



KENYA AGRICULTURAL AND LIVESTOCK RESEARCH ORGANIZATION

HEADQUARTERS:

Kaptagat Road, Loresho

P.O. BOX 57811 - 00200

NAIROBI

Telephone: 4183301-20/0722-206986/88

SUPPLY CONTRACT NOTICE

SUPPLY AND DELIVERY OF A 14 TONNE SEEDCANE TRUCK

KALRO/SRI/020/2015-16

CLOSING DATE: MARCH 21, 2016 AT 10.00 HOURS

SUPPLY CONTRACT NOTIC

SUPPLY AND DELIVERY OF A 14 TONNE SEEDCANE TRUCK

Location – ACP Countries - Kenya

1. Publication reference

2. KALRO/SRI/020/2015-16

3. Procedure

Local Open Tender

4. Programme title

Sugar Reform Support Project

5. Financing

Development Cooperation Programme/AAP 2012 for Sugar Reform Support Project in Kenya

6. Contracting authority

Kenya Agricultural and Livestock Research Organization

Kaptagat Road, Loresho

P.O. Box 57811 - 00200

Nairobi

CONTRACT SPECIFICATIONS

7. Description of the contract

Supply and Delivery of one seed cane truck 14 tonne to KALRO, Sugar Research Institute with financial assistance from the EU Sugar Reform Support Project - SRI programme of the European Union. Supplies are to be delivered, DDP within three months (3) of signing the contract at KALRO Headquarters Nairobi.

8. Number and titles of lots

No, one lot only, **Supply & Delivery of a 14 tonne Seed cane truck with a capacity of carrying bulky goods.**

TERMS OF PARTICIPATION

9. Eligibility and rules of origin

Participation is open to all legal persons participating either individually or in a grouping (consortium) of tenderers.

Participation is also open to international organisations. Participation of natural persons is directly governed by the specific instruments applicable to the programme under which the contract is financed.

10. Grounds for exclusion

Tenderers must submit a signed declaration, included in the Tender Form for a Supply Contract, to the effect that they are not in any of the situations listed in point 2.3.3 of the Practical Guide to contracts procedures for EU external actions.

11. Number of tenders

Tenderers may submit only one tender per lot. Tenders for parts of a lot will not be considered. Any tenderer may state in its tender that it would offer a discount in the event that its tender is accepted for more than one lot. Tenderers may not submit a tender for a variant solution in addition to their tender for the supplies required in the tender dossier.

12. Tender guarantee

No tender guarantee -is required.

13. Performance guarantee

No performance guarantee is required

14. Information meeting and/or site visit

No information meeting is planned

15. Tender validity

Tenders must remain valid for a period of 90 days after the deadline for submission of tenders.

16. Period of implementation of tasks

Within 90 (ninety) days from date of last signature of contract

SELECTION AND AWARD CRITERIA

17. Selection criteria

The following selection criteria will be applied to tenderers. In the case of tenders submitted by a consortium, these selection criteria will be applied to the consortium as a whole:

- 1) Economic and financial capacity of tenderer (based on i.a. item 3 of the Tender Form for a Supply Contract).
 - (a) The average annual turnover of the tenderer for the years 2012, 2013 and 2014 must exceed the financial proposal of the tender
 - (b) The averages of cash and cash equivalents at the beginning and end of the last 3 years (2012, 2013 and, 2014) are positive
- 2) Professional capacity of tenderer (based on i.e. items 4 and 5 of the Tender Form for a Supply Contract)
 - (a) The tenderer has a professional certificate appropriate to this contract (licence for supply of heavy commercial trucks/vehicles)
- 3) Technical capacity of candidate (based on item 1 of the application form)
 - (a) The tenderer has successfully completed 2 similar contracts in the field of the tender with a budget of at least that of this contract in the past three years (2012, 2013, and 2014)

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

be included in the tender in a separate document. Proof of the capacity will also have to be furnished when requested by the Contracting Authority.

18. Award criteria

Price

TENDERING

19. How to obtain the tender dossier

The tender dossier is available from the Contracting Authority website at www.kalro.org and at Supply Chain Manager's office, **Kenya Agricultural and Livestock Research Organization Headquarters, Kaptagat Road, Loresho, Nairobi**. Tenders must be submitted using the standard Tender Form for a Supply Contract included in the tender dossier, whose format and instructions must be strictly observed.

Tenderers with questions regarding this tender should send them in writing to:

Contact name:

Supply Chain Manager,

Kenya Agricultural and Livestock Research Organization,

Kaptagat Road, Loresho,

P.O. Box 57811 – 00200,

Nairobi.

Fax: 020-4183344

E-mail: stevens.musewe@kalro.org

Cc - directorgeneral@kalro.org

(mentioning the publication reference shown in item 1) at least 21 days before the deadline for submission of tenders given in item 19. The Contracting Authority must reply to all tenderers' questions at least 11 days before the deadline for submission of tenders.

20. Deadline for submission of tenders

All tenders must be received at KALRO Headquarters **Kaptagat Road, Loresho, Nairobi** before **10 am**. Kenyan time on **March 21, 2016** by registered letter with acknowledgement of receipt or hand-delivered against receipt signed by the Ag. Supply Chain Manager or his representative. Any tender received after this deadline will not be considered.

Any tender received by the Contracting Authority after this deadline will not be considered.

21. Tender opening session

The tenders will be opened in public session on **March 21, 2016 at 10.00 hours** Kenyan time at KALRO Headquarters Boardroom by the committee appointed for the purpose

22. Language of the procedure

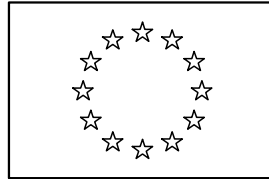
All written communications for this tender procedure and contract must be in English.

23. Legal basis¹

Regulation (EU) N°236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action and Development Cooperation Programme (Art. 24 of REGULATION (EC) No 1905/2006).

¹ Please state any specificity that might have an impact on rules on participation (such as geographic or thematic or long/short term).

Standard advertisement for local publication of local open tender procedures



TENDER FOR SUPPLY AND DELIVERY OF 1 NO 14 TONNE SEEDCANE TRUCK

PUBLICATION REF: KALRO/SRI/020/2015-16

Kenya Agricultural and Livestock Research Organization intends to award a supply contract for supply of 1 (one) 14 tonne Seedcane Truck with financial assistance from EU Sugar Reform Support Project – SRI a programme of the European Union (EU) BUDGET.

The tender dossier is available from www.kalro.org and free of charge from KALRO Headquarters, Supply Chain office from Monday to Friday on normal working hours from 9.00 a.m. to 4.00 p.m. situated at the physical location indicated below:

**Kenya Agricultural and Livestock Research Organization,
Kaptagat Road, Loresho,
P.O. Box 57811 – 00200,
Nairobi.
Fax: 020-4183344
E-mail: directorgeneral@kalro.org**

The deadline for submission of tenders is **on March 21, 2016 at 10.00 hours**

Possible additional information or clarifications/questions shall be published on the following websites: www.kalro.org

LETTER OF INVITATION TO TENDER



KENYA AGRICULTURAL AND LIVESTOCK RESEARCH ORGANIZATION

HEADQUARTERS:

Kaptagat Road, Loresho

P.O. BOX 57811 - 00200

NAIROBI

Telephone: 4183301-20/0722-206986/88

February 19, 2016

Our ref.: **KALRO/SRI/020/2015-16**

Dear Sirs,

SUBJECT: INVITATION TO TENDER FOR SUPPLY AND DELIVERY OF ONE (1) No 14 TONNE SEEDCANE TRUCK

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

- A. Instructions to tenderers and procurement notice
- B. Draft contract and special conditions, including annexes
 - Draft contract
 - Special conditions
 - Annex i: general conditions
 - Annex ii +iii: technical specifications + technical offer (to be tailored to the specific project)
 - Annex iv: budget breakdown (model financial offer)
 - Annex v: forms
- C. Further information
 - Administrative compliance grid

– Evaluation grid

D. Tender form for a supply contract

We look forward to receiving your tender before the submission deadline in the Tender Box in the reception area or Room 151 on the Ground Floor of KALRO Headquarters, Loresho, along Kaptagat Road, off Waiyaki Way.

Yours sincerely,

Supply Chain Manager
Director General, KALRO

A. INSTRUCTIONS TO TENDERERS AND PROCUREMENT NOTICE

PUBLICATION REF.: KALRO/SRI/020/2015-16. By submitting a tender, tenderers fully and unreservedly accept the Special and General conditions governing the contract as the sole basis of this tendering procedure, whatever their own conditions of sale may be, which they hereby waive. Tenderers are expected to examine carefully and comply with all instructions, forms, contract provisions and specifications contained in this tender dossier. Failure to submit a tender containing all the required information and documentation within the deadline specified will lead to the rejection of the tender. No account can be taken of any remarks in the tender relating to the tender dossier; remarks may result in the immediate rejection of the tender without further evaluation.

These Instructions set out the rules for the submission, selection and implementation of contracts financed under this call for tenders:

1 Supplies to be provided

1.1 The subject of the contract is the supply and delivery by the Contractor of:

1 No 14 tonne SEEDCANE Truck – for transportation of sugarcane seed from the nurseries to different regions of the country.

To be delivered, DDP², at Sugar Research Institute (SRI) Headquarters in Kisumu located in Kisumu- Miwani Road within a period of not more than ninety (90) days from the date of signature of contract in accordance with point 15 of the Contract Notice

1.2 The supplies must comply fully with the technical specifications set out in the tender dossier (technical annex) and conform in all respects with the drawings, quantities, models, samples, measurements and other instructions.

1.3 Tenderers are not authorised to tender for a variant in addition to the present tender.

² DDP (Delivered Duty Paid) — Incoterms 2010 International Chamber of Commerce <http://www.iccwbo.org/products-and-services/trade-facilitation/incoterms-2010/the-incoterms-rules>

2 Timetable

| | DATE | TIME* |
|---|-----------------------|------------|
| Clarification meeting / site visit (if any) | Not applicable | N/A |
| Deadline for requesting clarifications from the Contracting Authority | February 29, 2016 | 12.00 noon |
| Last date on which clarifications are issued by the Contracting Authority | March 10, 2016 | 12.00 noon |
| Deadline for submission of tenders | March 21, 2016 | 10.00Hours |
| Tender opening session | March 21, 2016 | 10.00Hrs |
| Notification of award to the successful tenderer | April 6, 2016 | |
| Signature of the contract | April 13, 2016 | |

To insert time

To insert time

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

3 Participation

3.1 Participation is open to all legal persons participating either individually or in a grouping (consortium) of tenderers.

