



Tender Specifications COD21003-10065

Public supply contract
for 'the supply and delivery of two power boats'

Negotiated Procedure without Prior Publication

Navision code: COD2100311

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1 General remarks

1.1 Derogations from the General Implementing Rules

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

These Tender Specifications derogate Article 26 of the General Implementing Rules – GIR (Royal Decree of 14 January 2013).

1.2 Contracting authority

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

For this public contract, Enabel is represented by Laura JACOBS, Manager Procurement Logistics & Legal.

1.3 Institutional framework of Enabel

The general framework of reference in which Enabel operates is:

- The Belgian Law on Development Cooperation of 19 March 2013¹;
- The Belgian Law of 21 December 1998 establishing the Belgian Technical Cooperation as a public-law company²;
- The Belgian Law of 23 November 2017 changing the name of the Belgian Technical Cooperation and defining the missions and functioning of Enabel, the Belgian development agency, published in the Belgian Official Gazette on 11 December 2017;

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

- In the field of international cooperation: the United Nations Sustainable Development Goals and the Paris Declaration on the harmonisation and alignment of aid;
- In the field of the fight against corruption: the Law of 8 May 2007 approving the United Nations Convention against Corruption, adopted in New York on 31 October 2003, as well as the Law of 10 February 1999 on the Suppression of Corruption transposing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;
- In the field of Human Rights: the United Nations’ Universal Declaration of Human Rights (1948) as well as the 8 basic conventions of the International

¹ Belgian Official Gazette of 30 December 1998, of 17 November 2001, of 6 July 2012, of 15 January 2013 and of 26 March 2013.

² Belgian Official Gazette of 1 July 1999.

³ Belgian Official Gazette of 18 November 2008.

Labour Organization⁴ on Freedom of Association (C. n°87), on the Right to Organise and Collective Bargaining (C. n°98), on Forced Labour (C. n°29 and 105), on Equal Remuneration and on Discrimination in Respect of Employment (C. n°100 and 111), on Minimum Age for Admission to Employment (C. n°138), on the Prohibition of the Worst Forms of Child Labour (C. n°182);

- In the field of environmental protection: The Climate Change Framework Convention of Paris, of 12 December 2015;
- The first Management Contract contracting Enabel and the Belgian federal State (approved by the Royal Decree of 17 December 2017, Belgian Official Gazette of 22 December 2017) that sets out the rules and the special conditions for the execution of public service tasks by Enabel on behalf of the Belgian State.
- Enabel's Code of Conduct of January 2019, Enabel's Policy regarding sexual exploitation and abuse of June 2019 and Enabel's Policy regarding fraud and corruption risk management of June 2019.

1.4 Rules governing the public contract

- The following, among other things, apply to this public contract:
- The Law of 17 June 2016 on public procurement⁵;
- The Law of 17 June 2013 on justifications, notification and legal remedies for public contracts and certain contracts for works, supplies and services⁶;
- Having regard to the Royal Decree of 18 April 2017 on the awarding of public contracts in the classic sectors;
- The Royal Decree of 14 January 2013 establishing the General Implementing Rules for public procurement and for concessions for public works⁷;
- Circulars of the Prime Minister with regards to public procurement;
- All Belgian regulations on public contracts can be consulted on www.publicprocurement.be.
- Enabel's Policy regarding sexual exploitation and abuse – June 2019
- Enabel's Policy regarding fraud and corruption risk management – June 2019
- Local legislation with regards to sexual harassment at the workplace or equivalent
- Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation, hereinafter referred to as 'the GDPR'), and repealing Directive 95/46/EC;

⁴ <https://www.ilo.org/global/standards/lang--en/index.htm>

⁵ Belgian Official Gazette 14 July 2016.

⁶ Belgian Official Gazette of 21 June 2013.

⁷ Belgian Official Gazette 27 June 2017.

- Law of 30 July 2018 on the protection of natural persons with regard to the processing of personal data;

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

1.5 Definitions

The following definitions apply to this contract:

The tenderer: An economic operator submitting a tender;

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

The contracting authority: Enabel, represented by the Resident Representative of Enabel in the DRC;

The tender: The commitment of the tenderer to perform the public contract under the conditions that he has submitted;

Days: In the absence of any indication in this regard in the Tender Specifications and the applicable regulations, all days should be interpreted as calendar days;

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

Technical specifications: A specification in a document defining the characteristics of a product or a service, such as the quality levels, the environmental and climate performance levels, the design for all needs, including accessibility for people with disabilities, and the evaluation of conformity, of product performance, of the use of the product, safety or dimensions, as well as requirements applicable to the product as regards the name by which it is sold, terminology, symbols, testing and test methods, packaging, marking or labelling, instructions for use, the production processes and methods at every stage in the life cycle of the supply or service, as well as the evaluation and conformity procedures;

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

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

Inventory: The procurement document which splits up the performance in different items and specifies the quantity or the method to determine the price for each of them;

General Implementing Rules (GIR): Rules laid down in the Royal Decree of 14 January 2013 establishing the General Implementing Rules for public procurement and for concessions for public works;

The Tender Specifications (Cahier spécial des charges/CSC): This document and its annexes and the documents it refers to;

Corrupt practices: The offer of a bribe, gift, gratuity or commission to a person as an inducement or reward for performing or refraining from an act relating to the award of a contract or performance of a contract already concluded with the contracting authority;

Litigation: Court action;

Subcontractor in the meaning of public procurement regulations: The economic operator proposed by a tenderer or contractor to perform part of the contract;

Controller in the meaning of the GDPR: The natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data.

Processor (subcontractor) in the meaning of the GDPR: A natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;

Recipient in the meaning of the GDPR: a natural or legal person, public authority, agency or another body, to which the personal data are disclosed, whether a third party or not;

Personal data: Any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

1.6 Confidentiality

1.6.1 Processing of personal data

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

1.6.2 Confidentiality

The tenderer or contractor and Enabel are bound to secrecy vis-à-vis third parties with regards to any confidential information obtained within the framework of this public contract and will only divulge such information to third parties after receiving the prior written consent of the other party. They will disclose this confidential information only among appointed parties involved in the assignment. They guarantee that said appointed parties will be adequately informed of their obligations in respect of the confidential nature of the information and that they shall comply therewith.

PRIVACY NOTICE OF ENABEL Enabel takes your privacy serious. We undertake to protect and process your personal data with due care, transparently and in strict compliance with privacy protection legislation.

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

1.7 Deontological obligations

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

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

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

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

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

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

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

1.8 Applicable law and competent courts

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

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

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

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

2 Subject-matter and scope of the public contract

2.1 Type of contract

Public supply contract (purchase and delivery).

2.2 Subject-matter of procurement

This public supply contract concerns the purchase and delivery in the DR Congo of two (2) powerboats, in accordance with the conditions of these Tender Specifications.

2.3 Lots

The public contract consists of a single lot forming an indivisible whole. A tender for part of a lot is inadmissible.

The description of the lot is included in Part 5 of these Tender Specifications.

2.4 Items

The lot of this public contract consists of the following items.

(See also Part 6 and/or inventory)

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

2.5 Duration of the public contract

Fixed duration

The public contract commences for this lot upon award notification and lasts 180 days.

2.6 Variants

Required and authorised variants may not be introduced.

Variants are not permitted.

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

2.7 Option

Options are presented in a separate part of the tender.

The tenderer is invited (authorised option) to submit price quotations for:

- Tool kit,
- Ramp tow trailer,
- A maintenance kit (10 maintenance services).

The technical requirements are set out in the technical specifications.

However, the contracting authority maintains the right not to order the option.

See also Article 'Performance modalities'.

2.8 Quantity

The fixed quantities are mentioned in the financial tender form of these Tender Specifications.

The contracting authority reserves the right to place additional orders. The unit prices quoted in the 'schedule of prices' attached to the tender will apply.

The supplier must be able to supply the quantities mentioned in the schedule of these Tender Specifications.

3 Procedure

3.1 Award procedure

Negotiated Procedure without Prior Publication in application of Article 42 of the Law of 17 June 2016.

3.2 Publication

These Tender Specifications are posted on the website of Enabel (www.enabel.be). Such publication constitutes an invitation to tender.

3.3 Information

The award of this public contract is being coordinated by Enabel's Public Procurement Unit in the DRC: procurement.cod@enabel.be. Throughout this procedure all contacts between the contracting authority and the (prospective) tenderers about this public contract will exclusively pass through this service / this person. (Prospective) tenderers are prohibited to contact the contracting authority in any other way with regards to this public contract, unless otherwise stipulated in these Tender Specifications.

Until 10 days before the tender submission deadline, prospective tenderers may ask questions about these Tender Specifications and the public contract. Questions will be in writing to procurement.cod@enabel.be and they will be answered in the order received. The complete overview of questions asked will be available at the address mentioned above.

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

The procurement documents can be consulted free of charge at the following internet address:

- www.enabel.be (go to 'Work with us' and then 'Public procurement').

The tenderer is to submit his tender after reading and taking into account any corrections made to the Tender Specifications that are published on the Enabel website or that are sent to him by e-mail. To do so, when the tenderer has downloaded the Tender Specifications, it is strongly advised that he gives his coordinates to the public procurement administrator mentioned above and requests information on any modifications or additional information.

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

3.4 Tender

3.4.1 Data to be included in the tender

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

The tender and the annexes to the tender form are drawn up in French or English.

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

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

authority.

3.4.2 Period the tender is valid

The tenderers remain bound by their tender for a period of 90 calendar days from the deadline for the submission of tenders date.

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

3.4.3 Determination of prices

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

This public contract is a price-schedule contract, i.e. a contract in which only the unit prices are flat fee prices. The price to be paid will be obtained by applying the unit prices quoted in the inventory to the quantities actually performed.

