

INSTRUCTIONS TO TENDERERS

REFERENCE: RESPA/EC/SER/001-16

When submitting their tenders, tenderers must follow all instructions, forms, terms of reference, contract provisions and specifications contained in this tender dossier. Failure to submit a tender containing all the required information and documentation within the deadline specified may lead to the rejection of the tender.

These instructions set out the rules for submitting, selecting and implementing contracts financed under this call for tenders, in conformity with the Practical Guide, (available on the internet at this address: <http://ec.europa.eu/europeaid/prag/document.do>).

1. Services to be provided

The services required by the Contracting Authority are described in the Terms of Reference. They are set out in Annex II to the draft contract, which forms Part B of this tender dossier.

2. Timetable

	DATE	TIME*
Deadline for requesting clarification from the Contracting Authority	16 August 2016	10:00 am
Last date for the Contracting Authority to issue clarification	26 August 2016	-
Deadline for submitting tenders	8 September 2016	10:00 am
Interviews (if any)	Not applicable	-
Completion date for evaluating technical offers	September 2016	-
Notification of award	September 2016	-
Contract signature	September 2016	-
Start date	September 2016	-

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

3. Participation and experts

- a) Natural or legal persons are not entitled to participate in this tender procedure or be awarded a contract if they are in any of the situations mentioned in Section 2.3.3.1. or 2.3.3.2. of the **Practical Guide**. Should they do so, their tender will be considered unsuitable or irregular respectively..
- b) In the cases listed in Section 2.3.3.1. of the **Practical Guide** tenderers may be excluded from EU financed procedures and be subject to financial penalties representing 2% to 10% of the total value of the contract in accordance with the conditions set in Section 2.3.4. of the **Practical Guide**. This information may be published on the Commission website in accordance with the conditions set in Section 2.3.4. of the Practical Guide.
- c) The contract between the tenderer/contractor and its experts shall contain a provision that it is subject to the approval of the partner country. It is furthermore recommended that this contract contains a dispute resolution clause.

- d) The tenderer must intend to provide the majority of the services itself except for the tasks entrusted to experts either as natural persons or single-member companies. If the tenderer intends to subcontract one or more parts of the contracted services, this must be clearly stated in the Organisation and Methodology and the Tender submission form. All subcontractors must be eligible for the contract.
- e) Subcontractors cannot be in any of the exclusion situations listed in Section 2.3.3 of the Practical Guide.
- f) If the offer includes subcontracting, it is recommended that the contractual arrangements between the tenderer and its subcontractors include mediation, according to national and international practices, as a method of dispute resolution.

4. Content of tenders

Offers, all correspondence and documents related to the tender exchanged by the tenderer and the Contracting Authority must be written in English.

Supporting documents and printed literature furnished by the tenderer may be in another language, provided they are accompanied by a translation into the language of the procedure. For the purposes of interpreting the tender, the language of the procedure has precedence.

The tender must comprise of a Technical offer and a financial offer, which must be submitted in separate envelopes (see clause 8). Each Technical offer and financial offer must contain one original, clearly marked '**Original**', and two copies, each marked '**Copy**'. Failure to fulfil the requirements in clauses 4.1, 4.2 and 8 will constitute a formal error and may result in rejection of the tender.

4.1. Technical offer

The Technical offer must include the following documents:

- (1) **Tender submission form** (see Part D of this tender dossier) including:
 - a) Signed statements of exclusivity and availability (using the template included with the tender submission form), one for each key expert, the purpose of which are as follows:
 - ❑ The key experts proposed in this tender must not be part of any other tender submitted for this tender procedure. They must therefore commit themselves exclusively to the tenderer.
 - ❑ Each key expert must also undertake to be available, able and willing to work for the whole period scheduled for his/her input to implement the tasks set out in the Terms of Reference and/or in the Organisation and methodology.

Note that non-key experts must not be asked to sign statements of exclusivity and availability.

Any expert working on an EU/EDF-financed project, where the input from his/her position to that contract could be required on the same dates as his/her activities under this contract, must not be proposed as a key expert for this contract under any circumstances. Consequently, the dates included by a key expert in his/her statement of exclusivity and availability in your tender must not overlap with dates on which he/she is committed to work as a key expert on any other contract.

The expert may participate in parallel tender procedures but must inform the Contracting Authority of these in the Statement of Exclusivity and Availability. Furthermore, the expert is expected to notify the tenderer immediately if he/she is

successful in another tender procedure and he/she is expected to accept the first engagement offered to him/her chronologically.

If a key expert is proposed as a key expert by more than one tenderer with the agreement of the key expert, the corresponding tenders may be rejected. The same applies if the key expert proposed has been involved in the preparation of the project. The expert concerned will be excluded from this tender procedure and may also be excluded from other EU/EDF-financed contracts.

Having selected a firm partly on the basis of an evaluation of the key experts presented in the tender, the Contracting Authority expects the contract to be executed by these specific experts. However, after the award letter, the selected tenderer may propose replacements for the key experts under certain conditions (for further information see point 14).

- b) A signed **declaration** together with a signed "Declaration of honour on exclusion criteria and selection criteria" from each legal entity identified in the tender submission form, using the format attached to the tender submission form.
 - c) A completed **Financial Identification form** (see Annex VI to the draft contract) to indicate the bank account into which payments should be made if the tender is successful. (If the tenderer has already signed another contract with the European Commission, it may provide instead either its financial identification form number or a copy of the financial identification form provided on that occasion, unless it has changed in the meantime).
 - d) The **legal entity file** and supporting documents (if the tenderer has already signed another contract with the European Commission, it may provide instead either its legal entity number or a copy of the legal entity file provided on that occasion, unless it has changed its legal status in the meantime).
 - e) Duly authorised signature: an official document (statutes, power of attorney, notary statement, etc.) proving that the person who signs on behalf of the company/joint venture/consortium is duly authorised to do so.
- (2) **Organisation and methodology** (will become Annex III to the contract), to be drawn up by the tenderer using the format in Annex III to the draft contract.
- (3) **Key experts** (to become Annex IV to the contract). The key experts are those whose involvement is considered to be instrumental to achieve the contract objectives.

Annex IV to the draft contract contains the templates that tenderers must use, including:

- a) a list of the names of the key experts;
- b) the CVs of each of the key experts. Each CV should be no longer than 3 pages and only one CV must be provided for each position identified in the Terms of Reference. Note that the CVs of non-key experts must not be submitted.