By derogation from the rule of origin granted by the EU, all goods and materials can originate from any country.

Participation is also open to international organisations. Participation of natural persons is directly governed by the specific instruments applicable to the programme under which the contract is financed.

3.2 These terms refer to all nationals of the above states and to all legal entities, companies or partnerships established in the above states. For the purposes of proving compliance with this rule, tenderers being legal persons, must present the documents required under that country's law. In case of doubt, the Contracting Authority may ask the tenderer to provide evidence demonstrating actual compliance with the "establishment" criteria. For this purpose, legal person have to demonstrate that their legal person is formed under the law of an eligible State and that its real seat is within an eligible State. "Real seat" must be understood as the place where its managing board and its central administration are located or its principal place of business.

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

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

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

4 Origin

- 4.1 Art. 10 of the SC refers to a derogation to the rule of origin allowing the purchase of the goods originating from any country.

For these purposes, "origin" means the place where the goods are mined, grown, produced or manufactured and/or from which services are provided. The origin of the goods must be determined according to the EU Customs Code or to the relevant international agreement applicable.

- 4.2 When submitting tenders, tenderers must state expressly that all the goods meet the requirements concerning origin and must state the countries of origin. They may be asked to provide additional information in this connection.

5 Type of contract

Unit-price.

6 Currency

Tenders must be presented in Kenya Shillings

7 Lots – N/A

This tender procedure is not divided into lots

8 Period of validity

- 8.1 Tenderers will be bound by their tenders for a period of 90 days from the deadline for the submission of tenders.

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

9 Language of tenders

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

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

10 Submission of tenders

- 10.1 The Contracting Authority must receive the tenders before the deadline specified in 10.30. They must include all the documents specified in point 11 of these Instructions and be sent to the following address:

**Director General
Kenya Agricultural & Livestock Research Organization
Kaptagat Road, Off Waiyaki Way
P O Box 57811-00200
Nairobi
Supply Chain Manager**

If the tenders are hand delivered they should be delivered to the following address: **the Tender Box in the reception area or Room 151 on the Ground Floor of Kenya Agricultural & Livestock Research Organization Headquarters, Kaptagat Road, Loresho, off Waiyaki Way on or before March 21, 2016 at 10.00 hours. Tenders will be opened immediately thereafter at Kenya Agricultural & Livestock Research Organization Headquarters, Kaptagat Road, Loresho, off Waiyaki Way, in the Boardroom, 2nd floor of the main building.**

Tenders must comply with the following conditions:

- 10.2 All tenders must be submitted in one original, marked 'original', and one copy signed in the same way as the original and marked 'copy'.
- 10.3 All tenders must be received at Kenya Agricultural & Livestock Research Organization (KALRO) Headquarters, Loresho, Kaptagat Road, off Waiyaki Way, before the deadline date and time, **March 21, 2016 at 10.00 am** by registered letter with acknowledgement of receipt or hand-delivered against receipt signed by the Supply Chain Manager or his representative.

10.4 All tenders, including annexes and all supporting documents, must be submitted in a sealed envelope bearing only:

- a) the above address;
- b) the reference code of this tender procedure , **KALRO/SRI/020/2015-16**
- c) where applicable, the number of the lot(s) tendered for;
- d) the words ‘Not to be opened before the tender opening session’ in the language of the tender dossier
- e) the name of the tenderer.

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

11 Content of tenders

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

Part 1: Technical offer:

- a detailed description of the supplies tendered in conformity with the technical specifications, including any documentation required, including if applicable:
 - a list of the spare parts and consumables recommended by the manufacturer;
 - technical proposals related to ancillary services (registration of the motor vehicle/truck).

The technical offer should be presented as per template (Annex II+III*, Contractor’s technical offer) adding separate sheets for details if necessary.

Part 2: Financial offer:

- A financial offer calculated on a DDP³ basis for the supplies tendered, including if applicable:
 - financial proposal related to ancillary services.

This financial offer should be presented as per template (Annex IV*, Budget breakdown), adding separate sheets for details if necessary.

Part 3: Documentation:

To be supplied using the templates attached*:

- The ‘Tender Form for a Supply Contract’, duly completed, which includes the_tenderer’s declaration, point 7, (from each member if a consortium):

³ DDP (Delivered Duty Paid)/DAP (Delivered At Place) — Incoterms 2010 International Chamber of Commerce <http://www.iccwbo.org/products-and-services/trade-facilitation/incoterms-2010/the-incoterms-rules/> .

- The details of the bank account into which payments should be made (financial identification form) (Tenderers that have already signed another contract with the European Commission, may provide their financial identification form number instead of the financial identification form, or a copy of the financial identification form provided on that occasion, if no change has occurred in the meantime.)
- The legal entity file and the supporting documents (Tenderers that have already signed another contract with the European Commission, may provide their legal entity number instead of the legal entity sheet and supporting documents, or a copy of the legal entity sheet provided on that occasion, if no change in legal status has occurred in the meantime).

To be supplied in free-text format:

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

Remarks:

Tenderers are requested to follow this order of presentation.

Annex* refers to templates attached to the tender dossier. **Taxes and other charges**

The applicable tax and customs arrangements are the following:

The European Commission and Ministry of Finance have agreed in Financing Agreement **KE/DCI-SUCRE/2012/023-290** to fully exonerate taxes, duties or other charges (including value added tax – VAT – or equivalent taxes) from EU financing

12 Additional information before the deadline for submission of tenders

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

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

**The Supply Chain Manager
Kenya Agricultural & Livestock Research Organization
Kaptagat Road, Off Waiyaki Way
P O Box 57811-00200
Nairobi
Fax: 020 4183344
Email: stevens.musewe@kalro.org
Cc – directorgeneral@kalro.org**

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

Any clarification of the tender dossier will be published on **www.kalro.org** at the **latest 11 days** before the deadline for submission of tenders.

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

13 Clarification meeting / site visit

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

14 Alteration or withdrawal of tenders

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

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

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

15 Costs of preparing tenders

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

16 Ownership of tenders

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

17 Joint venture or consortium

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

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

18 Opening of tenders

- 19.1 The opening and examination of tenders is for the purpose of checking whether the tenders are complete, whether the requisite tender guarantees have been furnished, whether the required documents have been properly included and whether the tenders are generally in order.
- 19.2 The tenders will be opened in public session on **March 21, 2016 starting 10.00hrs** in the Boardroom at **KALRO Headquarters on Kaptagat Road, Off Waiyaki** by a committee appointed for the purpose. The committee will draw up minutes of the meeting, which will be available on request.
- 19.3 At the tender opening, the tenderers' names, the tender prices, any discount offered, written notifications of alteration and withdrawal, the presence of the requisite tender guarantee (if required) and such other information as the Contracting Authority may consider appropriate may be announced.
- 19.4 After the public opening of the tenders, no information relating to the examination, clarification, evaluation and comparison of tenders, or recommendations concerning the award of the contract can be disclosed until after the contract has been awarded.
- 19.5 Any attempt by tenderers to influence the evaluation committee in the process of examination, clarification, evaluation and comparison of tenders, to obtain information on how the procedure is progressing or to influence the Contracting Authority in its decision concerning the award of the contract will result in the immediate rejection of their tenders.
- 19.6 All tenders received after the deadline for submission specified in the contract notice or these instructions will be kept by the Contracting Authority. The associated guarantees will be returned to the tenderers. No liability can be accepted for late delivery of tenders. Late tenders will be rejected and will not be evaluated.

19 Evaluation of tenders

20.1 Examination of the administrative conformity of tenders

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

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

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

20.2 Technical evaluation

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

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

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

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

20.4 Financial evaluation

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

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

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

20.5 Variant solutions

Variant solutions will not be taken into consideration.

20.6 Award criteria

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

20 Signature of the contract

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

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

21.3 If the successful tenderer fails to provide the documentary proof or statement or the evidence of financial and economic standing and technical and professional capacity within 15 calendar days following the notification of award or if the successful tenderer is found to have provided false

information, the award will be considered null and void. In such a case, the Contracting Authority may award the tender to the next lowest tenderer or cancel the tender procedure.

- 21.4 The Contracting Authority reserves the right to vary quantities specified in the tender by +/- 100% at the time of contracting and during the validity of the contract. The total value of the supplies may not, as a result of the variation rise or fall by more than 25% of the original financial offer in the tender. The unit prices quoted in the tender shall be used.
- 21.5 Within 30 days of receipt of the contract signed by the Contracting Authority, the selected tenderer must sign and date the contract and return it, with the performance guarantee (if applicable), to the Contracting Authority. On signing the contract, the successful tenderer will become the Contractor and the contract will enter into force.
- 21.6 If it fails to sign and return the contract and any financial guarantee required within 30 days after receipt of notification, the Contracting Authority may consider the acceptance of the tender to be cancelled without prejudice to the Contracting Authority's right to seize the guarantee, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the Contracting Authority.

21.7 Performance Guarantee

No performance guarantee is required

21 Tender guarantee

No tender guarantee is required.

23 Ethics clauses

- 23.1 Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee or the Contracting Authority during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of their candidacy or tender and may result in administrative penalties.
- 23.2 Without the Contracting Authority's prior written authorisation, a Contractor and its staff or any other company with which the Contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for the project. This prohibition also applies to any other projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the Contractor.
- 23.3. When submitting a tender, tenderers must declare that they are not affected by a conflict of interest and have no equivalent relation in that respect with other tenderers or parties involved in the project. Should such a situation arise during execution of the contract, the Contractor must immediately inform the Contracting Authority.
- 23.4 Contractors must at all times act impartially and as faithful advisers in accordance with the code of conduct of their profession. They will refrain from making public statements about the project or services without the Contracting Authority's prior approval. They may not commit the Contracting Authority in any way without its prior written consent.

