****

**European Union Rule of Law Mission in Kosovo**

**EULEX Kosovo**

Ndertesa Farmed

“Muharrem Fejza” p.n.

Lagja e Spitalit

10000 Pristina, Kosovo

[www.eulex-kosovo.eu](http://www.eulex-kosovo.eu)

**Letter of invitation to tender**

Pristina, 22 August 2019

**Our ref.: PROC/895/19 Asphalting and Horizontal Services No.6 (EuropeAid/140458/ID/WKS/XK)**

Please note that the awarding of the contract is subject to the condition of:

This tender procedure is launched under suspensive clause[[1]](#footnote-2) i.e. the award of this specific tender is subject to the provision of funding to EULEX through the conclusion of a Contract between the European Commission and the EULEX Head of Mission.

Dear Sir/Madam,

**SUBJECT: INVITATION TO TENDER FOR ASPHALTING AND HORIZONTAL SERVICES No. 6**

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

**VOLUME 1**

SECTION 1: INSTRUCTIONS TO TENDERERS

SECTION 2: TENDER FORM

Annex 1 - Declaration of honour on exclusion and selection criteria…..Form a.15

SECTION 3: TENDER GUARANTEE FORM

SECTION 4: QUESTIONNAIRE

Additional notice to tenderers

General information about the tenderer Form 4.1

Organisation chart Form 4.2

Power of attorney Form 4.3

Financial statement Form 4.4

Financial identification form Forms 4.5 a) + b)

Technical qualifications:

Overview of the tenderer’s staff ………………..Form 4.6.1.1

Staff to be employed on the contract Form 4.6.1.2

Professional experience of key staff

Curriculum vitae Form 4.6.1.3

Plant Form 4.6.2

Work plan and programme Form 4.6.3

Experience as contractor Form 4.6.4*joint venture/consortium*

Data on joint ventures Form 4.6.5

Litigation history Form 4.6.6

Quality assurance system(s) Form 4.6.7

Accommodation for the supervisor Form 4.6.8

Further information  ……………………………………..Form 4.6.9

SECTION 5: ADMINISTRATIVE COMPLIANCE GRID AND EVALUATION GRID

Administrative compliance grid

Evaluation grid

**VOLUME 2**

SECTION 1: CONTRACT FORM

SECTION 2: GENERAL CONDITIONS FOR WORKS CONTRACTS

SECTION 3: SPECIAL CONDITIONS

SECTION 4: SPECIMEN PERFORMANCE GUARANTEE

SECTION 5: SPECIMEN PREFINANCING PAYMENT GUARANTEE

SECTION 6: SPECIMEN RETENTION GUARANTEE

**VOLUME 3**

TECHNICAL SPECIFICATIONS

**VOLUME 4**

FINANCIAL OFFER UNIT PRICE CONTRACTS

**VOLUME 5**

DESIGN DOCUMENTS, INCLUDING DRAWINGS

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

We look forward to receiving your tender.

By submitting a tender you accept to receive notification of the outcome of the procedure by electronic means. Such notification shall be deemed to have been received by you on the date upon which the contracting authority sends it to the electronic address you referred to in your offer.

If you decide not to submit a tender, we would be grateful if you could inform us in writing, stating the reasons for your decision.

Yours sincerely,

**Sean Kerins**

**Head of Mission Support Department - EULEX KOSOVO**

**VOLUME 1**

**SECTION 1:** **INSTRUCTIONS TO TENDERERS**

**PUBLICATION REF.: PROC/895/19 Asphalting and Horizontal Services no.6 (EuropeAid/140458/ID/WKS/XK)**

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

**These Instructions set out the rules for the submission, selection and implementation of contracts financed under this call for tenders, in conformity with the provisions of the Practical Guide, which is applicable to the present call (available on the Internet at this address:** [**http://ec.europa.eu/europeaid/prag/document.do**](http://ec.europa.eu/europeaid/prag/document.do) **).**

CONTENTS

[GENERAL PART 4](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202006)

[1. GENERAL INSTRUCTIONS 4](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202007)

[2. FINANCING 4](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202008)

[3. PARTICIPATION 4](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202009)

[4. ONLY ONE TENDER PER TENDERER 6](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202010)

[5. TENDER EXPENSES 6](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202011)

[6. SITE VISIT AND CLARIFICATION MEETING 6](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202012)

[TENDER DOCUMENTS 6](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202013)

[7. CONTENT OF TENDER DOCUMENTS 6](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202014)

[8. EXPLANATIONS CONCERNING TENDER DOCUMENTS 6](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202015)

[9. MODIFICATIONS TO TENDER DOCUMENTS 7](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202016)

[TENDER PREPARATION 7](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202017)

[10. LANGUAGE OF TENDERS 7](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202018)

[11. CONTENT AND PRESENTATION OF TENDER 7](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202019)

[12. INFORMATION/DOCUMENTS TO BE SUPPLIED BY THE TENDERER 8](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202020)

[13. TENDER PRICES 14](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202021)

[14. PERIOD OF VALIDITY OF TENDERS 14](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202022)

[15. TENDER GUARANTEE 15](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202023)

[16. VARIANT SOLUTIONS 15](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202024)

[SUBMISSION OF TENDERS 16](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202025)

[17. SEALING, MARKING AND SUBMITTING TENDERS 16](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202026)

[18. EXTENSION OF THE DEADLINE FOR SUBMITTING TENDERS 17](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202027)

[19. LATE TENDERS 17](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202028)

[20. ALTERING AND WITHDRAWING TENDERS 17](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202029)

[OPENING AND EVALUATING TENDERS 17](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202030)

[21. OPENING TENDERS 17](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202031)

[22. EVALUATING TENDERS 18](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202032)

[23. CORRECTING ERRORS 19](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202033)

[CONTRACT AWARD 19](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202034)

[24. AWARD CRITERIA 19](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202035)

[25. Notification of award, contract clarifications 19](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202036)

[26. CONTRACT SIGNING AND PERFORMANCE GUARANTEE 20](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202037)

[27. CANCELLATION OF THE TENDER PROCEDURE 21](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202038)

[28. ETHICS CLAUSES 21](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202039)

[29. APPEALS 23](file:///C:\Users\avitija\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\IFBCVD5N\d4b_itt_en.doc#_Toc438202040)

**GENERAL PART**

1. **GENERAL INSTRUCTIONS**

1.1 Tenderers must tender for the whole of the works required by the dossier.

1.2 Timetable:

|  |  |  |
| --- | --- | --- |
|  | **DATE** | **TIME\*** |
| **Clarification meeting/Site Visit** | Not applicable | -- |
| **Deadline for request for any additional information from the Contracting Authority** | 07 October 2019 | 15:00 hrs |
| **Last date on which additional information are issued by the Contracting Authority** | 17 October 2019 | - |
| **Deadline for submission of tenders** | **28 October 2019** | **15:00hrs** |
| **Tender opening session** | **28 October 2019** | **15:30hrs** |
| **Notification of award to the successful tenderer** | November/December 2019 | - |
| **Signature of the contract** | November/December 2019 | - |

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

1. **FINANCING**

CFSP/2018/09/EULEX Kosovo

1. **PARTICIPATION**
   1. Participation is open to all natural persons and/or legal persons participating either individually or in a grouping (consortium), as authorized by Council Decision (CFSP) 2016/1990 of 14 November 2016 amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo (EULEX KOSOVO). The participation of natural and legal persons in the award of procurement contracts financed out of the Mission's budget is open without limitations. Participation is also open to international organisations.
   2. These terms refer to all nationals of the above states and to all legal entities, companies or partnerships established in the above states. For the purposes of proving compliance with this rule, tenderers being legal persons, must present the documents required under that country’s law.
   3. The eligibility requirement detailed in sub-clauses 3.1 and 3.2 applies to all members of a joint venture/consortium and all subcontractors, as well as to all entities upon whose capacity the tenderer relies for the selection criteria. Every tenderer, member of a joint venture/consortium, every capacity-providing entity, every subcontractor providing more than 10 % of the works and every supplier providing more than 10 % of the works must certify that they meet these conditions. They must prove their eligibility by a document dated less than one year earlier than the deadline for submitting tenders, drawn up in accordance with their national law or practice or by copies of the original documents stating the constitution and/or legal status and the place of registration and/or statutory seat and, if it is different, the place of central administration. The contracting authority may accept other satisfactory evidence that these conditions are met.
   4. Natural persons, companies or undertakings falling into a situation set out in Section 2.4. (EU restrictive measures), 2.6.10.1 (exclusion criteria) or 2.6.10.1.2 (rejection from a procedure) of the practical guide, are not entitled to participate in this tender procedure or be awarded a contract. Should they do so, their tender will be considered unsuitable or irregular respectively. Tenderers must provide declarations to the effect that they are not in any of the exclusion situations listed in Section 2.6.10.1 of the practical guide. The declarations must cover all the members of a joint venture/consortium. Tenderers guilty of making false declarations may also incur financial penalties up to 10% of the total value of the contract and exclusion, in accordance with the Financial Regulation in force.
   5. The exclusion situation referred to in sub-clause 3.4 applies to all members of a joint venture/consortium, all subcontractors and all suppliers to tenderers, as well as to all entities upon whose capacity the tenderer relies for the selection criteria.
   6. Subcontracting is allowed but the contractor will retain full liability towards the contracting authority for performance of the contract as a whole.
   7. No rule of origin is applied.
2. **ONLY ONE TENDER PER TENDERER**

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

1. **TENDER EXPENSES**

5.1. The tenderer will bear all costs associated with preparing and submitting the tender. The Contracting Authority will not be responsible or liable for such costs, whatever the conduct or outcome of the procedure.

5.2. The Contracting Authority will neither be responsible for, nor cover, any expenses or losses incurred by the tenderer through site visits and inspections or any other aspect of its tender.

1. **SITE VISIT AND CLARIFICATION MEETING**

6.1. A clarification meeting and/or a site visit will not be held by the Contracting Authority.

**TENDERS DOCUMENTS**

**7 CONTENT OF TENDER DOCUMENTS**

The set of tender documents comprises the documents specified in the invitation letter.

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

1. **EXPLANATIONS CONCERNING TENDER DOCUMENTS**

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

**EULEX Kosovo – Procurement Section**

**Ndërtesa Farmed**

**“Muharrem Fejza” p.n.**

**Lagja e Spitalit, P.O. Box 268**

**10000 Pristina, Kosovo**

**E-mail:** [**tenders@eulex-kosovo.eu**](mailto:tenders@eulex-kosovo.eu)

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

The contracting authority must reply to all tenderers’ questions at least 11 days before the deadline for receipt of tenders.

8.2 The questions and answers will be published on EULEX website at: [www.eulex-kosovo.eu](http://www.eulex-kosovo.eu).

1. **MODIFICATIONS TO TENDER DOCUMENTS**

9.1 The contracting authority may amend the tender documents by publishing modifications up to 11 days before the deadline for submitting tenders.

9.2 Each modification published will constitute a part of the tender documents and will be published on EULEX website at: [www.eulex-kosovo.eu](http://www.eulex-kosovo.eu).

9.3 The contracting authority may, as necessary and in accordance with Clause 18, extend the deadline for submitting tenders to give tenderers sufficient time to take modifications into account when preparing their tenders.

**TENDERS PREPARATION**

1. **LANGUAGE OF TENDERS**

10.1. The tender and all correspondence and documents related to the tender exchanged by the tenderer and the Contracting Authority must be written in the language of the procedure, which is English. All correspondence relating to payments, including invoices and interim and final payment certificates, must also be sent to the Contracting Authority in English.

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

1. **CONTENT AND PRESENTATION OF TENDER**
   1. Tenders must satisfy the following conditions:

11.1.1. Tenders must comprise the documents and information in Clause 12 below.

11.1.2. The tender must be signed on behalf of the tenderer/joint venture/consortium by a person or persons duly authorised to do so, empowered by power of attorney submitted in accordance with Form 4.3 in Volume 1, Section 4 of the tender dossier.

11.1.3. The relevant pages of the documents specified in Clause 12 must be signed as indicated.

11.1.4. The tenderer must provide all documents required by the tender dossier. All such documents, without exception, must comply strictly with these conditions and provisions and contain no amendments made by the tenderer. Tenders which do not comply with the requirements of the tender dossier may be rejected.

* 1. The works are not divided into lots. Tenders must be for all the quantities indicated.

1. **INFORMATION/DOCUMENTS TO BE SUPPLIED BY THE TENDERER**

12.1 All tenders must comprise the following information and duly completed documents:

**12.1.1 Tender form, together with its Annex 1 'Declaration of honour on exclusion criteria and selection criteria' using the form provided in Volume 1, section 2;**

**12.1.2. Documentation as required in the questionnaire in Volume 1, Section 4, including all forms attached;**

**12.1.3The forms provided in Volume 4:**

Volume 4.3.2 — Bill of Quantities;

Volume 4.3.3 — Price Schedule;

Volume 4.3.4 — Daily work Schedule;

Volume 4.3.5 — Detailed Breakdown of Prices.

12.1.3.1 The prices in Volume 4 are deemed to have been set on the basis of the conditions in force 30 days prior to the deadline for submitting tenders.

The Detailed Breakdown of Prices must be used when required for any purpose under the contract, notably to provide the coefficients for applying the price revision formula referred to in Article 48.2 of the Special Conditions. The tenderer must provide clear arithmetical calculations for the proposed coefficients.

**12.1.4. Cash flow statements.**

**12.1.5. Copies of the most recent documents showing the organisation chart, legal status and place of registration of the tenderer's headquarters, a power of attorney empowering the person signing the tender and all related documentation. These documents must follow the forms in Volume 1, Section 4 of the tender dossier:**

To be completed in accordance with the questionnaire in Volume 1, Section 4

* general information about the tenderer (Form 4.1)
* organisation chart (Form 4.2)
* power of attorney (Form 4.3).

**12.1.6. Evidence showing that the liquid assets and access to credit facilities are adequate for this contract, confirmed by a financial statement for the last three years verified by a chartered accountant. This evidence must be provided using Form 4.4, Financial statement, in Volume 1, Section 4 of the tender documents.**

**12.1.7. Financial projections for the two years ahead. This information must follow Form 4.4, Financial statement, provided in accordance with Volume 1, Section 4 of the tender documents.**

**12.1.8. Financial identification form (Form 4.5a, Volume 1) and Legal Entity File (Form 4.5b, Volume 1). If the tenderer has already signed another contract financed by the European Union, it may provide instead of the forms and supporting documents either the file numbers received or copies of the forms provided on that occasion, unless a change occurred in the meantime.**

**12.1.9. Information about the tenderer’s technical qualifications. This information must follow the forms in**

**of the tender documents and include:**

* a presentation of the tenderer’s organisation, including the total number of staff employed (Form 4.6.1.1),
* a list of the staff proposed for execution of the contract, with the CVs of key staff (Forms 4.6.1.2 and 4.6.1.3),
* a list of plant for execution of the contract. The descriptions must demonstrate the tenderer’s ability to complete the works.

The tenderer must indicate whether this equipment is owned, hired or used by a subcontractor. Manufacturer’s documents fully describing the equipment must be submitted with the tender (Form 4.6.2);

* a list of plant, materials and any supplies intended for use in the works, stating their origin;
* a work plan with brief descriptions of the main tasks (Form 4.6.3), showing the sequence and proposed timetable for implementing the tasks. In particular, the proposal must detail the temporary and permanent works to be constructed. The tenderer must take account of weather conditions and the requirement to prepare designs and obtain building permits prior to carrying out construction works. The tenderer must also submit a comprehensive method statement, with drawings if necessary, showing the methods by which it proposes to carry out the works. In particular, the tenderer must indicate the numbers, types and capacities of the plant and staff it proposes to use on the main areas of work;
* a critical milestone bar chart showing times and duties allocated for employees for this contract (Form 4.6.3);
* data on subcontractors and the percentage of works to be subcontracted (Form 4.6.3);
* Evidence of relevant experience in carrying out works of a similar nature, including the nature and value of the contracts, works in hand and contractually committed (Form 4.6.4). The evidence must include successful experience the prime contractor in construction of at least 2 projects of the same nature and complexity comparable to the works concerned by the tender during the last 5 years from the submission deadline(i.e. from 2014 to 2019).
* information regarding the proposed main site office (Form 4.6.3);
* an outline of the quality assurance system(s) to be used (Form 4.6.7).
* if applicable, information on tenderers involved in a joint venture/consortium (Form 4.6.5);
* details of their litigation history over the last 3 years (Form 4.6.6);
* details of the accommodation and facilities to be provided for the Supervisor (Form 4.6.8);
* any other information (Form 4.6.9).

**Tender guarantee of 720 Euros, using the form provided in Volume 1, Section 3:**

12.1.10.Proof documents, declarations and undertakings according to clauses 3.1-3.6 above. These documents should cover all members of a joint venture/consortium and all subcontractors as specified.

* 1. **Selection Criteria**

In order to be eligible for the award of the contract, tenderers must provide evidence that they meet the selection criteria. This must be provided by tenderers using the forms described in 12.1 above and any additional forms tenderers may wish to use.

If a tender is submitted by a consortium, unless specified, the selection criteria will be applied to the consortium as a whole.

The selection criteria for each tenderer are as follows:

***Economic and financial capacity of candidate:***

* The average annual turnover of the tenderer in the past 3 years (2018, 2017 and 2016) must be at least equal or exceed the financial proposal.;

***Technical and professional capacity of candidate:***

* Evidence of relevant experience in carrying out works of a similar nature, including the nature and value of the contracts, works in hand and contractually committed (Form 4.6.4). The evidence must include successful experience the prime contractor in construction of at least 2 projects of the same nature and complexity comparable to the works concerned by the tender during the last 5 years from the submission deadline (i.e. from 2014 to 2019).The Contracting Authority reserves the right to ask for copies of certificates of final acceptance signed by the supervisors/contracting authority of the projects concerned.

**Capacity-providing entities:**

An economic operator may, where appropriate and for a particular contract, rely on the capacity of other entities, regardless of the legal nature of the links which it has with them. Some examples of when it may *not* be considered appropriate by the Contracting Authority are when the tenderer relies mostly on the capacity of other entities or when it relies on key criteria. If the tenderer relies on other entities, it must prove to the Contracting Authority that it will have at its disposal the resources necessary to perform the contract, for example by producing a commitment on the part of those entities to place resources at its disposal. Such entities, for instance the parent company of the economic operator, must respect the same rules of eligibility and notably that of nationality, as the economic operator. Furthermore, the tender should include a separate document providing data on this third entity for the relevant selection criterion. Proof of capacity must be furnished at the request of the Contracting Authority.

With regard to technical and professional criteria, a tenderer may only rely on the capacities of other entities where the latter will perform the works for which these capacities are required.

With regard to economic and financial criteria, the entities upon whose capacity the tenderer relies, become jointly and severally liable for the performance of the contract.

12.3 Tenders submitted by companies in partnerships forming a joint venture/consortium must also   
 fulfil the following requirements:

* The tender must include all the information required in 12.1 above for each member of the joint venture/consortium and summary data for execution of works by the tenderer.
* The tender must be signed in a way that legally binds all members. One member must be appointed lead member and that appointment confirmed by submission of powers of attorney signed by legally empowered signatories representing all members. See Form 4.6.5 in Volume 1 and the tender form.
* All members of the joint venture/consortium are bound to remain in the joint venture/consortium for the whole execution period of the contract. See the declaration in the tender form.
* Documentary evidence of financial and economic standing and technical and professional capacity, referred to in 12.2 of these Instructions to Tenderers, is obligatory.

1. **TENDER PRICES**

13.1 The currency of the tender is the **Euro.** The currency of tender will be the currency of the contract and of payment.

13.2 The tenderer must provide a Bill of Quantities and Price Schedule. The tender price must cover all works as described in the tender documents. All sums in Bill of Quantities and Price Schedule, the questionnaire and other documents must also be expressed in this currency, with the exception of originals of bank and annual financial statements.

13.3 Tenderers must quote all components of the Bill of Quantities and Price Schedule. No payment will be made for items which have not been costed; such items will be deemed to be covered by other items on the Bill of Quantities and Price Schedule.

13.4 If a discount is offered by the tenderer, it must be clearly specified in the Bill of Quantities and Price Schedule in Volume 4 and indicated in the tender form in Volume 1, Section 1.2. The discount must be quoted for all works.

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

1. **PERIOD OF VALIDITY OF TENDERS**
   1. Tenders must remain valid for a period of 90 days after the deadline for submitting tenders indicated in the contract notice, the invitation to tender or as amended in accordance with Clauses 9 and/or 18.
   2. In exceptional circumstances, the Contracting Authority may, before the validity period expires, request that tenderers extend the validity of tenders for a specific period, which may not exceed 40 days. Such requests and the responses to them must be made in writing. A tenderer may refuse to comply with such a request without forfeiting its tender guarantee. If the tenderer decides to accept the request, it may not amend its tender and it is bound to extend the validity of its tender guarantee for the revised period of validity of the tender. In case the contracting authority is required to obtain the recommendation of the panel referred to in section 2.3.3.1 of the Practical Guide, the contracting authority may request an extension of the validity of the tenders up to the adoption of that recommendation.
   3. The successful tenderer must maintain its tender for a further 60 days. This period is in addition to the validity period, irrespective of the date of notification.
2. **TENDER GUARANTEE**
   1. The tenderer must provide, as a part of its tender, a tender guarantee in the form set out in Volume 1, Section 3 of the tender dossier, or in another form acceptable to the Contracting Authority that meets the essential requirements set out therein. The tender guarantee must be for an amount of **720 Euros**. The original guarantee must be included in the original tender.
   2. It may be provided in the form of a bank guarantee, a banker’s draft, a certified cheque, a guarantee provided by an insurance and/or guarantee company or an irrevocable letter of credit made out to the Contracting Authority.
   3. The tender guarantee must remain valid for 45 days beyond the period of validity of the tender, including any extensions, and be issued to the Contracting Authority for the requisite amount.
   4. The tender guarantees of unsuccessful tenderers will be returned together with the information letter that the tenderer has been unsuccessful.
   5. The tender guarantee of the successful tenderer must be released when the tenderer has signed the contract and provided the requisite performance guarantee.
3. **VARIANT SOLUTIONS**

Variant solutions will **not be taken** into consideration.

**SUBMISSION OF TENDERS**

**17 SEALING, MARKING AND SUBMITTING TENDERS**

17.1 The complete tender must be submitted in one original, clearly marked ‘original’ and **3** copies, clearly marked ‘copy’. In the event of any discrepancy between them, the original one will prevail.

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

17.3 All tenders must be received by the Contracting Authority before the deadline set in point 19 of the Contract notice.

Participants may choose to submit their tender :

(a) either by post or by courier service, in which case the evidence shall be constituted by the postmark or the date of the deposit slip[[2]](#footnote-3)**.** In such case**,** the tender must be sent to the following address:

**EULEX Kosovo – Procurement Section**

**Ndërtesa Farmed**

**“Muharrem Fejza” p.n.**

**Lagja e Spitalit, P.O. Box 268**

**10000 Pristina, Kosovo**

**E-mail: tenders@eulex-kosovo.eu**

(b) or by hand-delivery to the premises of the contracting authority by the participant in person or by an agent, in which case the evidence shall be constituted by acknowledgment of receipt. If tenders are hand delivered they should be delivered to the following address:

**EULEX Kosovo – Procurement Section**

**Ndërtesa Farmed**

**“Muharrem Fejza” p.n.**

**Lagja e Spitalit, P.O. Box 268**

**10000 Pristina, Kosovo**

**E-mail:** [**tenders@eulex-kosovo.eu**](mailto:tenders@eulex-kosovo.eu)

The contracting authority may, for reasons of administrative efficiency, reject any application or tender submitted on time to the postal service but received, for any reason beyond the contracting authority's control, after the effective date of approval of the short-list report or of the evaluation report, if accepting applications or tenders that were submitted on time but arrived late would considerably delay the evaluation procedure or jeopardise decisions already taken and notified.

17.4 Tenders, including annexes and all supporting documents, must be submitted in a sealed envelope bearing only:

1. the above address;
2. the reference code of this tender procedure, (i.e., PROC/895/19 Asphalting and Horizontal Services No.6 (EuropeAid/140458/ID/WKS/XK)
3. where applicable, the number of the lot(s) tendered for;
4. the words ‘Not to be opened before the tender opening session’ in the language of the tender dossier and “Te mos hapet para sesionit te hapjes” and “Ne otvoriti pre otvarajuce sesije”.
5. the name of the tenderer.
6. **EXTENSION OF THE DEADLINE FOR SUBMITTING TENDERS**

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

1. **LATE TENDERS**

19.1 All tenders submitted after the deadline for submission specified in the contract notice or these instructions will be kept by the contracting authority. The guarantees will be returned to the tenderers. See also last paragraph of point 17.3 above.

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

1. **ALTERING AND WITHDRAWING TENDERS**

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

20.2 Any notification of alteration or withdrawal must be prepared and submitted in accordance with Clause 17, and the envelope must be marked ‘alteration’ or ‘withdrawal’, as appropriate.

20.3 Withdrawal of a tender in the period between the deadline for submission and the date of expiry of the validity of the tender will result in forfeiture of the tender guarantee.

**OPENING AND EVALUATION OF TENDERS**

1. **OPENING OF TENDERS**

21.1 The purpose of opening and examining tenders is to check whether the tenders are complete, whether the requisite tender guarantees have been furnished, whether the required documents are included and whether the tenders are generally in order.

21.2 Tenders will be opened in public session on the date and venue specified in point 20 of the Contract notice by the committee appointed for that purpose. The committee will draw up minutes of the meeting, which must be available to tenderers on request.

In the case that at the date of the opening session some tenders have not been delivered to the contracting authority but their representatives can show evidence that they have been sent on time, the contracting authority will allow them to participate in the first opening session and inform all representatives of the tenderers that a second opening session will be organised.

21.3 At the tender opening session, the tenderers’ names, the tender prices, any discounts offered, written notifications of alteration and withdrawal, the presence of the tender guarantee (if required) and such other information the Contracting Authority may consider appropriate may be announced.

21.4 After the public opening of the tenders, no information relating to the examination, clarification, evaluation or comparison of tenders or recommendations concerning the award of contract can be disclosed until after the contract has been awarded.

Any attempt by a tenderer to influence the evaluation committee in the process of examination, clarification, evaluation and comparison of tenders, to obtain information on how the procedure is progressing or to influence the Contracting Authority in its decision concerning the award of the contract will result in the immediate rejection of its tender.

1. **EVALUATION OF TENDERS**

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

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

22.1 Examination of the administrative compliance of tenders

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

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

The evaluation committee will check that each tender:

* has been properly signed;
* includes a correct tender guarantee (if required);
* meets the requirements as set out in the administrative compliance grid;
* has complete documentation and information;
* substantially complies with the requirements of these tender documents.

If a tender does not meet the requirements set out in the administrative compliance grid, it may be rejected by the evaluation committee when checking admissibility.

22.2 Technical evaluation

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

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

22.3 Financial evaluation

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

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

1. **CORRECTION OF ERRORS**

23.1 Possible errors in the financial offer will be corrected by the evaluation committee as follows:

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

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

# CONTRACT AWARD

1. **AWARD CRITERIA**

The most economically advantageous tender is the technically compliant tender with the lowest price.

1. **Notification of award, contract clarifications**

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

Documentary evidence required from the successful tenderer:

Before the contracting authority signs the contract with the successful tenderer, the successful tenderer must provide the **documentary proof** or statements required under the law of the country in which the company (or, for consortia, each of the companies) is established, to show that it does not fall into any of the exclusion situations listed in Section 2.6.10.1. of the practical guide. This evidence, documents or statements must carry a date, which cannot be more than one year before the date of submission of the tender. In addition, a statement must be furnished stating that the situations described in these documents have not changed since then. The above-mentioned documents must be submitted for the tenderer, every member of a joint venture/consortium, all subcontractors providing more than 10 % of the works and every supplier providing more than 10 % of the works. For any other subcontractor or supplier, the successful tenderer must submit a declaration from the intended subcontractor or supplier that it is not in one of the exclusion situations. In the event of doubt on this declaration of honour, the contracting authority must request documentary evidence that they are not in a situation of exclusion.

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

If the successful tenderer fails to provide this documentary proof or statement within 15 calendar days following notification of award or if the successful tenderer is found to have provided false information, the award will be considered null and void. In this case, the contracting authority may award the tender to the next lowest tenderer or cancel the tender procedure.

The contracting authority will inform all tenderers simultaneously and individually of the award decision. The tender guarantee of the unsuccessful tenderers will be released once the contract is signed.

By submitting a tender, each tenderer accepts to receive notification of the outcome of the procedure by electronic means. Such notification shall be deemed to have been received on the date upon which the contracting authority sends it to the electronic address referred to in the offer.

1. **CONTRACT SIGNING AND PERFORMANCE GUARANTEE**

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

26.2 If it fails to sign and return the contract and any financial guarantee required within 30 days after receipt of notification, the Contracting Authority may consider the acceptance of the tender to be cancelled, without prejudice to the Contracting Authority’s right to invoke the guarantee, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the Contracting Authority.