The qualifications and experience of each key expert must clearly match the profiles indicated in the Terms of Reference. If an expert does not meet the minimum requirements for each evaluation criterion (i.e. qualification and skills, general professional experience and specific professional experience), he/she must be rejected. In such case the entire tender shall be rejected.

Tenderers must provide the following documents for any key experts proposed:

- a copy of the diplomas mentioned in their CVs,

- a copy of employer certificates or references proving the professional experience indicated in their CVs.

Only diplomas and documented experience will be taken into account. Previous experience which would have led to breach of contract and termination shall not be used as reference.

- (4) Non key experts may also be instrumental to achieve the contract objectives. However, they are not subject to evaluation by the evaluation Committee. Their positions and responsibilities may be defined in Section 6.1.2 of the Terms of Reference in Annex II to the draft contract.
- (5) Documentary proof or statements required under the law of the country in which the company (or each of the companies for consortia) is effectively established, to show that it is not in any of the exclusion situations listed in section 2.3.3 of the Practical Guide. This evidence, documents or statements must be dated, no more than one year before the date of submission of the tender. In addition, a statement must be furnished stating that the situations described in these documents have not changed since then. If the nature of your entity is such that it cannot fall into the exclusion situations and/or cannot provide the documents indicated above (for instance, national public administrations and international organisations), please provide a declaration explaining this situation. The Contracting Authority may waive the obligation of any candidate or tenderer to submit the documentary evidence referred to above if such evidence has already been submitted for the purposes of another procurement procedure, provided that the issue date of the documents does not exceed one year and that they are still valid. In this case, the candidate or tenderer must declare on his/her honour that the documentary evidence has already been provided in a previous procurement procedure and confirm that his/her situation has not changed.
- (6) Documentary evidence of the financial and economic capacity and/or of the technical and professional capacity according to the selection criteria specified in point 16 of the contract notice. (See further point 2.4.11 of the Practical Guide).

If the documentary evidence submitted is not written in one of the official languages of the European Union, a translation into the language of the procedure must be attached. Where the documents are in an official language of the European Union other than the one of the procedure, it is however strongly recommended to provide a translation into the language of the procedure, in order to facilitate the evaluation of the documents. Documentary proof or statements may be in original or copy. If copies are submitted, the originals must be available to send to the Contracting Authority upon request.

Tenderers are reminded that the provision of false information in this tender procedure may lead to the rejection of their tender and to their exclusion from EU-funded procedures and contracts.

The electronic version of the technical offer must be included with the printed version in the separate envelope in which the technical offer is submitted. If there are any discrepancies between the electronic version and the original, printed version, the latter has precedence.

4.2. Financial offer

The Financial offer must be presented as an amount in Euro and must be submitted using the template the global-price version of Annex V to part B of this tender dossier. The electronic version of this document 'B8 — Budget for a global-price contract' can be found on the website

<http://ec.europa.eu/europeaid/prag/document.do>.

The global price may be broken down by outputs if required from the Terms of Reference.

5. Variant solutions

Tenderers are not authorised to tender for a variant in addition to this tender.

6. Period during which tenders are binding

Tenderers are bound by their tenders for 90 days after the deadline for submitting tenders or until they have been notified of non-award.

The selected tenderer must maintain its tender for a further 60 days. A further period of 60 days is added to the validity period irrespective of the date of notification. This period can be further extended when the contracting authority is required to obtain the recommendation of the panel referred to in section 2.3.3.1 of the Practical Guide, up to the adoption of that recommendation.

7. Additional information before the deadline for submitting tenders

The tender dossier should be clear enough to avoid candidates having to request additional information during the procedure. If the Contracting Authority, either on its own initiative or in response to a request from a tenderer, provides additional information on the tender dossier, it must send such information in writing to all the tenderers at the same time.

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

ReSPA – Regional School of Public Administration
procurement@respaweb.eu

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

Any tenderer seeking to arrange individual meetings with the Contracting Authority and/or the government of the partner country and/or the European Commission concerning this contract during the tender period may be excluded from the tender procedure.

No information meeting or site visit is foreseen.

8. Submission of tenders

Tenders must be delivered to the Contracting Authority for **receipt** before 8 September 2016 by 10:00 am. They must include the requested documents in clause 4 above and be sent:

- **EITHER** by recorded delivery (official postal service) to:

Regional School of Public Administration – ReSPA

For the attention of:

Natasa Kuc

Branelovica, 81410 Danilovgrad, Montenegro

- **OR** hand delivered (including courier services) directly to the Contracting Authority against a signed and dated receipt to:

Regional School of Public Administration – ReSPA

For the attention of:

Natasa Kuc

Branelovica, 81410 Danilovgrad, Montenegro

In this case, the acknowledgment of receipt makes proof of compliance with the time-limit for receipt.

Tenders submitted by any other means will not be considered. Tenders must be submitted using the double envelope system, i.e., in an outer parcel or envelope containing two separate, sealed envelopes, one bearing the words '**Envelope A — Technical offer**' and the other '**Envelope B — Financial offer**'. All parts of the tender other than the financial offer must be submitted in Envelope A (i.e., including the Tender submission form, statements of exclusivity and availability of the key experts and declarations).

Any infringement of these rules (e.g., unsealed envelopes or references to price in the technical offer) will lead to rejection of the tender.

The outer envelope should provide the following information:

- a) the address for submitting tenders indicated above;
- b) the reference code of the tender procedure (i.e. <publication reference>);
- c) the words 'Not to be opened before the tender-opening session' and <equivalent phrase in local language>;
- d) the name of the tenderer.

The pages of the Technical and Financial offers must be numbered.

9. Amending or withdrawing tenders

Tenderers may amend or withdraw their tenders by written notification prior to the deadline for submitting tenders. Tenders may not be amended after this deadline.

Any such notification of amendment or withdrawal must be prepared and submitted in accordance with Clause 8. The outer envelope (and the relevant inner envelope) must be marked 'Amendment' or 'Withdrawal' as appropriate.

10. Costs for preparing tenders

No costs incurred by the tenderer in preparing and submitting the tender are reimbursable. All such costs must be borne by the tenderer, including the cost of interviewing proposed experts.

11. Ownership of tenders

The Contracting Authority retains ownership of all tenders received under this tendering procedure. Consequently, tenderers do not have the right to have their tenders returned to them.

12. Evaluation of tenders

12.1. Evaluation of technical offers

The quality of each technical offer will be evaluated in accordance with the award criteria and the weighting detailed in the evaluation grid in Part C of this tender dossier. No other award criteria will be used. The award criteria will be examined in accordance with the requirements indicated in the Terms of Reference.