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

3.4.4 Elements included in the price

The tenderer is to include in his unit and global prices any charges and taxes generally inherent to the performance of the contract, with the exception of the value-added tax.

The following are in particular included in the prices:

1° packaging (except if these remain the property of the tenderer), loading, trans-shipment and intermediate unloading, transportation, insurance and customs clearance;

2° unloading, unpacking and deployment at the place of delivery, provided that the procurement documents state the exact place of delivery and the means of access;

3° documentation pertaining to the delivery of supplies and any documentation required by the contracting authority;

4° assembly and taking into operation;

5° training required for operation;

6° where applicable, the measures imposed by occupational safety and worker health legislation;

7° customs and excise duties;

8° acceptance costs, including travel and accommodation expenses for the contractor (supplier) for the technical acceptance of the equipment.

All prices are DDP (Delivery Duty Paid).

3.4.5 How to submit tenders?

The tenderer may only submit one tender per public contract. The tenderer submits his tender as follows:

By e-mail sent exclusively to the address: procurement.cod@enabel.be

Documents must be in PDF or equivalent format (no WeTransfer links or similar platforms). The tender must also be sent in a single document and a single e-mail. The contracting authority reserves the right to reject any tender that does not comply with the above instructions.

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

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

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

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

When the tender is submitted via e-tendering, the tender is modified or withdrawn in accordance with Article 43, §2 of the Royal Decree of 18 April 2017.

Thus, modifying or withdrawing a tender after the submission report has been signed requires a new submission report to be signed in accordance with paragraph 1.

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

The withdrawal must be pure and simple.

Where the submission report issued following modification or withdrawal as referred to in clause 1 is not signed as referred to in paragraph 1, the modification or withdrawal is automatically void. This nullity applies only to the modifications or withdrawal, not to the tender itself.

3.4.7 Submission of tenders

The tenders must be in the possession of the contracting authority before **27 May 2024, at 16.00 (Kinshasa time)** by e-mail only to:

procurement.cod@enabel.be.

The tenders will be opened behind closed doors. Any tender must arrive before the final date and hour for submission.

3.5 Selection of tenderers

3.5.1 Exclusion grounds

The obligatory and facultative grounds for exclusion are given in attachment to these Tender Specifications.

By submitting this tender, the tenderer certifies that he is not in any of the cases of exclusion listed in the Articles 67 to 70 of the Law of 17 June 2016 and the Articles 61 to 64 of the Royal Decree of 18 April 2017.

The contracting authority will verify the accuracy of this Declaration on honour for the tenderer with the best tender.

For that purpose, the contracting authority will ask the tenderer concerned to provide information or documents allowing the contracting authority to verify the tenderer's personal situation by the fastest means and within the term set by the contracting authority.

The contracting authority will itself ask for information or documents that it can obtain free of charge by digital means from the instances that manage the information or documents.

3.5.2 Selection criteria

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

Financial and economic capacity

1. The tenderer must prove having realised an average annual turnover for the years 2020, 2021 and 2022, amounting to 1.5 times the value of his tender.
2. The tenderer must also enclose certified annual accounts for 2020, 2021 and 2022.

Technical capacity:

1. The tenderer must demonstrate that he has carried out three similar public supply contracts (powerboats) for the years 2018 to 2024. This list must be accompanied by the acceptance reports or certificates of successful completion signed by the client.

Only tenders from tenderers who meet the selection criteria are taken into consideration in order to participate in the comparison of tenders on the basis of the award criteria set out below, subject to the regularity of these tenders.

3.5.3 Overview of the procedure

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

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

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

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

When the contracting authority intends to conclude the negotiations, it will so advise the remaining tenderers and will set a common deadline for the submission of any BAFOs. After negotiations have been completed, the BAFO are assessed against the exclusion, selection and 'price/cost' award criteria. The tenderer whose regular BAFO is the best value for money will be appointed the contractor for this public contract.

The BAFOs of the tenderers with whom negotiations have been conducted will be evaluated as to their regularity. Irregular BAFOs will be excluded.

Only the regular BAFOs will be considered and assessed against the award criteria.

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

3.5.4 Award criteria

The contracting authority will choose the regular tender that it finds being most economically advantageous, taking account of the following criteria:

- Award on the basis of the **price:**
 - **Price: 100%**

3.5.4.1 Awarding the public contract

The lot of the public contract will be awarded to the tenderer who has submitted the economically most advantageous tender.

Notice though that, in accordance with Art. 85 of the Law of 17 June 2016, there is no obligation for the contracting authority to award the public contract.

The contracting authority may either decide not to award the contract, either redo the procedure, if necessary through another award procedure.

3.6 Concluding the public contract

In accordance with Art. 88 of the Royal Decree of 18 April 2017, the public contract occurs through the notification to the chosen tenderer of the approval of his tender.

Notification is via digital platforms, e-mail or fax and, on the same day, by registered post.

So, the full contract consists of a public contract awarded by Enabel to the chosen tenderer in accordance with:

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

In view of transparency, Enabel undertakes to annually publish the list of contractors of its public contracts. By submitting tender, the contractor of the public contract declares agreeing with the publication of the contract title, the nature and subject-matter of the contract, his name and location as well as the value of the contract.

4 Special contractual provisions

This chapter of these Tender Specifications holds the specific provisions that apply to this public contract by way of derogation from the 'General Implementing Rules for public procurement and for concessions for public works' of the Royal Decree of 14 January 2013, hereinafter referred to as 'GIR', or as a complement or an elaboration thereof. The numbering of the articles below (between brackets) follows the numbering of the GIR articles. Unless indicated, the relevant provisions of the General Implementing Rules (GIR) apply in full.

These Tender Specifications derogate from Article 26 of the General Implementing rules.

4.1 Managing official (Art. 11)

The managing official is Mamy RAJAONARISOA, Intervention Manager/ Projet GIFT, Tshopo Province, DR Congo, e-mail: mamy.rajaonarisoa@enabel.be.

Once the public contract is concluded the managing official is the main contact point for the supplier. Any correspondence or any questions with regards to the performance of the public contract will be addressed to him or her, unless explicitly mentioned otherwise in these Tender Specifications.

The managing official is responsible for the follow-up of the performance of the public contract.

The managing official is fully competent for the follow-up of the satisfactory performance of the public contract, including issuing service orders, drawing up reports and states of affairs, approving the services, progress reports and reviews. He or she may order any modifications to the public contract with regards to its subject-matter provided that they remain within its scope.

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

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

4.2 Subcontractors (Art. 12 to 15)

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

The contractor remains, in any case, solely liable to the contracting authority. The contractor may not subcontract the contract or a part of the contract to other subcontractors than those presented at the time of submission; subcontracting to subcontractors presented in the tender is allowed only after preliminary approval by the contracting authority of these subcontractors.

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

In the same way, the contractor will respect and enforce to his subcontractors, the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016

on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation, GDPR). The contracting authority may conduct an audit of the processing carried out in order to validate compliance with this legislation.

4.3 Confidentiality (Art. 18)

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

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

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

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

Therefore, he undertakes to:

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

4.4 Personal data protection

4.4.1 Processing of personal data by the contracting authority

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

4.4.2 Processing of personal data by the contractor

<< OPTION 1: PROCESSING OF PERSONAL DATA BY A SUBCONTRACTOR =

Where during contract performance, the contractor processes personal data of the contracting authority exclusively in the name and on behalf of the contracting authority, for the sole purpose of performing the services in accordance with the provisions of the Tender Specifications or in execution of a legal obligation, the following provisions apply:

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

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

The personal data that will be processed are confidential. The contractor will therefore limit access to data to the strictly necessary personnel for the performance, management and monitoring of the public contract.

For the performance of the public contract, the contracting authority will determine the purposes and means of processing personal data. In this case, the contracting authority will be responsible for the processing and the contractor will be its processor, within the meaning of Article 28 of the GDPR.

Processing carried out on behalf of a controller must be governed by a contract or other legal act that is binding on the processor with regard to the personal data controller and that sets out that the subcontractor acts only on the instruction of the person in charge of the processing and that the confidentiality and security obligations regarding the processing of personal data are also the responsibility of the subcontractor (Article 28 §3 of the GDPR).

To this end, the tenderer must fill out, sign and submit to the contracting authority the subcontracting agreement given in Annex [X]. Filling out and signing this annex is therefore a condition of regularity of the tender.

<< OPTION 2: PROCESSING OF PERSONAL DATA BY A CONTROLLER (RECIPIENT)

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

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

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

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

4.5 Intellectual property (Art. 19 to 23)

The contracting authority acquires the intellectual property rights created, developed or used during performance of the public contract.

4.6 Performance bond (Art. 25 to 33)

The performance bond is set at 5% of the total value, excluding VAT, of procurement. The value thus obtained is rounded up to the nearest 10 euros.

In accordance with the legal and regulatory provisions, the performance bond may be constituted either of cash or of public funds or may take the form of a joint performance bond.

The performance bond may also take the form of a surety bond issued by a credit institution meeting the requirements of the law on the statute and control of credit institutions, or by an insurance company meeting the requirements of the law on control of insurance companies and approved for branch 15 (bonds).

By way of derogation from Article 26 the performance bond may be posted through an establishment that has its registered office in one of the countries of destination of the services. The contracting authority reserves the right to accept or refuse the posting of the bond through that institution. The tenderer mentions the name and address of this institution in the tender.

This derogation is founded on the idea of providing possible local tenderers with an opportunity to submit a tender. This measure is made essential by the specific requirements of the public contract.

