injury, including death, can in no case be capped. The same applies to compensation for any damages of any kind resulting from fraud or gross negligence of the Contractor, its staff, its subcontractors and any person for which the Contractor is answerable.

c) Contractor's liability in respect of third parties

The Contractor shall, at its own expense, indemnify, protect and defend, the Contracting Authority, its agents and employees, from and against all actions, claims, losses or damage, direct or indirect, of whatever nature (hereinafter "claim(s)") arising from any act or omission by the Contractor, its staff, its subcontractors and/or any person for which the Contractor is answerable, in the performance of its duties.

The Contracting Authority must notify any third party claim to the Contractor as soon as possible after the Contracting Authority becomes aware of them.

If the Contracting Authority chooses to challenge and defend itself against the claim(s), the Contractor shall bear the reasonable costs of defense incurred by the Contracting Authority, its agents and employees.

Under these general conditions, the agents and employees of the Contracting Authority, as well as the Contractor's staff, its subcontractors and any person for which the Contractor is answerable are considered to be third parties.

The Contractor shall treat all claims in close consultation with the Contracting Authority. Any settlement or agreement settling a claim requires the prior express consent of the Contracting Authority and the Contractor.

12.2. Insurance

a) Insurance – general issues

At the latest together with the return of the countersigned contract, and for the period of implementation of the tasks, the Contractor shall ensure that itself, its staff, its subcontractors and any person for which the Contractor is answerable, are adequately insured with insurance companies recognized on the international insurance market, unless the Contracting Authority has given its express written consent on a specific insurance company.

At the latest together with the return of the countersigned contract, the Contractor shall provide the Contracting Authority with all cover notes and/or certificates of insurance showing that the Contractor's obligations relating to insurance are fully respected. The Contractor shall submit without delay, whenever the Contracting Authority or the Project Manager so requests, an updated version of the cover notes and/or certificates of insurance.

The Contractor shall obtain from the insurers that they commit to personally and directly inform the Contracting Authority of any event likely to reduce, cancel or alter in any manner whatsoever, that coverage. The insurers shall deliver this information as quickly as possible, and in any event at least thirty (30) days before the reduction, cancellation or alteration of the cover is effective. The Contracting Authority reserves the right to indemnify the insurer in case the Contractor fails to pay the premium, without prejudice to the Contracting Authority's right to recover the amount of the premium it paid, and to subsequently seek compensation for its possible resulting damage.

Whenever possible, the Contractor shall ensure that the subscribed insurance contracts contain a waiver of recourse in favor of the Contracting Authority, its agents and employees.

The purchase of adequate insurances by the Contractor shall in no case exempt it from its statutory and/or contractual liabilities.

The Contractor shall fully bear the consequences of a total or partial lack of coverage, and to the full discharge of the Contracting Authority.

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

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

The Contracting Authority shall not bear any liability for the assessment and adequacy of insurance policies taken out by the Contractor with its contractual and/or statutory obligations.

b) Insurance – Specific issues

The Contractor shall take out all insurance necessary to cover its liability, both with regard to its professional liability and its liability as provided under Article 12.1 "Liabilities". The contractor shall in particular subscribe a Products and After delivery insurance.

Depending on the nature of the Contractor's obligations, the Contracting Authority may require that the carriage of supplies be covered by a "transportation" insurance policy; the conditions of which may be specified in the Special Conditions, which may also specify other types of insurance to be taken out by the Contractor. This insurance shall in particular cover the loading, intermediate storage, unloading, including stowage and protection, if such operations are included in the contract.

Article 13 - Programme of implementation of the tasks

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

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

13.2. The Special Conditions shall specify the time limit within which the programme of implementation of the tasks must be submitted to the Project Manager for approval. They

may set time limits within which the Contractor must submit all or part of the detailed drawings, documents and items. They shall also state the deadline for the Project Manager's approval or acceptance of the programme of implementation, detailed drawings, documents and items.

- 13.3. The approval of the programme by the Project Manager shall not relieve the Contractor of any of its obligations under the contract.
- 13.4. No material alteration to the programme shall be made without the approval of the Project Manager. If, however, the progress of the implementation of the tasks does not conform to the programme, the Project Manager may instruct the Contractor to submit a revised programme in accordance with the procedure laid down in Article 13.