26.3 A performance guarantee will be required only if the value of the individual Work Order is equal or above 20.000 Euros at the time of the issuance of the Work Order referred to in the contract and it is set at 5 % of the amount of the Work Order. The Performance Guarantee must be presented in the form specified in the annex to the tender dossier. It will be released within 60 days of the issue of the final acceptance certificate by the Contracting Authority, except for the proportion assigned to after-sales service. This guarantee must be provided together with the return of the countersigned Work Order no later than 30 days after the tenderer receives the Work Order signed by the contracting authority. If the selected tenderer fails to provide such a guarantee within this period, the Work e Order will be void.

1. **CANCELLATION OF THE TENDER PROCEDURE**

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

Cancellation may occur, for example, where:

* the tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no valid response at all;
* the economic or technical parameters of the project have been fundamentally altered;
* exceptional circumstances or force majeure render normal execution of the project impossible;
* all technically compliant tenders exceed the financial resources available;
* there have been irregularities in the procedure, in particular where these have prevented fair competition;
* the award is not in compliance with sound financial management, i.e. does not respect the principles of economy, efficiency and effectiveness (e.g. the price proposed by the tenderer to whom the contract is to be awarded is objectively disproportionate with regard to the price of the market.

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

1. **ETHICS CLAUSES**

### 28.1 Absence of conflict of interest

The tenderer must not be affected by any conflict of interest and must have no equivalent relation in that respect with other tenderers or parties involved in the project. Any attempt by a tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the evaluation committee or the contracting authority during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of its tender and may result in administrative penalties according to the Financial Regulation in force.

### 28.2 Respect for human rights as well as environmental legislation and core labour standards

The tenderer and its staff must comply with human rights. In particular and in accordance with the applicable basic act, tenderers and applicants who have been awarded contracts must comply with the environmental legislation including multilateral environmental agreements, and with the core labour standards as applicable and as defined in the relevant International Labour Organisation conventions (such as the conventions on freedom of association and collective bargaining; elimination of forced and compulsory labour; abolition of child labour).

**Zero tolerance for sexual exploitation and sexual abuse:**

The European Commission applies a policy of 'zero tolerance' in relation to all wrongful conduct which has an impact on the professional credibility of the tenderer.

Physical abuse or punishment, or threats of physical abuse, sexual abuse or exploitation, harassment and verbal abuse, as well as other forms of intimidation shall be prohibited.

### 28.3 Anti-corruption and anti-bribery

The tenderer shall comply with all applicable laws and regulations and codes relating to anti-bribery and anti-corruption. The European Commission reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process or during the execution of a contract and if the contracting authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, ‘corrupt practices’ are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or execution of a contract already concluded with the contracting authority.

### 28.4 Unusual commercial expenses

Tenders will be rejected or contracts terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a payee who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

Contractors found to have paid unusual commercial expenses on projects funded by the European Union are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving EU funds.

### 28.5 Breach of obligations, irregularities or fraud

The contracting authority reserves the right to suspend or cancel the procedure, where the award procedure proves to have been subject to breach of obligations, irregularities or fraud. If breach of obligations, irregularities or fraud are discovered after the award of the contract, the contracting authority may refrain from concluding the contract.

1. **APPEALS**

Tenderers believing that they have been harmed by an error or irregularity during the award process may file a complaint. See Section 2.12. of the practical guide.

**30 DATA PROTECTION**

Processing of personal data related to this tender procedure by the contracting authority takes place in accordance with the national legislation of the state of the contracting authority and with the provisions of the respective financing agreement.

The tender procedure and the contract relate to an external action funded by the EU, represented by the European Commission. If processing your reply to the invitation to tender involves transfer of personal data (such as names, contact details and CVs) to the European Commission, they will be processed solely for the purposes of the monitoring of the procurement procedure and of the implementation of the contract by the Commission, for the latter to comply with its obligations under the applicable legislative framework and under the financing agreement concluded between the EU and the Partner Country without prejudice to possible transmission to the bodies in charge of monitoring or inspection tasks in application of EU law. For the part of the data transferred by the contracting authority to the European Commission, the controller for the processing of personal data is carried out within the Commission.

Details concerning processing of your personal data by the Commission are available on the privacy statement at:

<http://ec.europa.eu/europeaid/prag/annexes.do?chapterTitleCode=A>

In cases where you are processing personal data in the context of participation to a tender (e.g. CVs of both key and technical experts) and/or implementation of a contract (e.g. replacement of experts) you shall accordingly inform the data subjects of the possible transmission of their data to EU institutions and bodies and communicate the above mentioned privacy statement to them.

**31 EARLY DETECTION AND EXCLUSION SYSTEM**

The tenderers and, if they are legal entities, persons who have powers of representation, decision-making or control over them, are informed that, should they be in one of the situations of early detection or exclusion, their personal details (name, given name if natural person, address, legal form and name and given name of the persons with powers of representation, decision-making or control, if legal person) may be registered in the early detection and exclusion system (EDES) and communicated to the persons and entities concerned in relation to the award or the execution of a procurement contract.

VOLUME 1

# SECTION 2

# TENDER FORM

**TENDER FORM FOR A WORKS CONTRACT**

Publication reference: PROC/895/19/

Name of contract: PROC/895/19/Asphalting and Horizontal Services No.6 (EuropeAid/140458/ID/WKS/XK)

**<Place and date>**

**A: EULEX Kosovo, Ndërtesa Farmed, “Muharrem Fejza” p.n., Lagja e Spitalit, P.O. Box 268**

**10000 Pristina, Kosovo**

**One signed** form must be supplied (for each lot, if the tender procedure is divided into lots), together with the number of copies specified in the Instruction to Tenderers**.** The form must include a signed declaration using the annexed format from each legal entity making the application. **All data included in this form must concern only the legal entity or entities making the application.** The attachments to this form (i.e. declarations, statements, proofs) may be in original or copy. If copies are submitted, the originals must be sent to the Contracting Authority upon request. For economical and ecological reasons, we strongly recommend that you submit your files on paper (no plastic folder or divider).  We also suggest you use double-sided printing as much as possible.

Any additional documentation (brochures, letters, etc.) sent with the form will not be taken into consideration.Applications submitted by a **consortium** (i.e. either a permanent, legally-established grouping or a grouping which has been constituted informally for a specific tender procedure) must follow the instructions applicable to the consortium leader and its members.

**1 SUBMITTED BY**

|  |  |  |
| --- | --- | --- |
|  | **Name(s) of tenderer(s)** | **Nationality[[3]](#footnote-4)** |
| **Leader[[4]](#footnote-5)** |  |  |
| **Member 2\*** |  |  |
| **Etc …** |  |  |

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

|  |  |
| --- | --- |
| **Name** |  |
| **Address** |  |
| **Telephone** |  |
| **Fax** |  |
| **E-mail** |  |

**3 TENDERER’S DECLARATION(S)**

**As part of their tender, each legal entity identified under point 1 of this form, including every consortium member (all sections), as well as** **each capacity-providing entity (only sections 1 and 2, as well as sections 7 to 14) and each subcontractor providing more than 10% of the works (only sections 1, 2 and 7, as well as sections 9 to 15), must submit a signed declaration using this format, together with the Declaration of honour on exclusion and selection criteria (Annex 1) (insert Form a.14).**

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

we, the undersigned, hereby declare that:

1. We have examined and accept in full the content of the dossier for invitation to tender No **PROC/895/19 Asphalting and Horizontal Services No.6 (EuropeAid/140458/ID/WKS/XK)**  of xxxxxxxx.We hereby accept its provisions in their entirety, without reservation or restriction.
2. We offer to execute, in accordance with the terms of the tender dossier and the conditions and time limits laid down, without reserve or restriction, the following works:

[*description of works*]

1. The price of our tender is: [……………………………………………..]
2. We will grant a discount of [%], or […………..] [*in the event of our being awarded lot No ...and lot No ………*].
3. This tender is valid for a period of 90 days from the final date for submission of tenders.
4. If our tender is accepted, we undertake to provide a performance guarantee, as required by Article 15 of the special conditions.
5. Our firm/company [*and our subcontractors*] has/have the following nationality:

**<**…………………………………………………>

1. We are making this tender [on an individual basis/as member of the consortium led by < name of the leader / ourselves >]. We confirm that we are not tendering for the same contract in any other form. [We confirm, as a member of the consortium, that all members are jointly and severally bound in respect of the obligations under the contract, including any recoverable amount, that the lead member is authorised to bind, and receive instructions for and on behalf of, each member, that the execution of the contract, including payments, is the responsibility of the lead member, and that all members in the joint venture/consortium are bound to remain in the joint venture/consortium for the entire period of the contract’s execution].
2. In the event that our tender is successful, we undertake, if required, to provide the proof usual under the law of the country in which we are effectively established that we do not fall into any of the exclusion situations. The date on the evidence or documents provided will be no earlier than one year before the date of submission of tender and, in addition, we will provide a statement that our situation has not altered in the period which has elapsed since the evidence in question was drawn up. We also understand that if we fail to provide this proof within 15 calendar days after receiving the notification of award, or if the information provided is proved false, the award may be considered null and void.
3. We agree to abide by the ethics clauses in Clause 28 of the instructions to tenderers and, in particular, have no professional conflicting of interests and/or any equivalent relation with other candidates or other parties in the tender procedure or behaviour which may distort competition at the time of the submission of this application according to Section 2.5.4 of the Practical Guide. We have no interest of any nature whatsoever in any other tender in this procedure.
4. We will inform the Contracting Authority immediately if there is any change in the above circumstances at any stage during the implementation of the contract. We also fully recognise and accept that any inaccurate or incomplete information deliberately provided in this application may result in our exclusion from this and other contracts funded by the EU/EDF.
5. We note that the Contracting Authority is not bound to proceed with this invitation to tender and that it reserves the right to award only part of the contract. It will incur no liability towards us should it do so.
6. We fully recognise and accept that if the above-mentioned persons participate in spite of being in any of the situations listed in Section 2.6.10.1.1. of the practical guide or if the declarations or information provided prove to be false, they may be subject to rejection from this procedure and to administrative sanctions in the form of exclusion and financial penalties up to 10 % of the total estimated value of the contract being awarded and that this information may be published on the Commission website in accordance with the Financial Regulation in force
7. We are aware that, for the purposes of safeguarding the EU's financial interests, our personal data may be transferred to internal audit services, to the Early Detection and Exclusion System, to the European Court of Auditors, to the Financial Irregularities Panel or to the European Anti-Fraud Office.
8. We certify that the goods purchased under the contract, comply with the rules of origin laid down for this tender procedure.

[\* Delete as applicable]

Name and first name: […………………………………………………………………]

Duly authorised to sign this tender on behalf of:

[…………………………………………………………………………………… …]

Place and date: […………………………………………………………….………….]

Stamp of the firm/company:

This tender includes the following annexes:

[Numbered list of annexes with titles]

**ANNEX 1 – DECLARATION OF HONOUR ON EXCLUSION AND SELECTION CRITERIA**

**Declaration on honour on  
exclusion criteria and selection criteria**

The undersigned [*insert name of the signatory of this form*], representing:

|  |  |
| --- | --- |
| (*only for natural persons*) himself or herself | (*only for legal persons*) the following legal person: |
| ID or passport number:  (‘the person’) | Full official name:  Official legal form:  Statutory registration number**:**  Full official address:  VAT registration number:  (‘the person’) |

The person is not required to submit the declaration on exclusion criteria if the same declaration has already been submitted for the purposes of another award procedure of the same contracting authority[[5]](#footnote-6), provided the situation has not changed, and that the time that has elapsed since the issuing date of the declaration does not exceed one year.

In this case, the signatory declares that the person has already provided the same declaration on exclusion criteria for a previous procedure and confirms that there has been no change in its situation:

|  |  |
| --- | --- |
| **Date of the declaration** | **Full reference to previous procedure** |
|  |  |

**[FOR grants:**

[[which has been authorised to sign the present declaration on behalf of the following other persons[[6]](#footnote-7):

*[insert names of other entities on behalf of which the declaration is being signed*]]

declares that [the] [each] person:

|  |
| --- |
| 1. is eligible in accordance with the criteria set out in the specific call for proposals; |
| 1. has the required financial and operational capacity as set out in the specific call for proposals[[7]](#footnote-8); |
| 1. has not received any other Union funding to carry out the [action] [work programme] subject of this grant application and commits to declare immediately to the Commission/ the Agency any other such Union funding it would receive until the end of the [action][work programme]. |

***If any of the above requirements is not satisfied, please indicate*** *in annex to this declaration which and*  ***the name of the concerned person with a brief explanation.***]

**I – Situation of exclusion concerning the person**

|  |  |  |
| --- | --- | --- |
| 1. declares that the above-mentioned person is in one of the following situations:   FOR GRANTS: ***If yes, please indicate in annex to this declaration which situation and the name(s) of the concerned person with a brief explanation*.]** | YES | NO |
| 1. it is bankrupt, subject to insolvency or winding up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors, its business activities are suspended or it is in any analogous situation arising from a similar procedure provided for under EU or national legislation or regulations; |  |  |
| 1. it has been established by a final judgement or a final administrative decision that the person is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law; |  |  |
| 1. it has been established by a final judgement or a final administrative decision that the person is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibity where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following: |  | |
| (i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract or an agreement; |  |  |
| (ii) entering into agreement with other persons with the aim of distorting competition; |  |  |
| (iii) violating intellectual property rights; |  |  |
| (iv) attempting to influence the decision-making process of the contracting authority during the award procedure; |  |  |
| (v) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure***;*** |  |  |
| 1. it has been established by a final judgement that the person is guilty of the following: |  | |
| (i) fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 and Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995; |  |  |
| (ii) corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 and Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997, and conduct referred to in Article 2(1) of Council Framework Decision 2003/568/JHA, as well as corruption as defined in the applicable law. |  |  |
| (iii) conduct related to a criminal organisation, referred to in Article 2 of Council Framework Decision 2008/841/JHA; |  |  |
| (iv) money laundering or terrorist financing within the meaning of Article 1(3), (4) and (5) of Directive (EU) 2015/849 of the European Parliament and of the Council; |  |  |
| (v) terrorist-related offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA, respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision; |  |  |
| (vi) child labour or other offences concerning trafficking in human beings as referred to in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council; |  |  |
| 1. it has shown significant deficiencies in complying with the main obligations in the performance of a contract or an agreement financed by the Union’s budget, which has led to its early termination or to the application of liquidated damages or other contractual penalties, or which has been discovered following checks, audits or investigations by an contracting authority, OLAF or the Court of Auditors; |  |  |
| 1. it has been established by a final judgment or final administrative decision that the person has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95; |  |  |
| 1. it has been established by a final judgment or final administrative decision that the person or entity has created an entity under a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations of mandatory application in the jurisdiction of its registered office, central administration or principal place of business |  |  |
| 1. it has been established by a final judgment or final administrative decision that an entity has been created with the intent provided for in point (g). |  |  |
| 1. for the situations under points (c) to (h) the person is subject to: 2. facts established in the context of audits or investigations carried out by the European Public Prosecutor’s Office after its establishment, the Court of Auditors, the European Anti-Fraud Office or the internal auditor, or any other check, audit or control performed under the responsibility of an authorising officer of an EU institution, of a European office or of an EU agency or body; 3. non-final administrative decisions which may include disciplinary measures taken by the competent supervisory body responsible for the verification of the application of standards of professional ethics; 4. facts referred to in decisions of entities and persons being entrusted with EU budget implementation tasks; 5. information transmitted by Member States implementing Union Funds; 6. decisions of the Commission relating to the infringement of Union competition law or of a national competent authority relating to the infringement of Union or national competition law; or 7. decisions of exclusion by an authorising officer of an EU institution, of a European office or of an EU agency or body. |  |  |

**[for grants) II: situations of exclusion concerning a natural person who is essential for the award or the implementation of the action or work programme subject to the grant application]**

**II – Situations of exclusion concerning natural or legal persons with power of representation, decision-making or control over the legal person and Beneficial owners.**

***Not applicable to natural persons, Member States and local authorities***

|  |  |  |  |
| --- | --- | --- | --- |
| 1. declares that a natural or legal person who is a member of the administrative, management or supervisory body of the above-mentioned legal person, or who has powers of representation, decision or control with regard to the above-mentioned legal person (this covers e.g. company directors, members of management or supervisory bodies, and cases where one natural or legal person holds a majority of shares) or a beneficial owner of the person (as referred to in point 6 of article 3 of Directive (EU) N°2015/849) is in one of the following situations: 2. [FOR GRANTS: . ***If yes, please indicate in annex to this declaration which situation and the name(s) of the concerned person(s) with a brief explanation.]*** | YES | NO | N/A |
| Situation (c) above (grave professional misconduct) |  |  |  |
| Situation (d) above (fraud, corruption or other criminal offence) |  |  |  |
| Situation (e) above (significant deficiencies in performance of a contract ) |  |  |  |
| Situation (f) above (irregularity) |  |  |  |
| Situation (g) above (creation of an entity with the intent to circumvent legal obligations) |  |  |  |
| Situation (h) above (person created with the intent to circumvent legal obligations) |  |  |  |

**III – Situations of exclusion concerning natural or legal persons assuming unlimited liability for the debts of the [legal] person**

[FOR GRANTS: ***This section applies only to declarations that include a person for which a natural or legal person assumes unlimited liability for debts***]

|  |  |  |  |
| --- | --- | --- | --- |
| 1. declares that a natural or legal person that assumes unlimited liability for the debts of the above-mentioned legal person is in one of the following situations [***If yes, please indicate in annex to this declaration which situation and the name(s) of the concerned person(s) with a brief explanation]***: | YES | NO | N/A |
| Situation (a) above (bankruptcy) |  |  |  |
| Situation (b) above (breach in payment of taxes or social security contributions) |  |  |  |

**IV – Grounds for rejection from this procedure**

|  |  |  |  |
| --- | --- | --- | --- |
| 1. declares that the [above-mentioned] [[the] [each] ] person: | YES | NO | N/A |
| Was previously involved in the preparation of the procurement documents used in this award procedure, where this entailed a breach of the principle of equality of treatment including distortion of competition that cannot be remedied otherwise |  |  |  |

**[FOR GRANTS:**

**V – Grounds for rejection from this procedure**

|  |
| --- |
| (7) declares that the [the] [each] person: |
| was **not** previously involved in the preparation of documents used in this award procedure, where this entailed a breach of the principle of equality of treatment including distortion of competition that cannot be remedied otherwise. ***If yes, please indicate in annex to this declaration the name(s) of the concerned person(s) with a brief explanation .*** |

**]**

**[V] [VI] – Remedial measures**

If the person declares one of the situations of exclusion listed above, it must indicate measures it has taken to remedy the exclusion situation, thus demonstrating its reliability. This may include e.g. technical, organisational and personnel measures to prevent further occurrence, compensation of damage or payment of fines or of any taxes or social security contributions. The relevant documentary evidence which illustrates the remedial measures taken must be provided in annex to this declaration. This does not apply for situations referred in point (d) of this declaration.

**VI – Evidence upon request**

Upon request and within the time limit set by the contracting authority, the person must provide information on the natural or legal persons that are members of the administrative, management or supervisory body or that have powers of representation, decision or control, including legal and natural persons within the ownership and control structure and beneficial owners. It must also provide the following evidence concerning the person itself and the natural or legal persons on whose capacity the person intends to rely, or the subcontractor, and concerning the natural or legal persons which assume unlimited liability for the debts of the person:

For situations described in (a), (c), (d) (f), (g) and (h) production of a recent extract from the judicial record is required or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of establishment of the person showing that those requirements are satisfied.

For the situation described in point ( (b), production of recent certificates issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the person is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions. Where any document described above is not issued in the country concerned, it may be replaced by a sworn statement made before a judicial authority or notary or, failing that, a solemn statement made before an administrative authority or a qualified professional body in its country of establishment.

The person is not required to submit the evidence if it has already been submitted for another award procedure of the same contracting authority[[8]](#footnote-9). The documents must have been issued no more than one year before the date of their request by the contracting authority and must still be valid at that date.

[FOR GRANTS:

If selected to be awarded a grant, the person subject to this declaration accept(s) the terms and conditions laid down in the [grant agreement][grant decision].

**The person subject to this declaration may be subject to rejection from this procedure and to administrative sanctions (exclusion or financial penalty) if any of the declarations or information provided as a condition for participating in this procedure prove to be false.**

Full name Date Signature]

[FOR PROCUREMENT: The signatory declares that the person has already provided the documentary evidence for a previous procedure and confirms that there has been no change in its situation:

|  |  |
| --- | --- |
| **Document** | **Full reference to previous procedure** |
| *Insert as many lines as necessary.* |  |

**VII – Selection criteria**

|  |  |  |  |
| --- | --- | --- | --- |
| 1. declares that the above-mentioned person complies with the selection criteria applicable to it individually as provided in the tender documents: | YES | NO | N/A |
| 1. It has the legal and regulatory capacity to pursue the professional activity needed for performing the contract as required in section 16 of the contract notice. |  |  |  |
| 1. It fulfills the applicable economic and financial criteria indicated in section **16.a** of the contract notice. |  |  |  |
| 1. It fulfills the applicable technical and professional criteria indicated in section **16.b** of the contract notice. |  |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1. if the above-mentioned person is the **sole tenderer** or the **leader in case of a consortium**, declares that: | YES | NO | N/A | |
| 1. the tenderer, including all members of the group in case of consortium and including subcontractors if applicable, complies with all the selection criteria for which a consolidated assessment will be made as provided in the tender documents. |  |  | |  |

**VIII – Evidence for selection**

The signatory declares that the above-mentioned person is able to provide the necessary supporting documents listed in the relevant sections of the tender documents and which are not available electronically upon request and without delay.

The person is not required to submit the evidence if it has already been submitted for another procurement procedure of the same contracting authority[[9]](#footnote-10). The documents must have been issued no more than one year before the date of their request by the contracting authority and must still be valid at that date.

The signatory declares that the person has already provided the documentary evidence for a previous procedure and confirms that there has been no change in its situation:

|  |  |
| --- | --- |
| **Document** | **Full reference to previous procedure** |
| *Insert as many lines as necessary.* |  |

***The above-mentioned person may be subject to rejection from this procedure and to administrative sanctions (exclusion or financial penalty) if any of the declarations or information provided as a condition for participating in this procedure prove to be false.]***

Full name Date Signature

VOLUME 1

# SECTION 3 TENDER GUARANTEE FORM

**TENDER GUARANTEE FORM**

**Works contract**

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

For the attention of

<Address of the Contracting Authority>

referred to below as the ‘Contracting Authority’

Title of contract: <Title of contract>

Identification number: <Publication reference>

We, the undersigned, [name and address of financial institution], hereby irrevocably declare that we will guarantee, as primary obligor, and not merely as a surety on behalf of <Tenderer’s name and address>, payment to the Contracting Authority of <amount of the tender guarantee>, this amount representing the guarantee referred to in Article 11 of the Contract Notice and Article 15 of the Instructions to Tenderers.

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

We note that the guarantee will be released at the latest within 45 days of expiry of the tender validity period, including any extensions, in accordance with Article 15 of the Instructions to Tenderers [and in any case at the latest on (one year after the deadline for submitting tenders)].[[10]](#footnote-11)

The law applicable to this guarantee shall be that of: Belgium. Any dispute arising out of or in connection with this guarantee shall be referred to the courts of Belgium.

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

Done at ………….., ../../..

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

Signature: ……………..

[*stamp of the body providing the guarantee*]

VOLUME 1

# SECTION 4 QUESTIONNAIRE

VOLUME 1

SECTION 4

QUESTIONNAIRE

CONTENTS

Additional notice to tenderers

Form 4.1 General information about the tenderer

Form 4.2 Organisation chart

Form 4.3 Power of attorney

Form 4.4 Financial statement

Form 4.5 a) Financial identification form  
 b) Legal entity files

Form 4.6 Technical qualifications

4.6.1 Staff

4.6.2 Plant

4.6.3 Work plan and programme

4.6.4 Experience as contractor

4.6.5 Information on joint ventures

4.6.6 Litigation history

4.6.7 Quality assurance system(s)

4.6.8 Accommodation for the supervisor

4.6.9 Further information

**These documents may be adapted as required by the project.**

VOLUME 1

**SECTION 4**

# *ADDITIONAL NOTICE TO TENDERERS*

1. Tenderers must answer all questions contained in the forms.
2. Additional sheets may be attached as necessary.
3. If a question does not apply to the tenderer, ‘not applicable’ should be entered alongside with a brief explanation.
4. Every page of each form must be numbered consecutively in the bottom right‑hand corner.
5. Financial data and declarations submitted by the tenderer must be given in euro or national currency. Original bank statements may be also attached for reference.
6. If the requested supporting documents/certificates are not written in one of the official languages of the European Union, a translation into the language of the call for tender must be attached. If the documents are in an official language of the European Union, other than the procedural language, it is however strongly recommended to provide a translation into the language of the call for tenders in order to facilitate the evaluation of the documents.
7. *Each member of a joint venture/consortium must fill in and submit separately the following forms: 4.1, 4.2, 4.3, 4.4, 4.5b, 4.6.1.1, 4.6.4, 4.6.6. All other forms must be filled in and submitted jointly*
8. Firms applying as a joint venture/consortium must also complete Form 4.6.5 concerning joint ventures/consortia.
9. The person signing this questionnaire guarantees the truthfulness and accuracy of all the statements made.
10. The accuracy of the answers to the questionnaire, their completeness and the attached documentation will be taken into account in the tender evaluation. Please be aware that a lack of data may result in their non‑compliance in the related item of evaluation.

VOLUME 1

SECTION 4

# FORM 4.1 GENERAL INFORMATION ABOUT THE TENDERER

1. Name of company ............................................................................................................................................................................................................................................................
2. Registered address ............................................................................................................................................................................................................................................................Telephone .............................. Fax................................. Telex........................... E-mail..............................................................
3. Names and nationalities of principals/directors and associates....................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................
4. Type of company (natural person, partnership, corporation, etc.).............................................................................................................
5. Description of company (e.g. general civil engineering contractor)
6. Company’s nationality ...........................................................
7. Number of years' experience as contractor  
   - in own country.......................  
   - internationally......................
8. Registration details ...................................................................................................................................................................................  
   Please attach copy of the registration certificate
9. Equity in the company  
   Shares (%)............................................................................................................  
   ............................................................................................................
10. Name(s) and address(es) of companies involved in the project and whether parent/subsidiary/subcontractor/other:..............................................................................................................................................................................................................................................................................................................................
11. If the company is a subsidiary, what involvement, if any, will the parent company have in the project?

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

1. Foreign companies must state whether they are established in the state of the Contracting Authority in accordance with applicable regulations (for information only)

Signature: ..................................................................................

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

Date:.....................

VOLUME 1

**SECTION 4**

# FORM 4.2 ORGANISATION CHART

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

Signature...........................................................

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

Date.......................

VOLUME 1

SECTION 4:

# FORM 4.3 POWER OF ATTORNEY

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

Signature: ..................................................................................

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

Date: .....................

VOLUME 1

SECTION 4

# FORM 4.4 FINANCIAL STATEMENT

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

4.4.1 Basic capital

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

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

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

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

............................................ (euro or national currency)

4.4.4[[11]](#footnote-12) Please attach copies of the company’s certified statements of account for the previous three years (with translations into the procedural language, if necessary) from which the following basic data will be abstracted. Please provide estimates of the same information for the next two years.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Euro or NC | Year-2 | Year-1 | Last year | Current year | Year+1 | Year+2 |
| 1.Total assets  2.Total liabilities  *Net Value (1 minus 2)* | ....................  .................... | ....................  .................... | ....................  .................... | ....................  .................... | ....................  .................... | ....................  .................... |
| 3.Liquid assets  4.Short-term debts  *Working capital (3 minus 4)* | ....................  .................... | ....................  .................... | ....................  .................... | ....................  .................... | ....................  .................... | ....................  .................... |
| 5.Pre-tax profits  6.Losses | .................................................................... | .................................................... | .................................................... | ................................................................ | ...................................................................... | ........................................................................ |

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

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

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

Signature: ..................................................................................

(*person(s) authorised to sign on behalf of the tenderer*)

Date: .....................

Signature: ..................................................................................

(*person(s) authorised to sign on behalf of the tenderer*)

Date: .....................









**VOLUME 1**

**SECTION 4**

***FORMS 4.6.1 TO 9******TECHNICAL QUALIFICATIONS***

**VOLUME 1**

**SECTION 4**

**FORM 4.6.1.1****OVERVIEW OF THE TENDERER’S STAFF**

i - Overview

a - Directors and management ........................

b - Administrative staff ........................

c - Technical staff

- Engineers ........................

- Surveyors

- Foremen ........................

- Mechanics

- Technicians ........................

- Machine operators

- Drivers ........................

- Other skilled staff

- Labourers and unskilled staff ........................

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Total ===========

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

a - Site management ........................

b - Administrative staff ........................

c - Technical staff

- Engineers ........................

- Surveyors

- Foremen ........................

- Mechanics

- Technicians ........................

- Machine operators

- Drivers ........................

- Other skilled staff

- Labourers and unskilled staff ........................

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Total ===========

Signature .................................................... Date: ……………………………..

(*person(s) authorised to sign on behalf of the tenderer*)

**VOLUME 1**

**SECTION 4**

**FORM 4.6.1.2**

**STAFF TO BE EMPLOYED ON THE CONTRACT**

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

Signature ...................................................... Date: …………………………………..

