



Tender Specifications

GMB DITASIS 503 Public service contract for
Technical Assistance to The Ministry of
Information and Communication Infrastructure
Republic of The Gambia

Open procedure

Navision code: GMB 2000 111

Table of contents

1	General remarks	5
1.1	Derogations from the General Implementing Rules	5
1.2	Contracting authority	5
1.3	Institutional framework of Enabel	5
1.4	Rules governing the public contract	6
1.5	Definitions	7
1.6	Processing of personal data by the contracting authority and confidentiality	8
1.6.1	Processing of personal data by the contracting authority	8
1.6.2	Confidentiality	8
1.7	Deontological obligations	9
1.8	Applicable law and competent courts	9
2	Subject-matter and scope of the public contract	10
2.1	Type of contract	10
2.2	Subject-matter of the public contract	10
2.3	Lots	10
2.4	Duration of the public contract	10
2.5	Variants	10
2.6	Option	10
2.7	Quantity	10
3	Subject-matter and scope of the public contract	11
3.1	Award procedure	11
3.2	Publication	11
3.2.1	Official notification	11
3.2.2	Enabel publication	11
3.3	Information	11
3.4	Tender	11
3.4.1	Data to be included in the tender	11
1.1.1	12	
3.4.2	Period the tender is valid	12
3.4.3	Determination of prices	12
3.4.4	How to submit tenders?	13
3.4.5	Change or withdrawal of a tender that has already been submitted	13
3.4.6	Opening of Tenders	14
3.4.7	Selection of tenderers	14
3.4.8	Concluding the public contract	18

4	Specific contractual and administrative conditions	19
4.1	Managing official (Art. 11)	19
4.2	Subcontractors (Art. 12 to 15)	19
4.3	Confidentiality (art. 18)	20
4.4	Protection of personal data	20
4.4.1	Processing of personal data by the contracting authority	20
4.4.2	PROCESSING OF PERSONAL DATA BY A SUBCONTRACTOR	21
4.5	Intellectual property (Art. 19 to 23)	21
4.6	Performance bond (Art. 25 to 33)	22
4.7	Conformity of performance (Art. 34)	23
4.8	Zero tolerance Sexual exploitation and abuse	23
4.9	Changes to the public contract (Art. 37 to 38/19)	23
4.9.1	Replacement of the contractor (Art. 38/3)	23
4.9.2	Revision of prices (Art. 38/7)	23
4.9.3	Indemnities following the suspensions ordered by the contracting authority during performance (Art. 38/12)	24
4.9.4	Unforeseen circumstances	24
4.10	Preliminary technical acceptance (Art. 42)	24
4.11	Performance modalities (Art. 146 et seq.)	24
4.11.1	Deadlines and terms (Art. 147)	24
4.11.2	Place where the services must be performed and formalities (Art. 149)	25
4.12	Inspection of the services (Art. 150)	25
4.13	Liability of the service provider (Art. 152-153)	25
4.14	Means of action of the contracting authority (Art. 44-51 and 154- 155)	25
4.14.1	Failure of performance (Art. 44)	26
4.14.2	Fines for delay (Art. 46 and 154)	26
4.14.3	Measures as of right (Art. 47 and 155)	26
4.15	End of the public contract	27
4.15.1	Acceptance of the services performed (Art. 64-65 and 156)	27
4.15.2	Acceptance costs	27
4.15.3	Invoicing and payment of services (Art. 66 to 72 – 160)	28
4.16	Litigation (Art. 73)	29
5	Terms of reference	30
6	Forms	35
6.1	Identification forms	35
6.1.1	Natural person	35
6.1.2	Legal person entity private/public legal body	36
6.1.3	Public law entity	37

6.1.4	Subcontractors	38
6.2	Tender Forms – prices	39
6.3	Declaration on honour – exclusion criteria	40
6.4	Integrity statement for the tenderers	42
6.5	Selection file – technical aptitude	2
6.6	Overview of the documents to be submitted – to be completed exhaustively	2

1 General remarks

1.1 Derogations from the General Implementing Rules

Section 4, ‘*Specific contractual and administrative conditions*’ of these Tender Specifications (CSC/Cahier Spécial des Charges) holds the specific administrative and contractual provisions that apply to this public contract by way of derogation from the Royal Decree of 14.01.2013 or as a complement or an elaboration thereof.

1.2 Contracting authority

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

For this contract, Enabel is represented by Mr Alessio Salvadori PANNINI, Country Portofolio Manager, and Mr Cédric DE BUEGER, Expert in contracting and Administration who will sign the award letter and who are mandated to represent Enabel towards third parties.

1.3 Institutional framework of Enabel

The general framework of reference in which Enabel operates is:

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

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

- In the field of international cooperation: the United Nations Sustainable Development Goals and the Paris Declaration on the harmonisation and alignment of aid;
- In the field of the fight against corruption: the Law of 8 May 2007 approving the United Nations Convention against Corruption, adopted in New York on 31 October 2003³, as well as the Law of 10 February 1999 on the Suppression of Corruption transposing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;
- In the field of Human Rights: the United Nations’ Universal Declaration of Human Rights (1948) as well as the 8 basic conventions of the International

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

² Belgian Official Gazette of 1 July 1999.

³ Belgian Official Gazette of 18 November 2008.

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

- In the field of environmental protection: The Climate Change Framework Convention of Paris, 12 December 2015;
- The first Management Contract contracting Enabel and the Belgian federal State (approved by the Royal Decree of 17.12.2017, Belgian Official Gazette 22.12.2017) that sets out the rules and the special conditions for the execution of public service tasks by Enabel on behalf of the Belgian State.
- Enabel's Code of Conduct of January 2019, Enabel's Policy regarding sexual exploitation and abuse of June 2019 and Enabel's Policy regarding fraud and corruption risk management of June 2019;

1.4 Rules governing the public contract

- The following, among other things, apply to this public contract:
- The Law of 17 June 2016 on public procurement;
- The Law of 17 June 2013 on justifications, notification and legal remedies for public contracts and certain contracts for works, supplies and services;
- The Royal Decree of 18 April 2017 on the awarding of public contracts in the classic sectors;
- The Royal Decree of 14 January 2013 establishing the General Implementing Rules for public procurement and for concessions for public works;
- Circulars of the Prime Minister with regards to public procurement.
- All Belgian regulations on public contracts can be consulted on www.publicprocurement.be.
- Enabel's Policy regarding sexual exploitation and abuse – June 2019;
- Enabel's Policy regarding fraud and corruption risk management – June 2019;
- Gambian legislation with regards to sexual harassment at the workplace
- Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation – 'GDPR'), and repealing Directive 95/46/EC.
- Gambia IC Act of 2009 and Data Protection and Privacy Policy/Law on the protection of personal data and privacy
- Law of 30 July 2018 on the protection of natural persons with regard to the processing of personal data;
- All Belgian regulations on public contracts can be consulted on www.publicprocurement.be;
- Enabel's Code of Conduct and the policies mentioned above can be consulted Enabel's website via <https://www.enabel.be/content/integrity-desk>.

1.5 Definitions

The following definitions apply to this contract:

The tenderer: An economic operator submitting a tender;

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

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

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

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

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

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

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

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

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

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

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

BDA: Belgian Public Tender bulletin;

OJEU: Official Journal of the European Union;

OECD: Organisation for Economic Cooperation and Development;

E-tendering: Through the E-tendering platform tenderers can submit and open electronic tenders/requests to participate;

Corrupt practices: 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 performance of a contract already concluded with the contracting authority;

Litigation: Court action.