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

- 1° in the case of cash, by transfer of the amount to the bpost bank account number of the Deposit and Consignment Office. Fill out the following form as completely as possible: https://finances.belgium.be/sites/default/files/01_marche_public.pdf (PDF, 1.34 Mo), and return it to the e-mail address: info.cdcck@minfin.fed.be
- 2° in the case of public funds, by depositing such funds, for the account of the Deposit and Consignment Office, with the State Cashier at the head office of the National Bank in Brussels or at one of its provincial agencies or with a public institution with an equivalent function;
- 3° in the case of a joint surety, by deposit via an institution that lawfully carries out this activity of a deed of joint surety with the Deposit and Consignment Office or with a public institution with an equivalent function
- 4° in the case of a guaranty, by the deed of undertaking of the credit institution or the insurance company.

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

- 1° the deposit receipt of the Deposit and Consignment Office or of a public institution with an equivalent function; or
- 2° a debit notice issued by the credit institution or the insurance company; or

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

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

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

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

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

- 1° For provisional acceptance: This is equal to a request to release the first half of the performance bond;
- 2° For final acceptance: This is equal to a request to release the second half of the performance bond, or, in case no provisional acceptance applied, to release the whole of the performance bond.

4.7 Conformity of performance (Art. 34)

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

4.8 Changes to the public contract (Art. 37 to 38/19)

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

Provided that he meets the selection and exclusion criteria set out in this document, a new contractor may replace the contractor with whom the initial contract was agreed in cases other than those provided for in Art. 38/3 of the General Implementing Rules (GIR).

The contractor submits his request as quickly as possible by registered post, stating the reasons for this replacement and providing a detailed inventory of the state of the supplies and services already delivered, the new contractor's contact details and the documents and certificates which the contracting authority cannot access free of charge.

The replacement will be recorded in an amendment dated and signed by all three parties. The initial contractor remains liable to the contracting authority for the performance of the remainder of the public contract.

4.8.2 Revision of prices (Art. 38/7)

For this public contract, price revisions are not permitted.

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

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

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

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

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

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

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

4.8.4 Unforeseeable circumstances

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

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

4.9 Preliminary technical acceptance (Art. 41-42)

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

The technical acceptance will take place at Enabel's TSHOPO/SUD-KIVU coordination office in the presence of the contractor's representative (supplier) and a person appointed by the contracting authority (Enabel). The address is as follows:

Belgian development agency

3, Route Bukavu - Commune de Makiso

Kisangani - Democratic Republic of Congo

Products that at a given stage do not satisfy the technical acceptance tests imposed will be declared unfit for technical acceptance. Upon the request of the contractor, the contracting authority in accordance with the procurement documents verifies whether the products have the required qualities or at the very least comply with good practice and satisfy the conditions of the contract. If certain products are destroyed during verification, the contractor replaces these at his own expense. The procurement documents specify the quantity of products to be destroyed.

Where the contracting authority declares that the product presented is not in the required condition for examination, the acceptance request by the building contractor will be considered not having been made. A new request is made when the product is fit for acceptance.

4.10 Performance modalities (Art. 115 et seq.)

4.10.1 Deadlines and terms (Art. 116)

The supplies must be delivered within 180 calendar days as from the day following the date on which the supplier received the contract conclusion notification letter. The closure of the supplier's business for annual holidays is not included in this calculation.

4.10.2 Quantities to be supplied (Art. 117)

The public contract's minimum quantities are mentioned under 'Quantities'.

Without prejudice to the possibility for the contracting authority to terminate the contract if the supplies delivered do not meet the requirements imposed or if they are not delivered by the deadlines asked, by concluding this contract the supplier acquires the right to deliver these quantities, under penalty of indemnification by the contracting authority.

4.10.3 Place where the supplies must be delivered and formalities (Art. 149)

The supplies will be delivered at the following address:

SERVE AIR Cargo

15ième Rue, Limete Industriel,

Kinshasa, Democratic Republic of Congo

4.10.4 Packaging (Art. 119)

Packaging must be of container type and becomes the property of the contracting authority, without the supplier having any claim to compensation in this regard.

4.10.5 Inspection of the supplies delivered (Art. 120)

The supplier delivers only goods that have no apparent and/or hidden defects and that correspond strictly to the order (in kind, quantity, quality...) and, if necessary, to the prescriptions of related documents as well as applicable regulations, in compliance with good practice, the state of the art, the highest standards of usage, of reliability and of longevity, and for the purposes that the contracting authority has in mind, which the supplier knows or at least should know.

Acceptance (provisional acceptance) only takes place after the complete inspection by the contracting authority of the conformity of the goods and services delivered. The contracting authority disposes of a period for verification of thirty days starting on the date of delivery. This period will begin on the day after arrival of the supplies at the place of delivery, provided that the contracting authority is in possession of the delivery note or invoice.

The signature of (a staff member of) the contracting authority, in particular in electronic reception devices, upon delivery of the goods, does consequently only count as evidence of taking possession and does not concern the acceptance of the goods.

Acceptance on the premises of the contracting authority (**Belgian development agency - 3, Route Bukavu - Commune de Makiso - Kisangani - Democratic Republic of Congo**) counts as complete provisional acceptance.

Acceptance implies the transfer of ownership and of risks of damage and loss.

In case of full or partial refusal of a delivery, the supplier is bound to take back, at his own costs and risks, the products refused. The contracting authority may ask the supplier to deliver goods that comply as soon as possible, either cancel the order and get supplied by another supplier.

4.10.6 Liability of the suppliers (Art. 122)

The supplier shall be liable for his supplies up to the time when the inspection and notification formalities referred to in Article 120 are carried out, unless losses or damage sustained in the warehouses of the consignee are due to the events or circumstances referred to in Articles 54 and 56.

Moreover, the supplier indemnifies the contracting authority against damages for which it is liable towards third parties due to late performance of the contract or due to failure of the supplier.

4.11 Zero tolerance Sexual exploitation and abuse

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

4.12 Means of action of the contracting authority (Art. 44–51 and 123–126)

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

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

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

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

4.12.1 Failure of performance (Art. 44)

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

1° when performance is not carried out in accordance with the conditions specified in the procurement documents;

2° at any time, when performance has not progressed in such a way that it can be fully completed on the due dates;

3° when he does not observe written orders, which have been given in due form by the contracting authority.

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

The contractor must repair the defects without any delay. He may assert his right of defence by registered letter addressed to the contracting authority within fifteen days from the date of dispatch of the report (process verbal). Silence on his part after this period shall be deemed acknowledgement of the reported facts.

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

4.12.2 Fines for delay (Art. 46 and 123)

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

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

4.12.3 Measures as of right (Art. 47 and 124)

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

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

§2 The measures as of right are:

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

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

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

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

4.13 End of the public contract

4.13.1 Acceptance of the products delivered (Art. 64-65 and 128)

The managing official will closely follow up the delivery.

Provisional acceptance

Upon expiry of the thirty-day period specified in Article 120, §2, as appropriate, a provisional acceptance report or acceptance refusal report will be drawn up.

Full acceptance will take place at the premises of the contracting authority (Belgian development agency - 3, Route Bukavu - Commune de Makiso - Kisangani - Democratic Republic of Congo) without partial acceptance at the place of production:

Provisional acceptance takes place entirely on the contracting authority's premises. To investigate and test the supplies as well as to notify its decision to accept or reject the delivery, the contracting authority disposes of a period of thirty days

This period will begin on the day after the date of arrival of the supplies at the contracting authority's premises, provided that the contracting authority is in possession of the delivery slip or invoice. It comprises the 30-day period stipulated in Article 120.

4.13.2 Transfer of ownership (Art. 132)

The contracting authority automatically becomes the owner of the supplies as soon as they have been accepted for payment pursuant to Article 127 of GIR.

4.13.3 Guarantee period (Art. 134)

The warranty period commences on the date on which provisional acceptance is given. It lasts one year.

4.13.4 Final acceptance (Art. 135)

Final acceptance occurs upon expiry of the warranty period. It is implicit when the delivery has not led to any claims during said period.

If delivery has led to complaints during the warranty period, a final acceptance or refusal of acceptance report will be issued within 15 days prior to the expiry of said period.

4.13.5 Reception costs

Acceptance costs, including travel and accommodation expenses for the contractor (supplier) for the technical acceptance of the equipment are borne by the contractor (supplier).

4.14 Invoicing and payment of services (Art. 66 to 72 and 127)

The contractor sends (one copy only of) the invoices and the public contract acceptance report (original copy) to the following address:

For the attention of Jean-bosco BIGIRINDAVYI,

Administrative and financial officer

Belgian development agency

3, Route Bukavu - Commune de Makiso

Kisangani - Democratic Republic of Congo

Only delivery that has been performed correctly may be invoiced.

The contracting authority disposes of a period for verification of thirty days starting on the end date of the delivery, established in conformity with the modalities in the procurement documents, to carry out the technical acceptance and provisional acceptance formalities and to notify the result to the supplier.

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

When the procurement documents do not provide for any separate debt claim, the invoice will constitute the debt claim.

The invoice must be in EUROS.

In order for Enabel to obtain the VAT exemption and customs clearance documents as quickly as possible, the original invoice and all ad hoc documents will be transmitted as soon as possible before provisional acceptance.

An advance of maximum 20% may be asked by the contractor and the payment is made after provisional acceptance of each delivery of a same order.

4.15 Litigation (Art. 73)

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

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

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

Belgian development agency - Enabel

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

To the attention of Inge Janssens

rue Haute 147

1000 Brussels

Belgium

5 Terms of reference

5.1 Functional description

The two riverboats will be used to navigate the Congo River and its tributaries (the Lomami River for Tshopo Province).