- 23.5 For the duration of the contracts Contractors and their staff must respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary state. In particular and in accordance with the legal basic act concerned, tenderers that have been awarded contracts must abide by core labour standards as defined in the relevant International Labour Organisation conventions (such as the Conventions on freedom of association and collective bargaining; Abolition of forced and compulsory labour; Elimination of forced and compulsory labour; Abolition of child labour).
- 23.6 Contractors may accept no payment connected with the contracts other than that provided for therein. Contractors and their staff must not exercise any activity nor receive any advantage inconsistent with their obligations to the Contracting Authority.
- 23.7 Contractors and their staff are obliged to maintain professional secrecy for the entire duration of contracts and after their completion. All reports and documents drawn up or received by Contractors will be confidential.
- 23.8 The contract governs the Contracting Parties' use of all reports and documents drawn up, received or presented by them during the implementation of the contract.
- 23.9 Contractors must refrain from any relationship likely to compromise their independence or that of their staff. If the Contractor ceases to be independent, the Contracting Authority may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation.
- 23.10 The Commission reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process and if the Contracting Authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, 'corrupt practices' are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or implementation of a contract already concluded with the Contracting Authority.
- 23.11 All tenders will be rejected or contracts terminated if it emerges that the award or implementation of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has any appearance of being a front company.
- 23.12 The Contractor undertakes to supply the Commission on request with all supporting documents relating to the conditions of the contract's execution. The Commission may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected unusual commercial expenses.
- 23.13 Contractors found to have paid unusual commercial expenses on projects funded by the EU are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving EU funds.
- 23.14 The Contracting Authority reserves the right to suspend or cancel the procedure, if the award procedure proves to have been subject to substantial errors, irregularities or fraud. Where such substantial errors, irregularities or fraud are discovered after the award of the Contract, the Contracting Authority may refrain from concluding the Contract.

24 Cancellation of the tender procedure

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

Cancellation may occur, for example, if:

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

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

25 Appeals

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

B. DRAFT CONTRACT AND SPECIAL CONDITIONS, INCLUDING ANNEXES.

DRAFT CONTRACT

SUPPLY CONTRACT FOR EUROPEAN UNION EXTERNAL ACTIONS

**No. KALRO/SRI/020/2015-16
FINANCED FROM THE EU GENERAL BUDGET**

Kenya Agricultural & Livestock Research Organization, Kaptagat Road, Off Waiyaki Way, P O Box 57811-00200, Nairobi, of the one part,
and

<Full official name of Contractor>

[Legal status/title]⁴

[Official registration number]⁵

[Full official address]

[VAT number]⁶, (“the Contractor”) of the other part, have agreed as follows:

PROJECT: Sugar Reform Support Project

CONTRACT TITLE: SUPPLY AND DELIVERY OF 1 No SEEDCANE TRUCK, 14 tonne

Identification Number: KALRO/SRI/020/2015-16

⁴ Where the contracting party is an individual.

⁵ Where applicable. For individuals, mention their ID card or passport or equivalent document - number

⁶ Except where the contracting party is not VAT registered.

Article 1 Subject

1.1 The subject of the contract shall be the supply and delivery of:

1 No 14 tonne SEEDCANE Truck with a capacity of carrying bulky goods

The place of acceptance of the supplies shall be Sugar Research Institute Headquarters in Kibos, along Kisumu-Miwani Road. The time limits for delivery shall be 90 (ninety) days from the date of contract signature and the Incoterm applicable shall be DDP⁷. The implementation period of tasks shall run from the date of the contract signature to date for provisional acceptance but shall not exceed 90 days from the date of the signature of contract.

1.2 The Contractor shall comply strictly with the terms of the Special Conditions and the technical annex.

1.3 The supplies which form the subject of the contract must be accompanied by the spare parts described by the Contractor in its tender.

Article 2 Origin

The rules of origin of the goods are defined in Article 10 of the Special Conditions.

A certificate of origin for the goods must be provided by the Contractor at the latest when it requests provisional acceptance of the goods. Failure to comply with this condition may result in the termination of the contract.

Article 3 Price

3.1 The price of the supplies shall be that shown on the financial offer (specimen in Annex IV). The total maximum contract price shall be in Kenya Shillings.

3.2 Payments shall be made in accordance with the General and/or Special Conditions (Articles 26 to 28).

Article 4 Order of precedence of contract documents

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

-the contract agreement;

-the Special Conditions

-the General Conditions (Annex I);

-the Technical Specifications (Annex II [including clarifications before the deadline for submission of tenders and minutes from the information meeting/site visit];

⁷ DDP (Delivered Duty Paid) - Incoterms 2010 International Chamber of Commerce - <http://www.iccwbo.org/incoterms/>

- the Technical Offer (Annex III [including clarifications from the tenderer provided during tender evaluation]);
- the budget breakdown (Annex IV);
- (specified forms and other relevant documents (Annex V));

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

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

For the Contractor

Name:

Title:

Signature:

Date:

For the Contracting Authority

Name: Kenya
Agricultural &
Livestock Research
Organization

Title: Project
Coordinator
Sugar Reform
Support Project

Signature:

Date:

SPECIAL CONDITIONS

CONTENTS

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

Article 2 Language of the Contract

- 2.1 The language used shall be English.

Article 4 Communications

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

The Supply Chain Manager
Kenya Agricultural & Livestock Research Organization
Kaptagat Road, Off Waiyaki Way
P O Box 57811-00200
Nairobi
Email; stevens.musewe@kalro.org
Cc: directorgeneral@kalro.org

Article 7 Supply of documents

User service Operating manuals authored in English

Article 8 Assistance with local regulations

No Special Conditions applicable to the General Conditions

Article 9 General Obligations

- 9.9 No Special Conditions applicable to the General Conditions.

Article 10 Origin

10.1 By derogation from the rule of origin granted by the EU, all goods and materials can originate from any country.

Therefore, all goods purchased may not originate in a Member State of the European Union or a country covered by the Development Cooperation Programme (Art. 24 of REGULATION (EC) No 1905/2006) programme. For these purposes, "origin" means the place where the goods are mined, grown, produced or manufactured and/or from which services are provided. The origin of the goods must be determined according to the EU Customs Code or to the relevant international agreement applicable..

Article 11 Performance guarantee

No performance guarantee is required

Article 12 Liabilities and Insurance

12.1a) Supplies to be insured by Contractor up to registration of supplies in the name of Sugar Research Institute

Article 13 Programme of implementation of tasks

13.2 The Implementation of tasks shall commence immediately after the last signatory to the contract signs the contract and run for a period of 90 days

Article 14 Contractor's drawings

14.1 No specific drawings, samples or models have to be provided

The Contractor should provide the respective user service operating manuals in English

Article 15 Sufficiency of tender prices

23.1 No price revision foreseen

Article 16 Tax and customs arrangements

16.1 DDP as mentioned in the GC

Article 17 Patents and licences

17.1 No Special Conditions applicable to the General Conditions

Article 18 Commencement order

18.1 The date on which the implementation of the tasks has to commence is the date of the last signature of the contract

Article 19 Period of implementation of the tasks

19.1 Within 90 (ninety) days from date of last signature of the contract

Article 24 Quality of supplies

24.2 No preliminary technical acceptance required

Article 25 Inspection and testing

25.2 The truck shall be inspected by the Chief Mechanical and Transport Engineer for compliance with specifications prior to delivery to the premises of Contracting Authority, Sugar Research Institute Headquarters, Kisumu- Miwani road, Kibos.

Article 26 General principles for payments

26.1 Payments shall be made in Kenya Shillings

Payments shall be authorised by:

Sugar Reform Support Project (SRSP-K),

Sugar Research Institute,

Kisumu- Miwani Road,

P.O. Box 44, 40100, Kisumu,

Kenya.

And made by the Sugar Reform Support Project (SRSP-K), Sugar Research Institute

26.5 In order to obtain payments, the Contractor must forward to the authority referred to in paragraph 26.1 above:

a) For the 40% pre-financing, in addition to the payment request, the performance guarantee, if the pre-financing requested is equal or below EUR 300 000 unless no proof documents have been provided for the selection criteria or unless the Contracting Authority requires a financial guarantee following a risk assessment:

b) For the 60% balance, the invoice(s) in triplicate together with the request for provisional acceptance of the supplies.

26.9 The Contract does not include a price revision clause.

Article 28 Delayed payments

28.2 By derogation from Article 28.2 of the General Conditions, once the deadline laid down in Article 26.3 has expired, the Contractor shall, upon demand, be entitled to late-payment interest at the rate and for the period mentioned in the General Conditions. The demand must be submitted within two months of receiving late payment.

Article 29 Delivery

- 29.1 The Contractor shall bear all risks relating to the goods until provisional acceptance at destination. The supplies shall be packaged so as to prevent their damage or deterioration in transit to their destination.
- 29.2 The General Conditions are applicable
- 29.3 The packaging shall become the property of the recipient subject to respect for the environment.

Article 31 Provisional acceptance

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

Article 32 Warranty obligations

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

Article 33 After-sales service

- 33.1 The Contractor shall provide evidence that country wide service and spare part back up is available for the make/model of vehicles he has presented a bid for. Furthermore, the contractor, in case he is not the 'prime' importer of the motor vehicle in Kenya, will have to present acceptable evidence that the supplied motor vehicle will be covered by existing or alternative service and spare parts back up arrangements both during the warranty period and thereafter

Article 40 Settlement of disputes

- 40.4 Any disputes arising out of or relating to this Contract which cannot be settled otherwise shall be referred to the exclusive jurisdiction of Kenya in accordance with the national legislation of the state of the Contracting Authority.

Article 44 Data Protection

Not applicable.