The evaluation of the technical offers will follow the procedures set out in Section 3.3.10 of the Practical Guide (available on the internet at <http://ec.europa.eu/europeaid/prag/document.do>).

12.1.1. Interviews

No interviews are foreseen.

12.2. Evaluation of financial offers

Upon completion of the technical evaluation, the envelopes containing the financial offers for tenders that were not eliminated during the technical evaluation will be opened (i.e. those with an average score of 75 points or more). Tenders exceeding the maximum budget available for the contract are unacceptable and will be eliminated.

12.3. Choice of selected tenderer

The best value for money is established by weighing technical quality against price on a 80/20 basis.

12.4. Confidentiality

The entire evaluation procedure is confidential, subject to the Contracting Authority's legislation on access to documents. The Evaluation Committee's decisions are collective and its deliberations are held in closed session. The members of the Evaluation Committee are bound to secrecy. The evaluation reports and written records are for official use only and may be communicated neither to the tenderers nor to any party other than the Contracting Authority, the European Commission, the European Anti-Fraud Office and the European Court of Auditors.

13. Ethics clauses / Corruptive practices

- a) Any attempt by a tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the Evaluation Committee or the Contracting Authority during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of its tender and may result in administrative penalties.
- b) The tenderer must not be affected by any conflict of interest and must have no equivalent relation in that respect with other tenderers or parties involved in the project.
- c) The European Commission reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process or during the execution of a contract and if the Contracting Authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, 'corrupt practices' are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or execution of a contract already concluded with the Contracting Authority.
- d) Tenders will be rejected or contracts terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a payee who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

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

- e) The Contracting Authority reserves the right to suspend or cancel the procedure, where the award procedure proves to have been subject to substantial errors, irregularities or

fraud. If substantial errors, irregularities or fraud are discovered after the award of the Contract, the Contracting Authority may refrain from concluding the Contract.

14. Signature of contract(s)

14.1. Notification of award

The successful tenderer will be informed in writing that its tender has been accepted.

The successful tenderer shall then confirm availability or unavailability of their key-experts within 5 days from the date of the notification of award.

In case of unavailability the tenderer will be allowed to propose replacement key-expert(s). The successful tenderer shall give due justification for the exchange of key-expert but the acceptance will not be limited to specific cases. Several replacement key-experts may be proposed but only one time-period of 15 days from the date of the notification of award will be offered. The replacement key-expert(s) cannot be an expert proposed by another tenderer in the same call for tender.

The replacement key-expert's total score must be at least as high as the scores of the key-expert proposed in the tender. It must be emphasised that the minimum requirements for each evaluation criteria must be met by the replacement expert.

If replacement key-experts are not proposed within the 15 days delay or if the replacement experts are not sufficiently qualified, or that the proposal of the replacement key-expert amends the award conditions which took place, the Contracting Authority may decide to award the contract to the second best technically compliant tenderer (also giving them a chance to replace a key-expert should he/she not be available).

Should the Contracting Authority learn that a tenderer has confirmed the availability of a key expert and signed the contract although the tenderer has deliberately concealed the fact that the key-expert is unavailable from the date specified in the tender dossier for the start of the assignment, the Contracting Authority may decide to terminate the contract on the basis of article 36.2 (m) of the General Conditions.

It is reminded that the tenderer/contractor may also be subject to administrative and financial penalties foreseen in section 2.3.4 of the PRAG and article 10.2 of the General Conditions of service contracts. Furthermore it may lead to a tenderer's /contractor's exclusion from other contracts funded by the European Union.

14.2. Signature of the contract(s)

Within 30 days of receipt of the contract already signed by the Contracting Authority, the selected tenderer shall sign and date the contract and return it to the Contracting Authority.

Failure of the selected tenderer to comply with this requirement may constitute grounds for annulling the decision to award the contract. In this event, the Contracting Authority may award the tender to another tenderer or cancel the tender procedure.

The other tenderers will, at the same time as the notification of award is submitted, be informed that their tenders were not accepted, by means of a standard letter, including an indication of the relative weaknesses of their tender by way of a comparative table of the scores for the winning tender and the unsuccessful tender. The second best tenderer is informed of the notification of award to the successful tenderer with the reservation of the possibility to receive a notification of award in case of inability to sign the contract with the first ranked tenderer. The validity of the offer of the second best tenderer will be kept. The second tenderer may refuse the award of the contract if, when receiving a notification of award, the 90 days of validity of their tender has expired.

The Contracting Authority will furthermore, at the same time, also inform the remaining unsuccessful tenderers and the consequence of these letters will be that the validity of their offers must not be retained.

15. Cancellation of the tender procedure

In the event of cancellation of the tender procedure, the Contracting Authority will notify tenderers of the cancellation. If the tender procedure is cancelled before the outer envelope of any tender has been opened, the unopened and sealed envelopes will be returned to the tenderers.

Cancellation may occur, for example, where:

- the tender procedure has been unsuccessful, i.e., no suitable, qualitatively or financially acceptable tender has been received or there is no valid response at all;
- there are fundamental changes to the economic or technical data of the project;
- exceptional circumstances or force majeure render normal performance of the contract impossible;
- all technically acceptable tenders exceed the financial resources available;
- there have been substantial errors, irregularities or frauds in the procedure, in particular if they have prevented fair competition;
- the award is not in compliance with sound financial management, i.e. does not respect the principles of economy, efficiency and effectiveness (e.g. the price proposed by the tenderer to whom the contract is to be awarded is objectively disproportionate with regard to the price of the market).

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

16. Appeals

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

SERVICE CONTRACT NOTICE

INVITATION TO TENDER FOR THE AWARD OF A CONTRACT FOR PREPARATION OF BASELINE ANALYSIS ON QUALITY MANAGEMENT IN PUBLIC ADMINISTRATION AND PUBLIC SERVICES (QM in PA and PS) IN THE WESTERN BALKANS

Danilovgrad, Montenegro

1. Reference

ReSPA/EC/SER/001-16

2. Procedure

Competitive negotiated procedure

3. Programme title

4. Financing

Expert Trainers fee

5. Contracting Authority

Regional School of Public Administration

CONTRACT SPECIFICATION

6. Nature of contract

Global price

7. Contract description

During April 2015, valuable data on Quality Management (QM) in the Western Balkans has been received from the PAR network members and from a PAR network event in Ohrid, FYROM. It was confirmed that no QM baseline study has been developed in the Western Balkans. Also, all of the initiatives dealing with QM systems have not been widespread and institutionalised to the highest extent, with the exception of the FYROM case.