(*person(s) authorised to sign on behalf of the tenderer*)

**VOLUME 1**

**SECTION 4**

**FORM 4.6.1.3**

**PROFESSIONAL EXPERIENCE OF KEY STAFF**

**CURRICULUM VITAE**

(Maximum 3 pages + 3 pages of annexes)

Proposed position in the contract:

1. Surname:

2. Name:

3. Date and place of birth:

4. Nationality:

5. Civil status:

Address (phone/fax/e-mail):

6. Education:

|  |  |
| --- | --- |
| *Institutions:* |  |
| *Date:*  *From (month/year)*  *To (month/year)* |  |
| *Degree or qualification:* |  |

7. Language skills

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

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| *Language* | *Level* | *Passive* | *Spoken* | *Written* |
|  | *Mother tongue* |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

8. Membership of professional bodies:

9. Other skills (e.g. computer literacy):

10. Current position:

11. Years of professional experience:

12. Key qualifications:

13. Specific experience in non-industrialised countries:

|  |  |  |
| --- | --- | --- |
| *Country* | *Date: from (month/year) to (month/year)* | *Name and brief description of the project* |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

14. Professional experience:

|  |  |
| --- | --- |
| *Date: from (month/year) to (month/year)* |  |
| Place |  |
| Company/organisation |  |
| Position |  |
| Job description |  |

15. Others:

15a. Publications and seminars:

15b. References:

Signature ............................................

(*person(s) authorised to sign on behalf of the tenderer*)

Date...........................

**VOLUME 1**

**SECTION 4**

**FORM 4.6.2**

**PLANT**

Plant proposed and available for implementation of the contract[[12]](#footnote-13)

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | DESCRIPTION (type/make/model) | Power/ capacity | No of units | Age (years) | Owned (O) or hired (H)/ and percentage of ownership | Origin (country) | Current approximate value in euro or national currency |
| ***A)*** | **CONSTRUCTION PLANT** |  |  |  |  |  |  |
|  |  |  |  |  | / |  |  |
|  |  |  |  |  | / |  |  |
|  |  |  |  |  | / |  |  |
|  |  |  |  |  | / |  |  |
|  |  |  |  |  | / |  |  |
|  |  |  |  |  | / |  |  |
|  |  |  |  |  | / |  |  |
|  |  |  |  |  | / |  |  |
|  |  |  |  |  | / |  |  |
|  |  |  |  |  | / |  |  |
|  |  |  |  |  | / |  |  |
|  |  |  |  |  | / |  |  |
|  |  |  |  |  | / |  |  |
|  |  |  |  |  | / |  |  |
|  |  |  |  |  | / |  |  |
|  |  |  |  |  | / |  |  |

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

Signature ...........................................................

(*person(s) authorised to sign on behalf of the tenderer*)

Date................................................

**VOLUME 1**

**SECTION 4**

**FORM 4.6.3**

**WORK PLAN AND PROGRAMME**

4.6.3.1 State the proposed location of your main office on the site, stations (steel/concrete/asphalt structures), warehouses, laboratories, accommodation, etc. (sketches to be attached as required).

4.6.3.2 Give a brief outline of your programme for completing the works in accordance with the required method of construction and stated time of completion.

4.6.3.3 Attach a critical milestone bar chart (schedule of execution) representing the construction programme and detailing relevant activities, dates, allocation of labour and plant resources, etc.

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

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

Signature .......................................................

(*person(s) authorised to sign on behalf of the tenderer*)

Date .....................................

**VOLUME 1**

**SECTION 4**

**FORM 4.6.4**

**EXPERIENCE AS CONTRACTOR**

**4.6.4.1** List of contracts of similar nature and scale performed during the past 5 years.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Name of project/type of works | Total value of works the Contractor was responsible for2 | Period of contract | Start date | Percentage of works completed | Contracting authority and place | Prime contractor (P) or subcontractor (S) | Final acceptance issued? - Yes - Not yet (current contracts) – No |
| ***A) In home country*** |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Name of project/type of works | Total value of works the Contractor was responsible for[[13]](#footnote-14) | Period of contract | Start date | Percentage of works completed | Contracting authority and place | Prime contractor (P) or subcontractor (S) | Final acceptance issued? - Yes - Not yet (current contracts) – No |
| ***B) Abroad*** |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |

**4.6.4.2[[14]](#footnote-15)** Please attach here available references and certificates from the relevant Contracting Authorities

Signature .......................................................................................

(*person(s) authorised to sign on behalf of the tenderer*)

Date ..................

**VOLUME 1**

**SECTION 4**

**FORM 4.6.5**

**DATA ON JOINT VENTURES**

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

Signature: .................................................................................. Date: …………………… (*person(s) authorised to sign on behalf of the tenderer*)

**VOLUME 1**

**SECTION 4**

**FORM 4.6.6**

**LITIGATION HISTORY**

Please provide information on any history of litigation or arbitration resulting from contracts executed during the last 3 years or currently under execution.

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

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

Signature ......................................................................................

(*person(s) authorised to sign on behalf of the tenderer*)

Date ..................

**VOLUME 1**

**SECTION 4**

**FORM 4.6.7**

**QUALITY ASSURANCE SYSTEM(S)**

Please provide details of the quality assurance system(s) you propose using to ensure successful completion of the works.

Signature .................................................

(*person(s) authorised to sign on behalf of the tenderer*)

Date ..................

**VOLUME 1**

**SECTION 4**

**FORM 4.6.8**

**ACCOMMODATION FOR THE SUPERVISOR**

Please attach sketches and data detailing the accommodation and facilities intended to be provided by the tenderer under the relevant items in the bill of quantities/breakdown of the overall price.

Signature .................................................

(*person(s) authorised to sign on behalf of the tenderer*)

Date ..................

**VOLUME 1**

**SECTION 4**

**FORM 4.6.9**

**FURTHER INFORMATION**

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

Signature ............................................

(*person(s) authorised to sign on behalf of the tenderer*)

Date

# VOLUME 1

**ADMINISTRATIVE COMPLIANCE GRID AND EVALUATION GRID**

**ADMINISTRATIVE COMPLIANCE GRID**

|  |  |  |  |
| --- | --- | --- | --- |
| **Contract title :** | Asphalting and Horizontal Services No.6 | **Publication reference :** | PROC/895/19/ |

| Tender envelope number | Tenderer name | Tender submission form duly completed?  (Yes/No) | others | Tenderer's declaration (signed by each consortium member, if appropriate)?  (Yes/No) | Language as required? | Sub-contracting statement acceptable?  (Yes/No/ Not Applicable) | Nationality of sub-contractors eligible?  (Yes/No) | Overall decision? (Accept / Reject) |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 1 |  |  |  |  |  |  |  |  |
| 2 |  |  |  |  |  |  |  |  |
| 3 |  |  |  |  |  |  |  |  |

|  |  |
| --- | --- |
| **Chairperson's name** |  |
| **Chairperson's signature** |  |
| **Date** |  |

**EVALUATION GRID**

|  |  |  |  |
| --- | --- | --- | --- |
| **Contract title:** | Asphalting and horizontal services No.6 | **Publication reference:** | **PROC/895/19/** |

| Tender envelope N° | Tenderer's name | Rules of origin respected?  (Yes/No) | Economic and financial capacity? (OK/a/b/…) | Professional capacity? (OK/a/b/…) | Technical capacity? (OK/a/b/…) | Compliance with technical specifications? (OK/a/b/…) | Ancillary services as required? (OK/a/b/…/NA) | Nationalities of subcontractors eligible?  (Yes/No) | Other technical requirements in tender dossier?  (Yes/No/Not applicable) | Technical compliance? (Yes/No) | Observations |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |

|  |  |
| --- | --- |
| **Evaluator's name** |  |
| **Evaluator's signature** |  |
| **Date** |  |

# VOLUME 2

# SECTION 1

# CONTRACT FORM

DRAFT FRAMEWORK WORKS CONTRACT FOR EUROPEAN UNION EXTERNAL ACTIONS

**NO PROC/895/19**

**FINANCED FROM THE EU GENERAL BUDGET**

Between

**European Union Rule of Law Mission in Kosovo (EULEX),** with its address at Ndertesa Farmed “Muharrem Fejza” p.n. Lagja e Spitalit 10000 Pristina, Kosovo, represented for the purpose of this contract under delegated authority by the Head of Mission Support Department, Mr. Sean Kerins

(‘The Contracting Authority’),

of the one part,

and

<Full official Name of Contractor>

[<Legal status/title>][[15]](#footnote-16)

[<Official registration number>][[16]](#footnote-17)

<Full official address>

[<VAT number>],[[17]](#footnote-18)

(‘the Contractor’)

of the other part,

have agreed as follows:

**CONTRACT TITLE: Asphalting and Horizontal Services no.6 under Framework Contract**

**Identification number PROC/895/19**

Whereas the Contracting Authority would like the Contractor to carry out the following works:

**Framework Contract for Asphalting and Horizontal Services**

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

**It is hereby agreed as follows:**

**(1)** In this Contract, words and expressions shall have the meanings assigned to them in the contractual conditions set out below.

**(2)** The following documents shall be deemed to form and be read and construed as part of this Contract, in the following order of precedence:

1. the Framework Contract,
2. the Special Conditions,
3. the General Conditions,
4. the Bill of quantities (after arithmetical corrections),
5. the Technical and /or Performance Specifications,
6. the tender
7. any other documents forming part of the Contract.

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

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

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

- Contract price (excluding VAT/other taxes) Euro xxxxxxx

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

The unit prices for the works shall be that shown in the bill of quantities and shall be the sole remuneration owed by the Contracting Authority to the Contractor under the framework contract. The unit prices shall be firm and shall not be subject to revision for orders placed during the performance of the framework contract.

**5)** Other specific conditions applying to the Contract:

The framework contract will be implemented by “Works Order” i.e. whenever the Contracting Authority intends to acquire works pursuant to this framework contact, it shall send a “Works order” to the contractor, specifying the description, bill of quantities and the starting date for the works to be executed. The execution of works shall take place in accordance with the terms and conditions of the special and general conditions, supplemented and/or amended by the specific terms for each particular “Works Order”.

The yearly estimated quantities specified in the Bill of Quantities are only indicative and do NOT compel the contracting authority to buy any of them. The contracting authority may at its own discretion acquire fewer or more quantities than those estimated in the Bill of Quantities. The overall financial ceiling being the maximum budget available for this framework contract as expressed in article 4 above.

The contractor shall NOT be entitled to compensation and shall NOT be allowed to claim for changes of the unit prices, in case the contracting authority decides to acquire fewer, or more quantities than the indicative ones specified per item in the Bill of Quantities and/or in case the contracting authority decides NOT to purchase ANY of these quantities.

In witness whereof the parties hereto have signed the Contract. This Contract shall be valid for one

(1) year period and take effect on the date on which it is signed by the last party, namely the Contractor.

Done in English in four (4) originals, three (3) originals being for the Contracting Authority and one (1) original being for the Contractor.

|  |  |  |  |
| --- | --- | --- | --- |
| **For the Contractor** | | **For the Contracting Authority** | |
| Name: |  | Name: | Sean Kerins |
| Title: |  | Title: | Head of Mission Support Department - EULEX Kosovo |
| Signature: |  | Signature: |  |
| Date: |  | Date: |  |

**VOLUME 2**

**SECTION 3**

**SPECIAL CONDITIONS**

**CONTENTS**

These conditions amplify and supplement the General Conditions governing the Contract. Unless the Special Conditions provide otherwise, the General Conditions remain fully applicable. The numbering of the Articles of the Special Conditions is not consecutive but follows the numbering of the General Conditions. Other Special Conditions should be indicated afterwards.

Article 2 Language of the Contract

2.1 The language used shall be English.

**Article 4 Communication**

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

For the Contracting Authority:

|  |  |
| --- | --- |
| **Name:** | EULEX Kosovo  Attn: XXXX |
| **Address:** | EULEX Kosovo  Project Manager  Ndërtesa Farmed  “Muharren Fejza” p.n.  Lagja e Spitalit  10000 Pristina, Kosovo |
| **Telephone:** |  |
| **Fax:** |  |

For the Contractor:

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

**Article 5 Supervisor and Supervisor’s representative**

**5.1**       The contracting authority shall appoint a supervisor (project manager) to carry out duties referred to in the contract. The supervisor may have further staff to which he delegates matters related to the contract.

The supervisor may issue to the contractor (at any time) instructions which may be necessary for the execution of works and the remedying of any defects, all in accordance with the contract. If an instruction constitutes a modification, Article 37 of General Conditions shall apply.

As established within Article 37 of the general conditions, administrative orders regarding the execution of the contract shall be given by the supervisor after due consultation with the contracting authority, such consultation may be conducted by e-mail, technical meetings and/or briefings on the status of the works.

**5.2**       The supervisor shall obtain the formal approval of the contracting authority prior to taking the following action specified in the general conditions:

-          any extension of time determined under Article 35 of the general conditions.

**5.3** Administrative orders issued by the Supervisor shall be dated, numbered and delivered to the Contractor or its representative as specified under Article 4 above

**Article 9 Access to the site**

9.1 The staff needed for the implementation of the works will be issued special permission for access to the site.

9.2 The period of access to the site will be limited by the Contracting Authority, but however not less than 8 working hours per working day Fadmins(Monday-Thursday 08:00-17:00 hrs and Friday 08:00-16:00 hrs). The Supervisor might extend such period upon Contractor’s request by issuing an Administrative Order.

**Article 12 General Obligations**

12.9 The visibility measures must comply with the rules laid down in the Communication and Visibility Manual for EU External Actions published by the European Commission: <http://ec.europa.eu/europeaid/work/visibility/index_en.htm>

**Article 15 Performance guarantee**

15.1 A performance guarantee will be required only if the value of the individual Work Order is equal or above 20.000 Euros at the time of the issuance of the Work Order referred to in the contract and it is set at 5 % of the amount of the Work Order. The Performance Guarantee must be presented in the form specified in the annex to the tender dossier. It will be released within 60 days of the issue of the final acceptance certificate by the Contracting Authority, except for the proportion assigned to after-sales service. This guarantee must be provided together with the return of the countersigned Work Order no later than 30 days after the tenderer receives the Work Order signed by the contracting authority. If the selected tenderer fails to provide such a guarantee within this period, the Work Order will be void.

**Article 16 Liabilities and Insurance**

16.1 a) By way of derogation from Article 16.1, a) paragraph 2, of the general conditions, compensation for damage to the works resulting from the Contractor's liability in respect of the Contracting Authority is capped at an amount equal to the contract value.

16.1 b) By way of derogation from Article 16.1, b), paragraph 2, of the general conditions, compensation for damage resulting from the Contractor's liability in respect of the Contracting Authority is capped at an amount equal to the contract value in Euro.

16.2 a)   By derogation from Article 16.2, a) first paragraph of the general conditions, **at the latest by the date of the countersigned contract**, the Contractor shall ensure that itself, its staff, its subcontractors and any person for which the Contractor is answerable, are adequately insured with insurance companies recognized on the international insurance market, unless the Contracting Authority has given its express written consent on a specific insurance company.]

16.2 a) By derogation from Article 16.2, a) paragraph 2 of the General Conditions it is **at the latest by the date of the countersigned contract** that the Contractor shall provide the Contracting Authority and the Supervisor with all cover notes and/or insurance certificates showing that the Contractor's obligations relating to insurance are fully respected. ]

**Article 17 Programme of implementation of tasks**

17.1 The Contractor shall submit to the Supervisor for approval a detailed implementation programme **within 10 days** from the date of issuance of the “Work Order”.

17.2. The Supervisor shall return this document to the Contractor with any relevant remarks within 10 days of receipt, save where the Supervisor, within those 10 days, notifies the Contractor of its wish for a meeting in order to discuss the documents submitted.

**Article 27 Demolished materials**

27.2 Unsuitable materials from demolishing and dismantling remain the property of the Contractor and shall be disposed of in a manner and at a location to the approval of the Supervisor.

Unless otherwise specified or directed suitable material from excavation shall be used for fill, backfill of structures, road embankment or other parts of the Works. Surplus material and material determined unsuitable by the Supervisor shall be disposed of if so required by the Supervisor, in spoil- dumps designated by the Contractor and approved by the Supervisor. No material shall be disposed of in spoil-dumps or otherwise, unless approved by the Supervisor. Shortage of material caused by any unauthorized disposal of suitable material shall be made good at the Contractor's expense.

Unless otherwise directed material suitable for fill which at the time of excavation cannot be placed in its final position in the Permanent Works shall be stockpiled for later reuse. No measurement for payment nor payment will be made separately or directly for any stockpiling and subsequent re- excavation and re-handling of stockpiled material.

27.4 Only suitable material will remain on the site, unsuitable materials from demolishing and dismantling remain the property of the Contractor and shall be disposed of in a manner and at a location to the approval of the Supervisor.

**Article 29 Temporary works**

29.2 Should the Contractor need any additional information or drawings apart from those being part of the Tender Dossier, he will put his request to the Supervisor. Final decision will be on the side of the supervisor. The Contractor is responsible for any temporary works deemed necessary to complete the contracted works.

**Article 33    Commencement order**

33.1 The date on which the execution of works must start shall be determined by means of a “Works Order/Commencement Order” to be issued by the Supervisor during the implementation period of the framework contract.

The date of commencement shall be **within maximum 20 calendar days** after issuing an administrative order/work order to be issued by the Supervisor during the implementation period of the framework contract, notifying the Contractor of the date on which the period of implementation of tasks must start, but not before handing over the Insurance policy.

The period of the tasks will be specified in the “Works Order/Commencement Order”.

Under no circumstances may purchase orders be placed before the date on which the framework contract enters into force and/or after the framework contract expires

**Article 34 Period of implementation of tasks**

34.1 The framework contract shall be concluded for a period of **one (1) year**, with effect on the date on which it commences, (although the Framework contract may be terminated at short notice. See article 34.4 of the special conditions).

34.2 The contracting authority may, at its own discretion extend this framework contract. Such extension shall be made under negotiated procedure. The contract may only be extended once, such that the duration of extension does not exceed the duration of the initial framework contract. Any extension will be conditioned and limited by the Mission’s mandate, the availability of corresponding budgetary funds and the satisfactory fulfilment of its obligations by the contractor.

34.3 The period of implementation of tasks: working days in figures and words will be specifying in the “Works Order”.

The Contractor shall submit to the Supervisor for approval a detailed implementation programme within 10 working days from the date of receiving the “Works Order”.

34.4 In case that the mission’s mandate ends earlier this contract is terminated automatically. In addition to the grounds for termination defined in the General Conditions, the Contracting Authority may terminate the contract, in whole or in part, at any time after giving **thirty (30) days notice** to the Contractor, in case EULEX’s mandate was not to be prolonged and/or in case of budgetary issues affecting the financing of the project or for any other reasons the Contracting Authority deems as necessary.

In case of termination of the contract on such grounds, the Contractor shall not be entitled to claim any indemnity for loss suffered.

The Contractor shall only be entitled to claim for sums owing to it for services already provided and/or for services to be provided until the actual date of termination of the contract.

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

36.1 The rate of liquidated damages for delays in the completion of works shall be 0.1% of the contract price for every day or part thereof which elapses between the end of the period of implementation of tasks and the actual date of completion, up to a maximum amount of 10 % of the contract price or, if the contract is subdivided into phases, 10 % of the price of the phase concerned.

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

40.1 No rule of origin is applied.

**Article 43 Ownership of plant and materials**

43.2 The equipment, temporary structures, plant and materials on the site shall for the duration of the execution of the works, be vested in the Contracting Authority.

**Article 44: General principles for payments**

44.1 Payments shall be made in Euro.

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

Payments shall be authorized and made by the Contracting Authority

44.3 By derogation, pre-financing payment to the Contractor for the lump-sum advance shall be made within 30 days. Other pre-financing payments to the Contractor shall be made within 90 days. Interim payments to the Contractor of the amounts due under each of the interim payment certificates approved by the supervisor shall be made within 90 days, and the final payment to the Contractor of the amounts due after the final statement of account issued by the Supervisor shall be made within 90 days.

**Article 46 Pre-financing**

46.1 The total amount of the pre-financing must not exceed 20 % of the original contract price.

46.2 If a pre-financing of above mentioned 10 % is requested the Contractor must provide a financial guarantee for the full amount of the pre-financing payment (the contractor is not obliged to ask for pre financing).

If a pre-financing is requested the Contractor must provide a financial guarantee for the full amount of the pre-financing payment (the contractor is not obliged to ask for pre financing).

46.8 Repayment of the pre-financing shall take the form of deductions based on monthly claims.

1. The flat‑rate pre-financing (maximum of 10 %) shall be repaid by means of deductions from instalments and, if necessary, the balance due to the Contractor. This repayment shall begin with the first instalment and be completed, at the very latest, by the time 80 % of the amount of the Contract has been paid.

Repayment shall be made in the same currency as the pre-financing.

The amount to be deducted from each instalment shall be calculated using the following formula:



where:

R = the amount to be repaid

Va = the total amount of pre-financing

Vt = the initial contract amount

D = the amount of the instalment.

The result is rounded up to two decimal places.

1. The pre-financing for plant, machinery and tools — and the pre-financing for other major prior outlays (20 % maximum) — shall be repaid by means of deductions from instalments and, if necessary, the balance due to the Contractor. Repayment shall begin with the first instalment and end, at the very latest, by the time 90 % of the amount of the Contract has been paid.

The amount to be deducted from each instalment shall be calculated using the following formula:



where:

R = the amount to be repaid

Va = the total amount of pre-financing

Vt = the initial contract amount

D = the amount of the instalment.

**Article 47 Retention monies**

47.1 The sum to be retained from contract price to guarantee implementation of the Contractor's obligations during the defects liability period is **10%** of the contract price, after Signed Final statement of account for each Work Order. or Subject to the approval of the Contracting Authority, the Contractor may, if it so wishes, substitute, not later than the date fixed for the commencement of the works, these retention sums by a retention guarantee, respecting the provisions of Articles 15.3 and 15.6 of the General Conditions.

**Article 48 Price revision**

48.1 Prices are fixed and shall not be revised.

**Article 49 Measurement**

49.1 This is a unit-price contract. Apart from the amounts qualified as lump sums in the Bill of   
 Quantities, this is a unit-price contract.

**Article 50 Interim payments**

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

**Article 51 Final statement of account**

51.1 The Contractor shall, submit to the Supervisor a draft final statement of account when it applies for the provisional acceptance certificate. In order to enable the Supervisor to prepare the final statement of account, the draft final statement of account is submitted with supporting documents showing in detail the value of the work done in accordance with the contract and all further sums which the Contractor considers to be due to it under the contract.

51.2 Within 30 days from issuing the certificate of final acceptance referred to in article 62, the Supervisor shall prepare and signed the final statement of account.

**Article 60 Provisional acceptance**

60.1 In complement to article 60.1 of the General Conditions a certificate of provisional acceptance shall be issued by the Project Manager after the works have satisfactorily passed the tests on completion.

**Article 61 Defects liability**

61.1 The defects liability period is defined as the period commencing on the date of provisional acceptance, during which the Contractor is required to make good any effect in, or damage to, any part of the work which may appear or occur during this period as notify by the Supervisor or the Contracting Authority. The rights and obligations of the parties with regard to this defects liability period are laid down in Article 61 of the General Conditions.

The duration of the defects liability period is **365 days**. The defects liability period shall commence on the date of provisional acceptance is signed by both parties.

**Article 68 Dispute settlement**

68.1 Any dispute arising out of or relating to this contract which cannot be settled otherwise shall be referred to the exclusive jurisdiction ofthe courts of Brussels, Belgium.

\* \* \*

**VOLUME 2**

**SECTION 2**

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

**CONTENTS**

**PRELIMINARY PROVISIONS .......................................................................................................... 3**

Article 1 - Definitions ................................................................................................................... 3

Article 2 - Language of the contract ............................................................................................. 3

Article 3 - Order of precedence of contract documents ................................................................ 3

Article 4 - Communications.......................................................................................................... 3

Article 5 - Supervisor and Supervisor's representative ................................................................. 4

Article 6 - Assignment .................................................................................................................. 4

Article 7 - Subcontracting ............................................................................................................. 5

**OBLIGATIONS OF THE CONTRACTING AUTHORITY............................................................ 6**

Article 8 - Supply of documents ................................................................................................... 6

Article 9 - Access to site ............................................................................................................... 7

Article 10 - Assistance with local regulations ................................................................................ 7

Article 11 - Delayed payments to the Contractor's staff ................................................................. 7

**OBLIGATIONS OF THE CONTRACTOR ....................................................................................... 8**

Article 12 - General obligations...................................................................................................... 8

Article 13 - Superintendence of the works ................................................................................... 11

Article 14 - Staff ........................................................................................................................... 11

Article 15 - Performance guarantee .............................................................................................. 12

Article 16 - Liabilities, Insurance and Security arrangements ...................................................... 13

Article 17 - Programme of implementation of tasks ..................................................................... 16

Article 18 - Detailed breakdown of prices .................................................................................... 17

Article 19 - Contractor's drawings and execution studies............................................................. 17

Article 20 - Sufficiency of tender prices ....................................................................................... 18

Article 21 - Exceptional risks ....................................................................................................... 19

Article 22 - Safety on sites............................................................................................................ 20

Article 23 - Safeguarding adjacent properties .............................................................................. 20

Article 24 - Interference with traffic ............................................................................................. 20

Article 25 - Cables and conduits ................................................................................................... 21

Article 26 - Setting-out ................................................................................................................. 21

Article 27 - Demolished materials ................................................................................................ 22

Article 28 - Discoveries ................................................................................................................ 22

Article 29 - Temporary works....................................................................................................... 23

Article 30 - Soil studies ................................................................................................................ 23

Article 31 - Overlapping contracts................................................................................................ 23

Article 32 - Patents and licenses ................................................................................................... 24

**IMPLEMENTATION OF THE TASKS AND DELAYS ................................................................ 24**

Article 33 - Commencement orders .............................................................................................. 24

Article 34 - Period of implementation of tasks ............................................................................. 25

Article 35 - Extension of the period of implementation of tasks .................................................. 25

Article 36 - Delays in implementation of the tasks....................................................................... 26

Article 37 - Amendments.............................................................................................................. 26

Article 38 - Suspension................................................................................................................. 28

**MATERIALS AND WORKMANSHIP ............................................................................................ 30**

Article 39 - Work register ............................................................................................................. 30

Article 40 - Origin and quality of works and materials ................................................................ 30

Article 41 - Inspection and testing ................................................................................................ 31

Article 42 - Rejection.................................................................................................................... 32

Article 43 - Ownership of plant and materials .............................................................................. 33

**PAYMENTS......................................................................................................................................... 34**

Article 44 - General principles...................................................................................................... 34

Article 45 - Provisional price contracts ........................................................................................ 35

Article 46 - Pre-financing ............................................................................................................. 35

Article 47 - Retention monies ....................................................................................................... 36

Article 48 - Revision of prices ...................................................................................................... 37

Article 49 - Measurement ............................................................................................................. 37

Article 50 - Interim payments ....................................................................................................... 38

Article 51 - Final statement of account ......................................................................................... 40

Article 52 - Direct payments to sub-contractors ........................................................................... 41

Article 53 - Delayed payments ..................................................................................................... 42

Article 54 - Payments to third parties ........................................................................................... 42

Article 55 - Claims for additional payment .................................................................................. 42

Article 56 - End date ..................................................................................................................... 43

**ACCEPTANCE AND DEFECTS LIABILITY ................................................................................ 43**

Article 57 - General principles...................................................................................................... 43

Article 58 - Tests on completion................................................................................................... 44

Article 59 - Partial acceptance ...................................................................................................... 44

Article 60 - Provisional acceptance .............................................................................................. 44

Article 61 - Defects liability ......................................................................................................... 45

Article 62 - Final acceptance ........................................................................................................ 46

**BREACH OF CONTRACT AND TERMINATION ....................................................................... 47**

Article 63 - Breach of contract...................................................................................................... 47

Article 64 - Termination by the Contracting Authority ................................................................ 47

Article 65 - Termination by the Contractor .................................................................................. 50

Article 66 - Force majeure ............................................................................................................ 50

Article 67 - Decease...................................................................................................................... 51

**SETTLEMENT OF DISPUTES AND APPLICABLE LAW.......................................................... 52**

Article 68 - Settlement of disputes................................................................................................ 52

Article 69 - Applicable Law ......................................................................................................... 53

**FINAL PROVISIONS......................................................................................................................... 53**

Article 70 - Administrative sanctions ........................................................................................... 53

Article 71 - Verifications, checks and audits by European Union bodies .................................... 53

Article 72 - Data protection .......................................................................................................... 54

**PRELIMINARY PROVISIONS**

***Article 1 - Definitions***

1.1. The definitions of the terms used throughout this General Conditions are laid down in the "Glossary of terms", annex A1a to the Practical Guide, which forms an integral part of this contract.

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

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

1.4. Words designating persons or parties shall include firms and companies and any organisation having legal capacity.

***Article 2 - Language of the contract***

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

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

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

***Article 4 - Communications***

4.1. Any written communications between the Contracting Authority and/or the Supervisor on the one hand, and the Contractor on the other hand, shall state the contract title and identification number and shall be sent by post, cable, telex, facsimile transmission, e- mail or personal delivery, to the appropriate addresses designated by those parties for that purpose in the Special Conditions.