ANNEX I: GENERAL CONDITIONS

FOR SUPPLY CONTRACTS FINANCED BY THE EUROPEAN UNION OR BY THE EUROPEAN UNION BUDGET

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PRELIMINARY PROVISIONS

Article 1 - Definitions

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

Article 2 - Language of the Contract

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

Article 3 - Order of precedence of Contract documents

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

Article 4 - Communications

- 4.1. Any written communication relating to this Contract between the Contracting Authority or the Project Manager, and the Contractor shall state the contract title and identification number, and shall be sent by post, cable, telex, facsimile transmission, e-mail or personal delivery, to the appropriate addresses designated by the parties for that purpose in the Special Conditions.
- 4.2. If the sender requires evidence of receipt, it shall state such requirement in its communication and shall demand such evidence of receipt whenever there is a deadline for the receipt of the communication. In any event, the sender shall take all the necessary measures to ensure timely receipt of its communication.
- 4.3. Wherever the contract provides for the giving or issue of any notice, consent, approval, certificate or decision, unless otherwise specified such notice, consent, approval, certificate or decision shall be in writing and the words "notify", "consent", "certify", "approve" or "decide" shall be construed accordingly. Any such consent, approval, certificate or decision shall not unreasonably be withheld or delayed.
- 4.4. Any oral instructions or orders shall be confirmed in writing. **2014** Page 3 of 32 c4e_annexigc_en.doc

Article 5 - Assignment

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

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

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

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

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

5.4. If the Contractor has assigned the contract without authorization, the Contracting Authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Articles 35 and 36.

5.5. Assignees shall satisfy the eligibility criteria applicable for the award of the contract and they shall not fall under the exclusion criteria described in the tender dossier.

Article 6 - Subcontracting

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

6.2. The Contractor shall request to the Contracting Authority the authorization to subcontract. The request must indicate the elements of the contract to be subcontracted and the identity of the subcontractors. The Contracting Authority shall notify the Contractor of its decision within 30 days of receipt of the request, stating reasons should it withhold such authorization.

6.3. Subcontractors shall satisfy the eligibility criteria applicable for the award of the contract and shall not fall under the exclusion criteria described in the tender dossier.

6.4. No subcontract creates contractual relations between any subcontractor and the Contracting Authority.

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

6.6. If a subcontractor has undertaken any continuing obligation extending for a period exceeding that of the warranty period under the contract towards the Contractor in respect of the supplies provided by the subcontractor, the Contractor must, at any time after the expiration of the warranty period, transfer immediately to the Contracting Authority, at **2014** Page 4 of 32 c4e_annexigc_en.doc

the Contracting Authority's request and cost, the benefit of such obligation for the unexpired duration thereof.

6.7. If the Contractor enters into a subcontract without approval, the Contracting Authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Articles 35 and 36.

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

OBLIGATIONS OF THE CONTRACTING AUTHORITY

Article 7 - Supply of documents

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

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

7.3. The Contracting Authority shall notify the Contractor of the name and address of the Project Manager.

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

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

7.6. The Special Conditions must indicate the procedure used, if necessary, by the Contracting Authority and the Project Manager to approve drawings and other documents provided by the Contractor.

Article 8 - Assistance with local regulations

8.1. The Contractor may request the assistance of the Contracting Authority in obtaining copies of laws, regulations and information on local customs, orders or bye-laws of the country where the supplies are to be delivered which may affect the Contractor in the performance of its obligations under the contract. The Contracting Authority may provide the assistance requested to the Contractor at the Contractor's cost. **2014**

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8.2. The Contractor shall duly notify the Contracting Authority of details of the supplies so that the Contracting Authority can obtain the requisite permits or import licenses.

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

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

OBLIGATIONS OF THE CONTRACTOR

Article 9 - General Obligations

9.1. The Contractor shall execute the contract with due care, efficiency and diligence in accordance with the best professional practice.

9.2. The Contractor shall, in accordance with the provisions of the Contract, design, manufacture, deliver to site, erect, test and commission the supplies and carry out any other work including the remedying of any defects in the supplies. The Contractor shall also provide all necessary equipment, supervision, labour and facilities required for the implementation of the tasks.

9.3. The Contractor shall comply with administrative orders given by the Project Manager. Where the Contractor considers that the requirement of an administrative order goes beyond the scope of the Contract, it shall, give notice with reasons to the Project Manager. If the Contractor fails to notify within 30 days period after receipt thereof, he shall be barred from so doing. Execution of the administrative order shall not be suspended because of this notice.

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

9.5. The Contractor shall respect and abide by all laws and regulations in force in the country where the supplies are to be delivered and shall ensure that its personnel, their dependents, 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 dependents of such laws and regulations.

9.6. Should any unforeseen event, action or omission directly or indirectly hamper performance of the Contract, either partially or totally, the Contractor shall immediately and at its own initiative record it and report it to the Contracting Authority. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with its obligations under the contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.

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9.7. Subject to Article 9.9, the Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to the performance of the contract without the prior consent of the Contracting Authority. The Contractor shall continue to be bound by this undertaking after completion of the tasks and shall obtain from each member of its staff the same undertaking. However, use of the contract's reference for marketing or tendering purposes does not require prior approval of the Contracting Authority, except where the Contracting Authority declares the contract to be confidential.

9.8. If the Contractor is a joint venture or a consortium of two or more persons, all such persons shall be jointly and severally bound in respect of the obligations under the contract, including any recoverable amount. The person designated by the consortium to act on its behalf for the purposes of the contract shall have the authority to bind the consortium and is the sole interlocutor for all contractual and financial aspects. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the Contracting Authority. Any alteration of the composition of the consortium without the prior consent of the Contracting Authority may result in the termination of the contract.

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

9.10. Any records shall be kept for a 7-year period after the final payment made under the contract. In case of failure to maintain such records the Contracting Authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Articles 35 and 36.

Article 9a - Code of Conduct

9a.1 The Contractor shall at all times act impartially and as a faithful adviser in accordance with the code of conduct of its profession. It shall refrain from making public statements about the project without the prior approval of the Contracting Authority. It shall not commit the Contracting Authority in any way without its prior consent and shall, where appropriate, make this obligation clear to third parties.

9a.2 The Contractor and its staff shall respect human rights and undertake not to offend the political, cultural and religious practices prevailing in the country where the supplies have to be delivered.

9a.3 The Contractor shall respect environmental legislation applicable in the country where the supplies have to be delivered and internationally agreed core labour standards, e.g. the ILO core labour standards, conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation, and the abolition of child labour.

9.a.4 The Contractor or any of its subcontractors, agents or personnel shall not abuse of its entrusted power for private gain. The Contractor or any of its subcontractors, agents or personnel shall not receive or agree to receive from any person or offer or agree to give to any person or procure for any person, gift, gratuity, commission or consideration of any kind as an inducement or reward for performing or refraining from any act relating to the performance of the contract or for showing favour or disfavour to any person in relation **2014** Page 7 of 32
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to the contract. The Contractor shall comply with all applicable laws and regulations and codes relating to anti-bribery and anti-corruption.

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

9.a.6 The execution of the contract shall not give rise to unusual commercial expenses. Unusual commercial expenses are commissions not mentioned in the contract or not stemming from a properly concluded contract referring to the Contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commission paid to a company which has every appearance of being a front company. The European Commission may carry out documentary or on-the-spot checks it deems necessary to find evidence in case of suspected unusual commercial expenses.

Article 9b Conflict of Interest

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

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

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

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

9.b.5 The Contractor and anyone working under its authority or control in the performance of the contract or on any other activity shall be excluded from access to other EU budget/EDF funds available under the same project. However, the Contractor may participate after approval of the Contracting Authority if the Contractor is able to prove that its involvement in previous stages of the project does not constitute unfair competition.

Article 10 - Origin

10.1. All goods shall have their origin in any eligible source country as defined in the instructions to tenderers and the Special Conditions.

10.2. The Contractor must certify that the goods tendered comply with this requirement, specifying their countries of origin. It may be required to provide more detailed information in this respect. **2014** Page 8 of 32 c4e_annexigc_en.doc

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

Article 11 - Performance guarantee

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

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

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

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

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

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

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

Article 12 - Liabilities and Insurance

12.1. Liabilities

The liability rules described below are without prejudice to the possible application of international conventions on the carriage of goods. **2014**

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a) Liability for damage to supplies

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

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

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

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

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

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

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

c) Contractor's liability in respect of third parties

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

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

If the Contracting Authority chooses to challenge and defend itself against the claim(s), the Contractor shall bear the reasonable costs of defence 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 **2014** Page 10 of 32 c4e_annexigc_en.doc

Any settlement or agreement settling a claim requires the prior express consent of the Contracting Authority and the Contractor.

12.2. Insurance

a) Insurance – general issues

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

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

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

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

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

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

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

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

The Contracting Authority shall not bear any liability for the assessment and adequacy of insurance policies taken out by the Contractor with its contractual and/or statutory obligations. 2014 Page 11 of 32 c4e_annexigc_en.doc

b) Insurance – Specific issues

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

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

Article 13 - Programme of implementation of the tasks

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

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

13.2. The Special Conditions shall specify the time limit within which the programme of implementation of the tasks must be submitted to the Project Manager for approval. They may set time limits within which the Contractor must submit all or part of the detailed drawings, documents and items. They shall also state the deadline for the Project Manager's approval or acceptance of the programme of implementation, detailed drawings, documents and items.

13.3. The approval of the programme by the Project Manager shall not relieve the Contractor of any of its obligations under the contract.

13.4. No material alteration to the programme shall be made without the approval of the Project Manager. If, however, the progress of the implementation of the tasks does not conform to the programme, the Project Manager may instruct the Contractor to submit a revised programme in accordance with the procedure laid down in Article 13.

Article 14 - Contractor's drawings

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

- a) the drawings, documents, samples and/or models, according to the time limits and procedures laid down in the Special Conditions or in the programme of implementation of the tasks;
- b) such drawings as the Project Manager may reasonably require for the implementation of the tasks. **2014** Page 12 of 32 c4e_annexigc_en.doc

14.2. If the Project Manager fails to notify its decision of approval referred to in Article 14.1 within the time limits referred to in the contract or the approved programme of implementation of the tasks, such drawings, documents, samples or models shall be deemed to be approved at the end of the time limits specified. If no time limit is specified, they shall be deemed to be approved 30 days after receipt.