The hydrological data for the Congo River at these locations are as follows:

- Flood/ebb tidal ratio: 2.5
- Average speed of the surface current at high water: 2.16 to 2.7kt (4 to 5 km/h)
- Average speed of the surface current at low water: 4.3 to 5.4kt (8 to 10 km/h)
- Average wind speed 19 to 28m/s

Precise hydrological data on the tributaries of the Lomami River are not known, but are similar to that of the Congo River.

In view of these hydrological and geographical data, the two riverboats must be able in all circumstances :

1. Achieve a guaranteed minimum cruising speed of 25kt, upstream and downstream and vice versa.
2. Their hulls must be able to lift off at full load at cruising speed.

Their range with their original tanks, at cruising speed and full load, should be min. 10 hours without refuelling.

The routes that these powerboats should be able to cover are, indicatively, listed as follows:

Tshopo Province:

- Kisangani - Isangi: 140 km.
- Kisangani - Yanonge: 100 km.
- Kisangani - Lisala: 800 km (with a break for refuelling).

The capacity of each powerboat should be 8 to 10 people excluding the pilot.

Their radius of action must be able to cover a distance of 300 kms (i.e. 150 km roundtrip upstream-downstream and vice versa).

5.2 General conditions

The supplies must be new and guaranteed of origin. They must be free of any flaw or defect that could harm their appearance and proper functioning and they must comply with the "Technical forms".

The tenderer attaches the following to his tender:

- The duly completed technical forms of the supplies + options to be delivered;
- The certificates and attestations of origin of the supplies which must be delivered at the same time as the riverboats.
- The manufacturer's marketing authorisation certificates attesting to the validity of the manufacturer's guarantee if a distributor or reseller.

- A working drawing or photographs of the powerboat (inside and out), at least the documentation relating to the powerboat (brochure, technical documentation and so forth).
- Detailed delivery and installation schedules.

The technical documentation provided should clearly indicate the brands and models offered, so that the exact configuration can be seen. It must be sufficiently clear to easily compare the technical specifications required and the technical specifications offered.

In addition, the tenderer shall explicitly state the following characteristics:

- Hull profile
 - Over All Length (LOA) [Longueur Hors Tout (LHT)]
 - Beam Over All (BOA or B) [Largeur Hors Tout (B)]
 - Length Water Line (LWL) [Longueur à la flottaison (L)]
 - Beam Water Line (BWL) [Largeur à la flottaison]
 - The Draught of the Vessel (DV) [Le tirant d'eau du bateau (Calaison)]
 - Deadweight tonnage or DWT [Le Déplacement (Δ)]
 - Sinkage [Volume d'enfoncement (m³/cm)]
- Prismatic Coefficient (Cp)
- Block coefficient (Cb)

Tenders that do not accurately identify the models and specifications may be rejected. The tenderer shall enclose technical data sheets for all equipment with his tender.

The tenderer shall also enclose with his tender the brochures with photographs provided by the manufacturer of the proposed engine(s) with their technical specifications.

The tenderer shall also enclose with his tender the leaflets with photographs provided by the manufacturer or the manufacturer's representative of the other equipment.

Documentation

The user and technical documents are a mandatory prerequisite for technical acceptance.

User documentation

User documentation (user manual) should be provided with each piece of equipment.

The user manual will be written in French (possibly accompanied by an original English version if necessary).

If accessories, such as echo sounder, GPS, lock, compass, etc. are supplied, they must also be accompanied by their own user manual written in French.

Technical documentation

Technical documentation should be provided with each piece of equipment.

The set of technical documentation provided with the equipment shall include at least the following documents:

- Technical features of the equipment (including accessories),
- Workshop manual [Manuel d'Atelier],

The workshop manual will be written in French (possibly accompanied by an original English version if necessary).

This manual must include, but not be limited to, the following:

- All maintenance intervals and their components. (Engine, Propeller, Hull, Fittings etc.)
- All diagrams and mechanical dimensions.
- All setting dimensions.
- Replacement tolerances (cylinder, liners, bearings, crank pin journals, cylinder head gaskets, various rectifications, etc.).
- All tightening torques.
- Features of fluids (lubricants, fuel, hydraulics, coolant, etc.)
- The troubleshooting algorithms.
- Wiring diagrams [Les schémas électriques]
- Hydraulic diagrams (with all troubleshooting features such as pressure and flow control points).
- Schematics of the drive train.
- CPU fault codes if available.
- Any access keys to FCUs and Databases such as CAN Bus or EOBD.
- Intervention methods, replacement and inspection intervals, all dimensional data, views and sections and exploded views with references of all parts, etc.
- The manufacturer's nomenclature and references of the spare parts in views and exploded sections.

5.3 Technical specifications

The technical documentation provided should clearly indicate the models offered and the options included, so that the exact configuration can be seen. It must be sufficiently clear to easily compare the technical specifications required and the technical specifications offered.

Tenders that do not accurately identify the models and specifications may be rejected. The tenderer shall enclose technical data sheets for all equipment with his tender.

The tenderer shall also enclose with his tender the leaflets with photographs provided by the manufacturer or the manufacturer's representative of the equipment.

Tenderers shall, if requested by Enabel, provide the certificates of origin of the equipment.

Please note: Equipment must be transported in container-type packaging.

No.	Technical specifications required	Specifications proposed	Notes, remarks, documentation references
1	Hull of the boat - General:		
1.1	<p>Indicative dimensions:</p> <p>Over All Length: between +/-7.5 m and +/-10 m Beam Over All: between +/- 2.5 m and +/-3.0 m</p> <p>The boat must have unsinkable buoyancy.</p> <p>"The dimensions must be in line with the performance of the hull and its measure capabilities. "</p>		
1.2	<p>Draught of the vessel: maximum 0.5 m. Freeboard less than 1.0 m.</p> <p>The boat must be suitable for river navigation with strong surface currents.</p> <p>It must have a shallow draught.</p>		
1.3	<p>Fabrication materials:</p> <p>5000 series aluminium alloy (AW-ALMg3-AGM3) (Composition according to EC Standard 573-1)</p> <p>The shell will have a thickness of min. 4 to 4.5 mm The bridge will have a thickness of min. 4.5 to 5 mm</p>		
1.4	<p>Protection features</p> <p>Model of hull reinforcements: such as replaceable "rushes", "rails" or bottom "runners".</p>		

	<p>Material for hull and liston protectors: white rubber or polyurethane</p> <p>Material for martyrs or half-rounds: stainless steel</p> <p>Liston material: Plug-in type or easily replaceable radial-mount PVC rod systems</p> <p>Thanks to their interlocking rails these protectors have a professional finish and are easy to fix and reassemble. They will secure the hull against shocks on the quay or when beached by cushioning the impact.</p>		
1.5	<p>Freight loading bays: On deck and in the hold</p> <p>Luggage storage space: On deck and in the hold</p> <p>Watertight and secure spaces</p>		
1.6	<p>The body works of the boats consist of :</p> <p>Cockpit: with rigid and possibly removable windscreen</p> <p>Frame: A rigid metal frame (either aluminium alloy or stainless steel)</p> <p>Roof: covered by a roll-up tarpaulin with lateral overhangs</p> <p>Side guards: rigid, removable for blind spot-free visibility</p> <p>Tarpaulin must be of transparent film, ensuring perfect protection against rain and sun and so all must be of UV resistant constituent materials).</p>		

1.7	<p>Cockpit:</p> <p>Windscreen: Removable and fitted with wipers</p> <p>Steering wheel: hydraulically assisted steering wheel.</p> <p>IP68 waterproof electric dashboard with backlighting.</p>		
1.8	<p>Regulation lights:</p> <p>Mast lights: LED type</p> <p>Starboard light: LED type, green</p> <p>Port light: LED type, red</p> <p>Stern lights: LED type, white</p> <p>All-round lights: LED type, white</p> <p>Deck lighting</p> <p>Headlight: long-range adjustable</p>		
1.9	Boat weight: ideally under 3.5 T.		
2	Fittings		
2.1	<p>Deck, balcony and railings:</p> <p>Deck and/or balcony: non-slip coating or system</p> <p>The rail: fitted with rungs for boarding.</p>		
2.2	Cylindrical type fender (8 elements)		

2.3	<p>Bow:</p> <p>bow angle fender</p> <p>Chainplate</p> <p>Mooring ring</p> <p>Anchor capstan</p>		
2.4	<p>Mooring:</p> <p>Aluminium alloy mooring cleats.</p> <p>Anchor: "plough" type anchor or other type better adapted to the sand</p> <p>Number and position to be defined</p> <p>Anchor mounted on a capstan, adapted to a sandy river bottom that can "anchor" the boat against the river's flooding current.</p>		
2.5	<p>Bilge pump:</p> <p>with automatic activation.</p> <p>with manual activation.</p>		
2.6	<p>Protective cover:</p> <p>Waterproof cover with anti-UV fixing ropes, OXFORD type fabrics</p>		
3	Motorisation and electricity of the boat		
3.1	Motor:		