4.2. If the sender requires evidence of receipt, it shall state such requirement in its communication and shall demand such evidence of receipt whenever there is a deadline for the receipt of the communication. In any event, the sender shall take all the necessary measures to ensure timely receipt of its communication.

4.3. Wherever the contract provides for the giving or issue of any notice, consent, approval, certificate or decision, unless otherwise specified such notice, consent, approval, certificate or decision shall be in writing and the words 'notify', 'consent', 'certify',

'approve' or 'decide' shall be construed accordingly. Any such consent, approval, certificate or decision shall not unreasonably be withheld or delayed.

***Article 5 - Supervisor and Supervisor's representative***

5.1. The Supervisor shall carry out the duties specified in the contract. Except as expressly stated in the contract, the Supervisor shall not have authority to relieve the Contractor of any of its obligations under the contract.

5.2. The Supervisor may, from time to time, while retaining ultimate responsibility, delegate to the Supervisor's representative any of the duties and authority vested in the Supervisor and he may at any time revoke such delegation or replace the representative. Any such delegation, revocation or replacement shall be in writing and shall not take effect until a copy thereof has been delivered to the Contractor. The administrative order which determines the duties, authority and identity of the Supervisor's representative shall be issued by the Supervisor at the moment of the commencement order. The role of the Supervisor’s representative shall be to supervise and inspect works and to test and examine the materials employed and the quality of workmanship. Under no circumstances will the Supervisor’s representative be empowered to relieve the Contractor of its obligations under the contract or – save where express instructions to that effect are given below or in the contract – order works resulting in an extension of the period of implementation of tasks or additional costs to be paid by the Contracting Authority or introduce variants in the nature or scale of the works.

5.3. Any communication given by the Supervisor's representative to the Contractor in accordance with the terms of such delegation shall have the same effect as though it had been given by the Supervisor, provided that:

a) any failure on the part of the Supervisor's representative to disapprove any work, materials or plant shall not prejudice the authority of the Supervisor to disapprove such work, materials or plant and to give the instructions necessary for the rectification thereof;

b) the Supervisor shall be at liberty to reverse or vary the contents of such communication.

5.4. Instructions and/or orders issued in writing by the Supervisor shall be considered an administrative order. Such orders shall be dated, numbered and entered by the Supervisor in a register, and copies thereof delivered by hand, where appropriate, to the Contractor's representative.

***Article 6 - Assignment***

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

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

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

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

6.3. For the purpose of Article 6.2 the approval of an assignment by the Contracting Authority shall not relieve the Contractor of its obligations for the part of the contract already performed or the part not assigned for which the Contractor's performance guarantee may be kept.

6.4. If the Contractor has assigned its contract without authorization, the Contracting Authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Article 63 and 64.

6.5. Assignees must satisfy the eligibility criteria applicable for the award of the contract and they cannot fall under the exclusion criteria described in the tender dossier.

6.6. Before giving its approval the Contracting Authority should receive as needed a performance guarantee which may be requested for the full contract, a pre-financing guarantee and retention guarantee, from the assignees.

***Article 7 - Subcontracting***

7.1. A subcontract shall be valid only if it is a written agreement by which the Contractor entrusts performance of a part of the contract to a third party. Simple plant hire, labour only and supply contracts are not considered or construed "subcontracts" for the purpose of this Article.

7.2. The Contractor shall request to the Contracting Authority the authorisation to subcontract.

The request must indicate the elements of the contract to be subcontracted and the identity of the subcontractors.

Within 30 days of receipt of this request, the Contracting Authority must either extend the delay for a maximum of 15 days or notify the Contractor of its decision, stating reasons should he withhold such authorization. If the Contracting Authority fails to notify its decision within the time limit referred to above, the request is deemed to be approved at the end of the time limit.

7.3. Subcontractors must satisfy the eligibility criteria applicable for the award of the contract and they cannot fall under the exclusion criteria described in the tender dossier.

7.4. Subject to Articles 7.6 and 52, no subcontract creates contractual relations between any subcontractor and the Contracting Authority.

7.5. The Contractor shall be responsible for the acts, defaults and negligence of its sub- contractors and their agents or employees, as if they were the acts, defaults or negligence of the Contractor, its agents or employees. The approval by the Contracting Authority of

the sub-contracting of any part of the contract or of the subcontractor to perform any part of the works shall not relieve the Contractor of any of its obligations under the contract.

7.6. If a subcontractor has undertaken any continuing obligation for a period exceeding that of the defects liability period under the contract towards the Contractor in respect of the work executed or the goods, materials, plant or services supplied by the subcontractor, the Contractor shall, at any time after the expiration of the defects liability period, transfer immediately to the Contracting Authority, at the Contracting Authority's request and cost, the benefit of such obligation for the unexpired duration thereof. If the Contractor fails to effect such a transfer, the said continuing obligation(s) shall be transferred automatically.

7.7. If the Contractor enters into a subcontract without approval, the Contracting Authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Article 63 and 64.

7.8. If a subcontractor is found by the Contracting Authority or the Supervisor to be incompetent in discharging its duties, the Contracting Authority or the Supervisor may request the Contractor to forthwith remove the subcontractor from the site and either to provide a subcontractor with qualifications and experience acceptable to the Contracting Authority as a replacement, or to resume the implementation of the tasks itself.

**OBLIGATIONS OF THE CONTRACTING AUTHORITY**

***Article 8 - Supply of documents***

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

8.2. The Contracting Authority co-operates with the Contractor to provide information that the latter may reasonably request in order to perform the contract.

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

8.4. The Supervisor shall have authority to issue to the Contractor administrative orders incorporating such supplementary documents and instructions as shall be necessary for the proper and adequate execution of the works and the remedying of any defects therein.

***Article 9 - Access to site***

9.1. The Contracting Authority shall, in due time and in conformity with the progress of the works, place the site and access thereto at the disposal of the Contractor in accordance with the approved programme of implementation of tasks referred to in Article 17. The Contractor grants appropriate access to other persons as set out in the Special Conditions or as instructed.

9.2. Any land procured for the Contractor by the Contracting Authority shall not be used by the Contractor for purposes other than the implementation of tasks.

9.3. The Contractor shall preserve any facilities placed at its disposal in a good state while it is in occupation and shall, if so required by the Contracting Authority or the Supervisor, restore them to their original state on completion of the contract, taking into account normal wear and tear.

9.4. The Contractor shall not be entitled to any payment for improvements resulting from work carried out on its own initiative.

***Article 10 - Assistance with local regulations***

10.1. The Contractor may request the assistance of the Contracting Authority in obtaining copies of laws, regulations and information on local customs, orders or by-laws of the Country in which the works are executed, which may affect the Contractor in the performance of its obligations under the contract. The Contracting Authority may provide the assistance requested to the Contractor at the Contractor's cost.

10.2. Subject to the provisions of the laws and regulations on foreign labour of the Country in which the works are to be executed, the Contracting Authority provides reasonable assistance to the Contractor, at its request, for its application for any visas and permits required by the law of the Country in which the works are executed, including work and residence permits, for the personnel whose services the Contractor and the Contracting Authority consider necessary, as well as residence permits for their families.

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

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

The Contracting Authority shall not assume any responsibility towards the Contractor's employees by this action.

**OBLIGATIONS OF THE CONTRACTOR**

***Article 12 - General obligations***

12.1. The Contractor shall, with due care and diligence, design the works to the extent stated in the contract, execute and complete the works in accordance with the contract and with the Supervisor instructions, and shall remedy any defects in the works.

12.2. The Contractor shall provide all superintendence, personnel, materials, plant, equipment and all other items, of a temporary or permanent nature required in and for such design, execution, completion and remedying of any defects, insofar as specified in, or may be reasonably inferred from the contract.

12.3. The Contractor shall take full responsibility for the adequacy, stability and safety of all operations and methods of construction under the contract.

12.4. The Contractor shall comply with any administrative orders given to him. Where the Contractor considers that the requirements of an administrative order go beyond the authority of the Supervisor or of the scope of the contract, the Contractor shall give notice, with reasons, to the Supervisor. If the Contractor fails to notify within the 30 day period after receipt thereof, he shall be barred from so doing. Execution of the administrative order shall not be suspended because of this notice.

12.5. The Contractor shall supply, without delay, any information and documents to the Contracting Authority or the European Commission upon request, regarding the conditions in which the contract is being executed.

12.6. The Contractor shall respect and abide by all laws and regulations in force in the Country in which the works are executed and shall ensure that its personnel, their dependants, and its local employees also respect and abide by all such laws and regulations. The Contractor shall indemnify the Contracting Authority against any claims and proceedings arising from any infringement by the Contractor, its employees and their dependants of such laws and regulations.

12.7. Subject to Article 12.9, the Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to the performance of the contract without the prior consent of the Contracting Authority. The Contractor shall continue to be bound by this undertaking after completion of the tasks and shall obtain from each member of its staff the same undertaking. However, use of the contract’s reference for marketing or tendering purposes does not require prior approval of the Contracting Authority, except where the Contracting Authority declares the contract to be confidential.

12.8. If the Contractor acts on behalf of or is a joint venture or consortium of two or more persons, all such persons shall be jointly and severally bound in respect of the obligations

under the contract, including any recoverable amount. The person designated by the consortium to act on its behalf for the purposes of this contract shall have the authority to bind the consortium. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the Contracting Authority. Any alteration of the composition or the constitution of the joint venture or consortium without the prior consent of the Contracting Authority may result in the termination of the contract.

12.9. Save where the European Commission requests or agrees otherwise, the Contractor shall ensure the highest visibility to the financial contribution of the European Union. To ensure such publicity the Contractor shall implement among other actions the specific activities described in the Special Conditions. All measures must comply with the rules in the Communication and Visibility Manual for EU External Actions published by the European Commission.

12.10. Any records must be kept for a 7-year period after the final payment is made under the contract. In case of failure to maintain such the Contracting Authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Article 63 and 64.

***Article 12a - Code of Conduct***

12a.1 The Contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of its profession. It shall refrain from making public statements about the project or services without the Contracting Authority's prior approval. It shall not commit the Contracting Authority in any way whatsoever without its prior consent and shall make this obligation clear to third parties.

12a.2 The Contractor and its staff shall respect human rights and undertake not to offend the political, cultural and religious practices prevailing in the Country in which the works are executed.

12a.3 The Contractor shall respect environmental legislation applicable in the Country in which the works are executed and internationally agreed core labour standards, i.e. the ILO core labour standards, conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation, and the abolition of child labour, as well as applicable obligations established by these Conventions:

- Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;

- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);

- Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs

Convention);

- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10 September 1998, and its 3 regional Protocols.

12a.4 The Contractor or any of its sub-contractors, agents or personnel shall not abuse of its entrusted power for private gain. The Contractor or any of its sub-contractors, agents or personnel shall not receive or agree to receive from any person or offer or agree to give to any person or procure for any person, gift, gratuity, commission or consideration of any kind as an inducement or reward for performing or refraining from any act relating to the performance of the contract or for showing favour or disfavour to any person in relation to the contract. The Contractor shall comply with all applicable laws and regulations and codes relating to anti-bribery and anti-corruption.

12a.5 The payments to the Contractor under the contract shall constitute the only income or benefit it may derive in connection with the contract. The Contractor and its staff must not exercise any activity or receive any advantage inconsistent with their obligations under the contract.

12a.6 The execution of the contract shall not give rise to unusual commercial expenses.

Unusual commercial expenses are commissions not mentioned in the contract or not stemming from a properly concluded contract referring to the contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commission paid to a company which has every appearance of being a front company. The European Commission may carry out documentary or on-the-spot checks it deems necessary to find evidence in case of suspected unusual commercial expenses.

***Article 12b - Conflict of Interest***

12b.1 The Contractor shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of the contract. Such conflict of interests may arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which may arise during performance of the contract must be notified to the Contracting Authority without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.

12b.2 The Contracting Authority reserves the right to verify that such measures are adequate and may require additional measures to be taken if necessary. The Contractor shall ensure that its staff, including its management, is not placed in a situation which could give rise to conflict of interests. Without prejudice to its obligation under the contract the Contractor shall replace, immediately and without compensation from the Contracting Authority, any member of its staff exposed to such a situation.

12b.3 The Contractor shall refrain from any contact which would compromise its independence or that of its personnel.

12b.4 The Contractor shall limit its role in connection with the project to the provision of the works described in the contract.

12b.5 The Contractor and anyone working under its authority or control in the performance of the contract or on any other activity shall be excluded from access to other EU budget/EDF funds available under the same project. However, the Contractor may participate after approval of the Contracting Authority if the Contractor is able to prove

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

***Article 12c - Design and build contracts***

12c.1 For design and build contracts only, the Contractor shall carry out, and assume responsibility for, the design of the works with the help of experienced designers satisfying the criteria laid down by the Contracting Authority. It shall draw up the requisite technical documents according to the provisions laid down in the Special Conditions and technical specifications. These documents must be submitted to the Supervisor for approval, in accordance with the Special Conditions, and may be corrected at the Contractor's expense to satisfy the Contracting Authority's contractual requirements and eliminate errors, omissions, ambiguities, inconsistencies and other drafting defects. The Contractor shall train the Contracting Authority's personnel and deliver and update the set of detailed documents and operating and maintenance manuals, in accordance with the Special Conditions.

***Article 13 - Superintendence of the works***

13.1. The Contractor shall itself superintend the works or shall appoint a representative to do so. Such appointment shall be submitted to the Supervisor for approval within 30 days of the signature of the Contract. The Supervisor shall approve or refuse the appointment within 10 days. The approval may at any time be withdrawn. Should the Supervisor refuse the representative appointed within the deadline, or withdraw approval of the appointment, it shall set out the grounds on which its decision is based, and the Contractor shall submit an alternative appointment without delay. The address of the Contractor's representative shall be deemed to be the address for service given by the Contractor.

13.2. If the Supervisor withdraws its approval of the Contractor's representative, the Contractor shall, as soon as is practicable, after receiving notice of such withdrawal, remove the representative from the works and replace it with another representative approved by the Supervisor.

13.3. The Contractor's representative shall have full authority to make any decision necessary for the execution of the works, to receive and carry out administrative orders and to countersign the work register referred to in Article 39 or attachment, where appropriate. In any event, the Contractor shall be responsible for ensuring that the works are carried out satisfactorily including ensuring that the specifications and administrative orders are adhered to by its own employees and by its sub-contractors and their employees.

***Article 14 - Staff***

14.1. The persons employed by the Contractor must be sufficient in number, and permit the optimum use of the human resources of the Country in which the works are executed. Such employees must have the skills and experience necessary to ensure due progress and satisfactory execution of the works. The Contractor shall immediately replace all employees indicated by the Supervisor, in a letter stating reasons, as likely to jeopardize the satisfactory execution of the works.

14.2. The Contractor shall make its own arrangements for the engagement of all staff and labour. The rates of remuneration and the general working conditions, as laid down by the law of the Country in which the works are executed, shall apply as a minimum to employees on the site..

***Article 15 - Performance guarantee***

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

15.2. The performance guarantee shall be held against payment to the Contracting Authority for any loss resulting from the Contractor's failure to perform its obligations under the contract.

15.3. The performance guarantee shall be in the format provided for in the contract and may be provided in the form of a bank guarantee, a banker's draft, a certified cheque, a bond provided by an insurance and/or bonding company, an irrevocable letter of credit or a cash deposit made with the Contracting Authority. If the performance guarantee is to be provided in the form of a bank guarantee, a banker's draft, a certified cheque or a bond, it shall be issued by a bank or bonding and/or insurance company approved by the Contracting Authority.

15.4. Unless stated otherwise in the Special Conditions, the performance guarantee shall be denominated in the types and proportions of currencies in which the original contract is payable.

15.5. No payments shall be made in favour of the Contractor prior to the provision of the guarantee. The guarantee shall continue to remain valid until the date of the issuing of the signed final statement of account referred to in Article 51.

15.6. During the performance of the contract, if the natural or legal person providing the guarantee is not able to abide by its commitments, the guarantee shall cease to be valid. The Contracting Authority shall give formal notice to the Contractor to provide a new guarantee on the same terms as the previous one. Should the Contractor fail to provide a new guarantee, the Contracting Authority may terminate the contract.

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

15.8. Unless the Special Conditions provide otherwise, the performance guarantee shall be released within 60 days of the issuing of the signed final statement of account referred to

in Article 51, for its total amount except for amounts which are the subject of amicable settlement, arbitration or litigation.

***Article 16 - Liabilities, Insurance and Security arrangements***

16.1. Liabilities

a) Liability for damage to works

Without prejudice to Article 61 (defects liability) and Article 66 (force majeure), the Contractor shall assume (i) full responsibility for maintaining the integrity of the works and (ii) the risk of loss and damage, whatever their cause, until the final acceptance as foreseen in Article 62.

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

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

After the final acceptance as foreseen in Article 62, the Contractor shall remain responsible for any breach of its obligations under the contract for such period as may be determined by the law governing the contract, or by default for a period of 10 years.

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

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

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

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

c) Contractor's liability in respect of third parties

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

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

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

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

The Contractor shall treat all claims in close consultation with the Contracting

Authority

Any settlement or agreement settling a claim requires the prior express consent of the

Contracting Authority and the Contractor.

16.2. Insurance

a) Insurance – general issues

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

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

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

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

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

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

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

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

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

b) Insurance – Specific issues

*1. Insurance for damage to third parties*

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

*2. Works Insurance*

The Contractor shall take out a "Contractor All Risk" insurance to the joint benefit of itself, its subcontractors, the Contracting Authority and the Supervisor.

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

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

*3. Motor Insurance*

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

*4. Insurance against accidents at work*

The Contractor shall take out insurance policies providing coverage of the Contractor itself, its staff, its subcontractors and any person for which the Contractor is answerable, in case of an accident at work or on the way to work. It shall ensure that its subcontractors do the same. It indemnifies the Contracting Authority against any claims that its employees or those of its subcontractors could have in this regard. For its permanent expatriate staff, where appropriate, the Contractor shall in addition comply with the laws and regulations applicable in the country of origin.

*5. Insurance of liability related to the soundness of the works*

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

***Article 17 - Programme of implementation of tasks***

17.1. Notwithstanding any work programme submitted as part of its tender, the Contractor shall provide the Supervisor with a programme of implementation of tasks, broken down by activity and by month within 30 days of the signature of the Contract. This programme includes at least the following information:

a) the order and time limits within which the Contractor proposes to carry out the works;

b) the time limits within which submission and approval of the drawings are required;

c) an organisation chart containing the names, qualifications and curricula vitae of the staff responsible for the site,

d) a general description of the method including the sequence, by month and by nature, which the Contractor proposes to carry out the works;

e) a plan for the setting out and organisation of the site, and

f) such further details and information as the Supervisor may reasonably require.

17.2. The Supervisor shall return these documents to the Contractor with its approval or any relevant remarks within ten days of receipt, save where the Supervisor, within those ten days, notifies the Contractor of its wish for a meeting in order to discuss the documents submitted.

17.3. If the Supervisor fails to notify its decision or remarks or wish for a meeting within these

10 days, the programme submitted is deemed approved.

17.4. The approval of the programme by the Supervisor shall not relieve the Contractor from any of its obligations under the contract.

17.5. No material alteration to the programme shall be made without the approval of the Supervisor. If, however, the progress of the works does not conform to the programme, the Supervisor may instruct the Contractor to submit a revised programme in accordance with the procedure laid down in Article 17.

***Article 18 - Detailed breakdown of prices***

18.1. If not provided in its tender and where necessary for the purposes of the contract, the

Contractor shall provide a detailed breakdown of its rates and prices within no more than

20 days following the Supervisor's reasoned request.

18.2. Within 30 days of notification of the award of contract, the Contractor shall provide to the Supervisor for its information only, a detailed cash flow estimate, in quarterly periods, of all payments which may be due to the Contractor under the contract. The Contractor shall subsequently supply revised cash flow estimates at quarterly intervals, if so required by the Supervisor. The communication shall not impose any liability whatsoever on the Contracting Authority or the Supervisor.

***Article 19 - Contractor's drawings and execution studies***

19.1. The Contractor shall submit to the Supervisor for approval at its own expense, all design and construction drawings and other documents and objects necessary for the proper execution of the contract, and in particular:

a) drawings, documents, samples and/or models as may be specified in the contract within the time limits and procedures laid down therein or in the programme of implementation of tasks;

b) drawings as the Supervisor may reasonably require for the implementation of tasks.

c) plans, drawings and calculations needed to provide evidence of the stability and resistance of the structures, including foundation design and detailed reinforcement plan. These calculations and surveys should be sustained by sufficient site investigations and should be submitted in triplicate to the Supervisor for approval at least 30 days before commencing construction of the works in question.

19.2. The Supervisor shall return to the Contractor the drawings, documents, samples, models, design calculations, objects and other documents required under Article 19.1 with either its endorsement or its remarks within the time limits referred to in the contract or the approved programme of implementation of tasks or, if no time limit is specified, within

15 days of receipt. In the light of the complexity or the number of documents submitted for approval, if the Supervisor cannot send its endorsement or its remarks within the time

limit mentioned above, the Supervisor shall send within 15 days of receipt a holding reply, indicating another time limit by which it will send its endorsement or its remarks, taking into account the relative urgency and complexity of the matter.

If the Supervisor fails to notify its endorsement, remarks or holding reply within the time limits referred above, the drawings, documents, samples, models, design calculations, objects and other documents submitted to the Supervisor according to Article 19.1 shall be deemed to be approved at the end of the time limits specified above.

19.3. Approved drawings, documents, samples and models shall be signed or otherwise identified by the Supervisor and shall not be departed from except as otherwise instructed by the Supervisor. Any Contractor's drawings, documents, samples or models which the Supervisor refuses to approve, shall be modified to meet the requirements of the Supervisor and resubmitted by the Contractor for approval. Within 15 days of being notified of the Supervisor’s remarks, the Contractor shall make the requisite corrections, adjustments etc. to the documents, drawings, design calculations etc. The corrected or adjusted documents, drawings, design calculations etc. shall be resubmitted for the Supervisor’s approval under the same procedure.

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

19.5. The approval of any drawings, documents, samples or models by the Supervisor shall not relieve the Contractor from any of its obligations under the contract.

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

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

***Article 20 - Sufficiency of tender prices***

20.1. Subject to any additional provisions which may be laid down in the Special Conditions, the Contractor shall be deemed to have inspected and examined the site and its surroundings and to have satisfied itself before submitting its tender, as to the nature of the ground and sub-soil, and to have taken into account the form and nature of the site, the extent and nature of the work and materials necessary for the completion of the works, the means of communication with and access to the site, the accommodation it may require and in general to have obtained for itself all necessary information as to risks, contingencies and all other circumstances influencing or affecting its tender.

20.2. The Contractor shall be deemed to have satisfied itself before submitting its tender as to the correctness and sufficiency of the tender and of the rates and prices stated in the bill

of quantities or price schedule which shall, except in so far as it is otherwise provided in the contract, cover all its obligations under the contract.

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

***Article 21 - Exceptional risks***

21.1. If during the execution of the works the Contractor encounters artificial obstructions or physical conditions which could not reasonably have been foreseen by an experienced Contractor, and if the Contractor is of the opinion that additional costs will be incurred and/or an extension of the period of implementation of tasks will be necessary as a result of this, it shall give notice to the Supervisor in accordance with Articles 35 and/or 55. The Contractor shall specify in such notice the artificial obstructions and/or physical conditions, giving details of the anticipated effects thereof, the measures it is taking or intends to take and the extent of the anticipated delay in or interference with the execution of the works.

21.2. Following receipt of the notice, the Supervisor may inter alia:

a) require the Contractor to provide an estimate of the cost of the measures it is taking or intends to take;

b) approve measures referred to in Article 21.2 (a) with or without modification;

c) give written instructions as to how the artificial obstructions or physical conditions are to be dealt with;

d) order an amendment to, a suspension, or termination of the contract.

21.3. To the extent that the Supervisor decides that the whole or part of the said artificial obstructions or physical conditions could not reasonably have been foreseen by an experienced Contractor, the Supervisor shall:

a) take into account any delay suffered by the Contractor as a result of such obstructions or conditions in determining any extension of the period of implementation of tasks to which the Contractor is entitled under Article 35; and/or

b) in case of artificial obstructions or physical conditions other than weather conditions, determine additional payments due to the Contractor in accordance with Article 55.

21.4. Weather conditions shall not entitle the Contractor to claims under Article 55.

21.5. If the Supervisor decides that the artificial obstructions or physical conditions could, in whole or in part, have been reasonably foreseen by an experienced Contractor, he shall so inform the Contractor as soon as practicable.

***Article 22 - Safety on sites***

22.1. The Contractor shall have the right to forbid access to the site to any person not involved in the performance of the contract, with the exception of persons authorised by the Supervisor or the Contracting Authority.

22.2. The Contractor shall ensure the safety on sites during the whole period of execution and shall be responsible for taking the necessary steps, in the interests of its employees, agents of the Contracting Authority and third parties, to prevent any loss or accident which may result from carrying out the works.

22.3. The Contractor shall take all essential steps, on its own responsibility and at its expense, to ensure that existing structures and installations are protected, preserved and maintained. It shall be responsible for providing and maintaining at its expense all lighting, protection, fencing and security equipment which proves necessary for the proper implementation of the tasks or which may reasonably be required by the Supervisor.

22.4. If, during the implementation of the tasks, urgent measures are necessary to obviate any risk of accident or damage or to ensure security following any accident or damage, the Supervisor shall give formal notice to the Contractor to do what is necessary. If the Contractor is unwilling or unable to undertake the necessary measures, the Supervisor may carry out the work at the expense of the Contractor to the extent that the Contractor is liable.

***Article 23 - Safeguarding adjacent properties***

23.1. On its own responsibility and at its expense, the Contractor shall take all the precautions required by good construction practice and by the prevailing circumstances to safeguard adjacent properties and avoid causing any abnormal disturbance therein.

23.2. The Contractor shall indemnify the Contracting Authority against the financial consequences of all claims by neighbouring landowners or residents to the extent that the Contractor is liable and to the extent that the damage to adjacent properties is not the result of a hazard created through the design or method of construction imposed by the Contracting Authority or the Supervisor upon the Contractor.

***Article 24 - Interference with traffic***

24.1. The Contractor shall ensure that the works and installations do not cause damage to, or obstruct traffic on, communication links such as roads, railways, waterways and airports, save as permitted under the Special Conditions. It shall, in particular, take account of weight restrictions when selecting routes and vehicles.

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

The repair of any damage caused to roads, tracks or bridges by the transport of materials, plant or equipment shall be at the expense of the Contractor.

***Article 25 - Cables and conduits***

25.1. Where, in the course of carrying out the works, the Contractor encounters bench-marks indicating the course of underground cables, conduits and installations, it shall keep such bench-marks in position or replace them, should execution of the works have necessitated their temporary removal. Such related operations require the authorisation of the Supervisor.

25.2. The Contractor shall be responsible for the preservation, removal and replacement, as the case may be, of the cables, conduits and installations specified by the Contracting Authority in the contract and for the cost thereof.

25.3. Where the presence of cables, conduits and installations has not been specified in the contract but is revealed by bench-marks and references, the Contractor shall be under a general duty of care and similar obligations regarding preservation, removal and replacement to those set out above. In this case, the Contracting Authority shall compensate it for expenditure, to the extent that such work is necessary for the execution of the contract.

25.4. However, the obligations to remove and replace cables, conduits and installations and the expenditure resulting therefrom shall not be the responsibility of the Contractor if the Contracting Authority decides to accept that responsibility. The same shall apply where this obligation and the expenditure resulting therefrom devolve upon another specialist administration or an agent.

25.5. When any work on the site is likely to cause disturbances in or damage to a public utility service, the Contractor shall immediately inform the Supervisor in writing, giving a reasonable period of notice so that suitable measures may be taken in time to allow work to continue normally.

***Article 26 - Setting-out***

26.1. The Contractor shall be responsible for:

a) the accurate setting-out of the works in relation to original marks, lines and levels of reference given by the Supervisor;

b) the correctness, of the position, levels, dimensions and alignment of all parts of the works; and

c) the provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities.

26.2. If, at any time during the execution of the works, any error appears in the position, levels, dimensions or alignment of any part of the works, the Contractor, shall, if the Supervisor so requires, at the Contractor's cost, rectify such error to the satisfaction of the Supervisor, unless such error is based on incorrect data supplied by the Supervisor which

an experienced contractor exercising due care would not have discovered, in which case the Contracting Authority shall be responsible for the cost of rectification.

26.3. The checking of any setting-out or of any line or level by the Supervisor shall not in any way relieve the Contractor of its responsibility for the accuracy thereof and the Contractor shall carefully protect and preserve all bench-marks, sight-rails, pegs and other items used in setting-out the works.

***Article 27 - Demolished materials***

27.1. Where the contract includes demolition work, materials and articles obtained therefrom shall, unless the Special Conditions and /or the law of the Country in which the works are executed otherwise provide and subject to the provisions of Article 28, become the property of the Contractor.