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

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

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

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

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

Article 15 - Sufficiency of tender prices

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

- a) the costs of transport;
- b) the costs of handling, packing, loading, unloading, transit, delivery, unpacking, checking, insurance and other administrative costs in connection with the supplies. The packaging shall be the property of the Contracting Authority unless otherwise provided in the Special Conditions;
- c) the cost of documents relating to the supplies where such documents are required by the Contracting Authority;
- d) execution and supervision of on-site assembly and/or commissioning of the delivered supplies;
- e) furnishing of tools required for assembly and/or maintenance of the delivered supplies;

- f) furnishing of detailed operation and maintenance manuals for each unit of the delivered supplies, as specified in the Contract;
- g) supervision or maintenance and/or repair of the supplies, for a period of time stated in the Contract, with the stipulation that this service shall not release the Contractor from any warranty obligations under the Contract;
- h) training of the Contracting Authority's personnel, at the Contractor's factory and/or elsewhere as specified in the contract.

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

Article 16 - Tax and customs arrangements

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

Article 17 - Patents and licenses

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

IMPLEMENTATION OF THE TASKS AND DELAYS

Article 18 - Commencement order

18.1. Subject to the Special Conditions, the Contracting Authority shall fix the date on which implementation of the tasks is to commence and advise the Contractor thereof either in the notification of award of the contract or by administrative order.

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

Article 19 - Period of implementation of the tasks

19.1. The period of implementation of tasks shall commence on the date fixed in accordance with Article 18 and shall be as laid down in the Special Conditions, without prejudice to extensions of the period which may be granted under Article 20. **2014** Page 14 of 32
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19.2. If provision is made for distinct periods of implementation of the tasks for separate lots, in cases where one Contractor is awarded more than one lot per contract, the periods of implementation of the tasks for the separate lots shall not be accumulated.

Article 20 - Extension of period of implementation of the tasks

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

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

20.2. If the Contractor considers himself to be entitled to any extension of the period of implementation under the Contract, the Contractor shall

- a) give notice to the Project Manager of its intention to make such a request no later than 15 days after the Contractor became aware, or should have become aware of the event or circumstance giving rise to the request.

- b) If the Contractor fails to give notice of a request for extension of the period of implementation within such period of 15 days, the period of implementation shall not be extended and the Contracting Authority shall be discharged from all liability in connection with the request; and
- c) submit to the Project Manager full and detailed particulars of the request, within 30 days from the above notification unless otherwise agreed between the Contractor and the Supervisor, in order that such request may be investigated at the time.

20.3. Within 30 days from the receipt of the Contractor's detailed particulars of the request, the Project Manager shall in agreement with the Contracting Authority, by notice to the Contractor, grant such extension of the period of implementation of the tasks as may be justified, either prospectively or retrospectively, or inform the Contractor that it is not entitled to an extension.

Article 21 - Delays in implementation of the tasks

21.1. If the Contractor fails to deliver any or all of the goods or perform the services within the period of implementation of the tasks specified in the Contract, the Contracting Authority shall, without formal notice and without prejudice to its other remedies under the Contract, be entitled to liquidated damages for every day, or part thereof, which shall elapse between the end of the period of implementation of the tasks, or extended period **2014** Page 15 of 32 c4e_annexigc_en.doc of implementation of the tasks under article 20, and the actual date of completion. The daily rate of liquidated damages is 5/1000 of the value of the undelivered supplies to a maximum of 15% of the total contract price.

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

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

- seize the performance guarantee; and/or
- terminate the Contract,
- enter into a contract with a third party for the provision of the balance of the supplies at the Contractor's cost.

Article 22 - Amendments

22.1. Contract amendments must be formalized by a contract addendum signed by both parties or by an administrative order issued by the Project Manager or the Contracting Authority. Substantial amendments to the contract, including amendments to the total contract price, must be made by means of an addendum. Any contractual amendments must respect the general principles defined in the Practical Guide.

22.2. Subject to the limits of the procedure thresholds set in the Practical Guide, the Contracting Authority reserves the right to vary by an administrative order the quantities by +/- 100 % at the time of contracting and during the validity of the Contract. The total value of the supplies may not rise or fall as a result of the variation by more than 25% of the tender price. The unit prices quoted in the tender shall be applicable to the quantities procured under the variation.

22.3. The Project Manager and the Contracting Authority shall have the power to order any amendment to any part of the supplies necessary for the proper completion and/or functioning of the supplies. Such amendments by administrative order may include additions, omissions, substitutions, changes in quality, quantity, form, character, kind, as well as in drawings, designs or specifications where the supplies are to be specifically manufactured for the Contracting Authority, in method of shipment or packing, place of delivery, and in the specified sequence, method or timing of implementation of the tasks. No administrative order shall have the effect of invalidating the contract, but the financial effect, if any, of all such amendments shall be valued in accordance with Article 22.7.

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

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

b) if the Contractor confirms in writing an oral order given for the purpose of Article 22.4.a and the confirmation is not contradicted in writing forthwith by the Project Manager or the Contracting Authority, the Project Manager or the Contracting Authority shall be deemed to have issued an administrative order;

c) no administrative order is required to increase or decrease the quantity of any incidental sitting or installation because the estimates in the budget breakdown were too high or too low.

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22.5. Save where Article 22.4 provides otherwise, prior to issuing an administrative order, the Project Manager or the Contracting Authority shall notify the Contractor of the nature and form of such amendment. The Contractor shall then, without delay, submit to the Project Manager a written proposal containing:

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

22.6. Following the receipt of the Contractor's submission referred to in Article 22.5, the Project Manager shall, after due consultation with the Contracting Authority and, where appropriate, the Contractor, decide without delay whether or not to accept the amendment. If the Project Manager accepts the amendment, it shall notify the Contractor through an administrative order stating that the Contractor shall carry out the amendment at the prices and under the conditions given in the Contractor's submission referred to in Article 22.5 or as modified by the Project Manager in accordance with Article 22.7.

22.7. The prices for all amendments ordered by the Project Manager or the Contracting Authority in accordance with Articles 22.4 and 22.6 shall be ascertained in accordance with the following principles:

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

22.8. On receipt of the administrative order, the Contractor shall carry out the requested amendment according to the following principles:

a) The Contractor shall be bound by these General Conditions as if the amendment requested by administrative order were stated in the contract.

b) The Contractor shall not delay the execution of the administrative order pending the granting of any extension of time for completion or adjustment to the total contract price.

c) Where the administrative order precedes the adjustment to the total contract price, the Contractor shall keep records of the costs of undertaking the amendment and of the time expended thereon. Such records shall be open to inspection by the Project Manager at all reasonable times.

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22.9. The Contractor shall notify the Contracting Authority of any change of bank account, using the form in Annex V. The Contracting Authority shall have the right to oppose the Contractor's change of bank account.

Article 23 - Suspension

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

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

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

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

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

a) otherwise provided for in the contract; or

b) such suspension is necessary by reason of some breach or default of the Contractor; or

c) such suspension is necessary by reason of normal climatic conditions at the place of acceptance; or

d) such suspension is necessary for the safety or the proper execution of the contract or any part thereof insofar as such necessity does not arise from any act or default by the Project Manager or the Contracting Authority or

e) the presumed substantial errors or irregularities or fraud mentioned in article 23.2 are confirmed and attributable to the Contractor.

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

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

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

Contractor may, by notice to the Contracting Authority, request to proceed with the contract within 30 days, or terminate the contract. **2014**
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MATERIALS AND WORKMANSHIP

Article 24 - Quality of supplies

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

24.2. Any preliminary technical acceptance stipulated in the Special Conditions shall be the subject of a request sent by the Contractor to the Project Manager. The request shall indicate the reference to the contract, specify the materials, items and samples submitted for such acceptance according to the contract and indicate the lot number and the place where acceptance is to take place, as appropriate. The materials, items and samples specified in the request must be certified by the Project Manager as meeting the requirements for such acceptance prior to their incorporation in the supplies.

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

Article 25 - Inspection and testing

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

25.2. The Project Manager 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 at the place of acceptance or at such other places as may be specified in the Special Conditions.

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

a) provide to the Project Manager, temporarily and free of charge, with such assistance, test samples or parts, machines, equipment, tools, labour, materials, drawings and production data as are normally required for inspection and testing;

b) agree, with the Project Manager, on the time and place for tests;

c) provide access to the Project Manager at all reasonable times to the place where the tests are to be carried out.

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

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

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

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

PAYMENTS

Article 26 - General principles

26.1. Payments shall be made in euro or national currency as specified in the Special Conditions. The Special Conditions shall lay down the administrative or technical conditions governing payments of pre-financing and final payments made in accordance with the General Conditions.

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

26.3. Pre-financing payment shall be made within 30 days from the date on which an admissible invoice is registered by the Contracting Authority. The invoice shall not be admissible if one or more essential requirements are not met. Final payment shall be made within 60 days from the date on which an invoice is registered by the Contracting Authority, together with the request for provisional acceptance as per article 31.2. The date of payment shall be the date on which the paying account is debited.

26.4. The period referred to in article 26.3 may be suspended by notifying the Contractor that the invoice cannot be fulfilled because the sum is not due, because appropriate substantiating documents have not been provided or because there is evidence that the expenditure might not be eligible. In the latter case, an inspection may be carried out on the spot for the purpose of further checks. The Contractor shall provide clarifications, modifications or further information within 30 days of being asked to do so. The payment period shall continue to run from the date on which a properly drawn-up invoice is registered. 2014 Page 20 of 32 c4e_annexigc_en.doc

26.5. The payments shall be made as follows:

a) 40% of the total contract price after the signing of the contract, against provision of the performance guarantee and of a pre-financing guarantee for the full amount of the pre-financing payment, unless otherwise provided for in the Special Conditions. The performance guarantee shall be provided to the Contracting Authority following the procedure foreseen for the performance guarantee in accordance with Article 11, and in accordance with the format annexed to the contract. The pre-financing guarantee must remain valid until it is released 45 days at the latest after the provisional acceptance of the goods. Where the contractor is a public body, the obligation for a pre-financing guarantee may be waived depending on a risk assessment made;

b) 60% of the total contract price, as payment of the balance, after receipt by the Contracting Authority of an invoice and of the application for the certificate of provisional acceptance;

26.6. Where only part of the supplies has been delivered, the 60% payment due following partial provisional acceptance shall be calculated on the value of the supplies which have actually been accepted and the security shall be released accordingly.

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

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

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

26.10. The Contractor undertakes to repay any amounts paid in excess of the final amount due to the Contracting Authority before the deadline indicated in the debit note which is 45 days from the issuing of that note. Should the Contractor fail to make repayment within the 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 eight 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. **2014** Page 21 of 32 c4e_annexigc_en.doc

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.