Subcontractor in the meaning of public procurement regulations: The economic operator proposed by a tenderer or contractor to perform part of the contract. The subcontractor is understood as the economic operator with the capacity which the applicant or tenderer relies upon or to whom he entrusts all or part of his engagements.

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

Sub-contractor or processor in the meaning of the GDPR: a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.

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

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

1.6 Processing of personal data by the contracting authority and confidentiality

1.6.1 Processing of personal data by the contracting authority

The contracting authority undertakes to process the personal data that are communicated to it in response to the Call for Tenders with the greatest care, in accordance with legislation on the protection of personal data (General Data Protection Regulation, GDPR) and Gambia IC Act of 2009 and Data Protection and Privacy Policy/Law of the Gambia. Where the Belgian law of 30 July 2018 on the protection of natural persons with regard to the processing of personal data contains stricter provisions, the contracting authority will act in accordance with said law.

1.6.2 Confidentiality

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

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

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

1.7 Deontological obligations

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

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

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

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

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

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

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

1.8 Applicable law and competent courts

The contract must be performed and interpreted according to Belgian law. The parties commit to sincerely perform their engagements to ensure the good performance of this contract. In case of litigation or divergence of opinion between the contracting authority and the contractor, the parties will consult each other to find a solution. If agreement is lacking, the Brussels courts are the only courts competent to resolve the matter.

2 Subject-matter and scope of the public contract

2.1 Type of contract

This contract is a public service contract.

2.2 Subject-matter of the public contract

This public service contract consists in the performance of a *Technical Assistance to The Ministry of Information and Communication Infrastructure Republic of The Gambia*, in conformity with the conditions of these Tender Specifications.

2.3 Lots

This contract is a contract with one lot.

2.4 Duration of the public contract

The contract starts upon award notification and expires at the final acceptance. Meaning after acceptance of all services. Deadlines for performance are specified in section 5 Terms of reference, under 5.1.3 Project deliverables.

2.5 Variants

Variants are not permitted.

2.6 Option

Options are not required

2.7 Quantity

The quantity is estimated for an effort of approximately 300 man/days during within a period of 12 months:

Total estimated quantities = 300 man/days

- *A minimum of 25% of these quantities will be performed in Banjul, The Gambia.*
- *A maximum of 75% of these quantities will be performed at the expert home/office.*

3 Subject-matter and scope of the public contract

3.1 Award procedure

This contract is awarded in accordance with Article 36 of the Law of 17 June 2016 via an open procedure.

3.2 Publication

3.2.1 Official notification

This contract is officially advertised in the Belgian Public Tender bulletin and in the Official Journal of the European Union.

3.2.2 Enabel publication

This contract is furthermore published on the Enabel website (www.enabel.be), in local Gambian newspaper and the tender.gm platform.

3.3 Information

The awarding of this contract is coordinated by Miss Sokhna Sall. Throughout this procedure all contacts between the contracting authority and the (prospective) tenderers about this contract will exclusively pass through this person. (Prospective) tenderers are prohibited to contact the contracting authority in any other way with regards to this contract, unless otherwise stipulated in these Tender Specifications.

Until seven (7) calendar days inclusive, tenderers may ask questions about these Tender Specifications and the contract. Questions will be in writing to Miss Sokhna Sall (sokhna.sall@enabel.be) and they will be answered in the order received. The complete overview of questions asked will be available at the address mentioned.

Until the notification of the award decision no information will be given about the evolution of the procedure. The procurement documents can be consulted free of charge at the following internet address: www.enabel.be

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

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

3.4 Tender

3.4.1 Data to be included in the tender

Tenderers are advised to consult the general principles set out under Heading 1 of the Law of 17 June 2016, which are applicable to this award procedure. The tenderer must use the tender form in annex. In case he does not use this form, he is fully responsible for the perfect concordance between the documents he has used and the form. The tender and the annexes to the tender form are drawn up in English. By submitting a tender, the tenderer

automatically renounces to his own general or specific sales conditions, even if these are mentioned in any of the annexes to his tender. The tenderer clearly designates in his tender which information is confidential and/or relates to technical or business secrets and may therefore not be divulged by the contracting authority.

The tenderer MUST submitting his tender together with the European Single Procurement Document (ESPD) in attachment.

By submitting his tender together with the European Single Procurement Document (ESPD) the tenderer declares officially on his honour that:

1° he is not in one of the mandatory or facultative exclusion cases, which must or may lead to his exclusion;

2° he fulfils the selection criteria established by the contracting authority in this contract.

1.1.1

3.4.2 Period the tender is valid

The tenderers are bound by their tender for a period of 60 calendar days from the reception deadline date.

3.4.3 Determination of prices

All prices shall be given in EUROS and rounded off to two figures after the decimal point. Prices given are without VAT.

This contract is a lump-sum price contract, i.e. a contract in which the global price is a flat rate that covers the whole performance of the contract or each to the items of the inventory.

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

3.4.3.1 Elements included in the price

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

The following are in particular included in the prices:

The administrative management and secretariat;

Travel, transportation and insurance;

Documentation pertaining to the services;

Delivery of documents or records associated with the performance;

The packaging;

Training required for operation;

Where applicable, the measures imposed by occupational safety and worker health legislation;

Customs and excise duties for equipment and products used.

Accommodation and any other costs related to the mission;

The consultant's accommodation and all his personal expenses.

Attention: International Transport (Flight tickets) from the consultant's home to perform the services in Gambia MUST NOT be included in the price. These international transport costs will be reimbursed by Enabel on the basis of the invoices. These flights must be made as an economy flight and will be reimbursed up to a maximum of € 1,200 round trip

3.4.4 How to submit tenders?

The tender and all accompanying documents have to be numbered and signed (original handwritten signature) by the tenderer or his/her representative. The same applies to any alteration, deletion or note made to this document. The representative must clearly state that he/she is authorised to commit the tenderer. If the tenderer is a company / association without legal body status, formed by separate natural or legal persons (temporary group or temporary partnership), the tender must be signed by each of these persons.

The signed and dated original and “copies” will be sent in a sealed enveloped mentioning: “TENDER CSC GMB Ditasis 503 ”

The tender must be received before **27th June 2022 at 12.00 PM** by postal mail or hand delivered directly to the contracting authority against a signed and dated receipt:

**RIEC Intervention - Enabel, Belgian Development Agency Enabel,
Khamsys Technologies BIJILO Tourist Layout BIJILO - The Gambia**

Any tender must arrive before the final submission date and time. Tenders that arrive late will not be accepted.

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

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

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

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

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

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

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

The withdrawal must be pure and simple.

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

3.4.6 Opening of Tenders

The tenders must be in the possession of the contracting authority before **27th June 2022 at 12.00 PM**. The tender opening is open to the public.

The tender opening session will take place at the address given above for the submission of tenders.

3.4.7 Selection of tenderers

3.4.7.1 Exclusion grounds

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

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

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

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

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

Pursuant to section 70 of the Law of 17 June 2016, any tenderer who is in one of the situations referred to in sections 67 or 69 of the Law of 17 June 2016 may provide evidence to show that the actions taken by him are sufficient to demonstrate his reliability despite the existence of a relevant ground for exclusion. If this evidence is considered sufficient by the contracting authority, the tenderer concerned is not excluded from the award procedure.