27.2. Should the Special Conditions reserve to the Contracting Authority the right of ownership of materials or all or part of the articles obtained from the demolition work, the Contractor shall take all the necessary precautions to ensure that these are preserved. It shall be liable for any destruction of, or damage to, such materials or articles caused by it or its agents.

27.3. Irrespective of the use to which the Contracting Authority intends to put the materials or articles, in respect of which it reserves the right of ownership, all costs incurred in transporting and storing them and all warehouse charges at the place indicated by the Supervisor shall be borne by the Contractor for any carriage not exceeding 1000 meters.

27.4. Save where the Special Conditions provide otherwise, the Contractor shall, at its expense, progressively remove rubble and other demolition materials, rubbish and debris from the site.

***Article 28 - Discoveries***

28.1. Discoveries of any interest whatsoever made during excavation or demolition work shall be brought immediately to the attention of the Supervisor. The Supervisor shall decide how such discoveries are to be dealt with, taking due account of the law of the Country in which the works are executed.

28.2. The Contracting Authority reserves the right of ownership of materials found during the excavation and demolition work carried out on land belonging to it, subject to compensating the Contractor for any special efforts.

28.3. Artifacts, antiquities and natural, numismatic, or other objects which are of scientific interest, and also rare objects or objects made of precious metals found during excavation or demolition work shall be the property of the Contracting Authority.

28.4. In the event of disagreements, the Contracting Authority shall have sole authority to decide as to the qualifications set out in Articles 28.1 and 28.3.

***Article 29 - Temporary works***

29.1. The Contractor shall carry out at its expense all the temporary works to enable the works to be carried out. The Contractor shall submit to the Supervisor the drawings for temporary works which the Contractor intends to use, such as cofferdams, scaffolding, trusses and shuttering. The Contractor shall take into account any observations made by the Supervisor while assuming responsibility for these drawings.

29.2. Where the design of particular temporary works is specified in the Special Conditions to be the responsibility of the Contracting Authority, the Supervisor shall provide the Contractor with all drawings necessary in reasonable time to enable the Contractor to undertake the temporary works in accordance with its programme. In such cases, the Contracting Authority shall be solely responsible for the safety and adequacy of the design. However, the Contractor shall be responsible for the proper construction.

***Article 30 - Soil studies***

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

***Article 31 - Overlapping contracts***

31.1. The Contractor shall, in accordance with the requirements of the Supervisor, afford all reasonable opportunities for carrying out their work to any other contractors employed by the Contracting Authority and their workmen, to the workmen of the Contracting Authority and of any other public authorities who may be employed on or near the site in the execution of any work not included in the contract, or of any contract which the Contracting Authority may enter into in connection with, or ancillary to, the works.

31.2. If, however, the Contractor, on the written request of the Supervisor, makes available to any such Contractor, or public authority, or to the Contracting Authority, any roads or ways for the maintenance of which the Contractor is responsible, or permits the use by any such other persons of the Contractor's temporary works, scaffolding or other equipment on the site, or provides any other service of whatsoever nature, which was not provided for in the contract, the Contracting Authority shall pay to the Contractor in respect of such use or service, such sums and/or grant such extension of time, as shall, in the opinion of the Supervisor, be reasonable.

31.3. The Contractor shall not by reason of Article 31 be relieved of any of its obligations under the contract nor shall it be entitled to any claims other than those provided for in Article 31.2.

31.4. In no circumstances may difficulties arising with regard to one contract entitle the

Contractor to modify or delay implementation of other contracts. Similarly, the

Contracting Authority may not take advantage of such difficulties to suspend payments due under another contract.

***Article 32 - Patents and licenses***

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

32.2. All industrial, intellectual and other property rights (including but not limited to patent rights and copyright) developed in connection with the tasks by or on behalf of the Contractor, including but not limited to any rights in any documents prepared for the purpose of the contract or the tasks, shall remain vested in the Contractor but the Contracting Authority shall have an irrevocable, royalty-free, non-exclusive licence of the above-mentioned rights for the purpose of the contract.

Such licence shall carry the right to grant sub-licences and shall be transferable by the Contracting Authority to third parties without the consent of the Contractor being required.

All industrial, intellectual and other property rights (including but not limited to patent rights and copyright) developed in connection with the tasks by or on behalf of the Contracting Authority, including but not limited to any rights in any documents prepared for the purpose of the contract or the tasks, shall remain vested in the Contracting Authority but the Contractor shall have the right at its cost to copy, use and obtain communication of these documents for the purpose of the contract.

Upon and notwithstanding any termination of the contract howsoever arising, as well as after completion of the tasks, the Contracting Authority shall continue to have the benefit of the licence referred to in Article 32.2, first paragraph.

**IMPLEMENTATION OF THE TASKS AND DELAYS**

***Article 33 - Commencement orders***

33.1. The Supervisor issues an administrative order notifying the Contractor of the date on which the period of implementation of tasks must start.

33.2. Save where the parties agree otherwise, the period of implementation of tasks shall not start before:

a) in conformity with Article 9, the site, or part of the site has been placed at the disposal of the Contractor according to the progress of the work set out in the programme of implementation of tasks approved by the Supervisor;

b) the documents mentioned under Article 8.1 have been provided to the Contractor.

33.3. Save where the Parties agree otherwise, the period of implementation of tasks shall start no later than 180 days following notification of award of the contract.

***Article 34 - Period of implementation of tasks***

34.1. The period of implementation of tasks shall be as laid down in the Special Conditions, without prejudice to extensions of the period which may be granted under Article 35.

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

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

35.1. The Contractor may request an extension to the period of implementation of tasks if it is or will be delayed in completing the contract by any of the following reasons:

a) exceptional weather conditions in the Country in which the works are executed which may affect the implementation of the tasks;

b) artificial obstructions or physical conditions which could not reasonably have been foreseen by an experienced Contractor;

c) administrative orders affecting the date of completion other than those arising from the Contractor's default;

d) failure of the Contracting Authority to fulfil its obligations under the contract;

e) any suspension of the works which is not due to the Contractor's default;

f) force majeure;

g) any other causes referred to in these General Conditions which are not due to the

Contractor's default.

35.2. If the Contractor considers itself to be entitled to any extension of the period of implementation under the contract, the Contractor shall:

a) give notice to the Supervisor of its intention to make such a request no later than

15 days after the Contractor became aware, or should have become aware of the event or circumstance giving rise to the request.

If the Contractor fails to give notice of a request for extension of the period of implementation within such period of 15 days, the period of implementation shall

not be extended and the Contracting Authority shall be discharged from all liability in connection with the request; and

b) submit to the Supervisor full and detailed particulars of the request, within 30 days from the above notification unless otherwise agreed between the Contractor and the Supervisor, in order that such request may be investigated.

35.3. Within 30 days from receipt of the Contractor's detailed particulars of the request, the Supervisor shall, by notice to the Contractor after due consultation with the Contracting Authority and, where appropriate, the Contractor, grant such extension of the period of implementation as may be justified, either prospectively or retrospectively, or inform the Contractor that it is not entitled to an extension.

***Article 36 - Delays in implementation of the tasks***

36.1. If the Contractor fails to complete the works within the time period(s) specified in the contract, the Contracting Authority shall, without formal notice and without prejudice to its other remedies under the contract be entitled to liquidated damages for every day or part thereof which shall elapse between the end of the period specified for implementation of tasks or extended period of implementation of tasks under Article 35 and the actual date of completion, at the rate and up to the maximum amount specified in the Special Conditions.

If the works have been the subject of partial acceptance in accordance with Article 59, the liquidated damages specified in the Special Conditions may be reduced in the proportion which the value of the accepted part bears to the value of the whole of the works.

36.2. If the Contracting Authority has become entitled to the maximum claim under Article

36.1 it may, after giving notice to the Contractor: a) seize the performance guarantee; and/or b) terminate the contract; and/or

c) enter into a contract with a third party at the Contractor's cost for the provision of the balance of the works.

***Article 37 - Amendments***

37.1. Contract amendments must be formalised by a contract addendum signed by both parties or by an administrative order issued by the Supervisor except if the amendments result from the application of the contract.

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

37.3. All administrative orders shall be issued in writing, it being understood that:

a) if, for any reason, the Supervisor finds it necessary to give an order orally, it shall as soon as possible thereafter confirm the order by an administrative order;

b) if the Contractor confirms in writing an oral order given for the purpose of Article

37.3 (a) and the confirmation is not contradicted in writing forthwith by the Supervisor, the Supervisor shall be deemed to have issued an administrative order;

c) no administrative order is required to increase or decrease the quantity of any work where such increase or decrease is the result of the quantity exceeding or being less than that stated in the bill of quantities or price schedule, as the result of measurement laid down in article 49.

37.4. Save as provided by Article 37.3 prior to issuing an administrative order, the Supervisor shall notify the Contractor of the nature and form of such amendment. The Contractor shall then, without delay, submit to the Supervisor a written proposal containing:

a) a description of the tasks to be implemented or the measures to be taken and a programme for execution;

b) any necessary amendments to the programme of implementation of tasks or to any of the Contractor's obligations resulting from this contract; and

c) any adjustment to the contract price in accordance with the rules set out in Article

37.

37.5. Following the receipt of the Contractor's submission referred to in Article 37.4, the Supervisor shall, after due consultation with the Contracting Authority and, where appropriate, the Contractor, decide without delay whether or not to accept the amendment. If the Supervisor accepts the amendment, it shall notify the Contractor through an administrative order stating that the Contractor shall carry out the amendment at the prices and under the conditions given in the Contractor's submission referred to in Article 37.4 or as modified by the Supervisor in accordance with Article 37.6.

37.6. The Supervisor shall, for all amendments ordered by it in accordance with Article 37.3 and 37.5, ascertain the prices in accordance with the following principles:

a) where work is of similar character and executed under similar conditions as work priced in the bill of quantities or price schedule, it shall be valued at such rates and prices contained therein;

b) where work is not of a similar character or is not executed under similar conditions, the rates and prices in the contract shall be used as the basis for valuation as far as is reasonable, failing which the Supervisor shall make a fair valuation;

c) if the nature or amount of any amendment relative to the nature or amount of the whole contract or to any part thereof is such that, in the opinion of the Supervisor, any rate or price contained in the contract for any item of work is, by reason of such amendment, rendered unreasonable, the Supervisor shall fix such rate or price as he thinks reasonable and proper in the circumstances;

d) where an amendment is required by a default or breach of contract by the Contractor, any additional cost attributable to such amendment shall be borne by the Contractor.

37.7. On receipt of the administrative order, the Contractor shall carry out the requested amendment according to the following principles:

a) The Contractor will be bound by these General Conditions as if the amendment requested by administrative order were stated in the contract.

b) The Contractor shall not delay the execution of the administrative order pending the granting of any extension of time for completion or adjustment to the contract price.

c) Where the administrative order precedes the adjustment to the contract price, the Contractor shall keep records of the costs of undertaking the amendment and of the time expended thereon. Such records shall be open to inspection by the Supervisor at all reasonable times.

37.8. Where on provisional acceptance an increase or reduction in the total value of the works resulting from an administrative order, or from some other circumstance which is not caused by the Contractor's default, exceeds 15% of the initial contract price (or as amended by addendum), the Supervisor shall, after consulting the Contracting Authority and the Contractor, determine any addition to or reduction from the contract price as a consequence of applying Article 37.6. The sum so determined shall be based on the amount by which the increase or decrease in value of the works exceeds 15%. The Supervisor shall notify the sum to the Contracting Authority and the Contractor, and adjust the contract price accordingly.

37.9. The Contractor shall notify the Contracting Authority of any change of bank account, using the form in Annex V. The Contracting Authority shall have the right to oppose the Contractor's change of bank account.

***Article 38 - Suspension***

38.1. Suspension by administrative order of the Supervisor:

The Contractor shall, on the order of the Supervisor, suspend the progress of the works or any part thereof for such time or times and in such manner as the Supervisor may consider necessary. The suspension shall take effect on the day the Contractor receives the order or at a later date when the order so provides. The Supervisor shall, as soon as possible, instruct the Contractor to resume the contract suspended.

38.2. Suspension by notice of the Contractor:

Any default in payment of more than 30 days under any certificate issued by the Supervisor from the expiry of the time-limit referred to in Article 44.3(b) entitles the Contractor, after giving not less than 30 days' notice to the Contracting Authority, to suspend the work, or reduce the rate of the work, unless and until the Contractor has received reasonable evidence of payment or payment.

The Contractor's action shall not prejudice its entitlements to interest for delayed payment under Article 53.1 and to termination under Article 65.1.

If the Contractor subsequently receives such evidence or payment before giving notice of termination, the Contractor shall resume normal working as soon as reasonably practicable and, unless the parties agree otherwise, no later than 30 days after receiving the evidence or the payment.

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

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

38.4. During the period of suspension, the Contractor shall take such protective measures as may be necessary to safeguard the works, plant, equipment and site against any deterioration, loss or damage. Additional expenses incurred in connection with such protective measures may be added to the contract price, unless:

a) otherwise provided for in the contract; or

b) such suspension is necessary by reason of some breach or default of the

Contractor; or

c) such suspension is necessary by reason of normal climatic conditions on site; or

d) such suspension is necessary for the safety or the proper execution of the works or any part thereof insofar as such necessity does not arise from any act, breach or default by the Supervisor or the Contracting Authority or from any of the exceptional risks referred to in Article 21, or

e) the presumed substantial errors or irregularities or fraud mentioned in article 38.3 are confirmed and attributable to the Contractor.

38.5. The Contractor shall introduce claims for additional payment or extension of the period of implementation in accordance with Articles 35 and 55.

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

38.7. The Contracting Authority shall, as soon as possible, order the Contractor to resume the contract suspended or inform the Contractor that it terminates the contract.

**MATERIALS AND WORKMANSHIP**

***Article 39 - Work register***

39.1. A work register shall, unless otherwise provided by the Special Conditions, be kept on the site by the Supervisor, who shall enter in it at least the following information:

a) the weather conditions, interruptions of work owing to inclement weather, hours of work, number and type of workmen employed on the site, materials supplied, equipment in use, equipment not in working order, tests carried out in situ, samples dispatched, unforeseen circumstances, as well as orders given to the Contractor;

b) detailed statements of all the quantitative and qualitative elements of the work done and the supplies delivered and used, capable of being checked on the site and relevant in calculating payments to be made to the Contractor.

39.2. The statements shall form an integral part of the work register but may, where appropriate, be recorded in separate documents. The technical rules for drawing up the statements shall be as set out in the Special Conditions.

39.3. The Contractor shall ensure that statements are drawn up, in good time and in accordance with the Special Conditions, in respect of work, services and supplies which cannot be measured or verified subsequently; failing this, it shall accept the decisions of the Supervisor, unless, at its own expense, it provides evidence to the contrary.

39.4. Entries made in the work register as work progresses shall be signed by the Supervisor and countersigned by the Contractor or its representative. If the Contractor objects, it shall communicate its views to the Supervisor within 15 days following the date on which the entry or the statements objected to are recorded. Should it fail to countersign or to submit its views within the period allowed, the Contractor shall be deemed to agree with the notes shown in the register. The Contractor may examine the work register at any time and may, without removing the document, make or receive a copy of entries which it considers necessary for its own information.

39.5. The Contractor shall, on request, provide the Supervisor with the information needed to keep the work register in good order.

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

40.1. Save where otherwise provided for in the Special Conditions, all goods purchased under the contract shall have their origin in any eligible source country as defined in the Invitation to Tender. The Contractor must certify that the goods tendered comply with this requirement, specifying their countries of origin. It may be required to provide more detailed information in this respect.

40.2. The works, components and materials shall conform to the specifications, drawings, surveys, models, samples, patterns and other requirements in the contract which shall be

held at the disposal of the Contracting Authority or the Supervisor for the purposes of identification throughout the period of performance.

40.3. Any preliminary technical acceptance stipulated in the Special Conditions shall be the subject of a request sent by the Contractor to the Supervisor. The request shall indicate the reference to the contract, the lot number and the place where such acceptance is to take place, as appropriate. The components and materials specified in the request must be certified by the Supervisor as meeting the requirements for such acceptance prior to their incorporation in the works.

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

***Article 41 - Inspection and testing***

41.1. The Contractor shall ensure that the components and materials are delivered to the site in time to allow the Supervisor to proceed with acceptance of the components and materials. The Contractor is deemed to have fully appreciated the difficulties which it might encounter in this respect, and it shall not be permitted to advance any grounds for delay in fulfilling its obligations.

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

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

a) provide to the Supervisor, temporarily and free of charge, such assistance, test samples or parts, machines, equipment, tools, labour, materials, drawings and production data as are normally required for inspection and testing;

b) agree, with the Supervisor, on the time and place for tests;

c) provide access for the Supervisor at all reasonable times to the place where the tests are to be carried out.

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

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

41.6. If the Supervisor and the Contractor disagree on the test results, each shall give a statement of its views to the other within 15 days after such disagreement arises. The Supervisor or the Contractor may require such tests to be repeated on the same terms and conditions or, if either party so requests, by an expert to be selected by common consent. All test reports shall be submitted to the Supervisor who shall communicate the results of these tests without delay to the Contractor. The results of the re-testing shall be conclusive. The cost of re-testing shall be borne by the party whose views are proved wrong by the re-testing.

41.7. In the performance of its duties, the Supervisor and any persons authorised by him shall not disclose to unauthorised persons information concerning the undertaking's methods of manufacture and operation obtained through inspection and testing.

***Article 42 - Rejection***

42.1. Components and materials which are not of the specified quality shall be rejected. A special mark may be applied to the rejected components or materials. This shall not be such as to alter them or affect their commercial value. Rejected components and materials shall be removed by the Contractor from the site within a period which the Supervisor shall specify, failing which they shall be removed by the Supervisor as of right at the expense and risk of the Contractor. Any work incorporating rejected components or materials shall be rejected.

42.2. The Supervisor shall, during the progress of the works and before the works are taken over, have the power to order or decide:

a) the removal from the site, within such time limits as may be specified in the order, of any components or materials which, in the opinion of the Supervisor, are not in accordance with the contract;

b) the substitution of proper and suitable components or materials; or

c) the demolition and proper re-execution, or satisfactory repair, notwithstanding any previous test thereof or interim payment therefore, of any work which, in respect of components, materials, workmanship or design by the Contractor for which it is responsible, is not, in the opinion of the Supervisor, in accordance with the contract.

42.3. The Supervisor shall, as soon as reasonably practicable, give to the Contractor notice of its decision specifying particulars of the alleged defects.

42.4. The Contractor shall with all speed and at its expense make good the defects so specified.

If the Contractor does not comply with such order, the Contracting Authority shall be entitled to employ other persons to carry out the same and all expenses consequent thereon or incidental thereto may be deducted by the Contracting Authority from any monies due or which may become due to the Contractor.

42.5. The provisions of Article 42 shall not affect the right of the Contracting Authority to claim under Articles 36 and 63.

***Article 43 - Ownership of plant and materials***

43.1. All equipment, temporary works, plant and materials provided by the Contractor shall, when brought on the site, be deemed to be exclusively intended for the execution of the works and the Contractor shall not remove the same or any part thereof, except for the purpose of moving it from one part of the site to another, without the consent of the Supervisor. Such consent shall, however, not be required for vehicles engaged in transporting any staff, labour, equipment, temporary works, plant or materials to or from the site.

43.2. The Special Conditions may provide that all equipment, temporary works, plant and materials on site owned by the Contractor or by any company in which the Contractor has a controlling interest shall, for the duration of the execution of the works, be:

a) vested in the Contracting Authority; or

b) made subject to a lien in favour of the Contracting Authority; or

c) made subject to any other arrangement regarding priority interest or security.

43.3. In the event of termination of the contract in accordance with Article 63 due to the Contractor's breach of contract, the Contracting Authority shall be entitled to use the equipment, temporary works, plant and materials on site in order to complete the works.

43.4. Any agreement for the hire by the Contractor of equipment, temporary works, plant and materials brought onto the site, shall contain a provision that on request in writing made by the Contracting Authority within 7 days after the date on which the termination under Article 64 becomes effective, and on the Contracting Authority undertaking to pay all hire charges in respect thereof from such date, the owner thereof will hire such equipment, temporary works, plant or materials to the Contracting Authority on the same terms as they were hired by the Contractor, save that the Contracting Authority shall be entitled to permit the use thereof by any other contractor employed by it for completing the works under the provisions of Article 64.3.

43.5. Upon termination of the contract before completion of the works, the Contractor shall deliver to the Contracting Authority any plant, temporary works, equipment or materials the property in which has vested in the Contracting Authority or been made subject to a lien by virtue of Article 43.2. If it fails to do so, the Contracting Authority may take such appropriate action as it deems fit in order to obtain possession of such plant, temporary works, equipment and materials and recover the cost of so doing from the Contractor.

**PAYMENTS**

***Article 44 - General principles***

44.1. Payments shall be made in euro or national currency as specified in the Special Conditions. The Special Conditions shall lay down the administrative or technical conditions governing payments of pre-financing, interim and/or final payments made in accordance with the General Conditions.

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

44.3. Payment to the Contractor shall be done as follows:

a) Pre-financing payments shall be made within 90 days of receipt by the Contracting Authority of the Contractor's invoice and the documents referred to in Article 46.3. The date of payment shall be the date on which the paying account is debited.

b) Payments to the Contractor of the amounts due under each of the interim payment certificates and the final statement of account issued by the Supervisor shall be made within 90 days of such certificate of statement accompanied by the Contractor's invoice being delivered to the Contracting Authority. The date of payment shall be the date on which the paying account is debited.

44.4. The period referred to in 44.3 may be suspended by notifying the Contractor that the invoice cannot be paid because the sum is not due, because appropriate substantiating documents have not been provided or because there is evidence that the expenditure might not be eligible. In the latter case, an inspection may be carried out on the spot for the purpose of further checks. The Contractor shall provide clarifications, modifications or further information within 30 days of being asked to do so. Within 30 days of receipt of the clarification, the Supervisor shall decide and issue if need be a revised payment certificate or a final statement of account and the payment period shall continue to run from this date.

44.5. The Contractor undertakes to repay to the Contracting Authority any amounts paid in excess of the final amount due, before the deadline indicated in the debit note which is 45 days from the issuing of that note.

Should the Contractor fail to make repayment within the above deadline, the Contracting Authority may (unless the Contractor is a government department or public body of a Member State of the European Union) increase the amounts due by adding interest:

 at the rediscount rate applied by the central bank of the country of the

Contracting Authority if payments are in the currency of that country;

 at the rate applied by the European Central Bank to its main refinancing transactions in euro, as published in the Official Journal of the European Union, C series, where payments are in euro,

on the first day of the month in which the time-limit expired, plus three and a half percentage points. The default interest shall be incurred over the time which elapses between the date of the payment deadline and the date on which payment is actually made. Any partial payments shall first cover the interest thus established.

Amounts to be repaid to the Contracting Authority may be offset against amounts of any kind due to the Contractor. This shall not affect the parties' right to agree on payment in instalments. Bank charges arising from the repayment of amounts due to the Contracting Authority shall be borne entirely by the Contractor.

Without prejudice to the prerogative of the Contracting Authority, if necessary, the

European Union may as donor proceed itself to the recovery by any means.

44.6. Prior to, or instead of, terminating the contract as provided for in Article 64, the Contracting Authority may suspend payments as a precautionary measure without prior notice.

44.7. Where the award procedure or the performance of the contract proves to have been subject to substantial errors, irregularities or fraud attributable to the Contractor, the Contracting Authority may in addition to the possibility to suspend the performance of the contract in accordance with Article 38.3 and terminate the contract as provided for in Article 64, refuse to make payments and/or recover amounts already paid, in proportion to the seriousness of the errors irregularities or fraud.

***Article 45 - Provisional price contracts***

45.1. In exceptional cases, where a provisional price contract has been awarded, the amount payable under the contract shall be calculated as follows:

a) as for cost-plus contracts in Article 49.1 (c); or

b) initially on the basis of provisional prices and, after the conditions for performing the contract are known, as for lump-sum contracts or unit price contracts in Article 49.1 (a) and (b) respectively, or as in a hybrid contract.

45.2. The Contractor shall supply such information as the Contracting Authority or the Supervisor may reasonably require in respect of any matter relating to the contract for the purpose of the calculation. Where agreement cannot be reached on the valuation of the works, the amounts payable shall be determined by the Supervisor.

***Article 46 - Pre-financing***

46.1. If the Special Conditions so provide, pre-financing may be granted to the Contractor, at its request and before the first interim payment takes place, for operations connected with the implementation of the tasks, in the cases listed hereinafter:

a) as a lump-sum advance enabling it to meet expenditure resulting from the commencement of the contract;

b) as pre-financing for the purchase or order of : materials, plant, equipment, machines, tools and of any other substantial prior expenses such as the acquisition of patents or study costs, necessary for the execution of the contract. A proof of the conclusion of such purchase or order shall be provided by the Contractor to obtain the pre-financing.

46.2. The Special Conditions shall state the amount of the pre-financing which shall not exceed

10% of the original contract price for the lump-sum referred to in Article 46.1 (a) and 20

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

46.3. No pre-financing shall be granted until:

a) the signature of the contract;

b) provision of the performance guarantee in accordance with Article 15;

c) provision, for the full amount of the pre-financing, of a financial guarantee which shall remain effective until the pre-financing has been completely repaid by the Contractor out of interim payments under the contract unless otherwise provided for in the Special Conditions;

d) fulfilment of the Contractor's obligation under article 16;

e) approval of the programme of implementation of tasks by the Supervisor.

46.4. The Contractor shall use the pre-financing exclusively for operations connected with the implementation of the tasks. Should the Contractor misuse any portion of the pre- financing, it shall become due and repayable immediately and no further pre-financing payments will be made.

46.5. Should the pre-financing guarantee cease to be valid and the Contractor fail to re-validate it, either a deduction equal to the amount of the pre-financing may be made by the Contracting Authority from future payments due to the Contractor under the contract, or the Contracting Authority may apply the provisions of Article 15.6.

46.6. If the contract is terminated for any reason whatsoever, the guarantees securing the pre- financing may be invoked forthwith in order to repay the balance of the pre-financing still owed by the Contractor, and the guarantor shall not delay payment or raise objection for any reason whatever.

46.7. The pre-financing guarantee provided for in Article 46 shall be released as and when pre- financing is repaid.

46.8. Further conditions and procedures for granting and repaying pre-financing shall be as laid down in the Special Conditions.

***Article 47 - Retention monies***

47.1. The sum which shall be retained from interim payments by way of guarantee to meet the Contractor's obligations during the defects liability period, and the detailed rules governing that guarantee, shall be stipulated in the Special Conditions, provided that it shall, in no case, exceed 10% of the contract price.

47.2. Subject to the approval of the Contracting Authority, the Contractor may, if it so wishes, substitute, not later than the date fixed for the commencement of the works, these retention sums by a retention guarantee issued in accordance with Article 15.3.

47.3. The sum retained or the retention guarantee shall be released within 60 days of the issuing of the signed final statement of account referred to in Article 51, for its total amount except for amounts which are the subject of amicable settlement, arbitration or litigation.

***Article 48 - Revision of prices***

48.1. Unless otherwise stipulated in the Special Conditions, and except as provided in Article

48.4 the contract shall be at fixed prices which shall not be revised.

48.2. Where prices may be revised under the contract, such revision shall take into account variations in the prices of significant local or external elements which serve as a basis for the calculation of the tender price, such as manpower, services, materials and supplies, as well as charges laid down by law or regulation. The detailed rules for the revision shall be as laid down in the Special Conditions.

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

a) to have been arrived at on the basis of the conditions in force 30 days prior to the latest date fixed for submission of tenders; or in the case of direct agreement contracts, on the date of the contract;

b) to have taken account of the legislation and the relevant tax arrangements applicable at the reference date fixed in Article 48.3 (a).

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

a) to amend the contract; or

b) on payment of compensation for the resulting imbalance by one party to the other; or

c) to terminate the contract by mutual agreement.

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

***Article 49 - Measurement***

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

a) For lump-sum contracts, the amount due under the contract shall be determined on the basis of the breakdown of the overall contract price, or on the basis of a breakdown expressed as a percentage of the contract price corresponding to completed stages of the works. Where items are accompanied by quantities, these shall be firm quantities for which the Contractor has submitted its all-in price, and shall be paid for irrespective of the quantities of work actually carried out.

b) For unit price contracts:

i. the amount due under the contract shall be calculated by applying the unit rates to the quantities actually executed for the respective items, in accordance with the contract;

ii. the quantities set out in the bill of quantities shall be the estimated quantities of the works, which shall not be taken as the actual and correct quantities of the works to be executed by the Contractor in fulfilment of its obligations under the contract;

iii. the Supervisor shall determine by measurement the actual quantities of the works executed by the Contractor, and these shall be paid for in accordance with Article 50. Unless otherwise provided in the Special Conditions no additions shall be made to the items in the bill of quantities except as a result of an amendment in accordance with Article 37 or another provision of the contract entitling the Contractor to additional payment;

iv. the Supervisor shall, when he requires any parts of the works to be measured, give reasonable notice to the Contractor to attend, or to send a qualified agent to represent him. The Contractor or its agent shall assist the Supervisor in making such measurements and shall furnish all particulars required by the Supervisor. Should the Contractor not attend, or omit to send such agent, the measurement made by the Supervisor or approved by him shall be binding on the Contractor;

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

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

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

***Article 50 - Interim payments***

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

a) the estimated contract value of the permanent works implemented up to the end of the period in question;

b) an amount reflecting any revision of prices pursuant to Article 48;

c) an amount to be withheld as retention sum under Article 47;

d) any credit and/or debit for the period in question in respect of plant and materials on site intended for, but not yet incorporated in, the permanent works in the amount and under the conditions set out in Article 50.2;

e) an amount to be deducted on account of the pre-financing repayment under the provisions of Article 46; and

f) any other sum to which the Contractor may be entitled under the contract.