In July 2015, a ReSPA expert Working Group on Quality of Public Administration and Public Services (WG QPAS) has been established. Following consultations and expressed interest of the Working Group Members, it has been decided that ReSPA should conduct a regional analysis devoted to Quality Management in the Western Balkans, particularly focusing on the organisational aspects of central government. It is planned for the assignment to take place from September 2016 until the end of January 2017.

8. Number and titles of lots

N/A

9. Maximum budget

51.000 EUR

CONDITIONS OF PARTICIPATION

10. Eligibility

Participation is open to all natural persons who are nationals of and legal persons [participating either individually or in a grouping (consortium) of tenderers] which are effectively established in a Member State of the European Union or in a eligible country or territory as defined under the Regulation (EU) N°236/2014 establishing common rules and procedures for the implementation of the Union's instruments for external action (CIR) for the applicable Instrument under which the contract is financed (see also heading 22 below) . Participation is also open to international organisations. All supplies under this contract must originate in one or more of these countries. However, they may originate from any country when the amount of the supplies to be purchased is below 100,000 euros per purchase.

11. Number of tenders

No more than one tender can be submitted by a natural or legal person whatever the form of participation (as an individual legal entity or as leader or member of a consortium submitting a tender). In the event that a natural or legal person submits more than one tender, all tenders in which that person has participated will be excluded.

12. Grounds for exclusion

As part of the tender, tenderers must submit a signed declaration, included in the tender form, to the effect that they are not in any of the exclusion situations listed in Section 2.3.3. of the Practical Guide.

13. Sub-contracting

Subcontracting is allowed.

PROVISIONAL TIMETABLE

14. Provisional commencement date of the contract

September 2016

15. Implementation period of the tasks

September 2016-January 2017

SELECTION AND AWARD CRITERIA

16. Selection criteria

The following selection criteria will be applied to the tenderers. In the case of tenders submitted by a consortium, these selection criteria will be applied to the consortium as a whole. if not specified otherwise. The selection criteria will not be applied to natural persons and single-member companies when they are sub-contractors.

1) Economic and financial capacity of the tenderer (based on item 3 of the tender form).

In case of tenderer being a public body, equivalent information should be provided. The reference period which will be taken into account will be the last three years for which accounts have been closed.

The objective of this criterion is to examine whether or not the tenderer (i.e., the consortium as a

whole, in the case of a tender from a consortium):

- will not be economically dependent on the Contracting Authority in the event that the contract is awarded to it; and
- has sufficient financial stability to handle the proposed contract.

Examples of financial criteria for legal body:

- the average annual turnover of the tenderer must exceed the annualised maximum budget of the contract i.e., the maximum budget stated in the contract notice divided by the initial contract duration in years, where this exceeds 1 year (minimum annual turnover requested may not exceed 2 times the estimated annual contract value, except in duly justified cases motivated in the tender dossier); and
- Current ratio (current assets/current liabilities) in the last year for which accounts have been closed must be at least 1. In case of a consortium this criterion must be fulfilled by each member.

2) Professional capacity of the tenderer (based on items 4 of the tender form).

The reference period which will be taken into account will be the last three years from submission deadline.

The objective of this criterion is to examine whether or not the tenderer (i.e., the consortium as a whole, in the case of a tenderer from a consortium):

- has sufficient ongoing staff resources and expertise to be able to handle the proposed contract
- is not a so-called 'body shop', i.e. a tenderer with no real expertise in fields related to the contract but which simply identifies and proposes experts to fit the project description

Examples of professional criteria for legal persons:

- at least two staff currently work for the tenderer in fields related to this contract

3) Technical capacity of candidate (based on items 5 and 6 of the tender form). The reference period which will be taken into account will be the last three years from submission deadline.

The objective of this criterion is to examine whether or not the tenderer (i.e. the consortium as a whole, in the case of a tender from a consortium) has sufficient expertise and experience to be able to handle the proposed contract.

Example of technical criterion for legal persons:

- the tenderer has provided services under at least one contract with a budget of at least that of this contract in the field of Quality Management and/or PAR which were implemented at any moment during the following period: 2010-2015.
- or number of individual contracts in the amount of this contract in the field of Quality Management and/or PAR which were implemented at any moment during the following period: 2010-2015.

This means that the project the tenderer refers to could have been started or completed at any time during the indicated period but it does not necessarily have to be started and completed during that period, nor implemented during the entire period. Candidates/tenderers are allowed to refer either to projects completed within the reference period (although started earlier) or to projects not yet completed. In the first case the project will be considered in its whole if proper evidence of performance is provided (statement or certificate from the entity which awarded the

contract, proof of final payment for services). In case of projects still on-going only the portion satisfactorily completed during the reference period although started earlier will be taken into consideration. This portion will have to be supported by documentary evidence (similarly to projects completed) also detailing its value. If a tenderer has implemented the project in a consortium, the percentage that the tenderer has successfully completed must be clear from the documentary evidence, together with a description of the nature of the services provided if the selection criteria relating to the pertinence of the experience have been used.

Previous experience which would have led to breach of contract and termination by a Contracting Authority shall not be used as reference. This is also applicable concerning the previous experience of experts required under a fee-based service contract.

An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the Contracting Authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing a commitment on the part of those entities to place those resources at its disposal. Such entities, for instance the parent company of the economic operator, must respect the same rules of eligibility - notably that of nationality - and must fulfil the same relevant selection criteria as the economic operator. With regard to technical and professional criteria, an economic operator may only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required. With regard to economic and financial criteria, the entities upon whose capacity the tenderer relies, become jointly and severally liable for the performance of the contract.

17. Award criteria

Best price-quality ratio.

TENDERING

18. Deadline for receipt of tenders

The deadline for receipt of tenders is specified in point 8 of the Instruction to Tenderers.

19. Tender format and details to be provided

Tenders must be submitted using the standard tender form for Competitive Negotiated Procedures, the format and instructions of which must be strictly observed. The tender form is available from the following Internet address: <http://ec.europa.eu/europeaid/prag/annexes.do?group=B> , under the zip file called Simplified Tender dossier.

The tender must be accompanied by a declaration of honour on exclusion and selection criteria using the template available from the following Internet address:

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

Any additional documentation (brochure, letter, etc.) sent with a tender will not be taken into consideration.