The contracting authority may also check whether there are grounds for exclusion for subcontractor(s) within the meaning of Articles 67 to 69 of the Law of Law of 17 June 2016.

- 1) An extract from the criminal record made out to the name of the tenderer (legal person) or of his representative (natural person) where no criminal records exist for legal entities.
- 2) The document certifying that the tenderer is in order with the payment of social contributions, except where the contracting authority has the possibility to directly obtain certificates or relevant information by accessing a free national database in a Member State.
- 3) The document certifying that the tenderer is in order with the payment of levies and taxes, except where the contracting authority has the possibility to directly obtain certificates or relevant information by accessing a free national database in a Member State.
- 4) The document certifying that the tenderer is not into bankruptcy, except where the contracting authority has the possibility to directly obtain certificates or relevant information by accessing a free national database in a Member State.

The above-mentioned documents are to be recent; recent means they are established less than three months before the tender submission deadline.

Tenderers of Belgian nationality who have an enterprise number only have to provide the extract of the criminal record. The contracting authority will itself verify the situation of the tenderer for points 2, 3 and 4 via the Télémarc system.

3.4.7.2 Selection criteria

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

In order to be selected, the tenderer must prove that he is sufficiently capable, from an economic and financial as well as from a technical point of view, to successfully perform this public procurement contract. To be selected the tenderer must attach the following documents to his offer:

References

The tenderer includes in his tender certificates of satisfactory execution for 2 similar services (nature and amount) delivered over the past 3 years. The certificates must be signed by the contracting authorities and must mention the amount and date of the delivered services.

Consultants involved

The tenderer must include in his tender the CV of the consultants involved for the performance of the contract. These consultants must at minima have the experience and competences described below.

ICT strategy consultants:

- Master's degree in ICT engineering, or Finance, Economics/Applied Economics, or MBA;
- At least 10 years of experience ICT sector;
- At least 10 years proven experience of ICT project management;
- Languages: excellent command of English;
- Proven experience in the ICT sector in Africa;
- Proven in broadband strategy and business planning assignments in emerging markets (in Africa a plus);
- Proven experience in developing national digital strategies and/or national broadband action plans in emerging markets (in Africa a plus);
- Proven expertise in building broadband value chain financial and economic analysis.

ICT regulatory and legal consultants:

- Qualified lawyer with deep exposure to common law legal systems and public policies;
- At least 10 years of experience in regulatory and legal ICT sector;
- Languages: excellent command of English;
- Proven experience in the ICT sector in Africa;
- Proven experience in broadband policy development in emerging markets (in Africa a plus);
- Proven experience in setting up a new regulator in emerging markets is a plus;
- Ideally proven expertise in cybersecurity, privacy and data protection, IT contracts, internet of things (IoT), regulatory issues related to telecommunications and electronic communications, e- government, and e-commerce.

ICT technology consultants:

- Master's degree in ICT engineering or equivalent (and an MBA a plus);
- At least 10 years of experience in ICT sector;
- Languages: excellent command of English;
- Proven experience in fixed/mobile network planning and development in emerging markets (in Africa a plus);
- Proven experience in network and infrastructure due diligence (and valuation);
- Proven experience in public ICT infrastructure turnaround (in emerging markets a plus);
- Ideally proven leadership experience in the deployment of a broadband network in emerging markets (in Africa a plus).

Capacity-building consultants:

- Master's Degree in Social Sciences, Statistics, Pedagogy, Psychology, Adult Education, Human Resources Management or other relevant disciplines or equivalent professional experience of 10 years in capacity building is required;

- Languages: Excellent command of English
- Proven experience in capacity building, curriculum development including teaching materials, developing creative and pragmatic approaches to capacity support and institutional strengthening of telecom ministries and regulators,
- Proven experience in conducting organizational or institutional assessments of local governance, public administration, and related areas.
- Capacity to identify, engage, manage, and evaluate specialist experts;
- Proven experience in West Africa will be considered an asset.
- Proven experience in Telecom industry will be considered a must.

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

3.4.7.3 Modalities relating to tender examination and regularity of the tenders

Before starting the evaluation and comparison of the tenders, the contracting authority examines their regularity.

The tenders must be drawn up in such a way that the contracting authority can make a selection without starting negotiations with the tenderer. For this reason, and in order to be able to assess the tenders fairly, it is essential that the tenders be completely in conformity with the provisions of the Tender Specifications, both formally and materially.

The substantially irregular tenders are excluded.

A substantial irregularity is such as to give a discriminatory advantage to the tenderer, to distort competition, to prevent the evaluation of the tenderer's tender or its comparison with the other tenders, or to render non-existent, incomplete or uncertain the commitment of the tenderer to perform the contract under the conditions laid down.

The following irregularities are deemed substantial:

1° failure to comply with environmental, social or labour law, provided that such non-compliance is punishable by law;

2° failure to comply with the requirements of Articles 38, 42, 43, § 1, 44, 48, § 2, clause 1, 54, § 2, 55, 83 and 92 of the Royal Decree of 18 April 2017 and of Article 14 of the Law, insofar as they contain obligations vis-à-vis the tenderers;

3° failure to comply with the minimum requirements and the requirements that are indicated as substantial in the procurement documents;

4° tenders that do not bear an original handwritten signature on the tender form.

The contracting authority will also declare void any tender that is affected by several non-substantial irregularities which, by reason of their accumulation or combination, are capable of having the same effect as described above (in accordance with Article 76 of the Royal Decree of 18 April 2017).

Conflicts of interest - Revolving door (Art. 51 Royal Decree 18/04/2017).

Without prejudice to Articles 6 and 69, clause 1, 5° of the Law a conflict of interest is considered any situation in which a natural person who has worked for a contracting authority as an internal staff member, whether in a hierarchy relation or not, as a concerned civil servant, public officer or any other person linked whatsoever to the contracting authority, would later intervene under a public contract awarded by this contracting authority and where a relation exists between the

former activities that the above person conducted for the contracting authority and the activities he or she conducts under the contract.

The application of above-mentioned provision is limited however to a two-year term from the resignation of said person or any other type of termination of the former activities.

3.4.7.4 Award criteria

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

A) Quality – 70 points/100

- **Relevance of résumés and their complementarity in the setup of a balanced team structure (32 points):**
 - o Proven experience in fixed/mobile broadband strategy and business planning assignments in emerging markets (in Africa a plus) **(4 points)**;
 - o Proven experience in developing national digital strategies and/or national broadband action plans in emerging markets (in Africa a plus) **(4 points)**;
 - o Proven expertise in building broadband value chain financial and economic analysis **(4 points)**;
 - o Proven experience in broadband policy development in emerging markets (in Africa a plus) **(4 points)**;
 - o Proven expertise in legal and regulatory issues related to telecommunications and electronic communications in emerging markets (in Africa a plus) **(4 points)**;
 - o Proven experience in fixed/mobile network planning and development in emerging markets (in Africa a plus) **(4 points)**;
 - o Proven experience in network and infrastructure due diligence (and valuation) **(4 points)**.
 - o Well balanced and well-organized team aggregating the requested expertise and a strong project leadership with good communication skills and availability for an appropriate presence in The Gambia **(4 points)**.