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

a) the plant and materials conform with the specifications for the permanent works and are set out in batches in a way that they may be recognized by the Supervisor;

b) such plant and materials have been delivered to the site, and are properly stored and protected against loss or damage or deterioration to the satisfaction of the Supervisor;

c) the Contractor's record of requirements, orders, receipts and use of plant and materials under the contract are kept in a form approved by the Supervisor and such records are available for inspection by the Supervisor;

d) the Contractor submits with its statement, the estimated value of the plant and materials on site together with such documents as may be required by the Supervisor for the purpose of valuation of the plant and materials and providing evidence of ownership and payment therefor; and

e) where the Special Conditions so provide, ownership of the plant and materials referred to in Article 43 shall be deemed to be vested in the Contracting Authority.

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

50.4. The Contractor shall be responsible for any loss or damage to, and for the cost of storing and handling of, such plant and materials on site and shall effect such additional insurance as may be necessary to cover the risk of such loss or damage from any cause.

50.5. Within 30 days of receipt of the said invoice for interim payment, the Supervisor shall:

a) verify that, in the Supervisor's opinion, the invoice for interim payment reflects the amount due to the Contractor in accordance with the contract. In cases where

there is a difference of opinion as to the value of an item, the Supervisor's view shall prevail.

b) on determination of the amount due to the Contractor, issue and transmit to the Contracting Authority for payment and to the Contractor for information, an interim payment certificate for the amount due to the Contractor and shall inform the Contractor of the works for which payment is being made.

50.6. The Supervisor may, by an interim payment certificate, make any corrections or modifications to any previous certificate issued by him, and has power to modify the valuation in or withhold the issue of, any interim payment certificate if the works or any part thereof is not being carried out to its satisfaction.

50.7. Unless the Special Conditions provide otherwise, the frequency shall be one interim payment per month.

***Article 51 - Final statement of account***

51.1. Unless otherwise agreed in the Special Conditions, the Contractor shall submit to the Supervisor a draft final statement of account no later than 90 days after the issue of the final acceptance certificate referred to in Article 62. In order to enable the Supervisor to prepare the final statement of account, the draft final statement of account is submitted with supporting documents showing in detail the value of the work done in accordance with the contract and all further sums which the Contractor considers to be due to it under the contract.

51.2. Within 90 days after receipt of the draft final statement of account and of all information reasonably required for its verification, the Supervisor shall prepare and sign the final statement of account, which determines:

a) the amount which in its opinion is finally due under the contract; and

b) after establishing the amounts previously paid by the Contracting Authority and all sums to which the Contracting Authority is entitled under the contract, the balance, if any, due from the Contracting Authority to the Contractor, or from the Contractor to the Contracting Authority, as the case may be.

51.3. The Supervisor shall issue to the Contracting Authority or to its duly authorized representative, and to the Contractor, the final statement of account showing the final amount to which the Contractor is entitled under the contract. The Contracting Authority or its duly authorized representative and the Contractor shall sign the final statement of account as an acknowledgement of the full and final value of the work implemented under the contract and shall promptly submit a signed copy to the Supervisor together with the invoice for the payment of the agreed balance, if any, due to the Contractor. However, the final statement of account and the invoice for the payment of the balance shall not include amounts in dispute which are the subject of negotiations, conciliation, arbitration or litigation.

51.4. The final statement of account signed by the Contractor constitutes a written discharge of the Contracting Authority confirming that the total in the final statement of account

represents full and final settlement of all monies due to the Contractor under the contract, other than those amounts which are the subject of amicable settlement, arbitration or litigation. However, such discharge becomes effective only after any payment due in accordance with the final statement of account has been made and the performance guarantee referred to in Article 15 has been returned to the Contractor.

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

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

52.1. When the Supervisor receives a claim from a sub-Contractor duly approved under Article

7 to the effect that the Contractor has not met its financial obligations so far as the sub- Contractor is concerned, the Supervisor gives notice to the Contractor either to pay the sub-Contractor or to inform it of the reasons why payment should not be made. Should such payment not be made, or reasons not be given within the period of notice, the Supervisor may, after satisfying itself that the work has been carried out, certify, and the Contracting Authority pays the debt claimed by the sub-Contractor out of the sums remaining due to the Contractor. The Contractor remains entirely responsible for the work in respect of which direct payment has been made.

52.2. If the Contractor gives adequate reasons for refusing to settle all or part of the debt claimed by the sub-contractor, the Contracting Authority only pays to the sub-contractor only the amounts not in dispute. Sums claimed by the sub-Contractor in respect of which the Contractor has given adequate reasons for its refusal to pay shall be paid by the Contracting Authority only after the parties have come to an amicable settlement, or after the decision of an arbitrating authority or after a judgment of a court has been duly notified to the Supervisor.

52.3. Direct payments to sub-contractors shall not exceed the value at contract prices of the services performed by the sub-contractors for which they request payment; the value at contract prices is calculated or assessed on the basis of the bill of quantities, the price schedule or the breakdown of the lump sum price.

52.4. Direct payments to sub-contractors are made entirely in the national currency of the Country in which the works are executed, or partly in such national currency and partly in foreign currency, in accordance with the contract.

52.5. Where direct payments to sub-contractors are made in foreign currency, they are calculated in accordance with Article 56. They shall not result in any increase in the total amount payable in foreign currency, as stipulated in the contract.

52.6. The provisions of Article 52 apply subject to the requirements of the law applicable by virtue of Article 54 concerning the right to payment of creditors who are beneficiaries of an assignment of credit or of a collateral security.

***Article 53 - Delayed payments***

53.1. Once the time-limit referred to in Article 44.3 of the General Conditions has expired, the Contractor will, upon demand, submitted within two months of receiving late payment, be entitled to late-payment interest:

- at the rediscount rate applied by the central bank by the law of the Country in which the works are executed if payments are in the currency of that country;

- at the rate applied by the European Central Bank to its main refinancing transactions in euro, as published in the Official Journal of the European Union, C series, if payments are in euro,

on the first day of the month in which the time-limit expired, plus three and a half percentage points. The interest shall be payable for the time elapsed between the expiry of the payment deadline and the date on which the Contracting Authority’s account is debited.

53.2. Any default in payment of more than 30 days after the expiry of the time-limit stated in Article 44.3(b) shall entitle the Contractor to suspend the work in accordance with the procedure laid down in article 38.2.

53.3. Any default in payment of more than 120 days after the expiry of the time-limit stated in Article 44.3(b) shall entitle the Contractor to terminate the contract in accordance with the procedure laid down in Article 65.

***Article 54 - Payments to third parties***

54.1. Orders for payments to third parties may be carried out only after an assignment made in accordance with Article 6. The assignment is notified to the Contracting Authority.

54.2. Notification of beneficiaries of the assignment is be the sole responsibility of the

Contractor.

54.3. In the event of a legally binding attachment of the property of the Contractor affecting payments due to it under the contract, and without prejudice to the time limit laid down in Article 53, the Contracting Authority has 30 days, starting from the day when it receives notification of the definitive lifting of the obstacle to payment, to resume payments to the Contractor.

***Article 55 - Claims for additional payment***

55.1. If the Contractor considers itself being entitled to additional payment under the contract, the Contractor shall:

a) if it intends to make any claim for additional payment, give to the Supervisor notice of its intention or make such claim no later than 15 days after the Contractor became aware, or should have become aware of the event or circumstances giving rise of such claim, stating the reason for its claim;

If the Contractor fails to give notice of a claim for additional payment within such period of 15 days, the Contractor shall not be entitled to additional payment, and the Contracting Authority shall be discharged from all liability in connection with the request; and

b) submit full and detailed particulars of its claim as soon as it is reasonably practicable, but no later than 60 days after the date of such notice, unless otherwise agreed by the Supervisor. In case the Supervisor agrees to another deadline than the said 60 days, the agreed upon deadline will, in any event, require that such particulars shall be submitted no later than the date of submission of the draft final statement of account. The Contractor shall thereafter promptly submit such further particulars as the Supervisor may reasonably require assessing the validity of the claim.

55.2. When the Supervisor has received the full and detailed particulars of the Contractor's claim that it requires, he shall, without prejudice to Article 21.4, after due consultation with the Contracting Authority and, where appropriate, the Contractor, determine whether the Contractor is entitled to additional payment and notify the parties accordingly.

55.3. The Supervisor may reject any claim for additional payment which does not comply with the requirements of Article 55.

***Article 56 - End date***

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

**ACCEPTANCE AND DEFECTS LIABILITY**

***Article 57 - General principles***

57.1. Verification of the works by the Supervisor with a view to provisional or final acceptance shall take place in the presence of the Contractor. The absence of the Contractor shall not be a bar to verification on condition that the Contractor has been summoned in due form at least 30 days prior to the date of verification.

57.2. Should exceptional circumstances make it impossible to ascertain the state of the works or otherwise proceed with their acceptance during the period fixed for provisional or final acceptance, a statement certifying such impossibility shall be drawn up by the Supervisor after consultation, where possible, with the Contractor. The verification shall take place and a statement of acceptance or rejection shall be drawn up by the Supervisor within 30 days following the date on which such impossibility ceases to exist. The Contractor shall not invoke these circumstances in order to avoid its obligation of presenting the works in a state suitable for acceptance.

***Article 58 - Tests on completion***

58.1. The works shall not be accepted until the prescribed verifications and tests have been carried out at the expense of the Contractor. The Contractor shall notify the Supervisor of the date on which such verification and tests may commence.

58.2. Works which do not satisfy the terms and conditions of the contract, or in the absence of such terms and conditions, which are not carried out in accordance with trade practices in the Country in which the works are executed, shall, if required, be demolished and rebuilt by the Contractor or repaired to the satisfaction of the Supervisor, otherwise this shall be done as of right after due notice at the expense of the Contractor, by order of the Supervisor. The Supervisor may also require the demolition and reconstruction by the Contractor, or repair to the satisfaction of the Supervisor, under the same conditions, of any work in which unacceptable materials have been used, or carried out in the periods of suspension provided for in Article 38.

***Article 59 - Partial acceptance***

59.1. The Contracting Authority may make use of the various structures, parts of structures or sections of the works forming part of the contract as and when they are completed. Any taking over of the structures, parts of structures or sections of the works by the Contracting Authority shall be preceded by their partial provisional acceptance. However, works may in cases of urgency be taken over prior to acceptance provided an inventory of outstanding work is drawn up by the Supervisor and agreed to by the Contractor and the Supervisor beforehand. Once the Contracting Authority has taken possession of a structure, a part thereof or section of the works, the Contractor shall no longer be required to make good any damage resulting otherwise than from faulty construction or workmanship.

59.2. The Supervisor may, at the request of the Contractor and if the nature of the works so permits, proceed with partial provisional acceptance, provided that the structures, parts of structures or sections of the works are completed and suited to the use as described in the contract.

59.3. In the cases of partial provisional acceptance referred to in Article 59.1 and 59.2 the defects liability period provided for in Article 62 shall, unless the Special Conditions provide otherwise, run as from the date of such partial provisional acceptance.

***Article 60 - Provisional acceptance***

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

60.2. The Contractor may apply, by notice to the Supervisor, for a certificate of provisional acceptance not earlier than 15 days before the works, in the Contractor's opinion, are complete and ready for provisional acceptance. The Supervisor shall within 30 days after the receipt of the Contractor's application either:

a) issue the certificate of provisional acceptance to the Contractor with a copy to the Contracting Authority stating, where appropriate, its reservations, and, inter alia, the date on which, in its opinion, the works were completed in accordance with the contract and ready for provisional acceptance; or

b) reject the application giving its reasons and specifying the action which, in its opinion, is required of the Contractor for the certificate to be issued.

60.3. If the Supervisor fails either to issue the certificate of provisional acceptance or to reject the Contractor's application within the period of 30 days, he shall be deemed to have issued the certificate on the last day of that period. The certificate of provisional acceptance shall not be deemed to be an admission that the works have been completed in every respect. If the works are divided by the contract into sections, the Contractor shall be entitled to apply for separate certificates for each of the sections.

60.4. Upon provisional acceptance of the works, the Contractor shall dismantle and remove temporary structures as well as materials no longer required for use in connection with the implementation of the contract. It shall also remove any litter or obstruction and redress any change in the condition of the site as required by the contract.

60.5. Immediately after provisional acceptance, the Contracting Authority may make use of all the works as completed.

***Article 61 - Defects liability***

61.1. The Contractor shall be responsible for making good any defect in, or damage to, any part of the works which may appear or occur during the defects liability period and which:

a) results from the use of defective plant or materials or faulty workmanship or design of the Contractor; and/or

b) results from any act or omission of the Contractor during the defects liability period; and/or;

c) appears in the course of an inspection made by, or on behalf of the Contracting

Authority.

61.2. The Contractor shall at its own cost make good the defect or damage as soon as practicable. The defects liability period for all items replaced or renewed shall recommence from the date when the replacement or renewal was made to the satisfaction of the Supervisor. If the contract provides for partial acceptance, the defects liability period shall be extended only for the part of the works affected by the replacement or renewal.

61.3. If any such defect appears or such damage occurs, during the defects liability period, the Contracting Authority or the Supervisor shall notify the Contractor. If the Contractor fails to remedy a defect or damage within the time limit stipulated in the notification, the Contracting Authority may:

a) carry out the works itself, or employ someone else to carry out the works at the Contractor's risk and cost, in which case the costs incurred by the Contracting Authority shall be deducted from monies due to or from guarantees held against the Contractor or from both; or

b) terminate the contract.

61.4. If the defect or damage is such that the Contracting Authority has been deprived substantially of the whole or a part of the benefit of the works, the Contracting Authority shall, without prejudice to any other remedy, be entitled to recover all sums paid in respect of the parts of the works concerned together with the cost of dismantling such parts and clearing the site.

61.5. In case of emergency, where the Contractor is not immediately available or, having been reached, is unable to take the measures required, the Contracting Authority or the Supervisor may have the work carried out at the expense of the Contractor. The Contracting Authority or the Supervisor shall as soon as practicable inform the Contractor of the action taken.

61.6. Where the Special Conditions stipulate that the maintenance work, necessitated by normal wear and tear, shall be carried out by the Contractor, such work shall be paid for from a provisional sum. Deterioration resulting from the circumstances provided for in Article 21 or from abnormal use shall be excluded from this obligation unless it reveals a fault or defect justifying the request for repair or replacement under Article 61.

61.7. The defects liability period shall be stipulated in the Special Conditions and technical specifications. If the duration of the defects liability period is not specified, it shall be 365 days. The defects liability period shall commence on the date of provisional acceptance and may recommence in accordance with Article 61.2.

61.8. After provisional acceptance and without prejudice to the defects liability referred to in Article 61, the Contractor shall no longer be responsible for risks which may affect the works and which result from causes not attributable to it. However, the Contractor shall be responsible as from the date of provisional acceptance for the soundness of the construction, as laid down in the law of the Country in which the works are executed.

***Article 62 - Final acceptance***

62.1. Upon the expiry of the defects liability period, or where there is more than one such period, upon the expiry of the latest period, and when all defects or damage have been rectified, the Supervisor shall issue to the Contractor a final acceptance certificate and a copy thereof to the Contracting Authority stating the date on which the Contractor completed its obligations under the contract to the Supervisor's satisfaction. The final acceptance certificate shall be given by the Supervisor within 30 days after the expiration of the defects liability period, or as soon as any works ordered under Article 61 have been completed to the satisfaction of the Supervisor.

62.2. The works shall not be considered as completed until the final acceptance certificate has been signed by the Supervisor and delivered to the Contracting Authority, with a copy to the Contractor.

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

**BREACH OF CONTRACT AND TERMINATION**

***Article 63 - Breach of contract***

63.1. Either party commits a breach of contract where it fails to perform its obligations in accordance with the provisions of the contract.

63.2. Where a breach of contract occurs, the party injured by the breach is entitled to the following remedies:

a) damages; and/or

b) termination of the contract.

63.3. Damages may be either:

a) general damages; or b) liquidated damages.

63.4. Should the Contractor fail to perform any of its obligations in accordance with the provisions of the contract, the Contracting Authority is without prejudice to its right under article 63.2, also entitled to the following remedies:

a) suspension of payments; and/or

b) reduction or recovery of payments in proportion to the failure's extent.

63.5. Where the Contracting Authority is entitled to damages, it may deduct such damages from any sums due to the Contractor or call on the appropriate guarantee.

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

64.1. The Contracting Authority may, at any time and with immediate effect, subject to Article

64.9, terminate the contract, except as provided for under Article 64.2.

64.2. Subject to any other provision of these General Conditions the Contracting Authority may, by giving seven days' notice to the Contractor, terminate the contract and expel the Contractor from the site in any of the following cases where:

a) the Contractor is in serious breach of contract for failure to perform its contractual obligations;

b) the Contractor fails to comply within a reasonable time with the notice given by the Supervisor requiring it to make good the neglect or failure to perform its obligations under the contract which seriously affects the proper and timely performance of the works;

c) the Contractor refuses or neglects to carry out any administrative orders given by the Supervisor;

d) the Contractor assigns the contract or sub-contracts without the authorisation of the Contracting Authority;

e) the Contractor is bankrupt, subject to insolvency or winding up procedures, is having its assets administered by a liquidator or by the courts, has entered into an arrangement with creditors, has suspended business activities, or is in any analogous situation arising from a similar procedure provided for under any national law or regulation relevant to that Contractor;

f) any organisational modification occurs involving a change in the legal personality, nature or control of the Contractor, unless such modification is recorded in an addendum to the contract;

g) any other legal disability hindering performance of the contract occurs;

h) the Contractor fails to provide the required guarantees or insurance, or the person providing the earlier guarantee or insurance is not able to abide by its commitments;

i) the Contractor has been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;

j) it has been established by a final judgment or a final administrative decision or by proof in possession of the Contracting Authority that the Contractor has been guilty of fraud, corruption, involvement in a criminal organisation, money laundering or terrorist financing, terrorist related offences, child labour or other forms of trafficking in human beings or has committed an irregularity;

k) the Contractor, in the performance of another contract financed by the EU budget/EDF funds, has been declared to be in serious breach of contract, which has led to its early termination or the application of liquidated damages or other contractual penalties or which has been discovered following checks, audits or investigations by the European Commission, the Contracting Authority, OLAF or the Court of Auditors;

l) after the award of the contract, the award procedure or the performance of the contract proves to have been subject to substantial errors, irregularities or fraud;

m) the award procedure or the performance of another contract financed by the EU budget/EDF funds proves to have been subject to substantial errors, irregularities or fraud which are likely to affect the performance of the present contract;

n) the Contractor fails to perform its obligation in accordance with Article 12.8, Article 12a or Article 12b;

o) the Contracting Authority has become entitled to the maximum claim under

Article 36.1;

p) the Contractor fails to perform its obligation in accordance with Article 61.3.

The cases of termination under points (e), (i), (j), (l), (m) and (n) may refer also to persons who are members of the administrative, management or supervisory body of the Contractor and/or to persons having powers of representation, decision or control with regard to the Contractor.

The cases of termination under points (a), (e), (f), (g), (i), (j), (k), (l), (m) and (n) may refer also to persons jointly and severally liable for the performance of the contract.

The cases under points (e), (i), (j), (k), (l), (m) and (n) may refer also to subcontractors.

64.3. Termination shall be without prejudice to any other rights or powers under the contract of the Contracting Authority and the Contractor. The Contracting Authority may, thereafter, complete the works itself or conclude any other contract with a third party, at the Contractor's own expense. The Contractor's liability for delay in completion shall immediately cease when the Contracting Authority terminates the contract without prejudice to any liability thereunder that may already have arisen.

64.4. Upon termination of the contract or when it has received notice thereof, the Contractor shall take immediate steps to bring the works to a close in a prompt and orderly manner and to reduce expenditure to a minimum.

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

64.6. In the event of termination:

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

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

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

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

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

64.8. If the Contracting Authority terminates the contract pursuant to Article 64.2, it shall, in addition to the extra costs for completion of the works and without prejudice to its other remedies under the contract, be entitled to recover from the Contractor any loss it has suffered up to 10% of the contract price.

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

64.10. This contract shall be automatically terminated if it has not given rise to any payment in the two years following its signing by both parties.

***Article 65 - Termination by the Contractor***

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

a) fails for more than 120 days to pay the Contractor the amounts due under any certificate issued by the Supervisor after the expiry of the time limit stated in Article 44.3; or

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

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

65.2. Such termination shall be without prejudice to any other rights of the Contracting Authority or the Contractor acquired under the contract. Upon such termination, the Contractor shall, subject to the law of the Country in which the works are executed, be entitled to immediately remove its equipment from the site.

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

10% of the contract price.

***Article 66 - Force majeure***

66.1. Neither party shall be considered to be in default or in breach of its obligations under the contract if the performance of such obligations is prevented by any circumstances of force

majeure which arises after the date of notification of award or the date when the contract becomes effective.

66.2. The term force majeure, as used herein covers any unforeseeable events, not within the control of either party and which by the exercise of due diligence neither party is able to overcome such as acts of God, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars whether declared or not, blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosions. A decision of the European Union to suspend the cooperation with the partner country is considered to be a case of force majeure when it implies suspension of funding this contract.

66.3. Notwithstanding the provisions of Articles 36 and 64, the Contractor shall not be liable to forfeiture of its performance guarantee, liquidated damages or termination for default if, and to the extent that, its delay in performance or other failure to perform its obligations under the contract is the result of an event of force majeure. The Contracting Authority shall similarly not be liable, notwithstanding the provisions of Articles 53 and 65, for payment of interest on delayed payments, for non-performance or for termination by the Contractor for default, if, and to the extent that, the Contracting Authority's delay or other failure to perform its obligations is the result of force majeure.

66.4. If either party considers that any circumstances of force majeure have occurred which may affect performance of its obligations, it shall promptly notify the other party and the Supervisor, giving details of the nature, the probable duration and the likely effect of the circumstances. Unless otherwise directed by the Supervisor in writing, the Contractor shall continue to perform its obligations under the contract as far as is reasonably practicable, and shall seek all reasonable alternative means for performance of its obligations which are not prevented by the force majeure event. The Contractor shall not put into effect such alternative means unless directed so to do by the Supervisor.

66.5. If the Contractor incurs additional costs in complying with the Supervisor's directions or using alternative means under Article 66.4, the amount thereof shall be certified by the Supervisor.

66.6. If circumstances of force majeure have occurred and continue for a period of 180 days then, notwithstanding any extension of time for completion of the works that the Contractor may by reason thereof have been granted, either party shall be entitled to serve upon the other 30 days' notice to terminate the contract. If, at the expiry of the period of

30 days, force majeure persists, the contract shall terminate and, in consequence thereof under the law governing the contract, the parties shall be released from further performance of the contract.

***Article 67 - Decease***

67.1. Where the Contractor is a natural person, the contract shall be automatically terminated if that person dies. However, the Contracting Authority shall examine any proposal made by the heirs or beneficiaries if they have notified their wish to continue the contract.

67.2. Where the Contractor consists of a number of persons and one or more of them die, a report shall be agreed between the parties on the progress of the works, and the

Contracting Authority shall decide whether to terminate or continue the contract in accordance with the undertaking given by the survivors and by the heirs or beneficiaries, as the case may be. The decision of the Contracting Authority shall be notified to those concerned within 30 days of receipt of such proposal.

67.3. In the cases provided for in Article 67.1 and 67.2, persons offering to continue to perform the contract shall notify the Contracting Authority thereof within 15 days of the date of decease.

67.4. Such persons shall be jointly and severally liable for the proper performance of the contract to the same extent as the deceased Contractor. Continuation of the contract shall be subject to the rules relating to establishment of any guarantee provided for in the contract.

**SETTLEMENT OF DISPUTES AND APPLICABLE LAW**

***Article 68 - Settlement of disputes***

68.1. The parties shall make every effort to settle amicably any dispute relating to the contract which may arise between them, or between the Supervisor and the Contractor.

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

68.3. In the absence of an amicable settlement, a party may notify the other party requesting a settlement through conciliation by a third person. If the European Commission is not a party to the contract, it may accept to intervene as conciliator. The other party shall respond to the request for conciliation within 30 days. Unless the parties agree otherwise, the maximum time period laid down for reaching a settlement through conciliation shall be 120 days from the notification requesting such a procedure. Should a party not agree to the other party's request for conciliation, should a party not respond in time to that request or should no settlement be reached within the maximum time period, the conciliation procedure is considered to have failed.

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

***Article 69 - Applicable Law***

69.1. This contract shall be governed by the law of the country of the Contracting Authority or, where the Contracting Authority is the European Commission, by the European Union law supplemented as appropriate by Belgian law.

**FINAL PROVISIONS**

***Article 70 - Administrative sanctions***

70.1. Without prejudice to the application of other remedies laid down in the contract, a sanction of exclusion from all contracts and grants financed by the EU, may be imposed, after an adversarial procedure, upon the Contractor who, in particular,

a) is guilty of grave professional misconduct, has committed irregularities or has been found in serious breach of its contractual obligations. The duration of the exclusion shall not exceed the duration set by final judgement or final administrative decision or, in the absence thereof, three years;

b) is guilty of fraud, corruption, participation in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings. The duration of the exclusion shall not exceed the duration set by final judgement or final administrative decision or, in the absence thereof, five years.

70.2. In the situations mentioned in Article 70.1, in addition or in alternative to the sanction of exclusion, the Contractor may also be subject to financial penalties representing 2-10% of the contract price.

70.3. Where the Contracting Authority is entitled to impose financial penalties, it may deduct such financial penalties from any sums due to the Contractor or call on the appropriate guarantee.

70.4. The decision to impose administrative sanctions may be published on a dedicated internet-site, explicitly naming the Contractor.

70.5 The above administrative sanctions may also be imposed on persons who are members of the administrative, management or supervisory body of the Contractor, on persons having powers of representation, decision or control with regard to the Contractor, on persons jointly and severally liable for the performance of the contract and on subcontractors.

***Article 71 - Verifications, checks and audits by European Union bodies***

71.1. The Contractor will allow the European Commission, the European Anti-Fraud Office and the European Court of Auditors to verify, by examining the documents and to make copies thereof or by means of on-the-spot checks, including checks of documents (original or copies), the implementation of the contract. In order to carry out these verifications and audits, the EU bodies mentioned above shall be allowed to conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document relevant to the financing of the project. The

Contractor shall ensure that on-the-spot accesses is available at all reasonable times, notably at the Contractor's offices, to its computer data, to its accounting data and to all the information needed to carry out the audits, including information on individual salaries of persons involved in the project. The Contractor shall ensure that the information is readily available at the moment of the audit and, if so requested, that data be handed over in an appropriate form. These inspections may take place up to 7 years after the final payment.

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

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

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

71.5. Failure to comply with the obligations set forth in Article 71.1 to 71.4 constitutes a case of serious breach of contract.

***Article 72 - Data protection***

72.1. Any personal data included in the contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. The data shall be processed solely for the purposes of the performance, management and monitoring of the contract by the Contracting Authority without prejudice to possible transmission to the bodies charged with monitoring or inspection in application of EU law. The Contractor shall have the right to access his/her personal data and to rectify any such data. Should the Contractor have any queries concerning the processing of his/her personal data, s/he shall address them to the Contracting Authority. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

72.2. Where the contract requires processing personal data, the Contractor may act only under the supervision of the data controller, in particular with regard to the purposes of

processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.

72.3. The data shall be confidential within the meaning of Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data. The Contractor shall limit access to the data to staff strictly needed to perform, manage and monitor the contract.

72.4. The Contractor undertakes to adopt technical and organisational security measures to address the risks inherent in processing and the nature of the personal data concerned in order to:

1. prevent any unauthorised person from having access to computer systems processing personal data, and especially:

aa) unauthorised reading, copying, alteration or removal of storage media;

ab) unauthorised data input, unauthorised disclosure, alteration or erasure of stored personal data;

ac) unauthorised persons from using data-processing systems by means of data transmission facilities;

b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;

c) record which personal data have been communicated, when and to whom;

d) ensure that personal data processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;

e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;

f) design its organisational structure in such a way that it meets data protection requirements.

\* \* \*

VOLUME 2

# SECTION 4 SPECIMEN PERFORMANCE GUARANTEE

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

For the attention of

**European Union Rule of Law Mission in Kosovo (EULEX),** with its address at Ndertesa Farmed “Muharrem Fejza” p.n. Lagja e Spitalit 10000 Pristina, Kosovo, represented for the purpose of this contract under delegated authority by the Head of Mission Support Department, Mr. Sean Kerins referred to below as the ‘Contracting Authority’

Subject: Guarantee No …

Performance Guarantee for the full and proper execution of Contract <contract number and title> (please quote number and title in all correspondence)

We, the undersigned, <name, and address of financial institution>, hereby irrevocably declare that we guarantee, as primary obligor, and not merely as a surety on behalf of <Contractor’s name and address>, hereinafter referred to as ‘the Contractor’, payment to the Contracting Authority of <amount of the performance guarantee>, representing the performance guarantee mentioned in Article 15 of the Special Conditions of the Contract <contract number and title> concluded between the Contractor and the Contracting Authority, hereinafter referred to as ‘the Contract’.