20. How tenders may be submitted

Tenders must be submitted in English exclusively to the Contracting Authority, using the means specified in point 8 of the Instructions to Tenderers.

Tenders submitted by any other means will not be considered.

By submitting a tender tenderers accept to receive notification of the outcome of the procedure by electronic means.

21. Alteration or withdrawal of tenders

Tenderers may alter or withdraw their tenders by written notification prior to the deadline for submission of tenders. No tender may be altered after this deadline.

Any such notification of alteration or withdrawal shall be prepared and submitted in accordance with point 8 of the Instructions to Tenderers. The outer envelope (and the relevant inner envelope if used) must be marked 'Alteration' or 'Withdrawal' as appropriate.

22. Operational language

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

23. Legal basis

Regulation (EU) N°236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action and <please introduce here the reference of the Regulation or other instrument under which this contract is to be financed (e.g. DCI, ENPI, ENI, Ifs)> - See Annex A2 of the Practical Guide.



DRAFT CONTRACT

SERVICE CONTRACT FOR EUROPEAN UNION EXTERNAL ACTIONS

N^o FN/RES/EC/xxx-16

RELATIVE TO EC GRANT

Regional School of Public Administration
Branelovica bb, 81400 Danilovgrad
("the Contracting Authority"),

of the one part,

and

<Full official name of the Contractor>
<Legal status/title>¹
<Official registration number>²
<Full official address>
<VAT number>,³ ('the Contractor')

of the other part,

have agreed as follows:

CONTRACT TITLE: PREPARATION OF BASELINE ANALYSIS ON QUALITY MANAGEMENT IN PUBLIC ADMINISTRATION AND PUBLIC SERVICES (QM in PA and PS) IN THE WESTERN BALKANS

Identification number RESPA/EC/SER/001-16

(1) Subject

- 1.1 The subject of this Contract is preparation of baseline analyses on Quality Management in Public Administration (QM in PA and PS) in the Western with identification number **RESPA/EC/SER/001-16** ('the services').
- 1.2 The contractor shall execute the tasks assigned to him in accordance with the Terms of Reference annexed to the Contract (Annexe II)

(2) Contract value

This Contract, established in euro, is a global price contract. The contract value is EUR XXXX.

¹ Where the contracting party is an individual.

² Where applicable. For individuals, mention their ID card, passport or equivalent document number.

³ Except where the contracting party is not VAT registered.

(3) Order of precedence of contract documents

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

- the contract agreement;
- the Special Conditions
- the General Conditions (Annex I);
- the Terms of Reference [including clarification before the deadline for submitting tenders and minutes of the information meeting/site visit] (Annex II)
- the Organisation and methodology [including clarification from the tenderer provided during tender evaluation] (Annex III);
- Key experts (Annex IV)
- Other relevant forms and documents (Annex IV);

These above listed documents make up the contract. They shall be deemed to be mutually explanatory. In cases of ambiguity or divergence, they shall prevail in the order in which they appear above. Addenda shall have the order of precedence of the document they are amending.

(4) Language of the contract

The language of the contract and of all written communications between the Contractor and the Contracting Authority and/or the Project Manager shall be English.

(5) Other specific conditions applying to the Contract

Done in English in two originals: one original for the Contracting Authority and one original for the Contractor.

For the Contractor

For the Contracting Authority

Name:

Name:

Title:

Title:

Signature:

Signature:

Date:

Date:

SPECIAL CONDITIONS

These conditions amplify and supplement the General Conditions governing the Contract. Unless the Special Conditions provide otherwise, the General Conditions remain fully applicable. The numbering of the Articles of the Special Conditions is not consecutive but follows the numbering of the General Conditions. Exceptionally, and with the approval of the competent European Commission departments, other clauses can be indicated to cover particular situations.

Article 2 Communications

- 2.1 Contact person of the Contracting Authority:
Mr. Vlatko Naumovski, Operations Manager
Address: ReSPA, Branelovica bb, 81400 Danilovgrad
E mail addresses: v.naumovski@respaweb.eu

Article 4 Subcontracting

- 4.9 Subcontracting is not allowed

Article 7 General Obligations

- 7.1 The Contractor must take necessary measures to ensure the EU visibility on financing or co-financing. These activities must comply with the rules lay down in the Communication and Visibility Manual for EU External Actions published by the European Commission. These rules are set out and available at https://ec.europa.eu/europeaid/sites/devco/files/communication_and_visibility_manual_en.pdf

Article 19 Implementation of the tasks and delays

- 19.1 The start date for implementation shall be date/date of signature of the contract by both parties
19.2 The period for implementing the tasks is until the end of January 2017

Article 26 Interim and Final Reports

The Contractor shall submit progress reports as specified in the Terms of Reference

Article 27 Approval of Reports and Documents

The Contracting Authority shall, within 45 days of receipt, notify the Contractor of its decision concerning the documents or reports received by it, giving reasons should it reject the reports or documents, or request amendments. If the Contracting Authority does not give any comments on the documents or reports within the time limit, the Contractor may request written acceptance of them. The documents or reports shall be deemed to have been approved by the Contracting Authority if it does not expressly inform the Contractor of any comments within 45 days of the receipt of the report

Article 29 Payment and interest on late payment

- 29.1 Payments will be made in euro in accordance with Articles 20.6 and 29.4 of the General Conditions into the bank account notified by the Contractor to the Contracting Authority.

Article 30 Financial Guarantee

30.1 By derogation from article 30 of the General Conditions no pre-financing guarantee is required.

Article 40 Settlement of disputes

In default of amicable settlement, the parties may refer the matter to arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States in force at the date of conclusion of this Agreement. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration following a written request submitted by either Party. The Arbitrator's decision shall be binding on all Parties and there shall be no appeal* * *

ANNEX I:

GENERAL CONDITIONS FOR SERVICE CONTRACTS FOR EXTERNAL ACTIONS FINANCED BY THE EUROPEAN UNION OR BY THE EUROPEAN DEVELOPMENT FUND

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PRELIMINARY PROVISIONS

ARTICLE 1. DEFINITIONS

- 1.1. The headings and titles in these General Conditions shall not be taken as part thereof or be taken into consideration in the interpretation of the contract.
- 1.2. Where the context so permits, words in the singular shall be deemed to include the plural and vice versa, and words in the masculine shall be deemed to include the feminine and vice versa.
- 1.3. The word "country" shall be deemed to include State or Territory.
- 1.4. Words designating persons or parties shall include firms and companies and any organisation having legal capacity.
- 1.5. The definitions of the terms used throughout this General Conditions are laid down in the "Glossary of terms", annex A1a to the Practical Guide, which forms an integral part of the contract.