Article 14 - Contractor's drawings

- 14.1. If the Special Conditions so provide, the Contractor shall submit to the Project Manager for approval:
 - a) the drawings, documents, samples and/or models, according to the time limits and procedures laid down in the Special Conditions or in the programme of implementation of the tasks;
 - b) such drawings as the Project Manager may reasonably require for the implementation of the tasks.
- 14.2. If the Project Manager fails to notify its decision of approval referred to in Article 14.1 within the time limits referred to in the contract or the approved programme of implementation of the tasks, such drawings, documents, samples or models shall be deemed to be approved 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.
- 14.3. Approved drawings, documents, samples and models shall be signed or otherwise identified by the Project Manager and shall not be departed from except as otherwise instructed by the Project Manager. Any Contractor's drawings, documents, samples or models which the Project Manager refuses to approve shall be modified to meet the requirements of the Project Manager and resubmitted by the Contractor for approval. Within 15 days of being notified of the Project Manager's remarks, the Contractor shall make the requisite corrections, adjustments etc. to the documents, drawings etc. The corrected or adjusted documents, drawings etc. shall be resubmitted for the Project Manager's approval under the same procedure.
- 14.4. The Contractor shall supply additional copies of approved drawings in the form and numbers stated in the contract or in subsequent administrative orders.
- 14.5. The approval of the drawings, documents, samples or models by the Project Manager shall not relieve the Contractor from any of its obligations under the contract.
- 14.6. The Project Manager shall have the right at all reasonable times to inspect all drawings, documents, samples or models relating to the contract at the Contractor's premises.
- 14.7. Before provisional acceptance of the supplies, the Contractor shall supply operation and maintenance manuals together with drawings, which shall be in such detail as will enable the Contracting Authority to operate, maintain, adjust and repair all parts of the supplies.

Unless otherwise stated in the Special Conditions, the manuals and drawings shall be in the language of the contract and in such forms and numbers as stated in the contract. The supplies shall not be considered completed for the purpose of provisional acceptance until such manuals and drawings have been supplied to the Contracting Authority.

Article 15 - Sufficiency of tender prices

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

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

15.2. Since the Contractor is deemed to have determined its prices on the basis of its own calculations, operations and estimates, it shall carry out without additional charge any work that is the subject of any item whatsoever in its tender for which it neither indicates a unit price nor a lump sum.

Article 16 - Tax and customs arrangements

16.1. Save where otherwise provided in the Special Conditions, the terms of delivery of the goods shall be DDP (Delivered Duty Paid) – Incoterms 2010, International Chamber of Commerce.

Article 17 - Patents and licences

- 17.1. Save where otherwise provided in the Special Conditions, the Contractor shall indemnify and hold the Contracting Authority harmless for all damages and cost incurred due to any claim brought by any third party including creators and intermediaries for alleged or actual violations of intellectual, industrial or other property rights of any kind whatsoever based on the Contracting Authority's use as specified in the contract of patents, licenses, drawings, designs, models, or brand or trademarks, except where such infringement results from compliance with the design or specification provided by the Contracting Authority.

IMPLEMENTATION OF THE TASKS AND DELAYS

Article 18 - Commencement order

- 18.1. Subject to the Special Conditions, the Contracting Authority shall fix the date on which implementation of the tasks is to commence and advise the Contractor thereof either in the notification of award of the contract or by administrative order.
- 18.2. Save where the Parties agree otherwise, implementation of the tasks shall begin no later than 90 days following notification of award of contract. Unless this delay results from the Contractor default, after that date the Contractor shall be entitled not to implement the contract and to obtain its termination and/or compensation for the damage it has suffered. The Contractor shall forfeit this right unless it exercises it within 30 days of the expiry of the 90-day period.

Article 19 - Period of implementation of the tasks

- 19.1. The period of implementation of tasks shall commence on the date fixed in accordance with Article 18 and shall be as laid down in the Special Conditions, without prejudice to extensions of the period which may be granted under Article 20.
- 19.2. If provision is made for distinct periods of implementation of the tasks for separate lots, in cases where one Contractor is awarded more than one lot per contract, the periods of implementation of the tasks for the separate lots shall not be accumulated.