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

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

We note that the guarantee will be released in accordance with Article 15.8 of the General Conditions to the Contract and at the latest on <at the expiry of 18 months after the implementation period of the Contract.[[18]](#footnote-19)

[The whole paragraph should be deleted when the Contracting Authority is the European Commission:

Any request to pay under the terms of the guarantee must be countersigned by the Head of Delegation of the European Union in the country of the Contracting Authority or his designated empowered deputy as par the applicable Commission rules. In case of a temporary substitution of the Contracting Authority by the Commission, any request to pay will only be signed by the representative of the Commission, namely whether the Head of Delegation, his designated empowered deputy or the authorised person at headquarters' level.]

The law applicable to this guarantee will be that of [If the Contracting Authority is the European Union: Belgium] Any dispute arising out of or in connection with this guarantee will be referred to the courts of [If the Contracting Authority is the European Union: Belgium.

The guarantee will enter into force and take effect upon its signature.

Done at [*insert place*], on [*insert date*]

|  |  |
| --- | --- |
| [*Signature*]  [*Function at the Financial Institution/Bank*] | [*Signature*]  [*Function at the Financial Institution/Bank*] |

*Stamp of the body providing the guarantee*

VOLUME 2

# SECTION 5: SPECIMEN PREFINANCING PAYMENT GUARANTEE

**European Union Rule of Law Mission in Kosovo (EULEX),** with its address at Ndertesa Farmed “Muharrem Fejza” p.n. Lagja e Spitalit 10000 Pristina, Kosovo, represented for the purpose of this contract under delegated authority by the Head of Mission Support Department, Mr. Sean Kerins referred to below as the ‘Contracting Authority’

Subject: Guarantee No…

Financing Guarantee for the repayment of pre-financing payable under contract <Contract number and title> (please quote number and title in all correspondence)

We the undersigned, <name, and address of financial institution>, hereby irrevocably declare that we guarantee as primary obligor, and not merely as surety on behalf of <Contractor's name and address>, hereinafter referred to as “the Contractor”, the payment to the Contracting Authority of <indicate the amount of the pre-financing>, corresponding to the pre-financing as mentioned in Article 46 of the Special Conditions of the contract <Contract number and title> concluded between the Contractor and the Contracting Authority, hereinafter referred to as “the Contract”.

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

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

We note that the guarantee will be released in accordance with the article 46.7 of the General Conditions. [and in any case at the latest on (at the expiry of 18 months after the implementation period of the Contract) ][[19]](#footnote-20).

The law applicable to this guarantee shall be that of Belgium.

Any dispute arising out of or in connection with this guarantee shall be referred to the courts of Belgium.

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

Done at [*insert place*], on [*insert date*]

|  |  |
| --- | --- |
| [*Signature*]  [*Function at the Financial Institution/Bank*] | [*Signature*]  [*Function at the Financial Institution/Bank*] |

*Stamp of the body providing the guarantee*

VOLUME 2

# SECTION 6 SPECIMEN RETENTION GUARANTEE

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

For the attention of

**European Union Rule of Law Mission in Kosovo (EULEX),** with its address at Ndertesa Farmed “Muharrem Fejza” p.n. Lagja e Spitalit 10000 Pristina, Kosovo, represented for the purpose of this contract under delegated authority by the Head of Mission Support Department, Mr. Sean Kerins referred to below as the ‘Contracting Authority’

Subject: Guarantee No <…>

Retention Guarantee for Contract <contract number and title> (please quote number and title in all correspondence)

We, the undersigned, <name, and address of financial institution>, hereby irrevocably declare that we guarantee, as primary obligor, and not merely as a surety on behalf of <Contractor’s name and address>, hereinafter referred to as ‘the Contractor’, payment to the Contracting Authority of <amount of the retention guarantee>, representing the retention guarantee mentioned in Article 47 of the Special Conditions of the Contract (contract number and title) concluded between the Contractor and the Contracting Authority, hereinafter referred to as ‘the Contract’

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

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

We note that the guarantee will be released in accordance with Article 47.3 of the General Conditions to the Contract [and in any case at the latest on <at the expiry of 18 months after the implementation period of the Contract.[[20]](#footnote-21)

The law applicable to this guarantee will be that of Belgium. Any dispute arising out of or in connection with this guarantee will be referred to the courts of Belgium.

The guarantee will enter into force and take effect upon its signature.

Done at [*insert place*], on [*insert date*]

|  |  |
| --- | --- |
| [*Signature*]  [*Function at the Financial Institution/Bank*] | [*Signature*]  [*Function at the Financial Institution/Bank*] |

*Stamp of the body providing the guarantee*

**VOLUME 3**

**TECHNICAL SPECIFICATIONS**



EULEX KOSOVO

VOLUME 2

TECHNICAL SPECIFICATION

1 GENERAL INFORMATION

1.1 INTRODUCTION

1.2 LOCATION OF THE SITE

2 SECURITY CONDITIONS

3 SCOPE OF WORKS

4 CONTRACTOR’S RESPONSIBILITIES

4.1 TECHNICAL SUBMISSION AND TIME SCALE

4.2 PRIOR TO COMMENCING OF ANY WORK

4.3 Final Clearance

4.4 WHEN THE CONTRACTOR HAS OBTAINED APPROVAL FROM EULEX

4.5 GENERAL WORK REQUIREMENTS

5 DESCRIPTION OF WORKS AND MATERIALS

5.1 EARTHWORKS

5.1.1. Notice to be Given before Commencing Earthworks

5.1.2. Earthworks to Lines and Levels

5.1.3. Clearing

5.1.4. Demolition and Dismantling

5.1.5. Stripping of Topsoil

5.1.6. Relocation of Utilities

5.1.7. Excavation General

5.1.8. Extent of Excavations

5.1.9. Slips, Falls and Excess Excavation

5.1.10. Excavations to be Kept Dry

5.1.11. Excavation of Berms and Slopes

5.1.12. Excavation of Drains

5.1.13. Excavation of Roads

5.1.14. Excavation for Structures

5.1.15. Tolerances for Excavation

5.1.16. Preparation of Formation

5.2 ASPHALTING WORKS

5.2.1 GROUND PREPARATION

5.2.2 ASPHALTING

5.2.2.1. Priming Coat / Tack Coat

5.2.2.2. Hot rolled asphalt

5.2.2.2.1.Aggregates

5.2.3. EXECUTION OF THE ASPHALTING

5.2.3.1. Preparation of the surfaces:

5.2.3.2. Transport of the hot rolled asphalt:

5.2.3.3. Laying the hot rolled asphalt:

5.2.3.4. Thickness of the Asphalt:

5.2.3.5. Workmanship

**5.3 MARKING/PAINTING OF ROADWAYS/PARKINGS**

5.3.1. Marking/painting:

5.3.2. Precast Concrete Channel:

5.3.3. Rubber Wheel Stoppers:

5.4 PAVING WITH CONCRETE PRODUCTS

5.4.1. Concrete kerbs:

5.4.2. Poliuretan-plastic flexible tube:

5.4.3. Pavement tiles:

5.5 CONCRETE WORKS

5.4.1. Demolition Works:

5.4.2. Form Works:

5.4.3. Reinforcement Works:

5.4.4. Concrete Works:

6.0 RESPONSIBILITIES AND ITEM INSPECTION

# GENERAL INFORMATION

## INTRODUCTION

Due to the proper pavement and road maintenance at the EULEX facilities, asphating, concreting and other related construction works should be carried out at various locations to provide proper working and safe traffic conditions for the EULEX staff.

Also after different technical problems, such as a broken pipe, the hard surface of the road should be fixed as soon as possible to avoid any kind of accident on the site and provide normal working conditions for the users.

## LOCATION OF THE SITE

The locations of the various official facilities of the EULEX organization in KOSOVO in Prishtinë/Pristina and Mitrovicë/Mitrovica.

# SECURITY CONDITIONS

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

* Initially a list of workers and their tools that they will use during their work will be asked from the contractor. Before every entry/exit to the area, they will be asked about their ID Cards.
* The Contracting Authority's Representative will meet the contractor’s representative before they start with works and they will consider the security procedures.
* Contractor’s tools which are not going to be used during the weekend will be asked to be taken away (except if they have no request to work during the weekends).
* Only tools which are presented in the inventory list (mentioned above) will be allowed in the facility. Procedures can be applied in occasions of adding or removing a tool.
* All the tools shall be locked in tool boxes when not in use (during weekdays).
* The Contracting Authority's supervisor will check all the working places before the works start and after the works are finished for that particular day (every day).
* No items shall be transported in or out of the site without the express prior approval of the designated Contracting Authority's Representative. The approval, preceded by an inspection of the items to be transported, shall be in writing and will be accompanied by the list of the items approved for transportation to the specific location.

# SCOPE OF WORKS

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

* Eartworks.
* Construction of asphalt surface.
* Marking /painting works in roadways/parkings
* Paving with concrete products
* Concrete works

# CONTRACTOR’S RESPONSIBILITIES

## TECHNICAL SUBMISSION AND TIME SCALE

Tenders are obliged to include sufficient technical information to allow Contracting Authority to assess the quality of proposal. Tenders are obliged to state the contract period and the warranty period in their submission.

**PRIOR TO COMMENCING OF ANY WORK**

The contractor shall provide the samples of all materials with the manufacturer specifications that he intends to use, for approval by EULEX designated Representative.

The contractor shall submit a complete program- time schedule which specifies his intended procedure for executing the work in compliance with the above-mentioned requirements.

The contractor shall take his own measurements in accordance with the physical status on the ground before starting of any productions.

## FINAL CLEARANCE

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

## WHEN THE CONTRACTOR HAS OBTAINED APPROVAL FROM EULEX

All work has to be carried out to the complete satisfaction of the delegated representative in accordance with relevant standards and good working practices.

The Contractor shall notify the designated representative, prior to covering any part of the work, which will then be inaccessible for subsequent inspection. Failure to do so will result in exposure of the afore-said works and subsequently reinstatement at the contractor’s expense.

It is essential to have an English speaking contractor’s supervisor with direct authority over the workforce on site during all working hours. In the absence of an English-speaking contractor’s supervisor, a translator will be required to presence at all times.

## GENERAL WORK REQUIREMENTS

#### Security and Fire Fighting

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

#### Construction Equipment & Machinery

The Contractor shall provide all necessary sound and adequate equipment, heavy machinery and vehicles machinery vehicles and equipment required for the works that include but are not limited to (cranes, forklifts, trucks etc). The contractor shall be solely responsible for the employment of skilled and qualified machinery and equipment operators as well as the sufficient and proper maintenance of all machinery and equipment employed on the site

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

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

#### Water Supply

The Contractor shall provide a clean and sufficient supply of fresh water, both for construction of the Works and for all facilities. He shall undertake all arrangements including pipe lines and meters for connecting to local water mains and the provision of pumps, storage tanks and water conveyance where necessary, payment for all fees and water charges and the satisfactory removal of all such arrangements and provisions on completion of the Works. The Contractor shall provide temporary water supply if required for his work.

#### Electric Power Supply

The Contractor shall provide all temporary power, light, and telephone service required for his work. The Contractor shall make all necessary applications, obtain required permits and pay all fees and charges for such services and their use. The Contractor shall provide all wiring, lamps, switches" fuses, receptacles, etc., as may be required for his work. Temporary power and light circuits shall be thoroughly insulated and waterproof. The temporary power and light system shall be subject to the inspection and approval of the appropriate Authority. The Contractor shall be solely responsible for the provision of Electricity from whatever source for all his requirements under the Contract. The cost of provision of electricity is deemed to be included in the contract rates. The Contractor shall provide temporary electrical supply if required for his work.

* + 1. Use of the Site

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

Weather Conditions

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

* + 1. Protection of Existing Works and Services

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

* + 1. Temporary Buildings for Use by the Contractor

The Contractor shall provide and maintain in a perfectly usable and watertight condition on land in possession of the Beneficiary, or such lands as he may acquire for the purposes of the Works with the approval of the Project Manager, such temporary buildings of timber, galvanized iron, or other suitable material as may be necessary for his general use in connection with the Works as well as buildings for the temporary accommodation of any labor, and for the use of the persons employed by him and before constructing such buildings he shall supply to the Project Manager a plan or plans showing their positions and nature which shall be in all respects to the approval of the Project Manager. Prior to preparing his Tender, the Contractor shall satisfy himself as to what will be required especially with regard to labor accommodation. The cost of providing temporary buildings for use by the Contractor shall be spread over the works and included in the Breakdown of Prices for those works.

* + 1. Health, Safety and Accidents

The Contractor is also obliged to observe all the stipulated measures pertaining to fire protection, protection at work as well as hygienic and technical conditions such as Fire Protection Regulations Rule Book on general Measures and Normative of Protection at work concerning building facilities intended for the work and other subsidiary premises. The Contractor shall ensure, so far as is reasonably practicable and to the satisfaction of the Contracting Authority, the health, safety and welfare at work of his employees including those of his sub-Contractors and of all other persons on the Site.

His responsibilities shall include: the provision and maintenance of equipment and systems of work must be safe and without risks to health; the execution of suitable arrangements for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances; the provision of protective clothing and equipment, first aid stations with such personnel and equipment as are necessary and such information, instruction, training and supervision as are necessary to ensure the health and safety at work of all persons employed on the Works all in accordance with Laws and all local By- Laws; Designation as safety Officer of one of his senior staff who shall have specific knowledge of safety regulations, and experience of safety precautions on similar works and who shall advise on all matters affecting the safety of workman and on measures to be taken to promote such safety; the provision and maintenance of access to all places one the Site in a condition that is safe and without risk of injury; the provision of adequate water-borne sanitation, refuse collection and disposal, complying with the Laws and all local By-Laws and to the satisfaction of the Project Manager, for all site offices, workshops erected on the camp site; the provision of suitable latrines and other sanitary arrangements at the site where work is in progress to the satisfaction of the Medical Officer in the area and of the Contracting Authority Supervisor; the execution of appropriate measures in consultation with the appropriate Public Health Authority to control within the site; reporting details of any accident to the Contracting Authority Supervisor as soon as possible after its occurrence; the provision and maintenance of adequately equipped first aid station on the site of the works.

***NOTE:* The selected company is obliged to designate as Safety Officer one of his senior staff who shall have specific knowledge and experience of safety regulations.**

*Maintenance*

Make sure equipment is:

• well looked after and properly stored when it is not being used, for example in a dry, clean cupboard, or in the case of smaller items, such as eye protection, in a box or case;

• kept clean and in good repair - follow the manufacturer’s maintenance schedule (including recommended replacement periods and shelf lives). Simple maintenance can be carried out by the trained wearer, but more intricate repairs should only be done by specialists. Make sure suitable replacement PPE is always readily available.

# DESCRIPTION OF WORKS AND MATERIALS

**5.1. Earthworks**

### Notice to be Given before Commencing Earthworks

The Contractor shall give to the Project Manager at least three days written notice of his intention to commence earthworks on any part of the Site so as to enable the Project Manager to be furnished with all ground levels and other particulars he may require for the purpose of measurement. The earthworks shall not be commenced until written approval has been received by the Contractor from the Project Manager.

### Earthworks to Lines and Levels

The whole of the earthworks for the several parts of the Works shall be carried out to the dimensions and levels shown on the Drawings, or to such other dimensions and levels as may be ordered by the Project Manager. Dimensions which are based on, or relate to, ground levels or chainages shall be referred to the Project Manager before commencing earthworks at any location.

For the purpose of the Specification the term ground level shall refer to the ground surface before the start of earthwork operations, but after the general clearance of the Site in accordance with the Specification.

### Clearing

Clearing shall consist of clearing and grubbing including the disposal of materials, of all areas within the limits designated on the Drawings or as directed by the Project Manager. Such clearing and grubbing shall be to the approval of the Project Manager. Actual clearing and grubbing operations shall not start unless relevant pre-excavation surveys are completed.

In areas designated to be cleared and grubbed the surface of the ground shall be cleared of all trees, stumps, down timber, logs, brush, under growth, heavy growth of grass or weeds, fences, minor structures, debris, and rubbish of any nature, natural obstruction or such materials which in the opinion of the Project Manager are unsuitable for the foundation of embankments or other required structures including the grubbing of stumps roots and matted roots.

All unsuitable materials shall become property of the Contractor and shall be satisfactory disposed of as approved by the Project Manager.

At the locations of future embankments and foundations of structures roots shall be removed to a depth not less than 0.5m below finished ground level. Holes resulting from clearing shall be filled with acceptable materials, moistened and properly compacted and conforming with the specification.

### Demolition and Dismantling

The Contractor shall demolish, dismantle and/or remove any miscellaneous existing structures, buildings or parts thereof which occupy or obstruct the Permanent Works, all as shown on the Drawings, or as directed by the Project Manager. Unsuitable materials from demolishing and dismantling remain the property of the Contractor and shall be disposed of in a manner and at a location to the approval of the Project Manager.

Where partial demolition of structures is required the Contractor shall take the utmost care not to damage any part of the structure which is to remain in place. If any such damage may occur the Contractor shall repair and make good the damage at his own expense.

Unless otherwise directed by the Project Manager holes or openings shall be backfilled with acceptable materials compacted and conforming with Clauses 0 and 0.

### Stripping of Topsoil

Unless otherwise directed by the Project Manager, this item shall consist of stripping the soil at the top of the original surface over a full depth of 150 mm.

Stripping shall be carried out, if deemed necessary by the Project Manager, in the immediate areas to be occupied by the Works, including areas of excavation where material from excavation may be used in fill, areas to be occupied by Temporary Works, or any other areas as directed by the Project Manager. Stripped topsoil shall be dumped in approved dump areas.

Topsoil for reuse for covering of fill embankments, slopes of cuts, drains and the like shall be excavated and kept aside in approved dumping areas. In order to preserve the natural moisture content and general characteristics of materials which are to form foundations or are to be used as fill materials, stripping shall be carefully scheduled so that materials are not exposed to the extent that they may deteriorate prior to the relevant excavation or replacement of fill or structures. Such deteriorated areas must be restored, following the directions of the Project Manager at the Contractor's expense.

Should the Project Manager require the Contractor to perform stripping in excess of the required full depth of 150 mm, then such excess stripping shall be measured for payment and be paid for as excavation.

### Relocation of Utilities

The Contractor shall take at his own expense, any steps necessary to protect and safeguard any drains, pipes, cables and similar services encountered, already installed or to be installed, for the duration of the Contract in order to keep them in good working condition.

Information as may be given in the Contract in relation to the present condition and character of the existing structures, roadways, embankments and the like and in relation to the dimensions of various parts of the existing structures, the position, extent and particulars of drains, pipes, cables and the like, is given without guarantee of accuracy and neither the Contracting Authority nor the Project Manager will be liable for any discrepancy therein.

It shall be the responsibility of the Contractor to liaise, coordinate, follow up and obtain all information available from the Utility Authorities, regarding the positions and/or relocation of mains and services, and he shall make this information available to the Contracting Authority's Representative as soon as he obtains it.

All locating work shall be carried out four weeks in advance of execution of the work. The Contractor shall obtain all information and assistance available from the Utility Authorities for locating the mains and services, and shall agree with the Contracting Authority's Representative any trial excavations which may be necessary to confirm or establish these locations. All costs for executing trial holes shall be deemed to be included in the Contractor's rates for excavation.

The absence of such information shall not relieve the Contractor of this liability for the cost of any repair work necessitated by damage caused by him to such mains and services in the course of his work and for the cost of all losses arising from their disruption.

Any temporary or permanent diversion and/or relocation of mains and services will only be permitted after agreement with the appropriate Utility Authority and the approval of the Project Manager.

### Excavation General

Excavation shall consist of excavating, removing and satisfactory disposing of soil material, as per project given for all parts of the works. The Contractor's method of excavation shall be subject to the approval of the Project Manager.

All materials from excavation remain the property of the Contracting Authority.

Unless otherwise specified or directed suitable material from excavation shall be used for fill, backfill of structures, road embankment or other parts of the Works. Surplus material and material determined unsuitable by the Project Manager shall be disposed of if so required by the Project Manager, in spoil- dumps designated by the Contractor and approved by the Project Manager. No material shall be disposed of in spoil-dumps or otherwise, unless approved by the Project Manager. Shortage of material caused by any unauthorised disposal of suitable material shall be made good at the Contractor's expense.

Unless otherwise directed material suitable for fill which at the time of excavation can not be placed in its final position in the Permanent Works shall be stockpiled for later reuse. No measurement for payment nor payment will be made separately or directly for any stockpiling and subsequent re- excavation and rehandling of stockpiled material.

If areas of excavation are not accessible for earthmoving equipment due to limited working space, traffic or any other reason, excavation shall be carried out manually.

|  |  |  |
| --- | --- | --- |
| **TABLE OF SOIL CATEGORIZATION** | | |
| **Categories**  **Class of Materials** | **Categories**  **bulk excavation for road construction** | **Description** |
| **I.** | **C** | sandy topsoil; humus with grass roots; boiler slag; earth heaped without compaction; embankments of humus soil. |
| **II.** |
| **III.** | humus layers of soil with the roots of shrubs; earth with sand; stabilized earth embankments; soil of higher categories destroyed by machinery or by explosives; soil with 30% stone up to 90 mm ​​diameter. |
| **IV.** | B | hard compacted dried soil; earth material with 30% to 50% of stone from 100 to 200 mm diamete;, loose and cracked stone materials; marl dry soil; hardened mortar and asphalt; soil with roots of tall trees. |
| **V.** | soil with 50% to 70% of unbound stone with diameter up to 500 mm; cracked rocks with earthen material; hard marl; solid concrete MB 20. |
| **VI.** | A | full, sail, uncracked stone materials; solid concrete MB 30; surface layer of frozen ground. |
| **VII.** | igneous rocks; mud - a mixture of water, earth and stone, liquid or plastic consistency with stone diameter up to 300mm. |

### Extent of Excavations

The extent of excavations shall be the minimum practicable in the opinion of the Project Manager for the construction of the Permanent Works or to the dimensions and levels shown on the Drawings, or to such other dimensions and levels as may be ordered by the Project Manager.

During the progress of the work it may be found necessary to vary the slopes or the dimensions of the excavations from those shown on the Drawings. The Project Manager reserves the right to make any modifications of the slopes or the dimensions of the excavation. The Contractor shall not be entitled to any additional payment or allowance above the relevant Contract unit prices for the excavation by reason of such changes.

### Slips, Falls and Excess Excavation

The Contractor shall within the limits of the Contract be responsible for the stability of the excavations at all time, the Contractor shall be responsible for any injuries to the Works, or other consequential damages caused by or arising out of falls, slips, over excavations, erosion caused by wind or water or other injurious events.

The Contractor shall satisfy the Project Manager that any section of open excavation will permit safe excavation without the use of supports, or shall, at his own expense, provide temporary supports, permitting excavation to be carried out safely.

The Contractor shall take all possible precautions to prevent slips in excavations and to protect and support parts of Works which may be endangered.

The Contractor shall regularly inspect excavations and shall perform at his own expense all types of remedial work throughout the time of duration of the Contract caused by whatever injurious event, and to ensure that all excavated surfaces are maintained in a stable and safe condition.

Unless otherwise directed by the Project Manager over-excavation performed by the Contractor for whatever reason or purpose will not be measured for payment, nor paid for.

Any excess excavation, overbreak or slip beyond the limits of the specified excavation shall be remedied and made good at the Contractor's expense with such material and in such a manner as the Project Manager may direct. When such voids, in the opinion of the Project Manager, may affect the stability of the ground for the support of the work, or of the adjacent structures and services, the Contractor shall fill the void solid with concrete grade C15.

### Excavations to be Kept Dry

Unless otherwise approved, and such approval will only be given in exceptional circumstances, the Contractor shall keep the excavations for structures and pipelines free of water from atmospheric sources, so that the Works shall be constructed in dry conditions.

The destination and method of disposal of water from the excavations shall be subject to the approval of the Project Manager.

### Excavation of Berms and Slopes

The work under this item includes excavation to the true lines and grades as shown on the Drawings of berms and slopes, including trimming, haul and disposal of unsuitable material, all according to the Specifications.

Excavated surfaces shall be neatly trimmed to a smooth and regular surface. Excavated rock surfaces shall be finished to the best practicable finish which in the opinion of the Project Manager can be obtained by skilled use of the equipment approved for the use of rock excavation.

Over excavation shall be made good in accordance with the Specification and shall be fully at the

Contractors expense. Over excavation shall not be measured for payment nor paid for.

### Excavation of Drains

The Contractor shall excavate drains in straight lines and in smooth curves to the radius and dimensions shown on the Drawings or ordered by the Project Manager.

Side slopes and bottom of drains shall be constructed and neatly trimmed equal to the best practicable finish which in the opinion of the Project Manager can be obtained by the skilled use of the earthmoving equipment approved for use in the excavation of the Works.

### Excavation of Roads

The work under this item includes excavation of roads and tracks to the dimensions shown on the Drawings including trimming and grading and all hauling of materials.

The Contractor shall take due care that the excavated surface will be well drained and has the proper transverse slopes as indicated on the Drawings.

The Contractor shall excavate in such a manner that during and after excavation proper drainage of the road and track is safeguarded at all times and that drainage from higher slopes along the road and track will not deteriorate the excavated surfaces.

The Contractor shall finish the excavated surface to a smooth and regular surface and special care shall be taken to establish the transverse slopes in accordance with the Drawings.

Over excavation shall be made good by the Contractor at his own expense and shall comply in all respects with the Specifications. Over excavation shall not be measured for payment nor paid for.

### Excavation for Structures

Excavation for structures includes removal and disposal of material, for all structural excavation.

The Contractor shall be responsible for the stability of excavated slopes at all times. Haulage shall not be measured for payment nor paid for.

The bottom and side slopes of excavation in soil against which concrete is to be placed shall be excavated accurately by hand to the elevations, dimensions, grades and slopes as shown on the Drawings. Foundation of structures shall be prepared in accordance with the Specification. Excess excavation shall be backfilled to the required levels with concrete grade C15, at the expense of the Contractor.

Should the surface of excavations at foundation level become deteriorated through any cause whatsoever, then the Contractor shall further excavate all material which has in the opinion of the Project Manager become unsuitable and he shall replace it at his own expense with such material and in such manner as the Project Manager shall direct.

In cases where excavation for structures constitutes rock excavation, the Contractor shall after approval of the Project Manager extend the excavation to 250mm beyond the depth of footings and foundation as indicated on the Drawings. The Contractor shall then backfill the extended excavation to the required foundation levels with concrete grade C15. Extended excavation in rock and subsequently backfilling shall be measured for payment and paid for only when the extended excavation has been approved by the Project Manager prior to the execution, and be measured and paid for in accordance with the specifications for rock excavation and backfill for structures respectively.

### Tolerances for Excavation

Unless otherwise specified hereinafter or elsewhere no point on the surface of the complete earthwork shall be more than +50mm and less than -50mm in distance from the designated surface. Within the above tolerances the surface shall have a smooth regular face. All to the satisfaction of the Project Manager.

Bed levels of drains shall not be higher, (tolerance 0), or more than 200mm lower than the correct level.

### Preparation of Formation

The work under this clause shall consist of preparing the foundation which is to receive compacted earthfill roads or structures or which requires preparation for other purposes as directed by the Project Manager.

All foundations shall be free of loose material, remoulded debris or other deleterious material, all to the satisfaction of the Project Manager. Any foundation area shall be well graded for proper drainage and said grading shall be maintained at all times.

Foundations, except where limited by structures, which are to receive fill or structures shall be scarified and loosened by means of a disc harrow or plough or other approved methods to a depth of no more than 200mm unless such loosening is not needed in the opinion of the Project Manager. Scarifying shall be done approximately parallel to the centre line of the fill.

If any unsound material occurs in the bottom of any excavation, the Contractor shall remove it on the Project Manager 's instruction and dispose of it to the satisfaction of the Project Manager. Unless otherwise specified or ordered by the Project Manager, the Contractor shall fill the voids so formed with concrete grade C15 or with suitable granular material to the approval of the Project Manager. After removal of all unsuitable material, the entire foundation area shall be graded, moisture conditioned and thoroughly compacted to 95% of the standard maximum dry density as determined by the compaction control test as BS1377.

The Project Manager may direct at his discretion that unsuitable material for foundation shall be removed and replaced with suitable material of the same quality as the overlaying fill and treated as compacted fill. No payments will be made for removal and fill not previously approved or instructed by the Project Manager.

Where new embankments are to be placed on natural slopes or embankment slopes, benches shall be graded during the construction as directed by the Project Manager on Site.

If a foundation, which is to receive concrete structures is loosened or disturbed, it shall be compacted to 95% of the standard maximum dry density as determined by the compaction control test as BS1377.

The period between completion of preparation of foundation and the construction of the overlaying works shall be kept as short as practicably possible.

Embankments or structures placed on earth foundations not previously approved by the Project Manager, will be removed and the foundation shall be prepared in the manner described in this Clause, at the expense of the Contractor.