<p>Total power rating: 300 HP</p> <p>Engine features: 2 x 150 HP, 4-stroke, steerable outboard petrol engine</p> <p>Motor mounting: on a mobile chair or with hinges</p> <p>Transmission:</p> <p>vertical crankshaft, vertical shaft, angular gear, propeller behind the hull type.</p> <p>Or "Sail-drive" transmission, with one or two angle transmissions depending on the position of the engine, vertical or horizontal, propeller under the hull.</p> <p>Or Z-drive transmission, two angle gears, transom mount and propeller</p> <p>Optional 4-blade propellers with propeller pitch and rack optimised for speed on rivers with strong surface currents.</p> <p>Fuel filtration system: filtering by removable 5μ cartridge, with optimum filtration and flow capacity according to engine operating and maintenance intervals.</p> <p>Equipped with an independent (or separate pre-filter) desiccant or decantation system to separate water from the fuel.</p> <p>The engines will be fitted with "contra-rotating propellers" to cancel the torque effect of the propellers</p> <p>The motor assembly must be able to be raised or tilted to allow the propellers to be examined or replaced.</p>		
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	<p>The engines must be able to run on regular gasoline with a "research" or RON octane rating: Research Octane Number) ranging from 89 to 92.</p> <p>i.e. fuel not corresponding to the E10 standard.</p> <p>In addition, the fuel may contain traces of water or oil.</p>		
3.2	<p>Steering console:</p> <p>Control and electric start: by non-coded key (transponder type)</p> <p>Motor control</p> <p>Engine speed indicator: Of at least engine speed</p> <p>Low oil pressure warning</p> <p>Engine overheating warning</p> <p>3 keys</p>		
3.3	<p>Fuel tanks: compartmentalised type made of synthetic materials.</p> <p>Content: +/- 2 x 150 litres to +/- 2 x 300 litres</p> <p>Inlets and lines: independent</p> <p>Secure closing cap, possibly with padlock</p> <p>10h of operation and desired range.</p>		
4	Instruments - Navigation		
4.1	Instrument panel with instruments including:		

	<ul style="list-style-type: none"> • Navigation: <ul style="list-style-type: none"> ➤ A Loch. ➤ A GPS system. (With integrated map of the Congo River basin) ➤ An echo sounder. (with high background alarm). ➤ Backlit "globe" type magnetic compass. • Motor: <ul style="list-style-type: none"> ➤ Engine rpm counter. ➤ Oil pressure. ➤ Temperature. ➤ Battery voltage. ➤ Alarms. 		
5	Security equipment		
5.1	One (1) crown type lifebuoy with rope. (Lifting capacity of 100 N min.). One (1) castaway pole or gaff		
5.2	100N lifejacket capable of carrying a mass of at least 100 kg (12 pieces)		
5.3	CO2 fire extinguisher class B CO2 container < 2kg (1 piece) The fire extinguisher must be securely attached to the fixed structure of the boat within easy reach of the pilot or the steering console.		

5.4	<p>First aid kit (1 piece) waterproof first aid box.</p> <p>The first aid kit must be securely attached to the fixed structure of the boat within easy reach of the passengers.</p>		
5.5	Flare gun (or flares) with at least 3 sealed cartridges.		
5.6	<p>Regulatory traffic lights. (See point 1.8 above)</p>		
6	Options		
6.1	<p>Motor tool kit:</p> <p>A complete toolbox will be provided, from a recognised manufacturer of professional tools, compliant with General Regulations on Industrial Safety, allowing for all usual maintenance and repairs.</p> <p>Their dimensions must match those of the engine and boat.</p>		
6.2	<p>Trolley or tow ramp (Dolley):</p> <p>Load capacity: adapted to the model of boat offered with protective cover attachment points, load towing capacity of 3.5 T, fitted with a winch (electric or hydraulic) for towing the boat</p> <p>Frame: hot-dip galvanised according to EN-ISO 1461 (70µ or equivalent coating of 505 gr/m²).</p> <p>Brake system: hand brake and a "jokey" type wheel.</p>		

	Spare wheel		
6.3	Maintenance kit: for 10 maintenance services		

6 Forms

6.1 Identification form

6.1.1 Natural person

To fill out the form, please click here:

<https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:412289af-39d0-4646-b070-5cfed3760aed>

I. PERSONAL DATA			
FAMILY NAME(S) ⁸			
FIRST NAME(S)			
DATE OF BIRTH			
DD	MM YYYY		
PLACE OF BIRTH (CITY, VILLAGE)	COUNTRY OF BIRTH		
TYPE OF IDENTITY DOCUMENT			
IDENTITY CARD	PASSPORT	DRIVING LICENCE ⁹	OTHER ¹⁰
ISSUING COUNTRY			
IDENTITY DOCUMENT NUMBER			
PERSONAL IDENTIFICATION NUMBER ¹¹			
PERMANENT PRIVATE ADDRESS			
POSTCODE	P.O. BOX	CITY	
REGION ¹²	COUNTRY		
PRIVATE PHONE			
PRIVATE E-MAIL			
II. BUSINESS DATA			
If YES, please provide business data and attach copies of the official supporting documents.			
Do you run your own business without a separate legal personality (e.g. sole traders, self-employed etc.) and you provide as such services to the Commission, other Institutions, Agencies and EU-Bodies?	BUSINESS NAME (if applicable)		
YES NO	VAT NUMBER		
	REGISTRATION NUMBER		
	PLACE OF MAIN REGISTRATION CITY		
	COUNTRY		
DATE	SIGNATURE		

⁸ As indicated on the official document.

⁹ Accepted only for Great Britain, Ireland, Denmark, Sweden, Finland, Norway, Iceland, Canada, United States and Australia.

¹⁰ Failing other identity documents: residence permit or diplomatic passport.

¹¹ See table with corresponding denomination by country.

¹² To be completed with Region, State or Province by non EU countries only, excluding EFTA and candidate countries.

6.1.2 Private/public law body with legal form

To fill out the form, please click here:

<https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:3b918624-1fb2-4708-9199-e591dcdfe19b>

OFFICIAL NAME¹³	
BUSINESS NAME (if different)	
ABBREVIATION	
LEGAL FORM	
ORGANISATION	FOR PROFIT
TYPE	NON FOR PROFIT NGO¹⁴ YES NO
MAIN REGISTRATION NUMBER¹⁵	
SECONDARY REGISTRATION NUMBER (if applicable)	
PLACE OF MAIN	
REGISTRATION	CITY COUNTRY
DATE OF MAIN REGISTRATION	
	DD MM YYYY
VAT number	
ADDRESS OF	
HEAD OFFICE	
POSTCODE	P.O. BOX CITY
COUNTRY	PHONE
E-MAIL	
DATE	STAMP
SIGNATURE OF AUTHORISED REPRESENTATIVE	

¹³ National denomination and its translation in EN or FR if existing.

¹⁴ NGO = Non-Governmental Organisation, to be completed if NFPO is indicated.

¹⁵ Registration number in the national register of companies. See table with corresponding denomination by country.

6.1.3 Public-law body¹⁶

To fill out the form, please click here:

<https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:c52ab6a5-6134-4fed-9596-107f7daf6f1b>

OFFICIAL NAME¹⁷			
ABBREVIATION			
MAIN REGISTRATION NUMBER¹⁸			
SECONDARY REGISTRATION NUMBER			
(if applicable)			
PLACE OF MAIN REGISTRATION	CITY	COUNTRY	
DATE OF MAIN REGISTRATION	DD	MM	YYYY
VAT NUMBER			
OFFICIAL ADDRESS			
POSTCODE	CITY	P.O. BOX	
COUNTRY	PHONE		
E-MAIL			
DATE	STAMP		
SIGNATURE OF AUTHORISED REPRESENTATIVE			

⁹meaning a public entity being able to represent itself and act in its own name, i.e. being capable of suing or being sued, acquiring and disposing of property, entering into contracts. meaning a public entity being able to represent itself and act in its own name, i.e. being capable of suing or being sued, acquiring and disposing of property, entering into contracts. This legal status is confirmed by the official legal act establishing the entity (a law, a decree, etc.).

¹⁷ National denomination and its translation in EN or FR if existing.

¹⁸ Registration number in the national register of the entity.

6.1.4 Subcontractors

Name and legal form	Address / Registered office	Subject-matter

6.2 Tender form - Prices

By submitting this tender the tenderer commits to performing this public contract in conformity with the provisions of the Tender Specifications/COD21003-10065 and explicitly declares accepting all conditions listed in the Tender Specifications and renounces any derogatory provisions such as his own general sales conditions.

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

The value-added tax is dealt with as a separate item of the inventory, to be added to the tender value. The tenderer commits to performing the public contract in accordance with the provisions of the Tender Specifications /COD21003-10065 for the following prices, given in euros and exclusive of VAT:

Items	Quantity	Unit prices in euros (exclusive of VAT)	Total price in euros (exclusive of VAT)
Powerboat + accessories	2		
Option 1: Tool kit	1		
Option 2: Ramp tow trailer.	1		
Option 3: A maintenance kit for 10 maintenance services	1		

VAT percentage:%.

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

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

In order to correctly compare the tenders, the duly signed information or documents mentioned <<below or under point ... must be attached to the tender.

In annex, the tenderer attachesto his tender.

The tenderer declares on honour that the information given is accurate and correct and that it has been established while fully aware of the consequences of misrepresentation.