26.11. If the contract is terminated for any reason whatsoever, the guarantee 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.

26.12. Prior to, or instead of, terminating the contract as provided for in Article 36, the Contracting Authority may suspend payments as a precautionary measure without prior notice.

26.13. 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 23.2 and to terminate the contract as provided for in Article 36, refuse to make payments and/or recover amounts already paid, in proportion to the seriousness of the errors, irregularities or fraud.

Article 27 - Payment to third parties

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

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

27.3. In the event of a legally binding attachment of the property of the Contractor affecting payments due to him under the contract, and without prejudice to the time limit laid down in Article 26, the Contracting Authority shall have 30 days, starting from the day on which it receives notification of the definitive lifting of the obstacle to payment, to resume payments to the Contractor.

Article 28 - Delayed payments

28.1. The Contracting Authority shall pay the Contractor sums due in accordance with Article 26.3.

28.2. Once the time-limit referred to in Article 26.3 has expired, the Contractor – unless the contractor is a government department or public body in European Union Member State- shall, within two months of receipt of the late payment, receive default interest:

- at the rediscount rate applied by the central bank of the Partner country 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 eight 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. By way of exception, when the interest calculated in accordance with this provision is lower than or equal to EUR 200, it shall be paid to the Contractor only upon demand submitted within two months of receiving late payment. **2014** Page 22 of 32 c4e_annexigc_en.doc

However, when the interest calculated in accordance with the first subparagraph is lower than or equal to EUR 200, it shall be paid to the creditor only upon a demand submitted within two months of receiving late payment.

28.3. Any default in payment of more than 90 days from the expiry of the period laid down in Article 26.3 shall entitle the Contractor either not to perform the contract or to terminate it, with 30 days' prior notice to the Contracting Authority and the Project Manager.

ACCEPTANCE AND MAINTENANCE

Article 29 - Delivery

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

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

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

29.4. No supplies shall be shipped or delivered to the place of acceptance until the Contractor has received a delivery order from the Project Manager. The Contractor shall be responsible for the delivery at the place of acceptance of all supplies and supplier's equipment required for the purpose of the contract.

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

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

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

Article 30 - Verification operations

30.1. The supplies shall not be accepted until the prescribed verifications and tests have been carried out at the expense of the Contractor. The verifications and tests may be conducted before shipment, at the point of delivery and/or at the final destination of the goods. **2014** Page 23 of 32 c4e_annexigc_en.doc

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

- a) the removal from the place of acceptance, within such time or times as may be specified in the order, of any supplies which, in the opinion of the Project Manager, are not in accordance with the contract;
- b) their replacement with proper and suitable supplies;
- c) the removal and proper re-installation, notwithstanding any previous test thereof or of any installation which in respect of materials, workmanship or design for which the Contractor is responsible, is not, in the opinion of the Project Manager, in accordance with the contract;
- d) that any work done or goods supplied or materials used by the Contractor is or are not in accordance with the contract, or that the supplies or any portion thereof do not fulfil the requirements of the contract.

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

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

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

Article 31 - Provisional acceptance

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

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

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

The Contracting Authority's time limit for issuing the certificate of provisional acceptance to the Contractor shall be considered included in the time limit for payments indicated in Article 26.3, unless otherwise specified in the Special Conditions. **2014** Page 24 of 32
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31.3. Should exceptional circumstances make it impossible to proceed with the acceptance of the supplies during the period fixed for provisional or final acceptance, a statement certifying such impossibility shall be drawn up by the Project Manager after consultation, where possible, with the Contractor. The certificate of acceptance or rejection shall be drawn up within 30 days following the date on which such impossibility ceases to exist. The Contractor shall not invoke these circumstances in order to avoid the obligation of presenting the supplies in a state suitable for acceptance.

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

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

31.6. Upon provisional acceptance of the supplies, the Contractor shall dismantle and remove temporary structures 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 place of acceptance as required by the contract.

31.7. Immediately after provisional acceptance, the Contracting Authority may make use of all the supplies delivered.

Article 32 - Warranty obligations

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

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

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

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

32.4. If any such defect appears or such damage occurs during the warranty period, the Contracting Authority or the Project Manager shall notify the Contractor. If the **2014** Page 25 of 32 c4e_annexigc_en.doc

Contractor fails to remedy a defect or damage within the time limit stipulated in the notification, the Contracting Authority may:

- a) remedy the defect or the damage itself, or employ someone else to carry out the tasks 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.

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

32.6. The warranty obligations shall be stipulated in the Special Conditions and technical specifications.

32.7. Save where otherwise provided in the Special Conditions, the duration of the warranty period shall be 365 days. The warranty period shall commence on the date of provisional acceptance and may recommence in accordance with Article 32.3.

Article 33 - After-sales service

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

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

Article 34 - Final acceptance

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

34.2. The contract shall not be considered to have been performed in full until the final acceptance certificate has been signed or is deemed to have been signed by the Project Manager. **2014** Page 26 of 32 c4e_annexigc_en.doc

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

BREACH OF CONTRACT AND TERMINATION

Article 35 - Breach of contract

35.1. Either party commits a breach of contract where it fails to perform its obligations in accordance with the provisions of the contract.

35.2. 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.

35.3. Damages may be either:

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

35.4. 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 35.2, 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.

35.5. 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.

35.6. The Contracting Authority shall be entitled to compensation for any damage which comes to light after the contract is completed in accordance with the law governing the contract.

Article 36 - Termination by the Contracting Authority

36.1. The Contracting Authority may, at any time and with immediate effect, subject to Article 36.9, terminate the contract, except as provided for under Article 36.2.

36.2. Subject to any other provision of these General Conditions, the Contracting Authority may, after giving seven days' notice to the Contractor, terminate the contract 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 Project Manager requiring it to make good the neglect or failure to perform its obligations under the contract which seriously affects the proper and timely implementation of the tasks;

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- c) the Contractor refuses or neglects to carry out any administrative orders given by the Project Manager;
- d) the Contractor assigns the contract or subcontracts without the authorization of the Contracting Authority;
- e) the Contractor is bankrupt or being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- f) any organizational 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) the Contractor has been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organization, money laundering or any other illegal activity, where such illegal activity is detrimental to the European Union's financial interests;
- 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;
- 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 9a and Article 9b;
- o) the Contractor fails to comply with its obligation in accordance with Article 10.

36.3. 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, 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.

36.4. Upon termination of the contract or when it has received notice thereof, the Contractor shall take immediate steps to bring the implementation of the tasks to a close in a prompt and orderly manner and to reduce expenditure to a minimum.

36.5. The Project Manager shall, as soon as possible after termination, certify the value of the supplies and all sums due to the Contractor as at the date of termination.

36.6. In the event of termination, the Project Manager shall, as soon as possible and in the presence of the Contractor or his representatives or having duly summoned them, draw up **2014** Page 28 of 32 c4e_annexigc_en.doc. A report on the supplies delivered and the incidental siting or installation performed and take an inventory of the materials supplied and unused. A statement shall also be drawn up of monies due to the Contractor and of monies owed by the Contractor to the Contracting Authority as at the date of termination of the contract.

36.7. The Contracting Authority shall not be obliged to make any further payments to the Contractor until the supplies are completed. After the supplies are completed, the Contracting Authority shall recover from the Contractor the extra costs, if any, of providing the supplies, or shall pay any balance still due to the Contractor.

36.8. If the Contracting Authority terminates the contract pursuant to Article 36.2, it shall, in addition to the extra costs for completion of the contract and without prejudice to its other remedies under the contract, be entitled to recover from the Contractor any loss it has suffered up to the value of the supply unless otherwise provided for in the Special Conditions.

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

36.10. This contract shall be automatically terminated if it has not given rise to any payment in the three years following its signing by both parties.

Article 37 - Termination by the Contractor

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

- fails to pay the Contractor the amounts due under any certificate issued by the Project Manager after the expiry of the time limit stated in Article 28.3; or
- consistently fails to meet its obligations after repeated reminders; or
- suspends the delivery of the supplies, or any part thereof, for more than 180 days, for reasons not specified in the contract or not attributable to the Contractor's breach or default.

37.2. Such termination shall be without prejudice to any other rights of the Contracting Authority or the Contractor acquired under the contract.

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

Article 38 - Force majeure

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

38.2. 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, **2014** Page 29 of 32 c4e_annexigc_en.doc 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.

38.3. Notwithstanding the provisions of Articles 21 and 36, 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 28 and 37, for the 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*.

38.4. If either party considers that any circumstances of *force majeure* have occurred which may affect performance of its obligations, it shall promptly notify the other party and the Project Manager, giving details of the nature, the probable duration and the likely effect of the circumstances. Unless otherwise directed by the Project Manager in writing, the Contractor shall continue to perform 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 alternative means unless directed so to do by the Project Manager.

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

38.6. If circumstances of *force majeure* have occurred and continue for a period of 180 days then, notwithstanding any extension of time for completion of the contract that the Contractor may by reason thereof have been granted, either Party shall be entitled to serve upon the other with 30 days' notice to terminate the contract. If, at the expiry of the period of 30 days, the situation of *force majeure* persists, the contract shall be terminated and, in consequence thereof under the law governing the contract, the parties shall be released from further performance of the contract.

Article 39 - Decease

39.1. Where the Contractor is a natural person, the contract shall be automatically terminated if that person dies. However, the Contracting Authority shall examine any proposal made by the heirs or beneficiaries if they have notified their wish to continue the contract.

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

39.3. In the cases provided for in Articles 39.1 and 39.2, persons offering to continue to perform the contract shall notify the Contracting Authority thereof within 15 days of the date of decease. The decision of the Contracting Authority shall be notified to those concerned within 30 days of receipt of such proposal.

39.4. 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. **2014** Page 30 of 32 c4e_annexigc_en.doc

SETTLEMENT OF DISPUTES AND APPLICABLE LAW

Article 40 - Settlement of disputes

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

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

40.3. In the absence of an amicable settlement, a party may notify the other party 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.