Article 20 - Extension of period of implementation of the tasks

- 20.1. The Contractor may request an extension to the period of implementation of the tasks if it is or will be delayed in completing the contract by any of the following reasons:
- a) exceptional weather conditions in the country of the Contracting Authority which may affect installation or erection of the supplies;
 - b) artificial obstructions or physical conditions which may affect delivery of the supplies, 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 its obligations under the Contract;
 - e) any suspension of the delivery and/or installation of the supplies which is not due to the Contractor's default;

- f) force majeure;
 - g) extra or additional supplies ordered by the Contracting Authority;
 - h) any other causes referred to in these General Conditions which are not due to the Contractor's default.
- 20.2. If the Contractor considers himself to be entitled to any extension of the period of implementation under the Contract, the Contractor shall
- a) give notice to the Project Manager of its intention to make such a request no later than 15 days after the Contractor became aware, or should have become aware of the event or circumstance giving rise to the request.
 - b) If the Contractor fails to give notice of a request for extension of the period of implementation within such period of 15 days, the period of implementation shall not be extended and the Contracting Authority shall be discharged from all liability in connection with the request; and
 - c) submit to the Project Manager full and detailed particulars of the request, within 30 days from the above notification unless otherwise agreed between the Contractor and the Supervisor, in order that such request may be investigated at the time.
- 20.3. Within 30 days from the receipt of the Contractor's detailed particulars of the request, the Project Manager shall in agreement with the Contracting Authority, by notice to the Contractor, grant such extension of the period of implementation of the tasks as may be justified, either prospectively or retrospectively, or inform the Contractor that it is not entitled to an extension.

Article 21 - Delays in implementation of the tasks

- 21.1. If the Contractor fails to deliver any or all of the goods or perform the services within the period of implementation of the tasks specified in the Contract, the Contracting Authority shall, without formal notice and without prejudice to its 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 of implementation of the tasks, or extended period of implementation of the tasks under article 20, and the actual date of completion. The daily rate of liquidated damages is 5/1000 of the value of the undelivered supplies to a maximum of 15% of the total contract price.
- 21.2. If the non-delivery of any of the goods prevents the normal use of the supplies as a whole, the liquidated damages provided for in Article 21.1 shall be calculated on the basis of the total contract price.
- 21.3. If the Contracting Authority has become entitled to claim at least 15% of the total contract price it may, after giving notice to the Contractor:
- seize the performance guarantee; and/or
 - terminate the Contract,
 - enter into a contract with a third party for the provision of the balance of the supplies at the Contractor's cost.

Article 22 - Amendments

- 22.1. Contract amendments must be formalised by a contract addendum signed by both parties or by an administrative order issued by the Project Manager or the Contracting Authority. Substantial amendments to the contract, including amendments to the total contract price, must be made by means of an addendum. Any contractual amendments must respect the general principles defined in the Practical Guide.
- 22.2. Subject to the limits of the procedure thresholds set in the Practical Guide, the Contracting Authority reserves the right to vary by an administrative order the quantities by +/- 100 % at the time of contracting and during the validity of the Contract. The total value of the supplies may not rise or fall as a result of the variation by more than 25% of the tender price. The unit prices quoted in the tender shall be applicable to the quantities procured under the variation.
- 22.3. The Project Manager and the Contracting Authority shall have the power to order any amendment to any part of the supplies necessary for the proper completion and/or functioning of the supplies. Such amendments by administrative order may include additions, omissions, substitutions, changes in quality, quantity, form, character, kind, as well as in drawings, designs or specifications where the supplies are to be specifically manufactured for the Contracting Authority, in method of shipment or packing, place of delivery, and in the specified sequence, method or timing of implementation of the tasks. No administrative order shall have the effect of invalidating the contract, but the financial effect, if any, of all such amendments shall be valued in accordance with Article 22.7.
- 22.4. All administrative orders shall be issued in writing, it being understood that:
- a) if, for any reason, the Project Manager or the Contracting Authority finds it necessary to give an order orally, it shall as soon as possible thereafter confirm the order by an administrative order;
 - b) if the Contractor confirms in writing an oral order given for the purpose of Article 22.4.a and the confirmation is not contradicted in writing forthwith by the Project Manager or the Contracting Authority, the Project Manager or the Contracting Authority shall be deemed to have issued an administrative order;
 - c) no administrative order is required to increase or decrease the quantity of any incidental siting or installation because the estimates in the budget breakdown were too high or too low.
- 22.5. Save where Article 22.4 provides otherwise, prior to issuing an administrative order, the Project Manager or the Contracting Authority shall notify the Contractor of the nature and form of such amendment. The Contractor shall then, without delay, submit to the Project Manager a written proposal containing:
- a description of the tasks, if any, to be performed or the measures to be taken and a programme of implementation of the tasks;
 - any necessary amendments to the programme of implementation of the tasks or to any of the Contractor's obligations resulting from this contract; and
 - any adjustment to the total contract price in accordance with the rules set out in Article 22.