ARTICLE 2. COMMUNICATIONS

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

ARTICLE 3. ASSIGNMENT

- 3.1. An assignment shall be valid only if it is a written agreement by which the Contractor transfers its contract or part thereof to a third party.
- 3.2. The Contractor shall not, without the prior consent of the Contracting Authority, assign the contract or any part thereof, or any benefit or interest thereunder, except in the following cases:
 - (a) a charge, in favour of the Contractor's bankers, of any monies due or to become due under the contract; or
 - (b) the assignment to the Contractor's insurers of the Contractor's right to obtain relief against any other person liable in cases where the insurers have discharged the Contractor's loss or liability.
- 3.3. For the purpose of article 3.2, the approval of an assignment by the Contracting Authority shall not relieve the Contractor of its obligations for the part of the contract already performed or the part not assigned.

- 3.4. If the Contractor has assigned the contract without authorisation, the Contracting Authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Articles 34 and 36.
- 3.5. Assignees shall satisfy the eligibility criteria applicable for the award of the contract and they shall not fall under the exclusion criteria described in the tender dossier.

ARTICLE 4. SUBCONTRACTING

- 4.1. A subcontract shall be valid only if it is a written agreement by which the Contractor entrusts performance of a part of the contract to a third party.
- 4.2. The Contractor shall request to the Contracting Authority the authorization to subcontract. The request must indicate the elements of the contract to be subcontracted and the identity of the subcontractors. The Contracting Authority shall notify the Contractor of its decision, within 30 days of receipt of the request, stating reasons should it withhold such authorization.
- 4.3. No subcontract creates contractual relations between any subcontractor and the Contracting Authority.
- 4.4. The Contractor shall be responsible for the acts, defaults and negligence of its subcontractors and its experts, agents or employees, as if they were the acts, defaults or negligence of the Contractor, its experts, agents or employees. The approval by the Contracting Authority of the subcontracting of any part of the contract or of the subcontractor to perform any part of the services shall not relieve the Contractor of any of its obligations under the contract.
- 4.5. If a subcontractor is found by the Contracting Authority or the Project Manager to be incompetent in discharging its duties, the Contracting Authority or the Project Manager may request the Contractor forthwith, either to provide a subcontractor with qualifications and experience acceptable to the Contracting Authority as a replacement, or to resume the implementation of the tasks itself.
- 4.6. Subcontractors shall satisfy the eligibility criteria applicable to the award of the contract and they shall not fall under the exclusion criteria described in the tender dossier.
- 4.7. Those services entrusted to a subcontractor by the Contractor shall not be entrusted to third parties by the subcontractor, unless otherwise agreed by the Contracting Authority.
- 4.8. If the Contractor enters into a subcontract without approval, the Contracting Authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Articles 34 and 36.

OBLIGATIONS OF THE CONTRACTING AUTHORITY

ARTICLE 5. SUPPLY OF INFORMATION

- 5.1. The Contracting Authority shall supply the Contractor promptly with any information and/or documentation at its disposal which may be relevant to the performance of the contract. Such documents shall be returned to the Contracting Authority at the end of the period of implementation of the tasks.
- 5.2. The Contracting Authority shall co-operate with the Contractor to provide information that the latter may reasonably request in order to perform the contract.
- 5.3. The Contracting Authority shall give notification to the Contractor of the name and address of the Project Manager.

ARTICLE 6. ASSISTANCE WITH LOCAL REGULATIONS

- 6.1. The Contractor may request the assistance of the Contracting Authority in obtaining copies of laws, regulations, and information on local customs, orders or by-laws of the country in which the services are to be performed, which may affect the Contractor in the performance of its obligations

under the contract. The Contracting Authority may provide the assistance requested to the Contractor at the Contractor's cost.

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

OBLIGATIONS OF THE CONTRACTOR

ARTICLE 7. GENERAL OBLIGATIONS

- 7.1. The Contractor shall execute the contract with due care, efficiency and diligence in accordance with the best professional practice.
- 7.2. The Contractor shall comply with any administrative orders given by the Project Manager. Where the Contractor considers that the requirements of an administrative order go beyond the authority of the Project Manager or of the scope of the contract he shall give notice, with reasons, to the Project Manager. If the Contractor fails to notify within the 30 day period after receipt thereof, he shall be barred from so doing. Execution of administrative order should not be suspended because of this notice.
- 7.3. The Contractor shall supply, without delay, any information and documents to the Contracting Authority and the European Commission upon request, regarding the conditions in which the contract is being executed.
- 7.4. The Contractor shall respect and abide by all laws and regulations in force in the partner country and shall ensure that its staff, their dependants, and its local employees also respect and abide by all such laws and regulations. The Contractor shall indemnify the Contracting Authority against any claims and proceedings arising from any infringement by the Contractor, its employees and their dependants of such laws and regulations.
- 7.5. Should any unforeseen event, action or omission directly or indirectly hamper performance of the contract, either partially or totally, the Contractor shall immediately and at its own initiative record it and report it to the Contracting Authority. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with its obligations under the contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.
- 7.6. Subject to Article 7.8, the Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to the performance of the contract without the prior consent of the Contracting Authority. The Contractor shall continue to be bound by this undertaking after completion of the tasks and shall obtain from each member of its staff the same undertaking. However, use of the contract's reference for marketing or tendering purposes does not require prior approval of the Contracting Authority, except where the Contracting Authority declares the contract to be confidential.
- 7.7. If the Contractor is a joint venture or a consortium of two or more persons, all such persons shall be jointly and severally bound in respect of the obligations under the contract, including any recoverable amount. The person designated by the consortium to act on its behalf for the purposes of the contract shall have the authority to bind the consortium and is the sole interlocutor for all contractual and financial aspects. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the Contracting Authority. Any alteration of the composition of the consortium without the prior consent of the Contracting Authority may result in the termination of the contract.
- 7.8. Save where the European Commission requests or agrees otherwise, the Contractor shall ensure the highest visibility to the financial contribution of the European Union. To ensure such publicity

the Contractor shall implement among other actions the specific activities described in the Special Conditions. All measures must comply with the rules in the Communication and Visibility Manual for EU External Actions published by the European Commission.