**5.2. ASPHALTING WORKS**

**5.2.1. GROUND PREPARATION**

The ground has to be prepared, leveled and well compacted after the contractor can start directly with applying the priming coat, **Rich Asphalt Emulsion**, on all sides and all over the area to be treated, before proceeding to apply and lay the asphalt-beton layer.

All sides of the damaged areas shall be cut in straight lines, using mechanical asphalt disc cutters: the contractor is to make a vertical cut to the existing asphalt in order to reinforce the joint and to prevent the easy breaking of the new asphalt. This operation shall be executed using ***mechanical self-water cooled cutting machine***. No hand cuttings shall be allowed. All demolition, as well as a method of performing demolition (scraping and breaking) must be permitted by the EULEX representative. All extracted damaged parts shall be transported out of the site at the contractor’s expenses to authorized depot. No dumping of such broken parts in the vicinity of the sites shall be allowed. It is the responsibility of the contractor to get the approval for the dumping place. Contracting Authority will not be held responsible for this part of the project.

The contractor has to clean very well all the areas from all kind on impurities, organic materials, dust and earth prior to apply the priming coat.

**The contractor shall get the surfaces approved from EULEX BMU, before preceding the works.**

**5.2.2. ASPHALTING**

List of applicable standards:

DIN EN 933-5; DIN EN 1425; DIN EN 1426; DIN EN 1427; DIN EN 11251: Bitumen

DIN 1996: Asphalt testing

DIN 52098; DIN 52099; DIN 52114: Sieve Granular for asphalt

DIN 1996-14: Size of granulate

DIN 1996-6: Amount of binder

DIN 1996-7: Marshall Test

DIN 1996-8: Marshall Test water content

DIN 1996-5: Water content

**5.2.2.1. Priming Coat / Tack Coat**

***Important Note:***

Before proceeding to any kind of asphalting, the contractor shall apply first a priming coat or asphalt emulsion, on all surfaces that are destined to receive the asphalt products. This operation shall be also independent of the nature of the base that is going to receive the asphalt. This shall be applied on the graveled bases as well as on the already asphalted surfaces. The only difference is the rate of application of the emulsion, which is clearly mentioned in this paragraph.

**Only pressure spraying of this priming coat is allowed. No spraying by hands or by brooms shall be allowed, whatever the reasons. No asphalting works shall be allowed to start if the priming coat is not done properly, to the satisfaction of the EULEX BMU department.**

Companies not in procession of the required machineries (Primer spraying machine, asphalt laying machine, self-water cooled disc cutter, and rollers of different types and so on) should state that clearly in their offer. No allowance shall be made to alter the specifications. It is a must to spray the primer, at the rates mentioned here below, using only mechanical spraying machines or special pumps or special trucks made for this purpose only.

Use Cut-Back Bitumen binder with a viscosity of 25-500 sec at 60C as per British Grading for this purpose. Bitumen emulsion may also be used with a bitumen content of 65% minimum of the asphalt grade 80/100 with 35% of kerosene.

**The rates of application of this emulsion shall be:** 0.8 kg/m2 **on the stony foundation of the surfaces.**

Pressure spray the priming coat on the dry compacted and Dust Free foundation in a uniform and even manner. Rate of application shall be as mentioned here above and must penetrate the surface to a depth of 25mm to 40mm.

Before spraying the emulsion, the hard surface shall be cleaned from all kind of impurities and dust using a mechanical air compressor for that.

All works shall be verifies by EULEX BMU department, before proceeding to the next steps.

**5.2.2.2 Hot rolled asphalt**

**5.2.2.2.1 Aggregates**

Coarse aggregate/Crushed stone chippings must be clean and free from loosely handed coatings or clay or organic materials, intact in the water, not ductile (ductility degree 0), minimum sand equivalent 50% and to be the result of crashing good rocks in mechanical stations.

The aggregates sizes have to be as per the following table:

|  |  |  |  |
| --- | --- | --- | --- |
| **Mixture#** | **A4** | | |
| **Sieve size** | | **% on Weight of materials passing through the Sieve** | |
| **Inch** | **mm** | **Asphalt Binder course** | **Asphalt Wearing Course** |
| **3\4** | **19** | **100** |  |
| **1\2** | **12.7** | **75-100** | **100** |
| **3\8** | **9.5** | **60-85** | **80-100** |
| **#4** | **4.76** | **30-50** | **55-75** |
| **#8** | **2.38** | **20-35** | **35-50** |
| **#30** | **0.59** | **05--20** | **18-29** |
| **#50** | **0.297** | **03--12** | **12--23** |
| **#100** | **0.149** | **02--08** | **08--16** |
| **#200** | **0.074** | **0-04** | **04--10** |
| **% of Dense Bitumen of 80-100** | | **5.5%** | **6.5%** |

The coarse aggregates/crushed stones shipping’s are divided into 3 categories:

* 1. Big or thick for materials ending at the sieve #4,
  2. Fine for materials starting from the sieve #4 and ending at sieve #10 and
  3. Very Fine (powder) for materials passing through the sieve #10.

The general mix of the stones and aggregates should be as per the table here-above and the security margin should not be more than 5% for the materials which size is bigger than sieve #4, and 2% for the materials of size less than the sieve #4.Then the asphalt will be added in such proportion that the final hot rolled asphalt will possess the following properties:

**Binder course Wearing Course**

\*Stability Test (Marshall) 600 KG 900 KG or more

\*Streamline Test (Marshall) 4 ml or less 4 ml or less

\*% Of voids in the mix 6-8 % 4 -5 %

The mix proportions have to be, for 4 cubic meters of hot rolled asphalt as follow:

-2.6 cubic meters of stone shipping’s (60% of 12.7mm nominal size and below and 40% of 9mm nominal size and below).

-2.6 cubic meter of coarse sand of 2mm nominal size and below.

-480 kg of hot paving asphalt 80/100 heated and then mixed with solvent at the rate of 70grams per 1 kg of asphalt.

Another mix proportions could be used for the binder course and for the wearing course and they are referred here below as Mix BNS 22 Mix AB16 and Mix AB11:

***Mix BNS22:***

This mix shall be used for the asphalt Binder Course.

It shall contains the following proportions:

23% of gravel size 0-5mm, 23% of gravel size 5-8mm, 24% 8-16mm, 20% 16-22mm, 10% of filler and bitumen of grade 60 or 80/100. This mix is for 800 kg of hot rolled bitumen mix.

***Mix AB16:***

This mix shall be used for the asphalt Binder Course.

It shall contains the following proportions:

320kg of gravel size 0-2mm, 154kg of gravel size 2-5mm, 128kg of gravel size 5-8mm, 65kg of gravel size 8-11mm, 55kg of gravel size 11-16mm, 40kg of filler and 38litres of bitumen of grade 60 or 80/100. This mix is for 800 kg of hot rolled bitumen mix.

***Mix AB11:***

This mix shall be used for the asphalt Wearing course.

It shall contains the following proportions:

320kg of gravel size 0-2mm, 168kg of gravel size 2-5mm, 155kg of gravel size 5-8mm, 92kg of gravel size 8-11mm, 30kg of filler and 30 liters of bitumen grade 60 or 80/100. This mix is for 800 kg of hot rolled bitumen mix.

The granulometrie of the gravel mix shall be strictly adhered to. The maximum gravel size shall be as per the attached tables for the different kind of asphalt.

Asphalt where, gravel aggregate sizes are exceeding the required maximum sizes as given on the table at the paragraph 5.2.2.2.1, this asphalt will not be accepted and shall be rejected and removed at the contractor’s expenses. Contractor will be instructed to remove such quality of asphalt and shall redo it again, together with the graveled base if at all it get damaged, all at his own expenses. No payment shall be made for such accomplished works. No claims for extra works or payment shall be made.

Samples may be taken during the works in progress and even at the time of delivery from the asphalting plant; to check especially the proportion of bitumen contents and the granulometrie of the contents, and also cylindrical samples has to be taken from the asphalted surfaces after compaction to check the density of the mix, the proportion of voids. The density after compaction has not to be lower than 95% from the density already fixed in the laboratory by the Marshall Test.

**5.2.3. EXECUTION OF THE ASPHALTING:**

All machineries and equipment’s shall be in good and acceptable working conditions, approved by the Contracting Authority representative. The contractor shall take care of these equipment’s and machines and shall keep them in good working conditions during the whole period of the contract.

The contractor is to provide the number of machines and work force to execute the project according to the schedules and shall also provide adequate number of skilled workers and technicians to operate these machines.

The contractor shall appoint a site supervisor with past experience on similar works, with the proper and enough knowledge and power to give orders and to direct the works in the right tracks, and he should have workable English.

**5.2.3.1. Preparation of the surfaces**:

Before starting the asphalting works, the contractor shall clean all the surfaces from soil, earth, dirt’s, all kind of dust, loose and all strange materials using manual or mechanical brushes and brooms. He shall be able to use for this purpose, the mobile air compressors.

**5.2.3.2. Transport of the hot rolled asphalt:**

Transportation of the hot rolled asphalt has to be carried out only by using dumping trucks having steel clean casing, free from all strange materials, having all of the inside walls painted lightly with oil paint (not kerosene or solar). If the distance from the asphalting plant to the site is too long causing a decrease of the mix temperature below **“140 degree Celsius”** before the laying operation, then the contractor has to cover his trucks with special thermo-isolated canvas to avoid this cooling down of his mix and to keep it in good temperature.

The ideal working temperature of the delivered asphalt on site shall be between 140 and 160 degrees Celsius and it shall be laid in the spot. The contractor shall make sure that the temperature of the hot asphalt arriving to the site and ready to be laid will not be below 120 degrees for any reasons.

*The temperature will be checked and measured on the site, on each and every delivery and on each and every arriving truckload. Trucks carrying asphalt with temperature dropping below 120 degrees Celsius will not be accepted and shall be rejected.*

**No payment shall be made for such rejected asphalt. No reasons for this asphalt to be accepted. No justifications shall be accepted; no remedial works shall be promised and accepted such as applying a second layer of wearing course on top of the cold asphalt, to be a reason for its acceptance.**

*This shall be rejected straight away.*

The contractor is to provide and keep an appropriate thermometer on site in order for Contracting Authority representative to verify the correct temperature of the asphalt at the time of delivery on site and also to verify that the correct temperature in maintained during the whole laying operation.

**5.2.3.3 Laying the hot rolled asphalt:**

Immediately after spraying the surfaces with the priming coat, the contractor shall start laying the asphalt using the mechanical asphalt laying machine, taking in consideration that the temperature of the mix during the operation should be: 140-160 degree Celsius.

After that, the contractor shall start the compaction using mechanical smooth wheel-roller of 10 tons weight in which the wheels are self-watered to prevent sticking of asphalt.

The compaction shall be in the longitudinal direction of the surfaces, starting from the sides towards the axe, in such way that the roller wheels cover the half way of the previous pass.

After the contractor completes the first operation of compaction using the so-called machine “Cylinder” or smooth steel roller, he shall proceed to the second step or type of compaction using the second type of compactors, the “caoutchouc tires” compactor. The contractor shall proceed and smooth the compacted asphalt using this second type of compactors. This compactor shall make as many passes as required to allow the newly asphalted surfaces to acquire a smooth nice and shiny finish, with no traces, no waves or apparent lines, or any roller marks, to the full satisfaction of the Contracting Authority representative. The contractor shall continue this operation until the area in question is up to the required standards and up to the end finish product.

During the compaction a special care should be taken for the following points:

a- The thickness of the mix has to be enough to get the required thickness after compaction.

b- The compaction action will continue until no longitudinal traces or lines are developed under the roller wheels, then the asphalt is completely compacted.

c- The overlapping areas have to be well done to keep the same level in between the different parts at both directions of the asphalted surfaces.

d- The speed of the roller should be between 3 and 6 Km/Hr to prevent the translation of the asphalt under it’s wheels.

e- The density of the asphalt after compaction has to be at least of 95% of the density already fixed in the laboratory by using the Marshall Test.

f- The traffic over the new asphalted surfaces has to be forbidden until it’s temperature is becoming same as the temperature of the surrounding air, in condition that this period is not less than 24 hours. It will be preferred to close and to cordon the newly asphalted area and not to allow any traffic before a minimum of 48 hours even more if required, all depending on the temperature and conditions of the surrounding weather and air.

g- Where the new asphalt is to be tied with the existing asphalt ( old asphalt or from previous day), the contractor is to make a vertical cut to the existing asphalt in order to reinforce the joint and to prevent the easy breaking and washing of the new asphalt. This operation shall be executed using the mechanical Self-water-cooled Disc Cutting machine. The contractor is to apply a rich priming coat on all of these cuttings in order to form a good binder for the new asphalt. The removed asphalt pieces shall be as it is well known removed from the area and transported out of the site at the contractor’s expenses.

**5.2.3.4 Thickness of the Asphalt:**

The contractor shall lay and compact a Binder course of asphalt, according to the mixture given at the table in para 5.2.2.2.1 for binder layers. No allowances shall be made to alter or to change this thickness.

The thickness shall be maintained uniform and shall not be for any reason less than 4 cm. Spot checks will be performed to ensure the required thickness.

*Areas where the thickness is found to be less than 4 cm (in one location at least) will result in asking the contractor to resurface the whole area with a second layer at his own expenses. The contractor will be instructed to resurface the whole area with an additional layer of wearing course 3 cm thick, at his own expenses, to compensate the loss of the thickness that is found at least in one place. It may result also in disqualifying the contractor, terminating his contract and asking another company to complete the works. Contractors shall be careful in executing the asphalting works.*

The contractor shall lay and compact a wearing course, according to the mixture given at the table in the paragraph 5.2.2.2.1 for wearing courses.

Same as for the previous paragraph, spot checks will be performed to check on the thickness of the asphalt.

***Important note*** : The thickness of the asphalt is to be measured, only after compaction (compressed) and not before.

**5.2.3.5. Workmanship**

a. Compacting: The foundation or the sub-base, the asphalt binder course and/or the asphalt wearing Course shall each be compacted with a vibrating smooth-wheel roller, normally 10 - 15 tons weight, making 4 to 8 passes, until each layer is fully compacted with no apparent movement. Make good any depressions with similar material of the layer being compacted. Contracting Authority representative is to confirm that the finished surfaces will have the falls desired towards the existing outlets, drainage systems, manholes, gullies and so on.

**All areas close to existing walls, fences, prefabs and so on shall be compacted using small size of compactors. Asphalt with no compaction will not be accepted for any reason and shall be rejected at the contractor’s expenses. The contractor will be instructed to remove such asphalt and to replace it, at his own expenses.**

No damages shall be done to the existing EULEX premises or building while performing the asphalting works, especially the compacting. Such damages if it occurs shall be made good by the contractor, at his own expenses, and to the full satisfaction of the Contracting Authority representative. He shall not claim any additional money or additional payment for that.

Any pipes, electrical cables, telephone cables and so on that are damaged by the contractor during the performing of the works, shall be repaired, rectified and made good at the contractor’s expenses.

b. The finished surfaced shall be free from any of the following defects:

(1) Cracking: deep or hairline.

(2) Unraveling of the surface.

(3) Wavy or undulating surface.

(4) Surface depressions or humps.

(5) Roller marks.

(6) Joints marks or bad performed joining between the different passes.

All defects found shall be ordered to be removed and redone, at the contractor’s expenses, as mentioned in the paragraph above.

c. The laying of the Asphalting binder course and/or the Wearing Course shall be done by Bituminous Paving machines only.

**5.3. Marking/Painting and roadway accessories**

**5.3.1. Marking/painting**

The road markings (Centre-line marking, edge marking, stop-lines, letters and symbols on the road) shall be placed at locations, to lines and levels as shown in the Drawings and as directed by the Contracting Authority by using traffic zone marking paint, two component, chlorinated solvent base type, dry time 2 to 3 hr and tack free dry tyme 15min.

Application shall be by mobile sprayers, either hand-propelled or self-propelled, as acceptable to the Contracting Authority. The road surface shall be dry, and free of mud or other extraneous matter. The paint shall be applied in intermittent lines or continuous lines of 1.5mm thickness using an approved pressure spray unit as directed by the Contracting Authority. The finished lines shall be free from "Ruggedness" on the roadway. The upper surface of the lines shall be level, uniform and free from streaks. The material, when tested by the approved method, shall show little or no indentation at 80°C.

The Contractor shall control the traffic in such a manner as to protect the freshly marked surface from damage. The traffic control shall be so arranged as to give minimum interference to the travelling public. Signs, barricades, flagmen and control devices shall be

supplied by the Contractor.

**5.3.2. Poliuretan-plastic flexible tube**

Traffic polyurethane-plastic flexible tubes are to be provided for approval to the Contracted Authority, prior installateon (see photo attached in BoQ as example)

Installation is to be done in existing surfaces of concrete, asphalt or concrete cubes to lines and distances as shown in the drawings and as directed by the Contracting Authority with adequate non-rusted screw-bolts as per producer technical specifications.

**5.3.3. Rubber Wheel Stoppers**

Traffic rubber wheel stopers are to be provided for approval to the Contracted Authority, prior installation (see photo attached in BoQ as example)

Installation is to be done in existing parking surfaces ( concrete, asphalt or concrete cubes) to lines as shown in the drawings and as directed by the Contracting Authority with adequate non-rusted screw-bolts as per producer technical specifications.

**5.4. PAVING WITH CONCRETE PRODUCTS**

**5.4.1. Concrete kerbs**

Concrete kerbs shall be installed in the layer of cement mortar with proportions 1:2. Size and type of concrete kerbs shall be chosen by representative of contracting authority.

**5.4.2. Precast Concrete Channel**

Precast concrete channel for water drain, dimensions 40x33x12 cm, shall be installed in the layer of cement mortar with proportions 1:2. Colors of precast concrete channel shall be chosen by representative of contracting authority.

***Where concrete kerbs or precast concrete channels are constructed in the same contract, the construction of concrete kerbs and gutters must be complete before the construction of side walk is started.***

**5.4.3. Pavement tiles**

Materials and construction for Pavement and bases shall be as specified. Pavement and bases shall be compacted to not less than 95% dry maximum density per ISO Standards.

Paving block shall have the pattern as specified and shall be constructed as follows:

(1) Level sand bedding to the required slopes, allowing for settlement after compaction.

(2) Lay paving blocks to form an interlocking resistance between the blocks.

(3) After the paving blocks have been laid in place, sand shall be placed over the blocks and swept to fill the gaps between the blocks. Plate vibrator shall be applied to compact sand in the gaps.

The blocks shall all have the same uniform shade. The tiles shall not be cracked or chipped or in any other way damaged or have any other defects. The blocks are to be rectangular or interlocking paving tiles, thickness d=6 cm or d=8 cm. Thickens of sand d=3~5 cm

In the laying of the end rows of paving blocks it may be necessary to cut the blocks to fit the available spaces. The cutting shall be done by a hydraulic splitter.

Upon completion of sidewalk or paving construction, the gaps between the blocks and concrete kerbs, manhole walls, building walls and at any locations shall not be more than 10mm wide.

Precast concrete channel for water drain, dimensions 40x33x12 cm, shall be installed in the layer of cement mortar with proportions 1:2. Colors of precast concrete channel shall be chosen by representative of contracting authority.

Where concrete kerbs or precast concrete channels are constructed in the same contract, the construction of concrete kerbs and gutters must be complete before the construction of side walk is started.

**5.5. CONCRETE WORKS**

**5.5.1. Demolition works**

Breaking of the concrete is to be done with proper tools/ machinery as per position of the works.

Contractor is obliged to take of the demolished material from the compound.

Where partial demolition of structures is required the Contractor is to take the maximum care not to damage any part of the structure which is to remain in place. If any such damage may occur the Contractor shall repair and make good the damage at his own expense.

**5.5.2. Formworks**

Construction of timber formwork for concrete works, curved or angled surfaces is to be done as per the work order done by the Contracting Authority. Concrete surface side of the timber used in the formworks is to be strate, smooth and without damages or old pieces of concrete.

All formwork shall be removed without shock or vibration to the concrete. The responsibility for the safe removal of the formwork shall rest with the Contractor. Any work showing signs or damage through premature loading shall be entirely reconstructed at the Contractor's expense.

Formwork shall not be removed until the characteristic cube strength is 10 N/mm2 or twice the stress to which it will then be subjected whichever the greater, provided that such earlier stripping will not result in unacceptable deflection due to shrinkage, creep, etc

**5.5.3. Reinforcement works**

Rribbed concrete steel or welded reinforcing bar mesh are to be installed as per the drowing provided. Steel is to be mild, type S 235. The necessary binding wire for conection of the steel bars is to be used.

Cutting, Bending and Fixing of Reinforcement Steel:

All bending shall be in accordance with BS4466 save insofar as otherwise specified. The bending of the steel reinforcement shall be carried out with approved plant and shall be carried out so as not to injure the material. No heating will be allowed to facilitate bending and no welding of steel reinforcement shall be permitted without the approval of the Engineer. Bars which have become bent shall not be straightened or re-bent for incorporation in the Works without the Engineer's approval.

Cutting of reinforcement by heat (flame torch) will not be permitted. Only cutting by grinding or shearing is permitted.

All reinforcement shall, immediately prior to being placed, be free from loose mill scale, loose rust, oil, grease, dirt or other foreign matter and shall be maintained in that condition up to the time of concreting. All reinforcement shall, prior to the placing of concrete be securely fixed in position by tying intersections with ample lashings of tying wire, by attaching adequate spacer blocks and by provision of any other approved supports necessary to ensure that it is not displaced during concreting or vibrating.

Reinforcement shall be inspected and approved by the Engineer before any concrete is placed. Such approval will not relieve the Contractor of his responsibilities in connection with the work. Braces and supports which are to be left in position shall be of concrete or steel and shall be of an approved design. The ties, links or stirrups connecting the bars shall be taut so that the bars are properly braced. The inside of any curved parts shall be in contact with the bars around which they fit.

**5.5.4. Concrete works**

Concrete class used in this contract is to be :

a. Concrete class **C20/25** concrete mixture

b. Concrete class **C25/30** concrete mixture

The Contractor shall give not less than 24 hours’ notice to the Contracting Authority of his intention to concrete any section of the Works so that these sections may be inspected prior to concreting being carried out.

No concreting shall be carried out without the approval of the Contracting Authority. Immediately prior to placing concrete all formwork shall be cleaned with compressed air or water, or both, as the Engineer may require and all dirt, shavings and other foreign matter shall be removed.

On placing in its final position the concrete shall be carefully worked around and between all steel reinforcing bars and other embedded fittings. All concrete shall be compacted to the maximum possible degree before it commences to set. The surfaces of horizontal slabs shall be tamped to a true and even surface.

All concrete, except when otherwise agreed by the Engineer shall be compacted with vibrators.

During the concreting Contractor shall ensure that the reinforcement and other embedded fittings are kept in their correct positions.

Concreting shall be carried out as a continuous operation with no breaks for lunch hours or other reasons.

Curing Concrete:

Until it has thoroughly hardened, concrete shall be protected from the harmful effects of wind, sun, temperature and variations of temperature, premature loading or deflection or impact, aggressive ground-water and any other adverse causes.

Exposed concrete surfaces shall be kept continuously moist after casting for not less than 7 days. Surfaces, shall be covered with thick hessian or other material as needed, which shall be in continuous contact with the concrete and which shall be kept wet to the satisfaction of the Contracting Authority.

Curing operations shall in general begin immediately following placement. All curing procedures shall be approved in advance by the Engineer.

**6.0 RESPONSIBILITIES AND ITEM INSPECTION:**

The contractor is to provide all materials, equipment and workforce to complete the project.

Unless otherwise specified in the contract, the contractor is responsible for the performance of all inspection requirements as specified herein.

Except as otherwise specified in the contract, the contractor may use his own or any other facilities suitable for the performance of the inspection requirements specified herein, unless disapproved by the appointed Contracting Authority representative.

Contracting Authority reserves the right to perform any of the inspection set forth in the specification where such inspections are deemed necessary to assure supply and services conform to the prescribed.

All materials to be used should get an approval from Contracting Authority representative at the site prior their utilization.

All defective / rejected (supplies and services) shall be corrected by the contractor at his own expenses, in such manner as to be equivalent and quality to an accepted item, upon correction of the defect(s), the end item(s) is (are) considered acceptable by the appointed Contracting Authority representative.

The contractor is to remove from the site all surplus materials to an approved site and provide certification of same, if requested to do so by Contracting Authority.

Full method statements and the working program are to be provided by the contractor prior to the commencement of the works.

Contracting Authority will give the contractor the opportunity to visit the site and familiarize themselves with the relevant details.

The contractor must comply with all Health, Safety and Environmental Codes and Security Regulations at the site.

The contractor is to maintain the work areas and thoroughfares in safe, clean and tidy manner. Particular attention in to be given to avoid splashing of bituminous emulsion on the site surroundings (building, walls…).

Upon completion of the works the contractor is to issue all as built plans, all certificates and guarantees etc. on all works executed by them as may be demanded by the Contracting Authority representative.

**Important Note:**

The contractor’s asphalting plants and capabilities shall be well verified by Contracting Authority representative. The past experience in performing similar works will be also taking into consideration.

The location of the asphalting plant, whether it is owned by the contractor or used by him for the production of the goods and for the performing of this project, shall in turn be taken into consideration, for the reason of transportation, temperature drop and so on.

The machines, trucks, equipment’s, the plant itself, all will be the subject of a close inspection by Contracting Authority representative to determine their ability to produce the required quality of asphalt mix, its correct temperature, its granulometrie and all the rest of the technical specifications.

Contractors are requested to mention the source of their asphalting mix, meaning the asphalting plants and their address. It will be preferable that, one contractor to use a unique asphalting plant for the execution of this project. This will be advised for the reasons getting the product from one approved and well-known source.

**VOLUME** **4**

**FINANCIAL OFFER TEMPLATES**

**UNIT PRICE FRAMEWORK CONTRACT**

**Content**

**4.1 — Introduction**

**4.2 — Bill of Quantities**

**4.3.3 — Price Schedule**

**4.3.4 — Daily works Schedule**

**4.3.5 — Detailed Breakdown of Prices**

**Please refer to ANNEX – Bill of Quantities**

**INTRODUCTION**

1 The Bill of Quantities (in annex 2) is the document containing an itemised breakdown of the works to be carried out in a unit price contract, indicating a quantity for each item and the corresponding unit price. The quantities set out in the Bill of Quantities are estimated quantities.

The amounts due will be calculated by measuring the actual quantities of the works executed as specified in the Works Order and by applying the unit rates to the quantities actually executed for each item.

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

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

The prices do not include taxes and fiscal duties, as exoneration is explicitly given for the contract.

1. See Paragraph 2.3.6 of Practical Guide to Contract procedures for EU external actions. <http://ec.europa.eu/europeaid/work/procedures/implementation/practical_guide/documents/2008new_prag_final_en.pdf> [↑](#footnote-ref-2)
2. It is recommended to use registered mail in case the postmark would not be readable. [↑](#footnote-ref-3)
3. Country in which the legal entity is established. [↑](#footnote-ref-4)
4. Add/delete additional lines for members as appropriate. Note that a subcontractor is not considered to be a member for the purposes of this tender procedure. If this tender is being submitted by an individual tenderer, the name of the tenderer should be entered as ‘leader’ (and all other lines should be deleted). [↑](#footnote-ref-5)
5. The same institution or agency. [↑](#footnote-ref-6)
6. Please also consult the call for proposals in case specific options are defined to sign the declaration [↑](#footnote-ref-7)
7. This does not apply to affiliated entities except if their financial capacity and operational capacity is necessary due to the fact that the beneficiary composed of these affiliated entities does not have the required capacity itself. [↑](#footnote-ref-8)
8. The same institution or agency. [↑](#footnote-ref-9)
9. The same institution or agency. [↑](#footnote-ref-10)
10. This mention has to be inserted only where required, for example where the law applicable to the guarantee stipulates a precise expiry date or where the guarantor can justify that he is unable to provide such a guarantee without expiry date. [↑](#footnote-ref-11)
11. Please see point 4 in Instructions to Tenders if documentary evidence/proof is needed. [↑](#footnote-ref-12)
12. Not all the plant owned by the company. [↑](#footnote-ref-13)
13. Amounts actually paid, without the effect of inflation. [↑](#footnote-ref-14)
14. Please see point 4 in Instructions to Tenders if documentary evidence/proof is needed. [↑](#footnote-ref-15)
15. Where the contracting party is an individual. [↑](#footnote-ref-16)
16. Where applicable. [↑](#footnote-ref-17)
17. Except where the contracting party is not VAT registered. [↑](#footnote-ref-18)
18. This mention should be inserted only where required, for example where the law applicable to the guarantee imposes a precise expiry date or where the guarantor can justify that he is unable to provide such a guarantee without expiry date. [↑](#footnote-ref-19)
19. This mention has to be inserted only where required, for example where the law applicable to the guarantee imposes a precise expiry date or where the guarantor can justify that he is unable to provide such a guarantee without expiry date. [↑](#footnote-ref-20)
20. This mention should be inserted only where required, for example where the law applicable to the guarantee imposes a precise expiry date or where the guarantor can justify that he is unable to provide such a guarantee without expiry date. [↑](#footnote-ref-21)