Certified true and sincere,

Done at, on

6.3 Declaration on honour – Exclusion grounds

Hereby, I / we, acting as legal representative(s) of above-mentioned tenderer declare that the tenderer is not in any of the following cases of exclusion:

1. The tenderer nor any of his directors was found guilty following an infeasible judgement for one of the following offences:
 - 1° involvement in a **criminal organisation**
 - 2° **corruption**
 - 3° **fraud**
 - 4° **terrorist offence**, offence linked to terrorist activities or incitement to commit such offence, collusion or attempt to commit such an offence
 - 5° money laundering or **financing of terrorism**
 - 6° **child labour** and other trafficking in human beings
 - 7° employment of foreign citizens under **illegal status**
 - 8° creation of a shell companyThe exclusions on the basis of this criterion apply for a 5-year term from the date of judgement.
2. The tenderer has failed to fulfil his obligations to **pay taxes or social security contributions** for an amount in excess of EUR 5 000, except if the tenderer can demonstrate that a contracting authority owes him one or more unquestionable and due debts which are free of all foreseeable liabilities. These debts are at least of an amount equal to the one for which he is late in paying outstanding tax or social charges.
3. The tenderer is in **a state of bankruptcy, liquidation, cessation of business, judicial reorganisation** or has admitted bankruptcy or is the subject of a liquidation procedure or judicial reorganisation, or in any similar situation resulting from a procedure of the same kind existing under other national regulations.
4. The tenderer or one of his directors has committed **serious professional misconduct which calls into question their integrity.**

The following are considered serious professional misconduct, among others:

- a. A breach of Enabel's Policy regarding sexual exploitation and abuse – June 2019
 - b. A breach of Enabel's Policy regarding fraud and corruption risk management – June 2019
 - c. A breach of a regulatory provision in applicable local legislation regarding sexual harassment in the workplace
 - d. The tenderer was seriously guilty of misrepresentation or false documents when providing the information required to verify that there are no grounds for exclusion or that selection criteria are satisfied, or concealed this information
 - e. Where Enabel has sufficient plausible evidence to conclude that the tenderer has committed acts, entered into agreements or entered into arrangements to distort competition

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

5. When a conflict of interest cannot be remedied by other, less intrusive measures than exclusion;
6. When **significant or persistent failures** by the tenderer were detected during the execution of an **essential obligation** incumbent on him in the framework of a past contract concluded with another contracting authority, when these failures have given rise to measures as of right, damages or another comparable sanction. Failures to respect applicable obligations regarding environmental, social and labour rights under European Union law, national law, labour agreements or international provisions on environmental, social and labour rights are considered 'significant'.
The presence of the tenderer on the exclusion list of Enabel because of such a failure serves as evidence.

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

8. The tenderer or one of his directors are on the lists of persons, groups or entities subject to United Nations, European Union or Belgian financial sanctions:

For the United Nations, the lists can be consulted at the following address:
<https://finances.belgium.be/fr/tresorerie/sanctions-financieres/sanctions-internationales-nations-unies>

For the European Union, the lists can be consulted at the following address:
<https://finances.belgium.be/fr/tresorerie/sanctions-financieres/sanctions-europ%C3%A9ennes-ue>

<https://eeas.europa.eu/headquarters/headquarters-homepage/8442/consolidated-list-sanctions>

https://eeas.europa.eu/sites/eeas/files/restrictive_measures-2017-01-17-clean.pdf

For Belgium :

https://finances.belgium.be/fr/sur_le_spf/structure_et_services/administrations_generales/trésorerie/contrôle-des-instruments-1-2

9. <...>If Enabel executes a project for another funder or donor, other grounds for exclusion may be added.

The tenderer formally declares being able, when asked and without delay, to provide the relevant certificates and other kinds of supporting documents, except if:

- a. Enabel can directly obtain the supporting documents concerned by consulting a national database in a Member State that is accessible for free, provided the tenderer has given the required information (website address, responsible authority for providing the information, specific reference of the documents) so Enabel can obtain these, with concomitant permission to access them;
- b. Enabel already has said documents.

The tenderer formally agrees with Enabel accessing the supporting documents substantiating the information provided in this document.

Date

Place

Signature

6.4 Documents to be submitted – exhaustive list

- Identification form (form 6.1)
- Sub-contracting form (form 6.2)
- Tender form - Prices (form 6.3)
- Declaration on honour regarding the exclusion grounds + enclose extract from the manager's criminal record, certificate of regularity of tax and social security contributions (form 6.4)
- Integrity statement (form 6.5)
- Table of economic and financial capacity (form 6.6) + certified annual accounts for 2020, 2021 and 2022
- Table "Tenderer's references - form 6.7" + acceptance certificates or completion certificates signed by the donor
- Technical tender: table of proposed technical specifications (refer to paragraph 5.3) + equipment data sheets + leaflets with photos supplied by the manufacturer or the equipment manufacturer's representative.

6.5 Integrity Statement of the tenderer

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

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

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

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

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

Date

Done at, on

Original hand-written signature (preceded by the handwritten note 'read and approved by') / name:

6.6 Economic and financial capacity

The tenderer must prove having realised an average annual turnover for the years 2020, 2021 and 2022 amounting to 1.5 times the value of his tender.

The tenderer must also enclose certified annual accounts for 2020, 2021 and 2022.

Financial data	Exercise (2020) EURO	Exercise (2021) EURO	Exercise (2022) EURO	Average EURO
Annual turnover				
Annual turnover, linked to the subject-matter of this public contract				
Assets in the short term				
Amounts payable in the short term				

6.7 Identification of the tenderer

The tenderer must demonstrate that he has carried out three similar public supply contracts (powerboats) for the years 2018 to 2024. This list must be accompanied by the acceptance reports or certificates of successful completion signed by the client.

Title / description of works / location (maximum 5)	Total amount (€)	Client name	Year (2018 to 2024)

6.8 Performance bond (not to be attached to the tender - to be completed by successful tenderer only after awarding)

(To be submitted on the financial institution's letterhead)

To the attention of Enabel, Belgian development agency
3, Route Bukavu - Commune de Makiso, Kisangani - Democratic Republic of Congo

Re: Performance bond number

Performance bond for the entire performance of public contract COD21003-10065

Title: Public supply contract for the supply and delivery of two power boats

We, the undersigned, <name and address of financial institution> hereby irrevocably declare that we guarantee, as principal debtor, and not only as joint surety, on behalf of <name and address of contractor> hereinafter referred to as "the contractor", the payment to the contracting authority of EUR, representing the performance bond referred to in Article 15 of the special conditions of contract

COD21003-10065 named: Public supply contract for the supply and delivery of two power boats.

Payments shall be made to the account indicated by the contracting authority, without dispute or legal proceedings, upon receipt of your first written request (by registered letter with acknowledgement of receipt) stating that the contractor has failed to fully perform its contractual obligations or that the contract has been terminated. We will not delay payment and we will not oppose it for any reason. We will inform you in writing as soon as payment has been made.

In particular, we agree that no amendment to the terms of the Contract shall relieve us of our liability under the performance bond. We waive the right to be informed of any changes, additions or amendments to this contract.

We note that the guarantee will be released in accordance with article 4.5 of the special contractual provisions of the Tender Specifications. The performance bond shall be released on full acceptance of the services (as provided for in the Tender Specifications). In all cases, the performance bond must be released no later than 18 months after the contract implementation period.

All requests for payment regarding the performance bond must be countersigned by Enabel's Resident Representative in the Democratic Republic of Congo or by his designated representative authorised to sign.

The law applicable to this performance bond is that of Belgium. Any dispute arising from or relating to this performance bond shall be brought before the courts of Brussels.

This performance bond will come into force and take effect as soon as it is signed.

Done at, on

Name:Function:

Signature:

[Stamp of guarantor instance]:.....

6.9 Annexes

6.9.1 << GDPR clause (in case a service provider will process personal data)

This Annex must be used where the contractor is a subcontractor in the meaning of the GDPR, i.e. a natural or legal person which processes personal data on behalf of Enabel.

Personal data = Any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

AGREEMENT on the Processing of personal data (GDPR)

BETWEEN:

The contracting authority: Enabel, the Belgian development agency, public-law company with social purposes, with its registered office at Rue Haute 147, 1000 Brussels, Belgium (enterprise number 0264.814.354, RPM/RPR Brussels).

Represented by: [.....],

Hereinafter referred to as 'the contracting authority' or 'personal data controller'.

AND:

The contractor: [.....], with registered office at [.....] and which is registered with the Crossroad Bank for Enterprises under number [.....],

Represented by: [.....],

in accordance with Article [.....] of the statutes of the company,

Hereinafter referred to as ‘the contractor’ or ‘processor’.

The contracting authority and the contractor are referred to separately as a ‘Party’ and are jointly referred to as the ‘Parties’.

Preamble

By decision of the [.....], the contractor was awarded a public contract in accordance with Tender Specifications no. [.....].

The needs of this public contract involve the processing of personal data within the meaning of the Belgian law on the protection of natural persons with regard to the processing of personal data and of European Regulation 2016/679 (GDPR).

The purpose of this amendment is to comply with the requirements of Article 28 of the GDPR.

The public contract conditions are not otherwise derogated, particularly in terms of the time frame and value of the public contract awarded.

Article 1: Definitions

- 1.1. Terms such as ‘process’/‘processing’, ‘personal data,’ ‘personal data controller’, ‘processor’ and ‘personal data breach’ must be interpreted in light of data protection legislation. ‘Data protection legislation’ refers to any regulation of the European Union and/or its Member States, including, without being limited to laws, directives and regulations for the protection of personal data, in particular European Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and the free movement of such data (GDPR) and the Belgian law of 30 July 2018 on the protection of natural persons with regard to the processing of personal data.

Article 2: Subject-matter of the Agreement

- 2.1. During performance of the public contract, the contracting authority entrusts the contractor with the processing of personal data. The contractor undertakes to process personal data in the name of and on behalf of the contracting authority.
- 2.2. The contractor performs the public contract in accordance with the provisions of this Agreement.
- 2.3. Both Parties explicitly undertake to comply with the provisions of applicable data protection laws and to do nothing or fail to cause the other Party to violate relevant and applicable data protection laws.
- 2.4. The elements included in the processing are further included and clarified in Annex 1 of this Agreement. The following are particularly included in said Annex:
 - a) Personal data processing activities;

- b) The categories of personal data processed;
 - c) The categories of stakeholders to which the personal data of the contracting authority's relate;
 - d) The purpose of the processing.
- 2.5. Only the personal data mentioned in Annex 1 of this Agreement may and must be processed by the contractor. In addition, personal data will only be processed in light of the purposes set out by the Parties in Annex 1 of this Agreement.
- 2.6. Both Parties undertake to take appropriate measures to ensure that personal data are not misused or acquired by an unauthorized third party.
- 2.7. In the event of a conflict between the provisions of this Agreement and those of the Tender Specifications, the provisions of this Agreement will prevail.