40.4. 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 41 - Applicable law

41.1. 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 42 - Administrative and financial penalties

42.1. Without prejudice to the application of other remedies laid down in the contract, a Contractor who has made false declarations, has made substantial errors or committed irregularities and fraud, or has been found in serious breach of its contractual obligations may be excluded from all contracts and grants financed by the EU for a maximum of five years from the date on which the infringement is committed, to be confirmed after an adversarial procedure with the Contractor, in accordance with the relevant EU Financial Regulations. The period may be increased to ten years in the event of a repeat offence within five years of the first infringement. **2014** Page 31 of 32 c4e_annexigc_en.doc

42.2. In addition or in alternative to the administrative penalty laid down in Article 42.1, the Contractor may also be subject to financial penalties representing 2-10% of the total contract price. This rate may be increased to 4-20% in the event of a repeat offence within five years of the first infringement.

42.3. 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.

Article 43 - Verifications, checks and audits by European Union bodies

43.1. The Contractor shall 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 original documents, 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.

43.2. Furthermore, the Contractor shall 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.

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

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

Article 44 - Data protection

44.1. 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 **2014** Page 32 of 32 c4e_annexige_en.doc 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.

44.2. 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.

44.3. 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.

44.4. The Contractor undertakes to adopt technical and organizational security measures to address the risks inherent in processing and in the nature of the personal data concerned in order to:

a) prevent any unauthorized person from having access to computer systems processing personal data, and especially:

aa) unauthorized reading, copying, alteration or removal of storage media;

ab) unauthorized data input unauthorized disclosure, alteration or erasure of stored personal data;

ac) unauthorized persons from using data-processing systems by means of data transmission facilities;

b) ensure that authorized 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 authorization;

f) design its organizational structure in such a way that it meets data protection requirements.

*

*

*

SPECIFICATIONS FOR A 14 TONNE SEEDCANE TRUCK

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

Contract title: Supply, Delivery of 1 (one) 14 (fourteen) tonne Seed cane truck with a capacity of carrying bulky goods

Publication reference: KALRO/SRI/020/2015-16

Column 1-2 should be completed by the Contracting Authority

Column 3-4 should be completed by the tenderer

Column 5 is reserved for the evaluation committee

Annex III - the Contractor's technical offer

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

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

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

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

SPECIFICATIONS FOR A 14 TONNE SEEDCANE TRUCK

| FOURTEEN TONNE SEED CANE TRUCK | SPECIFICATION | 1. REQUIRED | 2. SPECIFICATIONS OFFERED | 3. NOTES, REMARKS, REF TO DOCUMENTATION | 4. EVALUATION COMMITTEE'S NOTES |
|--------------------------------|---|-------------|---------------------------|---|---------------------------------|
| | Make | - | | | |
| | Model | - | | | |
| | Country of origin | | | | |
| | Manufacturer's literature and specifications supplied | Yes |(Y/N) | | |

1. SPECIFIC FUNCTIONAL SPECIFICATION

| | | | | | |
|--|--------------------------|--|---|------------|--|
| | a) Gross weight, KG | | Not less than 22,000kg | | |
| | b) Cab Chassis mass, KG | | Between 7,000-8000kg | | |
| | c) Engine type: | | Diesel, 6 cylinder, water-cooled, Direct Injection, Inline, OHC | | |
| | d) Displacement, cc | | 6000-10000CC | | |
| | e) Maximum Power | | 236hp(177kW@2500 Rpm) | | |
| | f) Maximum Torque | | 725Nm(74 Kgm)@1300 rpm | | |
| | g) Transmission: 9 Speed | | 8 Forward 1 Reverse | | |
| | h) Clutch | | Dry single plate hydraulic control with air assist | | |
| | i) Steering | | power assisted with tilt & telescopic function | | |
| | j) Brakes | | full air dual circuit | | |
| | k) Auxiliary Service | | exhaust brake | | |
| | l) Ground clearance, HH | | Above 265mm | | |
| | m) Chassis Height, EH | | Approximately 1100mm | | |
| | n) Emission | | Euro II |(Y/N) | |

2. ELECTRICAL SYSTEM AND INSTRUMENTS

| | | | | | |
|--|---|----------------|--|--|--|
| | a)System voltage, negative earth with alternator charging | 24 VOLT SYSTEM | | | |
| | b) Battery capacity | 2X12V | | | |
| | Full lighting to conform to Cap.403 Subs.23, Kenya Traffic Act. | Yes | | | |
| | d) Standard instruments, and gauges ,warning lights, for charging circuit, oil pressure, coolant temperature etc. | Yes, Yes ,Yes | | | |

3. CARRIAGE BODY STRUCTURE

| | | | | | |
|--|-------------------------------|---|--|--|--|
| | a) Suspension: | SEMI ELLIPTICAL ALLOY STEEL LEAF SPRING & HYDRAULLIC DOUBLE ACTING TELESCOPIC SHOCK ABSORBERS AT THE FRONT | | | |
| | b) Wheel Size | 12X22.5 TUBELESS 16PLY RATING | | | |
| | c) Rim Size | 22.5 INCHES | | | |
| | d) Fuel Tank Capacity, Litres | 400 – (2X200) LITRES | | | |
| | e) Emission Level | EURO II | | | |
| | f) Wheel base | Approximately 5700mm | | | |
| | g) Overall Length, OAL | Minimum 9745mm | | | |
| | h) Front Overhang, FOH | Not exceeding 1250mm | | | |
| | i) Rear Overhang, ROH | Not exceeding 2775mm | | | |
| | k) Cab to end ,CE | Approximately 7645mm | | | |
| | l) Overall Width, OW | Not less than 2400mm | | | |
| | M) Front Track ,AW | Approximately 1990mm | | | |
| | n) Rear Track ,BW | Approximately 2465mm | | | |
| | o) Cabin Weight CW | 8000Kg | | | |
| | p) Overall height, OH | Approximately 3435mm | | | |
| | q) Ground clearance, HH | Above 265mm | | | |
| | r) Chassis Height, EH | Approximately 1100mm | | | |
| | s) Body carrier Height | TBA | | | |
| | t) cargo fasteners | At the rear, middle and front of the carrier | | | |
| | | | | | |

4. EQUIPMENT

| | | | | | |
|--|---|-------------------------|-------------|--|--|
| | a) Heavy duty front fender fitted. | Yes | ------(Y/N) | | |
| | b) Heavy duty towing hitch and hooks at rear and front | Yes | ------(Y/N) | | |
| | c) Sun visors supplied | Yes | ------(Y/N) | | |
| | d) Rear view mirrors, external 2 No. and inside 1 No. supplied | Yes, Yes | ------(Y/N) | | |
| | e) Spare wheel supplied | Yes Mandatory | ------(Y/N) | | |
| | f) Hydraulic jack and wheel brace supplied | Yes, Yes | ------(Y/N) | | |
| | g) Safety belts provided for all seats Conforming to KEBS 06-664: 1985 standard | Yes Mandatory | ------(Y/N) | | |
| | h) Extra heavy duty suspension i.e 2 double action Shock Absorbers at front. | Front 2 | ------(Y/N) | | |
| | i) 4 speaker FM,AM ,SW radio-cassette system/CD charger with appropriate aerial, 40W output, min. | Specify make and model | ----- | | |
| | j) Security alarm and immobilizer fitted | Yes Mandatory | ------(Y/N) | | |
| | k) Manufacturer's standard tool kit supplied | 1 per vehicle | ------(Y/N) | | |
| | l) Multi lock. | Yes, Mandatory | ------(Y/N) | | |

MANUALS

| | | | | | |
|--|--|-----|-------------|--|--|
| | All literature in English language | Yes | ------(Y/N) | | |
| | Repair Manual supplied | Yes | ------(Y/N) | | |
| | Drivers handbook and service schedule supplied | Yes | ------(Y/N) | | |
| | Parts catalogue and microfiche supplied | Yes | ------(Y/N) | | |

DELIVERY

| | | | | | |
|--|---|--|--|--|--|
| | a) Number of items | 1 | | | |
| | b) Inspection and Certification Chief Mechanical and Transport Engineer | Mandatory (Certificate) | | | |
| | b) Registration with Kenya Revenue Authority. | Mandatory | | | |
| | d) Warranty | 24 months or 50,000 Km whichever comes first | | | |
| | e) A local competent service outlet in Kisumu or agent | Mandatory | | | |
| | f) Insurance | Comprehensive | | | |
| | h) Provision of basic handling instruction to the user | Yes | | | |
| | BRANDING Whole vehicle cabin and body to be KALRO branded, to bear printed KALRO-SRI and EU logo on both left and right side. | Yes | | | |
| | Delivery | KALRO-SRI HQS, KIBOS, KISUMU | | | |

ANNEX IV: Budget breakdown (Model financial offer)

PUBLICATION REFERENCE: KALRO/SRI/020/2015-16

NAME OF TENDERER:

| A | B | C | D | E |
|--|----------|---|---|----------------------------------|
| ITEM NUMBER | QUANTITY | SPECIFICATIONS OFFERED (INCL BRAND/MODEL) | UNIT COSTS WITH DELIVERY DDP ¹ KALRO-SRI HEADQUARTERS, KIBOS, KISUMU KENYA SHILLINGS | TOTAL KENYA SHILLINGS |
| 1 No 14(fourteen) tonne SEEDCANE Truck | 1 | | | |
| | | CLEARING AND FORWARDING COSTS | | |
| | | COST OF REGISTRATION & NUMBER PLATE | | |
| | | | Total | |
| | | Price of recommended consumable and spare parts <i>(not to be included in the TOTAL)</i> | | |

¹ DDP (Delivered Duty Paid) - Incoterms 2010 International Chamber of Commerce - <http://www.iccwbo.org/incoterms/>

C. FURTHER INFORMATION

ADMINISTRATIVE COMPLIANCE GRID

| | | | |
|-------------------------|--|--------------------------------|--|
| Contract title : | | Publication reference : | |
|-------------------------|--|--------------------------------|--|

| Tender envelope number | Name of Tenderer | Is tenderer (consortium) nationality ⁸ eligible? (Y/N) | Is documentation complete? (Y/N) | Is language as required? (Y/N) | Is tender submission form complete? (Y/N) | Is tenderer's declaration signed (by all consortium members if a consortium)? (Yes/No/ Not Applicable) | Other administrative requirements of the tender dossier? (Yes/No/Not applicable) | Overall decision? (Accept / Reject) |
|------------------------|------------------|---|----------------------------------|--------------------------------|---|--|--|-------------------------------------|
| 1 | | | | | | | | |
| 2 | | | | | | | | |
| 3 | | | | | | | | |
| 4 | | | | | | | | |
| 5 | | | | | | | | |

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

⁸ If the tender has been submitted by a consortium, the nationalities of **all** the consortium members must be eligible

EVALUATION GRID

| | | | |
|-------------------------|--|--------------------------------|--|
| Contract title : | | Publication reference : | |
|-------------------------|--|--------------------------------|--|

| Tender envelope No | Name of Tenderer | Rules of origin respected? (Y/N) | Economic & financial capacity? (OK/a/b/...) | Professional capacity? (OK/a/b/...) | Technical capacity? (OK/a/b/...) | Compliance with ⁹ technical specifications? (OK/a/b/...) | Ancillary services as required? (OK/a/b/.../NA) | Subcontracting statement in accordance with art 6 of the General Conditions? (Y/N) | Other technical requirements in tender dossier? (Yes/No/Not applicable) | Technically compliant? Y/N) | Justification/ notes: |
|--------------------|------------------|-------------------------------------|--|--|-------------------------------------|--|--|---|--|--------------------------------|-----------------------|
| 1 | | | | | | | | | | | |
| 2 | | | | | | | | | | | |
| 3 | | | | | | | | | | | |
| 4 | | | | | | | | | | | |

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

⁹ The selection criteria, in the previous section of this form, have to be met before the technical requirements are assessed.