- 7.9. Any records shall be kept for a 7-year period after the final payment made under the contract as laid down in Article 24. These documents comprise any documentation concerning income and expenditure and any inventory, necessary for the checking of supporting documents, including timesheets, plane and transport tickets, pay slips or invoices for the remuneration paid to the experts and invoices or receipts for incidental expenditure. In case of failure to maintain such records the Contracting Authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Articles 34 and 36.

ARTICLE 8. CODE OF CONDUCT

- 8.1. The Contractor shall at all-time act impartially and as a faithful adviser in accordance with the code of conduct of its profession as well as with appropriate discretion. It shall refrain from making any public statements concerning the project or the services without the prior approval of the Contracting Authority. It shall not commit the Contracting Authority in any way whatsoever without its prior consent, and shall make this obligation clear to third parties.
- 8.2. The Contractor and its staff shall respect human rights and undertake not to offend the political, cultural and religious practices prevailing in the country where the services have to be rendered.
- 8.3. The Contractor shall respect environmental legislation applicable in the country where the services have to be rendered and internationally agreed core labour standards, e.g. the ILO core labour standards, conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation, and the abolition of child labour.
- 8.4. The Contractor or any of its subcontractors, agents or staff shall not abuse of its entrusted power for private gain. The Contractor or any of its subcontractors, agents or staff shall not receive or agree to receive from any person or offer or agree to give to any person or procure for any person, gift, gratuity, commission or consideration of any kind as an inducement or reward for performing or refraining from any act relating to the performance of the contract or for showing favour or disfavour to any person in relation to the contract. The Contractor shall comply with all applicable laws and regulations and codes relating to anti-bribery and anti-corruption.
- 8.5. The payments to the Contractor under the contract shall constitute the only income or benefit it may derive in connection with the contract. The Contractor and its staff must not exercise any activity or receive any advantage inconsistent with their obligations under the contract.
- 8.6. The execution of the contract shall not give rise to unusual commercial expenses. Unusual commercial expenses are commissions not mentioned in the contract or not stemming from a properly concluded contract referring to the contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commission paid to a company which has every appearance of being a front company. The Contracting Authority and the European Commission may carry out documentary or on-the-spot checks they deems necessary to find evidence in case of suspected unusual commercial expenses.

ARTICLE 9. CONFLICT OF INTEREST

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

- 9.2. The Contracting Authority reserves the right to verify that such measures are adequate and may require additional measures to be taken if necessary. The Contractor shall ensure that its staff, including its management, is not placed in a situation which could give rise to conflict of interests. Without prejudice to its obligations under the contract, the Contractor shall replace, immediately and without compensation from the Contracting Authority, any member of its staff exposed to such a situation.
- 9.3. The Contractor shall refrain from any contact which would compromise its independence or that of its staff.
- 9.4. The Contractor shall limit its role in connection with the project to the provision of the services described in the contract.
- 9.5. The Contractor and anyone working under its authority or control in the performance of the contract or on any other activity shall be excluded from access to other EU budget/EDF funds available under the same project. However, the Contractor may participate after approval of the Contracting Authority if the Contractor is able to prove that its involvement in previous stages of the project does not constitute unfair competition.
- 9.6. Civil servants and other staff of the public administration of the country where the services have to be rendered, regardless of their administrative situation, shall not be recruited as experts unless the prior approval has been granted by the European Commission.

ARTICLE 10. ADMINISTRATIVE SANCTIONS

- 10.1. Without prejudice to the application of other remedies laid down in the contract, a sanction of exclusion from all contracts and grants financed by the EU may be imposed, after an adversarial procedure, upon the Contractor who, in particular,
 - a) is guilty of grave professional misconduct, has committed irregularities or has been found in serious breach of its contractual obligations. The duration of the exclusion shall not exceed the duration set by final judgement or final administrative decision or, in the absence thereof, three years;
 - b) is guilty of fraud, corruption, participation in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings. The duration of the exclusion shall not exceed the duration set by final judgement or final administrative decision or, in the absence thereof, five years.
- 10.2. In the situations mentioned in Article 10.1, in addition or in alternative to the sanction of exclusion, the Contractor may also be subject to financial penalties representing 2-10% of the total value of the contract.
- 10.3. Where the Contracting Authority is entitled to impose financial penalties, it may deduct such financial penalties from any sums due to the Contractor or call on the appropriate guarantee.
- 10.4. The decision to impose administrative sanctions may be published on a dedicated internet-site, explicitly naming the Contractor.
- 10.5. The above administrative sanctions may also be imposed on persons who are members of the administrative, management or supervisory body of the Contractor, on persons having powers of representation, decision or control with regard to the Contractor, on persons jointly and severally liable for the performance of the contract and on subcontractors.

ARTICLE 11. SPECIFICATIONS AND DESIGNS

- 11.1. The Contractor shall prepare all specifications and designs using accepted and generally recognised systems acceptable to the Contracting Authority and taking into account the latest design criteria.

- 11.2. The Contractor shall ensure that the specifications and designs and all documentation relating to procurement of goods and services for the project are prepared on an impartial basis so as to promote competitive tendering.

ARTICLE 12. LIABILITIES

12.1. Liability for damage to services

Without prejudice to Article 30 (financial guarantee) and Article 38 (force majeure), the Contractor shall assume (i) full responsibility for maintaining the integrity of services and (ii) the risk of loss and damage, whatever their cause, until the completion of the implementation of the tasks and approval of reports and documents under Articles 26 and 27.

After the completion of the implementation of the tasks, the Contractor shall be responsible for and shall indemnify the Contracting Authority for any damage caused to the services by the Contractor, its staff, its subcontractors and any person for which the Contractor is answerable, during any operation performed to complete any work left, as the case may be, pending or to comply with its obligations under Articles 26 and 27, particularly if the contract is performed in phases.

Compensation for damage to the services resulting from the Contractor's liability in respect of the Contracting Authority is capped at the contract value.

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

The Contractor shall remain responsible for any breach of its obligations under the contract for such period after the services have been performed as may be determined by the law governing the contract, even after approval of the reports and documents, or by default for a period of 10 years.

12.2. Contractor's liability in respect of the Contracting Authority

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

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

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

12.3. Contractor's liability in respect of third parties

Without prejudice to Article 14.9, the Contractor shall, at its own expense, indemnify, protect and defend, the Contracting Authority, its agents and employees, from and against all actions, claims, losses or damage, direct or indirect, of whatever nature (hereinafter "claim(s)") arising from any act or omission by the Contractor, its staff, its subcontractors and/or any person for which the Contractor is answerable, in the performance of the services, including any violation of any legal provisions, or rights of third parties, in respect of patents, trademarks and other forms of intellectual property such as copyrights.