- **Methodology (38 points)**
 - o Understanding of the terms of reference **(8 points)**;
 - o Detailed methodology for implementing the terms of reference **(20 points)**;
 - o Detailed schedule proposed to perform the services including proposal for on site/remote split per phasis **(10 points)**.

The technical offer must include a summary of the tenderer's understanding of the Terms of References. It must also present and justify any modification and / or improvement of those ToRs that the tenderer proposes to improve the results of the mission.

In addition, it should include a technical design and methodology proposal for the development of expected deliverables as well as a detailed work plan.

The technical offer must also detail the planning and the proposed timetable for carrying out the service.

Attention:

1) The experts proposed to perform the services as to meet the minimum requirement fixed at the point 3.4.7.2 (selection criteria – consultant involved above). The resumes of the experts will be evaluated for the additional relevance than the minimal requirement fixed.

2) Only bids that obtain a score of 49/70 following the evaluation of their quality with regard to the relevance of summary and methodology criteria will be accepted and retained for the price comparison. Bids that do not obtain 49/70 will therefore be discarded.

B) Price - 30 points/100

Scores for price are based on the following method: (Note that the lower the price, the higher the score.) For each tender, Price score =

$$\frac{\text{lowest tender price} \times 30}{\text{tender price}}$$

3.4.7.5 Final score

The scores for the award criteria will be added up. The contract will be awarded to the tenderer with the highest final score, after the contracting authority has verified the accuracy of the Declaration on honour of this tenderer and provided the control shows that the Declaration on honour corresponds with reality.

3.4.7.6 Awarding the public contract

The contract will be awarded to the tenderer who has submitted the most economically advantageous tender on the basis of the criteria mentioned above.

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

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

3.4.8 Concluding the public contract

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

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

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

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

In an objective of transparency, Enabel undertakes to publish each year a list of recipients of its contracts. By introducing his tender, the successful tenderer declares that he agrees with the publication of the title of the contract, the nature and object of the contract, its name and location, and the amount of the contract.

4 Specific contractual and administrative conditions

This chapter of these Tender Specifications holds the specific provisions that apply to this public contract by way of derogation from the 'General Implementing Rules for public procurement and for concessions for public works' of the Royal Decree of 14 January 2013, hereinafter referred to as 'GIR', or as a complement or an elaboration thereof. The numbering of the articles below (between brackets) follows the numbering of the GIR articles. Unless indicated, the relevant provisions of the General Implementing Rules (GIR) apply in full. Except for art 26 below (Performance bond), these Tender Specifications do not derogate the GIR.

4.1 Managing official (Art. 11)

The managing official is Mr Alessio Salvadori PANNINI, Country Portfolio Manager.

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

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

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

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

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

4.2 Subcontractors (Art. 12 to 15)

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

The contractor remains, in any case, solely liable to the contracting authority.

The service provider undertakes to have the contract performed by the persons indicated in the tender, except for force majeure. The persons mentioned or their replacements are all deemed to effectively be involved in the performance of the contract. Any replacements must be approved by the contracting authority.

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

In the same way, the contractor will respect and enforce to his subcontractors, the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation, GDPR). The contracting authority may conduct an audit of the processing carried out in order to validate compliance with this legislation.

4.3 Confidentiality (art. 18)

The knowledge and information gathered by the tenderer under the framework of this public contract is strictly confidential.

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

The tenderer is therefore bound by the duty of discretion.

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

Therefore, he undertakes to:

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

4.4 Protection of personal data

4.4.1 Processing of personal data by the contracting authority

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

4.4.2 PROCESSING OF PERSONAL DATA BY A SUBCONTRACTOR

PROCESSING OF PERSONAL DATA BY A SUBCONTRACTOR

During contract performance, the contractor may process personal data of the contracting authority exclusively in the name and on behalf of the contracting authority, for the sole purpose of performing the services in accordance with the provisions of the Tender Specifications or in execution of a legal obligation.

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

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

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

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

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

4.5 Intellectual property (Art. 19 to 23)

The contracting authority does not acquire the intellectual property rights created, developed or used during performance of the contract.

Without prejudice to clause 1 and unless otherwise stipulated in the procurement documents, when the subject-matter of the public contract consists of the creation, manufacture or the development of designs or of logos, the contracting authority acquires the intellectual property thereof, as well as the right to trademark them, to have them registered and to have them protected.

For domain names created under the contract, the contracting authority also acquires the right to register and protect them, unless otherwise stipulated in the procurement documents.

When the contracting authority does not acquire the intellectual property rights, it obtains a patent licence of the results protected by intellectual property law for the exploitation modes that are mentioned in the procurement documents.

The contracting authority lists the exploitation modes for which it intends to obtain a licence in the procurement documents.

4.6 Performance bond (Art. 25 to 33)

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

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

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

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

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

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

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

This proof must be provided as applicable by submission to the contracting authority of:

- 1° the deposit receipt of the Deposit and Consignment Office or of a public institution with an equivalent function; or
- 2° a debit notice issued by the credit institution or the insurance company; or
- 3° the deposit certificate issued by the State Cashier or public institution with an equivalent function; or
- 4° the original copy of the deed of joint surety stamped by the Depot and Consignment Office or by a public institution with an equivalent function; or
- 5° the original copy of the deed of undertaking issued by the credit institution or the insurance company granting a guaranty.

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

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

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

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

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

4.7 Conformity of performance (Art. 34)

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

4.8 Zero tolerance Sexual exploitation and abuse

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

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

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

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

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

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

4.9.2 Revision of prices (Art. 38/7)

For this contract, price revisions are not permitted.

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

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

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

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

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

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

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

4.9.4 Unforeseen circumstances

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

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

4.10 Preliminary technical acceptance (Art. 42)

The contracting authority reserves the right to request an activity report at any time of the assignment from the service provider (meetings held, persons met, institutions visited, summary of results, problems encountered and unresolved issues, deviations from the planning and deviations from the ToR

4.11 Performance modalities (Art. 146 et seq.)

4.11.1 Deadlines and terms (Art. 147)

The services must be performed within 12 months lasting for 300 working days as from the day after the date on which the service provider received the contract conclusion notification letter.

The order form is addressed to the service provider either by registered letter, or by fax, or by any other means through which the date of dispatch can be determined unambiguously. Any further correspondence pertaining to the order form (and to the performance of the services) follows the same rules as those for the dispatch of the order form when a party wants to establish proof of its intervention.

In the event the acknowledgement of receipt of the order form is received after the period of two working days, upon written demand and justification of the service provider, the performance period may be extended pro rata of the delay of the acknowledgement of receipt of the order form. When the service that placed the order, upon examination of the written demand of the service provider, estimates that the demand is founded or partially founded, it will inform the service provider in writing of which extension of the period is accepted.

When the order form is clearly incorrect or incomplete and implementation of the order becomes impossible, the service provider immediately notifies the service that placed the order about this in writing in order to find a solution to allow for normal implementation of the order. If necessary, the service provider shall ask for an extended service performance period under the same conditions as those foreseen in case of late reception of the order form.

In any event, complaints about the order form are not admissible any more if they are not submitted within 15 calendar days from the day following the date on which the service provider has received the order form.