- 22.6. Following the receipt of the Contractor's submission referred to in Article 22.5, the Project Manager shall, after due consultation with the Contracting Authority and, where appropriate, the Contractor, decide without delay whether or not to accept the amendment. If the Project Manager accepts the amendment, it shall notify the Contractor through an administrative order stating that the Contractor shall carry out the amendment at the prices and under the conditions given in the Contractor's submission referred to in Article 22.5 or as modified by the Project Manager in accordance with Article 22.7.
- 22.7. The prices for all amendments ordered by the Project Manager or the Contracting Authority in accordance with Articles 22.4 and 22.6 shall be ascertained in accordance with the following principles:
- where the task is of similar character and implemented under similar conditions as an item priced in the budget breakdown, it shall be valued at such rates and prices contained therein;
 - where the task is not of a similar character or is not implemented under similar conditions, the rates and prices in the contract shall be used as the basis for valuation as far as is reasonable, failing which the Project Manager shall make a fair valuation;
 - if the nature or amount of any amendment relative to the nature or amount of the whole contract or to any part thereof is such that, in the opinion of the Project Manager, any rate or price contained in the contract for any item of work is, by reason of such amendment, rendered unreasonable, the Project Manager shall fix such rate or price as he thinks reasonable and proper in the circumstances;
 - where an amendment is required by a default or breach of contract by the Contractor, any additional cost attributable to such amendment shall be borne by the Contractor.
- 22.8. On receipt of the administrative order, the Contractor shall carry out the requested amendment according to the following principles:
- a) The Contractor shall be bound by these General Conditions as if the amendment requested by administrative order were stated in the contract.
 - b) The Contractor shall not delay the execution of the administrative order pending the granting of any extension of time for completion or adjustment to the total contract price.
 - c) Where the administrative order precedes the adjustment to the total contract price, the Contractor shall keep records of the costs of undertaking the amendment and of the time expended thereon. Such records shall be open to inspection by the Project Manager at all reasonable times.
- 22.9. The Contractor shall notify the Contracting Authority of any change of bank account, using the form in Annex V. The Contracting Authority shall have the right to oppose the Contractor's change of bank account.

Article 23 - Suspension

- 23.1. The Contractor shall, on the order of the Contracting Authority, suspend the execution of the contract or any part thereof for such time or times and in such manner as the Contracting Authority may consider necessary. The suspension shall take effect on the day the Contractor receives the order or at a later date when the order so provides.

23.2. Suspension in the event of presumed substantial errors or irregularities or fraud:

The Contract may be suspended in order to verify whether presumed substantial errors or irregularities or fraud occurred during the award procedure or the performance of the contract. If these are not confirmed, performance of the contract shall resume as soon as possible.

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

23.4. Additional expenses incurred in connection with such protective measures may be added to the total contract price, unless:

- a) otherwise provided for in the contract; or
- b) such suspension is necessary by reason of some breach or default of the Contractor;
or
- c) such suspension is necessary by reason of normal climatic conditions at the place of acceptance; or
- d) such suspension is necessary for the safety or the proper execution of the contract or any part thereof insofar as such necessity does not arise from any act or default by the Project Manager or the Contracting Authority or
- e) the presumed substantial errors or irregularities or fraud mentioned in article 23.2 are confirmed and attributable to the Contractor.

23.5. The Contractor shall only be entitled to such additions to the total contract price if it notifies the Project Manager, within 30 days after receipt of the order to suspend the contract, of its intention to claim them.

23.6. The Contracting Authority, after consulting the Contractor, shall determine such additions to the total contract price and/or extension of the period of performance to be granted to the Contractor in respect of such claim as shall, in the opinion of the Contracting Authority, be fair and reasonable.

23.7. The Contracting Authority shall, as soon as possible, order the Contractor to resume the contract suspended or inform the Contractor that it terminates the contract. If the period of suspension exceeds 180 days and the suspension is not due to the Contractor's breach or default, the Contractor may, by notice to the Contracting Authority, request to proceed with the contract within 30 days, or terminate the contract.

MATERIALS AND WORKMANSHIP

Article 24 - Quality of supplies

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