Article 3: Instructions of the contracting authority

- 3.1. The contractor undertakes to process personal data only on the documented instructions of the contracting authority and in accordance with agreed processing activities as defined in Annex 1 of this Agreement. The contractor will not process the personal data subject to this Agreement in a manner inconsistent with the instructions and provisions of this Agreement.
- 3.2. The contractor undertakes to process personal data in accordance with the documented instructions of the personal data controller, including for transfers of personal data to third countries or to international organisations, unless it is required under EU or Member State law. In this case, the processor informs the personal data controller of this legal obligation prior to processing unless the relevant law prohibits such information for important public interest reasons.
- 3.3. The contracting authority may unilaterally make limited changes to the instructions. The contracting authority undertakes to consult with the contractor before making significant changes to the instructions. Changes affecting the content of this Agreement must be agreed by the Parties.
- 3.4. The contractor undertakes to immediately notify the contracting authority if it considers that the instructions received (in whole or in part) constitute a violation of the Regulations or other provisions of EU law or Member State data protection law.

Article 4: Assistance to the contracting authority

- 4.1. **Legal conformity.** The contractor assists the contracting authority in accordance with its obligations under the Regulation, taking into account the nature of the processing and the information available to the contractor.
- 4.2. **Personal data breach.** In the case of a personal data breach in relation to processing under this Agreement, the contractor must without undue delay after having become aware of it notify the personal data breach to the contracting authority.

At the very least, this notification should include the following information:

- (a) Nature of the personal data breach;
- (b) The categories of personal data;
- (c) The categories and approximate number of data subjects concerned;
- (d) The categories and approximate number of personal data records concerned;
- (e) The likely consequences of the personal data breach;
- (f) The measures taken or proposed to be taken by the contractor to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.

The contractor is required to remedy the negative consequences of a data breach as quickly as possible or to minimise other potential consequences. The contractor will immediately implement all remedies requested by the contracting authority or the relevant authorities to remedy any data breach or other non-compliance and/or mitigate the risks associated with these events. The contractor will have to cooperate at all times with the contracting authority and observe its instructions in order to enable it to carry out an appropriate investigation into the data breach, formulate a correct response and then take appropriate action.

- 4.3. **Data protection impact assessment** Where applicable and where requested by the contracting authority, the contractor assists the contracting authority in carrying out the data protection impact assessment in accordance with Article 35 of the Regulation.

Article 5: Obligations of the contractor/processor

- 5.1. The contractor will deal with all reasonable requests from the contracting authority for the processing of personal data related to this Agreement, immediately or within a reasonable period of time (based on the legal obligations set out in the Regulation) and in an appropriate manner.
- 5.2. The contractor guarantees that there is no obligation arising from any applicable legislation that makes it impossible to comply with the obligations of this Agreement.
- 5.3. The contractor maintains complete documentation, in accordance with the law or regulations applicable to the processing of personal data carried out for the contracting authority. In particular, the contractor must keep a record of all categories of processing activities carried out on behalf of the contracting authority in accordance with Article 30 of the GDPR.
- 5.4. The contractor undertakes not to process personal data for any purpose other than the performance of the public contract and the fulfilment of the responsibilities of this Agreement in accordance with the documented instructions of the contracting authority; if the contractor, for whatever reason, cannot comply with this requirement, he will notify the contracting authority without delay.

- 5.5. The contractor will immediately inform the contracting authority, if he believes that an instruction by the contracting authority violates applicable data protection legislation.
- 5.6. The contractor will ensure that personal data are disclosed only to those who need it to perform the public contract in accordance with the principle of proportionality and the principle of "need to know" (i.e. data are provided only to persons who need personal data to perform the public contract as determined in the relevant Tender Specifications and this Agreement).
- 5.7. The contractor undertakes not to disclose personal data to persons other than contracting authority personnel who require personal data to comply with the obligations of this Agreement and ensures that identified staff have accepted appropriate legal and contractual confidentiality obligations.
- 5.8. If the contractor is in breach of this public contract and the GDPR by determining the purposes and means of processing, he should be considered a personal data controller in the context of such processing.

Article 6: Obligations of the contracting authority/controller

- 6.1. The contracting authority will provide all necessary assistance and cooperate in good faith with the contractor to ensure that any processing of personal data is in accordance with the requirements of the Regulation, including the principles relating to the processing of personal data.
- 6.2. The contracting authority will agree with the contractor on the appropriate channels of communication to ensure that instructions, guidance and other communications regarding personal data that are processed by the contractor on behalf of the contracting authority are well received between the Parties. The contracting authority notifies the contractor of the identity of the single point of contact of the awarding authority that the contractor is required to contact under this Agreement. Unwritten instructions (e.g. oral instructions by telephone or in person) must always be confirmed in writing.

The point of contact of the contracting authority is: dpo@enabel.be

- 6.3. The contracting authority guarantees that it will not issue any instructions, guidance or requests to the contractor who does not comply with the provisions of the Regulation.
- 6.4. The contracting authority provides the necessary assistance to the contractor and/or his or her subsequent subcontractors to comply with a request, order, investigation or subpoena addressed to the contractor or his subsequent subcontractor(s) by a competent government or judicial authority.
- 6.5. The contracting authority guarantees that it will not instruct, guide or ask the contractor to compel the contractor and/or his subsequent subcontractor(s) to violate any obligation imposed by the applicable mandatory national legislation to which the contractor and/or his subcontractor(s) are subject.

- 6.6. The contracting authority ensures that it will cooperate in good faith with the contractor in order to mitigate the negative effects of a security incident affecting the personal data processed by the contractor and/or his subsequent contractor(s) on behalf of the contracting authority.

Article 7: Use of subsequent subcontractors/processors

- 7.1. In accordance with the Tender Specifications, the contractor may use the capacity of a third party to tender for the public contract, which constitutes further subcontracting within the meaning of Article 28 of the GDPR.¹⁹.
- 7.2. The contractor may engage another subcontractor (hereinafter, the 'subsequent subcontractor') for carrying out specific processing activities. In this case, he informs the contracting authority in advance and in writing of any change considered with regards to adding or replacing other subcontractors. This information must clearly indicate the processing activities that are subcontracted, the identity and contact details of the subcontractor and the dates of the subcontracting contract. The contracting authority disposes of a minimum period of 30 days from the date of reception of said information to voice any objections. Such subcontracting may only be carried out if the contracting authority has not voiced any objection during said period.
- 7.3. The contractor will use only subsequent subcontractors who provide sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of this public contract, of Belgian legislation and of the GPDR and assures the rights of the data subject concerned.
- 7.4. When the contractor uses another subcontractor to carry out specific processing activities in the name of the contracting authority, obligations in any respect identical to those provided for in this Agreement will have to be imposed on this subsequent subcontractor; the latter in particular must provide the same sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the Regulation.

Agreements with the subsequent subcontractor are written down. Upon request, the contractor will be required to provide the contracting authority with a copy of this contract or these contracts.

- 7.5. Where the subsequent subcontractor fails to fulfil his data protection obligations, the contractor shall remain fully liable to the contracting authority for the performance of the subsequent subcontractor's obligations.
- 7.6. The contractor must pass on the specific objectives and instructions issued by the contracting authority in a precise and timely manner to the subsequent subcontractor(s) when and where these objectives and instructions relate to the part of the processing in which the subsequent subcontractor(s) is or are involved.

Article 8: Rights of the data subject concerned

- 8.1. Where possible, taking into account the nature of the processing and through appropriate technical and organisational measures, the contractor undertakes to

¹⁹ To be adapted in accordance with Tender Specifications.

assist the contracting authority in fulfilling its obligation to respond to requests of exercise of data subject rights in accordance with Chapter III of the Regulation.

- 8.2. With respect to any request from the data subjects concerned in connection with their rights regarding the processing of personal data concerning them by the contracting authority and/or his subsequent subcontractor(s), the following conditions apply:
- The contractor will immediately inform the contracting authority of any request made by a data subject concerned relating to personal data that the contractor and/or his subsequent subcontractor(s) are processing on behalf of the contracting authority;
 - The contractor will comply promptly and require his subsequent subcontractor(s) to promptly comply with any request from the contracting authority to comply with a request by the data subject concerned to exercise one of their rights;
 - The contractor will ensure that he and his subsequent subcontractor(s) have the technical and organisational capabilities to block access to personal data and to physically destroy the data without the possibility of recovery if and when such a request is made by the contracting authority. Without prejudice to the above, the contractor retains the opportunity to consider whether the request of the contracting authority does not constitute a violation of the Regulation.
- 8.3. The contractor must, at the request of the contracting authority, provide all necessary assistance and provide all necessary information for the contracting authority to defend its interests in any proceeding - judicial, arbitral or otherwise - brought against the contracting authority or its staff for any violation of the fundamental rights to privacy and the protection of the personal data of the data subjects concerned.

Article 9: Security measures

- 9.1. Throughout the duration of this Agreement, the contractor must have appropriate technical and organisational measures in place to ensure that the processing meets the requirements of the Regulation and ensures the protection of the rights of the data subject concerned.
- 9.2. The contractor undertakes to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, in accordance with Article 32 of the Regulation.
- 9.3. In assessing the appropriate level of security account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed.
- 9.4. The parties recognise that security requirements are continually evolving and that effective security requires frequent assessment and regular improvement of outdated security measures. The contractor will therefore have to continually assess and strengthen, complete or improve the measures implemented with a view to the continued compliance of his obligations.

- 9.5. The contractor provides the contracting authority with a complete and clear description, in a transparent and understandable manner, of how he handles its personal data (Annex 3).
- 9.6. In the event that the contractor changes the security measures applied, the contractor undertakes to notify so immediately to the contracting authority.
- 9.7. The contracting authority reserves the right to suspend and/or terminate the public contract, where the contractor can no longer provide appropriate technical and organisational measures regarding processing risks.