D. TENDER FORM FOR A SUPPLY CONTRACT

Publication reference: KALRO/SRI/020/2015-16

Title of contract: Supply and Delivery of 1 no SEEDCANE Truck 14 tonne

Place and date; Director General, Kenya Agricultural & Livestock Research Organization, on March 21, 2016 not later than 10.00Hrs

A: Kenya Agricultural & Livestock Research Organization

Kaptagat Road, Off Waiyaki Way

P O Box 57811-00200

Nairobi

Fax: 020 4183344

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

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

1 SUBMITTED BY

| | Name(s) of tenderer(s) | Nationality ¹⁰ |
|----------------------------|------------------------|---------------------------|
| Leader¹¹ | | |
| Member | | |
| Etc ... | | |

¹⁰ Country in which the legal entity is registered.

¹¹ add/delete additional lines for members as appropriate. Note that a subcontractor is not considered to be a member for the purposes of this tender procedure. Subsequently, the data of the subcontractor must not appear in the data related to the economic, financial and professional capacity. If this tender is being submitted by an individual tenderer, the name of the tenderer should be entered as '**leader**' (and all other lines should be deleted).

2 CONTACT PERSON (for this tender)

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

3 ECONOMIC AND FINANCIAL CAPACITY¹²

Please complete the following table of financial data¹³ based on your annual accounts and your latest projections. If annual accounts are not yet available for this year or last year, please provide your latest estimates, clearly identifying estimated figures in italics. Figures in all columns must be on the same basis to allow a direct, year-on-year comparison to be made (or, if the basis has changed, an explanation of the change must be provided as a footnote to the table). Any clarification or explanation which is judged necessary may also be provided.

¹² Natural persons have to prove their capacity in accordance with the selection criteria and by the appropriate means.

¹³ If this application is being submitted by a consortium, the data in the table above must be the sum of the data in the corresponding tables in the declarations provided by the consortium members — see point 7 of this tender form for a supply contract..

| Financial data | 2 years before last year¹⁴ € | Year before last year € | Last year € | Average¹⁵ € | This year € |
|---|---|---|---------------------------|----------------------------------|---------------------------|
| Annual turnover ¹⁶ , excluding this contract | | | | | |
| Current Assets ¹⁷ | | | | | |
| Current Liabilities ¹⁸ | | | | | |

¹⁴ Last year=last accounting year for entity.

¹⁵ Amounts entered in the ‘Average’ column must be the mathematical average of the amounts entered in the three preceding columns of the same row.

¹⁶ The gross inflow of economic benefits (cash, receivables, other assets) arising from the ordinary operating activities of the enterprise (such as sales of goods, sales of services, interest, royalties, and dividends) during the year.

¹⁷ A balance sheet account that represents the value of all assets that are reasonably expected to be converted into cash within one year in the normal course of business. Current assets include cash, accounts receivable, inventory, marketable securities, prepaid expenses and other liquid assets that can be readily converted to cash.

¹⁸ A company's debts or obligations that are due within one year. Current liabilities appear on the company's balance sheet and include short term debt, accounts payable, accrued liabilities and other debts.

4 STAFF RESOURCES

Please provide the following personnel statistics for the current year and the two previous years.¹⁹

| Average manpower | Year before last | | Last year | | This year | |
|--|------------------|---|-----------|---|-----------|---|
| | Overall | Total for fields related to this contract ²⁰ | Overall | Total for fields related to this contract ¹¹ | Overall | Total for fields related to this contract ¹¹ |
| Permanent staff ²¹ | | | | | | |
| Other staff ²² | | | | | | |
| Total | | | | | | |
| Permanent staff as a proportion of total staff (%) | % | % | % | % | % | % |

¹⁹ If this tender is being submitted by a consortium, the data in the table above must be the sum of the data in the corresponding tables in the declarations provided by the consortium members — see point 7 of this tender form for a supply contract.

²⁰ Corresponding to the relevant specialisms identified in point 5 below.

²¹ Staff directly employed by the Tenderer on a permanent basis (i.e. under indefinite contracts).

²² Other staff not directly employed by the Tenderer on a permanent basis (i.e. under fixed-term contracts).

5 FIELDS OF SPECIALISATION

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

| | Leader | Member 2 | Member 3 | Etc ... |
|-----------------------|--------|----------|----------|---------|
| Relevant specialism 1 | | | | |
| Relevant specialism 2 | | | | |
| Etc ... ¹ | | | | |

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

6 EXPERIENCE

Please complete a table using the format below to summarise the **major relevant supplies** carried out in the course of the past **3** years²⁴ by the legal entity or entities making this tender. The number of references to be provided must not exceed **15** for the entire tender

| Ref # (maximum 15) | Project title | | ... | | | | | |
|--------------------------------|---------------|--|---|----------------------|----------------|---------------------------|-------|------------------------|
| Name of legal entity | Country | Overall supply value (EUR) ²⁵ | Proportion supplied by legal entity (%) | No of staff provided | Name of client | Origin of funding | Dates | Name of members if any |
| ... | ... | ... | ... | ... | ... | ... | ... | ... |
| Detailed description of supply | | | | | | Related services provided | | |
| ... | | | | | | ... | | |

²⁴ In the case of framework contracts (without contractual value), only specific contracts corresponding to assignments implemented under such framework contracts will be considered.

²⁵ Amounts actually paid, without the effect of inflation.

7 TENDERER’S DECLARATION(S)

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

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

we, the undersigned, hereby declare that:

1 We have examined and accept in full the content of the dossier for invitation to tender No of ----- We hereby accept its provisions in their entirety, without reservation or restriction.

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

Lot 1: *[description of supplies with indication of quantities and origin]*

Lot 2: *[description of supplies with indication of quantities and origin]*

Etc.

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

Lot 1: [.....]

Lot 2: [.....]

Lot 3: [.....]

4 We will grant a discount of [%], or [.....] *[in the event of our being awarded Lot ... and Lot]*.

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

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

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

.....

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

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

We also undertake, if required, to provide evidence of financial and economic standing and technical and professional capacity according to the selection criteria for this call for tender

specified in the contract notice, point 16. The documentary proofs required are listed in Section 2.4.11 of the Practical Guide.

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

- 10** We agree to abide by the ethics clauses in Clause 23 of the instructions to tenderers and, in particular, have no conflict of interests or any equivalent relation in that respect with other tenderers or other parties in the tender procedure at the time of the submission of this application.
- 11** We will inform the Contracting Authority immediately if there is any change in the above circumstances at any stage during the implementation of the tasks. We also fully recognise and accept that any inaccurate or incomplete information deliberately provided in this application may result in our exclusion from this and other contracts funded by the EU/EDF.
- 12** We note that the Contracting Authority is not bound to proceed with this invitation to tender and that it reserves the right to award only part of the contract. It will incur no liability towards us should it do so.
- 13** We fully recognise and accept that we may be excluded from tender procedures and contracts, in accordance with Section 2.3.4 of the Practical Guide, for a maximum period of 5 years from the date on which the infringement is established and up to 10 years in the event of a repeat offence within the 5 years of the above-mentioned date. Furthermore, we acknowledge that, should we make false declarations or commit substantial errors, irregularities or fraud, we will also be subject to financial penalties representing 2% to 10% of the total estimated value of the contract being awarded. This rate may be increased to 4% to 20% in the event of a repeat offence within 5 years of the first infringement.
- 14** We are aware that, for the purposes of safeguarding the financial interests of the Communities, our personal data may be transferred to internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel or to the European Anti-Fraud Office.

If this declaration is being completed by a consortium member:

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

| Financial data | 2 years before last⁵ EUR | Year before last year EUR | Last year EUR | Average⁶ EUR | This year EUR |
|--|--|--|--------------------------|------------------------------------|------------------------------|
| Annual turnover ⁷ , excluding this contract | | | | | |
| Current Assets ⁸ | | | | | |
| Current Liabilities ⁹ | | | | | |

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

| Average manpower | Previous year | | Last year | | This year | |
|-------------------------------|---------------|---|-----------|---|-----------|---|
| | Overall | Total for fields related to this contract ¹¹ | Overall | Total for fields related to this contract ¹¹ | Overall | Total for fields related to this contract ¹¹ |
| Permanent staff ¹² | | | | | | |
| Other staff ¹³ | | | | | | |

Yours faithfully

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

Duly authorised to sign this tender on behalf of:

.....

Place and date:

Stamp of the firm/company:

FINANCIAL IDENTIFICATION FORM

Please refer to the link below to download the Financial Identification Form in PDF Format (where necessary) – Ref C4o1'Bank account notification form'

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

LEGAL ENTITY FORM

Please refer to the link below to download the Legal Entity File (Private Companies) where necessary – Ref C4o3

http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm#el