4.11.2 Place where the services must be performed and formalities (Art. 149)

The services will be performed at the following address:

- A minimum of 25% of these quantities will be performed in Banjul, The Gambia.
- A maximum of 75% of these quantities will be performed at the expert home/office.

Ideally the Consortium will have a regular presence in Banjul, The Gambia during the span of the project

4.12 Inspection of the services (Art. 150)

If during contract performance irregularities are found, the contractor will be notified about this immediately by fax or e-mail, which will be confirmed consequently by registered letter. The contractor is bound to perform the non-complying services again.

The service provider advises the managing official by registered post or e-mail showing the exact date of dispatch, at which date the services can be controlled.

4.13 Liability of the service provider (Art. 152-153)

The service provider takes the full responsibility for mistakes and deficiencies in the services provided.

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

4.14 Means of action of the contracting authority (Art. 44-51 and 154- 155)

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

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

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

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

4.14.1 Failure of performance (Art. 44)

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

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

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

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

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

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

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

4.14.2 Fines for delay (Art. 46 and 154)

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

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

4.14.3 Measures as of right (Art. 47 and 155)

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

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

§2 The measures as of right are:

1° Unilateral termination of the contract. In this case the entire performance bond, or if no bond has been posted an equivalent amount, is acquired as of right by the contracting authority as lump

sum damages. This measure excludes the application of any fine for delay in performance in respect of the terminated part;

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

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

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

4.15 End of the public contract

4.15.1 Acceptance of the services performed (Art. 64-65 and 156)

The managing official will closely follow up the services during performance.

The services will not be accepted until after fulfilling audit checks, technical acceptance and prescribed tests.

The contracting authority disposes of a verification term of thirty days starting on the final or partial end date of the services, set in conformity with the modalities in the procurement documents, to carry out the acceptance formalities and to notify the result to the service provider. This term commences provided that the contracting authority possesses, at the same time, the list of services delivered or the invoice. Upon expiry of the thirty-day term following the date stipulated for completion of the entirety of the services, depending on the case, an acceptance report or a refusal of acceptance report will be drawn up.

Where the services are completed before or after this date, it is the responsibility of the service provider to notify the managing official by registered letter, and at the same time to ask for the acceptance procedure to be carried out. Within thirty days after the date of receipt of the service provider's request, an acceptance or a refusal of acceptance report will be drawn up, depending on the case.

The acceptance specified above is final.

4.15.2 Acceptance costs

When drawing up his tender, the tenderer shall take into account the following acceptance costs:

- The administrative management and secretariat;
- Travel, transportation and insurance;
- Documentation pertaining to the services;
- The delivery of documents or of pieces related to the performance;
- The packaging;
- Training required for operation;
- Where applicable, the measures imposed by occupational safety and worker health legislation;
- Customs and excise duties for equipment and products used;
- The tenderer must include a daily amount for accommodation and personal expenses for the consultant in The Gambia (25 % of the quantities)

We would like to draw the attention of the tenderer to the fact that professional travels to Banjul

for the performance of the services will be covered by Enabel. The Travel costs from the consultant's home to Banjul must NOT be include in his price (25 % of the quantities).

4.15.3 Invoicing and payment of services (Art. 66 to 72 – 160)

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

Erik De Niet
Sotrac Mermoz
Lot N° 52
Route de Ouakam
BP 24474
Dakar
Senegal

Only service delivery that has been performed correctly according to the deliveries and the schedule below may be invoiced and paid:

Deliverables		Length (after notification for the first deliverable and after the previous deliverable for the next deliverable)	Payment
R1.1	Strategic memorandum	2 weeks	2%
R1.2	White book report	6 weeks	10%
R1.3.1	Broadband value chain strategy report	10 weeks	15%
R1.3.2	Broadband infrastructure mapping and a technical analysis report	10 weeks	10%
R1.4	Strategy report describing the optimal positioning, contribution, and development of the ICT state-owned assets	2 weeks	10%
R1.5	A legal review and recommendation memorandum on the assessment of the regulatory environment	2 weeks	5%
R2.1	New action implementation roadmap	10 weeks	5%
R2.2	Technical Action Plan	2 weeks	5%
R2.3	A legal review and recommendation memorandum on the new ICT draft bill	2 weeks	5%
R3.1	Capacity need assessment	6 weeks after R1.1	5%
R3.2	Execution of a training program	Depends on program delivery schedule	28%

The contracting authority disposes of a verification term of thirty days starting on the end date for the services, set in conformity with the modalities in the procurement documents, to carry out the technical acceptance and provisional acceptance formalities and to notify the result to the service provider. The amount owed to the service provider must be paid within thirty days with effect from the expiry of the verification term or with effect from the day after the last day of the verification term, if this is less than thirty days. And provided that the contracting authority possesses, at the same time, the duly established invoice.

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

The invoice must be in EUROS.

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

No advance may be asked by the contractor and the payment will be made after final acceptance of each service delivery of a same order.

4.16 Litigation (Art. 73)

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

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

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

Enabel, public-law company

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

To the attention of Ms Inge Janssens

rue Haute 147

1000 Brussels

Belgium

5 Terms of reference

5.1 General context

5.1.1 Objectives of the DITASIS project

Given the geography of The Gambia and the presence of a submarine cable landing station, most of the technical prerequisites for a large development of Internet access for individuals and businesses are met, however The Gambian telecommunications value chain remains tied up in bottlenecks that are limiting access, affordability, and quality of broadband services.

The affordability of (mobile) broadband represents a challenge as prices are still too high despite their recent decline. Cost of (mobile) broadband services represents 8% of average monthly gross income per capita in The Gambia, compared to 4.2% in Sub-Saharan Africa. Fixed internet access (residential and businesses) remains quite uncommon and suffers both quality and affordability problems.

A well-articulated national strategy to achieve the UN broadband affordability target of 2% of average monthly gross income per capita is needed and within reach to create a fostering environment enabled by modern ICT laws and regulations that are enforced by a competent and well-equipped regulatory authority. The Gambia Broadband Strategic plan 2020-2024 (GBSP) lays down the overall necessary strategic improvements to reach the objective of building a broadband robust ecosystem that boosts competition, innovation and investments through readjusted and new policies, laws and regulatory frameworks. However, this plan needs funding, further support in implementation planning and institutions capacity building.

The DITASIS project will provide the government of The Gambia with technical assistance in rolling out such a strategy especially in its priority areas, in particular the supply side of the sector: 1/ the national infrastructure development and investment master plan and the coordination of its deployment (both long distance and last mile) and 2/ the accompanying regulatory/legal packages, by:

- helping first the Ministry of information and Communication Infrastructure (MOICI) obtain the alignment of the government on a diagnosis of the broadband sector and lead a national consultation with all stakeholders. (This effort includes providing relevant studies and analysis on the internet value-chain and public assets development).
- and second, by providing technical assistance to the MOICI and the regulatory authority to implement a roadmap that will specify their role in the GBSP 20-24.

5.1.2 Project strategy

Enabel staff and consultants will focus on providing technical assistance and capacity building to MOICI and PURA (Public Utilities Regulatory Authority) to plan and effectively implement selected key areas of the GBSP including the development of a financial dossier to fund its implementation.