Article 10: Audit

- 10.1. The contractor acknowledges that the contracting authority falls under the supervision of one or several Supervisory Authorities. The contractor acknowledges that the contracting authority and any Supervisory Authority concerned will have the right to conduct an audit at any time, and at least during the contractor's regular office hours, during the term of this Agreement in order to assess whether the contractor complies with the Regulation and the provisions of this Agreement. The contractor provides the necessary cooperation.
- 10.2. This auditing right may not be used more than once in a calendar year, unless the contracting authority and/or the Supervisory Authority has reasonable grounds to assume that the contractor is acting in conflict with this Agreement and/or the provisions of the Regulation. The restriction of the right of control does not apply to the Supervisory Authority.
- 10.3. At the written request of the contracting authority, the contractor will provide the contracting authority or the relevant Supervisory Authority with access to the relevant parts of the contractor's administration and to all places and information of interest to the contractor (as well as, applicable to those of its agents, subsidiaries and subsequent subcontractors) to determine whether the contractor complies with the Regulation and provisions of this Agreement. At the request of the contractor, the parties concerned agree to a confidentiality agreement.
- 10.4. The contracting authority must take all appropriate measures to minimise any obstruction caused by the audit on the day-to-day functioning of the contractor or the services performed by the contractor.
- 10.5. If there is agreement between the contractor and the contracting authority on a significant breach in compliance with the Regulation and/or the Agreement, as reported in the audit, the contractor will remedy this breach as soon as possible. Parties may agree to put in place a plan, including a timetable for implementing the plan, to address the gaps revealed by the audit.
- 10.6. The contracting authority will cover the costs of any audit carried out within the meaning of this article. Without prejudice to the above, the contractor will bear the costs of his employees. However, where the audit has revealed that the contractor is clearly not in compliance with the Regulation and/or provisions of this Agreement, the contractor bears the costs of said audit. The costs of re-compliance with the Regulation and/or the provisions of this Agreement are borne by the contractor.

Article 11: Transfers to third parties

- 11.1. The transmission of personal data to third parties in any way is in principle prohibited, unless required by law or if the contractor has obtained explicit authorisation from the contracting authority to do so.
- 11.2. In the event that a legal obligation applies to the transfer of personal data, which is the subject of this Agreement, to third parties, the contractor shall inform the contracting authority before the transfer.

Article 12: Transfer outside the EEA

- 12.1. The contractor will process personal data from the contracting authority only in a location in the EEA.
- 12.2. The contractor shall not process or transfer the personal data of the contracting authority, or process them himself or through third parties, outside the European Union, unless after express and explicit prior authorisation from the contracting authority.

The contractor will have to ensure that no access to the personal data of the contracting authority by a third party in any way leads to the transfer of these data outside the European Union.

Article 13: Behaviour towards national government and judicial authorities

- 13.1. The contractor will immediately notify the contracting authority of any request, injunction, investigation or subpoena of a competent national government or judicial authority addressed to the contractor or its subsequent subcontractor(s) that involves the disclosure of personal data processed by the contractor or a subsequent subcontractor for and on behalf of the contracting authority or any data and/or information relating to that processing.

Article 14: Intellectual property rights:

- 14.1. All intellectual property rights relating to personal data and databases containing such personal data are reserved for the contracting authority, unless otherwise agreed between the Parties.

Article 15: Confidentiality

- 15.1. The contractor undertakes to guarantee the confidentiality of personal data and of their processing.
- 15.2. The contractor ensures that employees or subsequent subcontractors authorised to process personal data have committed to conducting the processing confidentially and are also bound by a contractual obligation of confidentiality.

Article 16: Liability

- 16.1. Without prejudice to the public contract, the contractor is only liable for the damage caused by the processing if he has not complied with the obligations of the Regulation specifically for subcontractors or if he acted outside or contrary to the legal instructions of the contracting authority.
- 16.2. The contractor is liable for the payment of administrative fines resulting from a violation of the Regulation.

- 16.3. The contractor will be exempt from liability only if he can prove that he is not responsible for the event that caused a violation of the Regulation.
- 16.4. If it appears that the contracting authority and the contractor are responsible for the damage caused by the processing of personal data, both Parties will be liable and will pay damages, in accordance with their individual share of liability for the damage caused by the processing.

Article 17: Contract termination

- 17.1. This Agreement applies as long as the contractor processes personal data in the name and on behalf of the contracting authority under this public contract. If the public contract ends, this Agreement will also end.
- 17.2. In the event of a serious breach of this Agreement or the applicable provisions of the Regulation, the contracting authority may order the contractor to terminate the processing of personal data with immediate effect.
- 17.3. In the event of termination of the Agreement, or if the personal data are no longer relevant to the provision of services, the contractor will, by decision of the contracting authority, remove all personal data or return them to the contracting authority and delete personal data and other copies. The contractor will provide proof in writing, unless applicable legislation requires the storage of personal data. Personal data will be returned to the contracting authority free of charge, unless otherwise agreed upon.

Article 18: Mediation and competence

- 18.1. The contractor agrees that if the data subject concerned alleges claims for damages under this Agreement, the contractor will accept the decision of the data subject concerned:
- To refer the dispute to mediation with an independent person
 - To refer the dispute to the courts of the place of establishment of the contracting authority
- 18.2. The Parties agree that the choice made by the data subject concerned will not infringe on the substantial or procedural rights of the data subject concerned to seek redress in accordance with other provisions of applicable national or international law.
- 19.1. Any dispute between the Parties over the terms of this Agreement must be brought before the appropriate courts, as determined in the main agreement.

Thus, agreed on the [.....] and established in two copies of which each Party acknowledges having received a signed copy.

FOR THE CONTRACTING AUTHORITY

FOR THE CONTRACTOR

Name: [.....]

Name: [.....]

Function: [.....]

Function: [.....]

Annex 1: Description of personal data processing activities by the contractor²⁰

1. Processing activities carried out by the subcontractor

Subject matter of processing:

Nature of processing: *[For instance, organisation, consultation, storage and collection, etc.]*

Duration of the processing:

Purpose of the processing:

2. The special categories of personal data that the subcontractor will process on behalf of the controller (*indicate as appropriate)

- Personal identification data (e.g. name, address and telephone)
- Electronic identification data (e.g. e-mail address, ID Facebook, ID Twitter, user names, passwords or other connection data, etc.)
- Electronic location data (e.g. IP addresses, mobile phone, GPS, connection points, etc.)
- Biometric identification data (e.g. fingerprints, iris scan, etc.)

²⁰ To be filled out by the contracting authority and the contractor.

- Copies of identity documents
- Financial identification data (e.g. account numbers (bank), credit card numbers, salary and payment information, etc.)
- Personal characteristics (e.g. gender, age, date of birth, marital status, nationality, etc.)
- Physical data (e.g. height, weight, etc.)
- Habits of life
- Psychological data (e.g. personality, character, etc.)
- Family composition
- Leisure and interests
- Memberships
- Consumption habits
- Education and training;
- Career and occupation (e.g. function, title, etc.)
- Images/photos
- Sound recordings
- National Social Security Register Number/Identification Number
- Details of the contract (e.g. contractual relationship, order history, order numbers, invoicing and payment, etc.)
- Other categories of data, <Describe>

3. The special categories of personal data that the subcontractor will process on behalf of the controller (where applicable) (indicate as appropriate)

- Special categories of personal data (Art. 9 GDPR)
 - Data revealing racial or ethnic origin
 - Data concerning sexual orientation
 - Political opinions
 - Trade union membership
 - Religious or philosophical beliefs
- Data concerning health (Art. 9 GDPR)
 - Physical health

- Mental health
- Risk situations and risk behaviours
- Genetic data
- Healthcare data

- Judicial data (Article 10 of the general data protection law)
 - Suspicions and indictments
 - Convictions and sentences
 - Judicial measures
 - Administrative sanctions
 - DNA data

4. The categories of data subjects concerned (*indicate as appropriate)

- (Potential)/(former) clients

If yes, <describe>

- Applicants and (former) employees, interns, etc.

If yes, <describe>

- (Potential)/(former) suppliers

If yes, <describe>

- (Potential)/(former) (business) partners

If yes, <describe>

- Other category

If yes, <describe>

5. Extent of processing (number of records/number of data subject concerned)

<Describe>

6. Period of use and period for which the (various categories of) personal data are stored:

<Describe>

7. Processing place

<Describe>

If processing is outside the EEA, please specify the appropriate guarantees that are put in place

<Describe>

8. Use of following subsequent subcontractors/processors:

<Describe>

9. Contact details of the responsible contact person at the controller's

Name:	
Title:	
Telephone number:	
E-mail:	
Name: ²¹	
Title:	
Telephone number:	
E-mail:	

10. Contact details of the responsible contact person at the subcontractor's:

Name:	
Title:	
Telephone number:	

²¹ Identify the person responsible of the project/department/other as appropriate

E-mail:	
Name:	
Title:	
Telephone number:	
E-mail :	

Annex 2: Security of processing²²

The controller should use only processors providing sufficient guarantees, in particular in terms of expert knowledge, reliability and resources, to implement technical and organisational measures which will meet the requirements of this Regulation (in particular Article 32 of the GDPR), including for the security of processing.²³

In order to ensure a level of security adapted to the risk, given the state of knowledge and the nature, scope, context and purposes of the processing, as well as the risks, of varying degree of probability and severity, of processing for the rights and freedoms of natural persons, the contractor implements appropriate technical and organisational measures.

These security measures comprise the following, among others:

- [Describe]

²² To be filled out by contractor

²³ Consideration 81 of the GDPR