Support will be provided to the MOICI and PURA (and possibly other government departments) through workshops to obtain clear alignment on their priorities for the roll out of the strategy. Specifically, the Action will deliver results around 3 key areas:

Result 1: A well-articulated roll out plan of key areas of The Gambia Broadband Strategic Plan 20-24 to create a fostering environment made of modern ICT laws and regulations that are enforced by a competent and well-equipped regulatory authority.

1. **Strategic alignment with the government.** A series of workshops will be conducted to fully align on the objectives of the Action, its expected results and its implementation. As important, this alignment effort is needed to help the government priorities and plan for affordable, accessible, and quality broadband services throughout The Gambia. This will require empirical evidence and best practices sharing from other countries. Workshops will also include key members of Gambian diaspora abroad showcasing the importance of an efficient telecommunication ecosystem to better remit and transfer funds and knowledge to the country.
2. **Consultations among all key stakeholders.** Sector wide consultations will ensure that the

government taps the widest source of information possible which improves the quality of the decision reached, that policy makers are alerted to any concerns and issues not picked up through existing evidence or research, and that existing policies are properly monitored. Consultations will focus their efforts on how to decrease the average cost of broadband services in The Gambia and achieve the UN broadband affordability target of 2% of average monthly gross income per capita within 5 years.

3. **Broadband value chain planning.** With the support of specialized ICT consultants, the core project team will define and articulate evolution scenarios for the key components of the broadband value chain: international connectivity, national fibre connectivity and last mile connectivity including legacy copper to fibre migration. Governance model and econometric business model will be developed to assess economic and social implications of various scenarios and derive optimal cases. These scenarios will also take into account the needs/potential of usage of digital systems by Gambians living abroad and willing to keep strong ties with their country of origin (diaspora engagement for country development). In order to ground the value chain planning into reality, a mapping and a technical analysis overview of key broadband infrastructure will be conducted.
4. **State-owned ICT assets development.** In partnership with the world Bank, the Government of The Gambia assembled a Transaction Advisory Services project team to advise on a transaction strategy and assist in completing the restructuring and/or divestiture of the state-owned retail and wholesale telecom assets. With the support of specialized ICT consultants, the core project team will review findings and provide recommendations to the Transaction Advisory Services project team on the evaluation the most appropriate positioning and contribution of the ICT state-owned assets within the Broadband Value Chain. ICT-owned assets are Gambia Submarine Cable Company (Landing station of ACE submarine cable), Ecowan (the national fibre backbone), National Broadband Network, Gamtel (the state-owned incumbent fixed telecom operator) and Gamcel (the state-owned mobile operator).
5. **Legal and regulatory framework enhancement.** In partnership with the world bank, the Government of The Gambia hired a legal consulting team to initiate a review of The Information and Communication Amendment Act. With the support of specialized ICT sector consultants (including legal, economists and broadband network development experts), the project team will review findings and provide recommendations to the legal consulting team on the overall assessment of the regulatory environment and on the development of an end-to-end legal and regulatory broadband-focus strategy, detailing cascaded regulatory levers (taking into consideration any upcoming structural changes to the state- owned ICT assets). Ideally, this strategy will be incorporated into the broader review of the Information and Communication Amendment Act outcome. Stakeholder consultations, including diaspora members, should be foreseen.

Result 2: The removal of key bottlenecks in the broadband value chain and the multiplication of sustainable asset sharing initiatives to achieve greater economies of scale at the sectoral level.

1. **Implementation roadmap.** With the support of specialized ICT consultants, the core project team will design and articulate a thorough implementation roadmap to deliver prioritized elements of the GBSP and achieve the UN broadband affordability target of 2% of average monthly gross income per capita within 5 years. The implementation roadmap will describe all tasks and actions, roles & responsibilities, the roadmap timeline, the key resources required, the implementation governance and the effectiveness measurement tools and processes. This roadmap should be the emanation of all previous consultations with all key stakeholders and work listed above.
2. **Implementation funding.** The core team will work with key international donors and development agencies to develop a sustainable financial strategy enabling the full execution of the implementation roadmap. The core team will work with the team leaders of other key related projects to increase collaboration efficiency and avoid redundant initiatives. Coordination/continuity with the EU-funded project on Competitiveness and digital transformation in The Gambia will be sought.

3. **Draft Bill formulation and approval.** In partnership with the world bank, the Government of The Gambia hired a legal consulting team to formulate a new information and Communications Bill, ensuring that it provides the appropriate legal framework for the implementation of the Government's reform program. With the support of specialized ICT sector consultants (including legal, economists and broadband network development experts), the project core team will review and provide recommendations to the legal consulting team on the formulation and the finalization of a new draft bill to ensure inclusion and survival of all key amendments related to the National Broadband Strategy. In particular, the project core team will participate in a one-week seminar, to actively debate the proposed bill with Government officials, private sector and members of the national assembly, as an essential step in securing the necessary consensus to ease final approval of the bill.

Result 3: The development of core expertise within the MOICI and adjacent public bodies to develop well-crafted formulation of adapted policies, strategy and regulatory frameworks across the information and telecommunication sectors.

1. **Public expertise strengthening.** Following the Institutional diagnosis and the Public Utilities Regulatory Authority strengthening plan to be established by the project team of the Review of The Information and Communication Amendment Act project and with the support of specialized ICT consultants, the core project team will assess skills and expertise gaps at MOICI and PURA and deliver adequate capacity-building programs around areas such as but no limited to e-commerce regulation or information security policy.

5.2 Objectives of the service contract

The **Consortium of International ICT experts** will be contracted to execute the project under the supervision of the Portfolio Manager and the Project Implementation Unit. With deep expertise in ICT strategic and regulatory planning and specifically in broadband development in Africa, the Consortium will be the main implementation body of the DITASIS project.

Place of assignment and frequency of travel: Banjul/Dakar/regional

Duration of the consultancy:

- Desired start date: July 2022
- Desired end date: July 2023

Organization chart / Organization with partners:

- **Referral person:** Portfolio Manager (based in Dakar)
- **Report to the Country Portfolio Manager, the Steering and management Committees of DITASIS**

Partners: Permanent Secretary of the Ministry of Information and Communication infrastructure; Director General of the Public Utilities Regulatory Agency; other institutions involved in the roll out of the National Broadband Strategy.

1. **Specific result areas:** together with the implementation unit, support the abovementioned authorities to define, plan and implement specific areas of the Gambian Broadband Strategic Plan.
2. **Expected results of the consultancy:**
 - Produce all deliverables expected around the 3 specific results of the project;
 - Ensure jointly adequate and proactive representation whenever necessary with all stakeholders and “defend” the project;
 - Be involved in the various strategic and operational project meetings;
 - Identify strategic and operational areas along the implementation period that need to be

addressed. Make sure that a genuine culture of partnership and accountability to the project prevails amongst the project partners and beneficiaries;

Main deliverables linked to result 1 activities are:

1. **A strategic memorandum** describing the agreed objectives of the Action, its expected results, and its detailed implementation roadmap.
2. **A white book report describing the result and impact of the specific stakeholders' consultations** and any further relevant information that has been used in forming recommendations and outline its implications for future legislation and/or regulations.
3. **A strategy report describing the target national broadband value chain.** Its key players, Its governance, its optimal configuration, and its econometric business model.
4. **A mapping and a technical analysis overview of key broadband infrastructure** describing the current key infrastructures of the national broadband value chain.
5. **A strategy report** describing the optimal positioning, contribution, and development of the ICT state-owned assets within the Broadband Value Chain. The report will include specific elements such as the protection of national critical information and communication infrastructure, e-commerce development, and as the outlines of a security policy framework.
6. **A legal review and recommendation memorandum on the assessment of the regulatory environment** and on the development proposal of the legal and regulatory broadband framework in The Gambia (to be included in the final overview report of the Review of The Information and Communication Amendment Act project).

Main deliverables linked to result 2 activities are:

1. **A detailed report describing a new action implementation roadmap** including all tasks and actions, roles & responsibilities, the roadmap timeline, the key resources required, the implementation governance and the effectiveness measurement tools and processes;
2. **A new Technical Action Plan** supporting the implementation roadmap and approved between Enabel and other development partners;
3. **A legal review and recommendation memorandum on the new ICT draft bill** to be proposed to the parliament of the Gambia, which included all key amendments related to the National Broadband Strategy.

Main deliverables linked to result 3 activities are:

1. **A capacity need assessment of MOICI and PURA** identifying key capacity-building initiatives regarding ICT policies, infrastructure management, ICT economics and PPP project management;
2. **The execution of a training program** designed to support the capacity-building need of MOICI and PURA on ICT policies, infrastructure management, ICT economics and PPP project management;

5.3 Methodology

The methodology will be participatory throughout the mission to ensure ownership and a perfect understanding of the tasks expected of the parties concerned.

All of the above activities will be prepared and carried out in collaboration with the Enabel implementation unit chaired by the Portfolio Manager. The activities will be supervised by the Management Committee also chaired by the Portfolio Manager where representatives of the Gambian authorities stand.

For the validation of activities and deliverables, the Consortium will submit the necessary reports after review to the PM for the final decisions.

5.4 Planning, duration and location of the mission

The project will take place in Banjul, The Gambia and remotely. The assignment will take place over a period of 12 months, lasting for approximately 300 working days of actual work according to the schedule below:

DITASIS Activities planning		Q1	Q2	Q3	Q4
P1	Organize & ensure presence at all projects meetings				
P2	Support to the implementation unit				
R1.1	Strategic memorandum				
R1.2	White book report				
R1.3.1	Broadband value chain strategy report				
R1.3.2	Broadband infrastructure mapping and a technical analysis report				
R1.4	Strategy report describing the optimal positioning, contribution, and development of the ICT state-owned assets				
R1.5	A legal review and recommendation memorandum on the assessment of the regulatory environment				
R2.1	New action implementation roadmap				
R2.2	Technical Action Plan				
R2.3	A legal review and recommendation memorandum on the new ICT draft bill				
R3.1	Capacity need assessment				
R3.2	Execution of a training program				

Note: on the basis of any strategic requirement that have arisen from Enabel, the effective duration of the service may increase to the extent permitted by public procurement regulations.

6 Forms

6.1 Identification forms

6.1.1 Natural person

To fill the form, please click here :
[https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:e15a7f59-9a3c-4072-89ac-deb89f513e1c\[lien\]](https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:e15a7f59-9a3c-4072-89ac-deb89f513e1c[lien])

I. PERSONAL DATA	
FAMILY NAME(S)①	
FIRST NAME(S)①	
DATE OF BIRTH	
JJ MM YYYY	
PLACE OF BIRTH	COUNTRY OF BIRTH
TYPE OF IDENTITY DOCUMENT	
IDENTITY CARD	PASSPORT DRIVING LICENCE② OTHER③
ISSUING COUNTRY	
IDENTITY DOCUMENT NUMBER	
PERSONAL IDENTIFICATION NUMBER④	
PRIVATE ADDRESS	
POSTCODE	P.O. BOX CITY
REGION ⑤	COUNTRY
PRIVATE PHONE	
PRIVATE E-MAIL	
II. BUSINESS DATA	
If YES, please provide business data and attach copies of official supporting documents	
Do you run your own business without a separate legal personality (e.g. sole traders, self-employed etc.) and you provide as such services to the Commission, other Institutions, Agencies and EU-Bodies ?	BUSINESS NAME (if applicable)
YES NO	VAT NUMBER
	REGISTRATION NUMBER
	PLACE OF REGISTRATION
	CITY
	COUNTRY
DATE	SIGNATURE

- ① As indicated on the official document.
- ② Accepted only for Great Britain, Ireland, Denmark, Sweden, Finland, Norway, Iceland, Canada, United States and Australia.
- ③ Failing other identity documents: residence permit or diplomatic passport.
- ④ See table with corresponding denominations by country.
- ⑤ To be completed with Region, State or Province by non EU countries only, excluding EFTA and candidate countries.

6.1.2 Legal person entity private/public legal body

To fill the form, please click here :

[https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:fcf7423f-7287-4cbb-9c7b-645ab60734a3\[lien\]](https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:fcf7423f-7287-4cbb-9c7b-645ab60734a3[lien])

OFFICIAL NAME ②			
ABBREVIATION			
MAIN REGISTRATION NUMBER ③			
SECONDARY REGISTRATION NUMBER (if applicable)			
PLACE OF MAIN REGISTRATION	CITY	COUNTRY	
DATE OF MAIN REGISTRATION	DD	MM	YYYY
VAT NUMBER			
OFFICIAL ADDRESS			
POSTCODE	P.O. BOX	CITY	
COUNTRY		PHONE	
E-MAIL			
BANK ACCOUNT NUMBER			
DATE		STAMP	
SIGNATURE OF AUTHORISED REPRESENTATIVE			

- ① **Public law body WITH LEGAL PERSONALITY**, meaning a public entity being able to represent itself and act in its own name, i.e. being capable of suing or being sued, acquiring and disposing of property, entering into contracts. This legal status is confirmed by the official legal act establishing the entity (a law, a decree, etc.).
- ② **National denomination and its translation in EN or FR if existing.**
- ③ **Registration number in the national register of the entity.**

6.1.3 Public law entity

To fill the form, please click here:

[https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:911554eb-a56f-4ee0-bb21-8926a3cbd6dd\[lien\]](https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:911554eb-a56f-4ee0-bb21-8926a3cbd6dd[lien])

OFFICIAL NAME ①			
BUSINESS NAME (if different)			
ABREVIATION			
LEGAL FORM			
ORGANISATION TYPE	FOR PROFIT	NOT FOR PROFIT	NGO ② YES NO
MAIN REGISTRATION NUMBER ③			
SECONDARY REGISTRATION NUMBER (if applicable)			
PLACE OF MAIN REGISTRATION	CITY	COUNTRY	
DATE OF MAIN REGISTRATION	DD	MM	YYYY
VAT NUMBER			
ADDRESS OF HEAD OFFICE			
POSTCODE	P.O. BOX	CITY	
COUNTRY	PHONE		
E-MAIL			
DATE		STAMP	
SIGNATURE OF AUTHORISED REPRESENTATIVE			

① National denomination and its translation in EN or FR if existing.

② NGO = Non Governmental Organisation, to be completed if NFPO is indicated.

③ Registration number in the national register of companies. See table with corresponding field denomination by country.

6.1.4 Subcontractors

Name and legal form	Address / Registered office	Object

6.2 Tender Forms – prices

By submitting this bid the tenderer commits to performing this public contract in conformity with the provisions of the Tender Specifications GMB Ditasis 503– and explicitly declares accepting all conditions listed in the Tender Specifications and renounces any derogatory provisions such as his own general sales conditions. The unit prices and the global prices for each item in the inventory are established relative to the value of these items in relation to the total value of the tender. All general and financial costs as well as the profits are distributed between the various items in proportion to their weight.

The value added tax is dealt with on a separate line in the summary bill of quantities or the inventory, to be added to the tender's value.

The tenderer commits to performing the public contract in accordance with the provisions of the Tender Specifications for the following prices, given in euros and exclusive of VAT:

	Estimated Quantity (man-day)	Unit price (man-day) in EUR ex-VAT	Total price in EUR ex-VAT
ICT strategy consultants	300 man/day		
ICT regulatory and legal consultants			
ICT technology consultants			
Capacity-building consultants			
TOTAL			

	Estimated Quantity (man-day)	Unit price (man-day) in EUR ex-VAT	Total price in EUR ex-VAT
Price for accommodation and consultant expenses in Banjul	<i>(a minimum of 75 man-days in banjul must be proposed)</i>		

VAT percentage %.

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

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

In annex, the tenderer attaches..... to his tender.

Certified true and sincere,

Handwritten original signature(s):

6.3 Declaration on honour – exclusion criteria

Hereby, I / we, acting as legal representative(s) of above-mentioned tenderer, declare that the tenderer does not find himself in one of the following situations :

- 1) The tenderer or one of its ‘directors[1]’ was found guilty following a conviction by final judgement for one of the following offences:
 - 1° involvement in a criminal organisation
 - 2° corruption
 - 3° fraud
 - 4° terrorist offences, offences linked related to terrorist activities or incitement to commit such offence, collusion or attempt to commit such an offence
 - 5° money laundering or terrorist financing
 - 6° child labour and other trafficking in human beings
 - 7° employment of foreign citizens under illegal status
 - 8° creating a shell company.
- 2) The counterparty which fails to fulfil his obligations relating to the payment of taxes or social security contributions for an amount in excess of EUR 3 000, except if the counterparty can demonstrate that a contracting authority owes him one or more unquestionable and due debts which are free of all foreseeable liabilities. These debts are at least of an amount equal to the one for which he is late in paying outstanding tax or social charges.
- 3) The counterparty who is in a state of bankruptcy, liquidation, cessation of activities, judicial reorganisation or has admitted bankruptcy or is the subject of a liquidation procedure or judicial reorganisation, or in any similar situation resulting from a procedure of the same kind existing under other national regulations;
- 4) When Enabel can demonstrate by any appropriate means that the counterparty or any of its directors has committed serious professional misconduct which calls into question his integrity.

Are also considered such serious professional misconduct:

- a. A breach of Enabel’s Policy regarding sexual exploitation and abuse – June 2019
- b. A breach of Enabel’s Policy regarding fraud and corruption risk management – June 2019
- c. A breach of a regulatory provision in applicable local legislation regarding sexual harassment in the workplace
- d. The counterparty was seriously guilty of misrepresentation or false documents when providing the information required for verification of the absence of grounds for exclusion or the satisfaction of the selection criteria, or concealed this information

e. Where Enabel has sufficient plausible evidence to conclude that the counterparty has committed acts, entered into agreements or entered into arrangements to distort competition

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

- 5) When a conflict of interest cannot be remedied by other, less intrusive measures;
- 6) When significant or persistent failures by the counterparty were detected during the execution of an essential obligation incumbent on him in the framework of a previous contract, a previous contract placed with another contracting authority, when these failures have given rise to measures as of right, damages or another comparable sanction.

Also failures to respect applicable obligations regarding environmental, social and labour rights, national law, labour agreements or international provisions on environmental, social and labour rights are considered 'significant'.

The presence of the counterparty on the exclusion list of Enabel because of such a failure serves as evidence.

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

The counterparty or one of its directors are on the lists of persons, groups or entities submitted by the United Nations, the European Union and Belgium for financial sanctions:

For the United Nations, the lists can be consulted at the following address:

<https://finances.belgium.be/fr/tresorerie/sanctions-financieres/sanctions-internationales-nations-unies>

For the European Union, the lists can be consulted at the following address:

<https://finances.belgium.be/fr/tresorerie/sanctions-financieres/sanctions-europ%C3%A9ennes-ue>

https://eeas.europa.eu/headquarters/headquarters-homepage/8442/consolidated-list-sanctions_en

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

For Belgium:

https://finances.belgium.be/fr/sur_le_spf/structure_et_services/administrations_generales/tr%C3%A9sorerie/contr%C3%B4le-des-instruments-1-2

- 8) If Enabel executes a project for another funder or donor, other grounds for exclusion may be added.

6.4 Integrity statement for the tenderers

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

- Neither members of administration or employees, or any person or legal person with whom the tenderer has concluded an agreement in view of performing the public contract, may obtain or accept from a third party, for themselves or for any other person or legal person, an advantage appreciable in cash (for instance, gifts, bonuses or any other kind of benefits), directly or indirectly related to the activities of the person concerned for the account of Enabel.
- The board members, staff members or their partners have no financial or other interests in the businesses, organisations, etc. that have a direct or indirect link with Enabel (which could, for instance, bring about a conflict of interests).
- I have / we have read and understood the articles about deontology and anti-corruption included in the Tender Documents (see 1.7.), as well as *Enabel's Policy regarding sexual exploitation and abuse* of June 2019 and *Enabel's Policy regarding fraud and corruption risk management* of June 2019 and I / we declare fully endorsing and respecting these articles.

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

- In order to avoid any impression of risk of partiality or connivance in the follow-up and control of the performance of the public contract, it is strictly forbidden to the public contractor (i.e. members of the administration and workers) to offer, directly or indirectly, gifts, meals or any other material or immaterial advantage, of whatever value, to the employees of Enabel who are concerned, directly or indirectly, by the follow-up and/or control of the performance of the public contract, regardless of their hierarchical rank.
- Any (public) contract will be terminated, once it appears that contract awarding or contract performance would have involved the obtaining or the offering of the above-mentioned advantages appreciable in cash.
- Any failure to comply with one or more of the deontological clauses will be considered as a serious professional misconduct which will lead to the exclusion of the contractor from this and other public contracts for Enabel.
- The public contractor commits to supply, upon the demand of the contracting authority, any supporting documents related to the performance conditions of the contract. The contracting authority will be allowed to proceed to any control, on paperwork or on site, which it considers necessary to collect evidence to support the presumption of unusual commercial expenditure.

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

Signature preceded by 'read and approved', in writing, and indication of name and function of the person signing:

.....

Place, date

6.5 Selection file – technical aptitude

References

The tenderer includes in his tender certificates of satisfactory execution for 2 similar services (nature and amount) delivered over the past 3 years. The certificates must be signed by the contracting authorities and must mention the amount and date of the delivered services.

Consultants involved

The tenderer must include in his tender the CV of the consultants involved for the performance of the contract. These consultants must at minima have the experience and competences described at the point 3.4.7.2 “selection criteria”.

6.6 Overview of the documents to be submitted – to be completed exhaustively

- *Certificates of satisfactory execution for 2 similar services (nature and amount) delivered over the past 3 years;*
- *The CV of the consultants involved for the performance of the contract;*
- *Technical proposal;*
- *Financial proposal.*
- *European Single Procurement Document (ESPD) dated and signed*