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

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

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

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

ARTICLE 13. MEDICAL, INSURANCE AND SECURITY ARRANGEMENTS

13.1. Medical arrangement

The Contracting Authority may condition the performance of the services to the production, by the Contractor, of a recent medical certificate attesting that the Contractor itself, its staff, its subcontractors and/or any person for which the Contractor is answerable, are fit to implement the services required under this contract.

13.2. Insurance – general issues

- a) At the latest together with the return of the countersigned contract, and for the period of implementation of the tasks, the Contractor shall ensure that itself, its staff, its subcontractors and any person for which the Contractor is answerable, are adequately insured with insurance companies recognized on the international insurance market, unless the Contracting Authority has given its express written consent on a specific insurance company.
- b) At the latest together with the return of the countersigned contract, the Contractor shall provide the Contracting Authority with all cover notes and/or certificates of insurance showing that the Contractor's obligations relating to insurance are fully respected. The Contractor shall submit without delay, whenever the Contracting Authority or the Project Manager so requests, an updated version of the cover notes and/or certificates of insurance.

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

- c) Whenever possible, the Contractor shall ensure that the subscribed insurance contracts contain a waiver of recourse in favor of the Contracting Authority, its agents and employees.
- d) The purchase of adequate insurances by the Contractor shall in no case exempt it from its statutory and/or contractual liabilities.
- e) The Contractor shall fully bear the consequences of a total or partial lack of coverage, and to the full discharge of the Contracting Authority.
- f) The Contractor shall ensure that its staff, its subcontractors and any person for whom the Contractor is answerable comply with the same insurance requirements imposed to it under this contract. In case of default of insurance or inadequate insurance of its staff, its subcontractors or any person for which the Contractor is answerable, the Contractor shall indemnify the Contracting Authority from all consequences resulting therefrom.
- g) Under its own responsibility and without prejudice to the obligation to take out all insurance covering its obligations under this contract, the Contractor shall ensure that all compulsory insurances are subscribed in compliance with the laws and regulations in force in the country in which the services are to be performed. It shall also ensure that all possible statutory obligations applying to the coverage are complied with.

- h) The Contracting Authority shall not bear any liability for the assessment and adequacy of insurance policies taken out by the Contractor with its contractual and/or statutory obligations.
- i) In any event, the Contractor shall take out the insurance referred to below.

13.3. Insurance – Specific issues

- a) The Contractor shall take out all insurance necessary to cover its liability, both with regard to its professional liability and its liability as provided under Article 12.
- b) The contractor shall ensure that itself, its staff, its subcontractors and any person for which the Contractor is answerable, are covered by an insurance policy covering, in addition to the possible intervention of any statutory insurance:
 - i. all medical expenses, including hospital expenses;
 - ii. the full cost of repatriation in case of illness, accident, or in the event of death by disease or accident;
 - iii. accidental death or permanent disability resulting from bodily injury incurred in connection with the contract.

In the absence of adequate insurance, the Contracting Authority may bear such costs to the benefit of the Contractor itself, its staff, its subcontractors and any person for which the Contractor is answerable. This bearing of the costs by the Contracting Authority shall be subsidiary and may be claimed against the Contractor, its subcontractors and any person who should have taken out this insurance, without prejudice to the compensation of the Contracting Authority's possibly resulting damage.

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

13.4. Security arrangements

The Contractor shall put in place security measures for its employees, experts and their families located in the partner country commensurate with the physical danger (possibly) facing them.

The Contractor shall also be responsible for monitoring the level of physical risk to which its employees, experts and their families located in the partner country are exposed and for keeping the Contracting Authority informed of the situation. If the Contracting Authority or the Contractor becomes aware of an imminent threat to the life or health of any of its employees, experts or their families, the Contractor must take immediate emergency action to remove the individuals concerned to safety. If the Contractor takes such action, he must communicate this immediately to the Project Manager and this may lead to suspension of the contract in accordance with Article 35.

ARTICLE 14. INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

- 14.1. A "result" shall be any outcome of the implementation of the contract and provided as such by the Contractor.
- 14.2. The ownership of all the results or rights thereon as listed in the tender specification and the tender attached to the contract, including copyright and other intellectual or industrial property rights, and

all technological solutions and information embodied therein, obtained in performance of the contract, shall be irrevocably and fully vested to the Contracting Authority from the moment these results or rights are delivered to it and accepted by it. The Contracting Authority may use them as it sees fit and in particular may store, modify, translate, display, reproduce, publish or communicate by any medium, as well as, assign, transfer them as it sees fit.

- 14.3. For the avoidance of doubt and where applicable, any such vesting of rights is also deemed to constitute an effective transfer of the rights from the Contractor to the Contracting Authority.
- 14.4. The above vesting of rights in the Contracting Authority under this contract covers all territories worldwide and is valid for the whole duration of intellectual or industrial property rights protection, unless stipulated otherwise by the Contracting Authority and the Contractor.
- 14.5. The Contractor shall ensure that delivered results are free of rights or claims from third parties including in relation to pre-existing rights, for any use envisaged by the Contracting Authority. If the Contracting Authority so requires, the Contractor shall provide exhaustive proof of ownership or rights to use all necessary rights, as well as, of all relevant agreements of the creator(s).
- 14.6. All reports and data such as maps, diagrams, drawings, specifications, plans, statistics, computations, databases format and data, software and any supporting records or materials acquired, compiled or prepared by the Contractor in the performance of the contract, as well as, any outcome of the implementation of the contract, shall be the absolute property of the Contracting Authority unless otherwise specified. The Contractor shall, upon completion of the contract, deliver all such documents and data to the Contracting Authority. The Contractor must not retain copies of such documents and data and must not use them for purposes unrelated to the contract without the prior consent of the Contracting Authority.
- 14.7. The Contractor shall not publish articles relating to the services or refer to them when carrying out any services for others, or divulge information obtained by the Contractor in the course of the contract for purposes other than its performance, without the prior consent of the Contracting Authority.
- 14.8. By delivering the results the Contractor warrants that the above transfer of rights does not violate any law or infringe any rights of others and that it possesses the relevant rights or powers to execute the transfer. It also warrants that it has paid or has verified payment of all fees including fees to collecting societies, related to the final results.
- 14.9. The Contractor shall indemnify and hold the Contracting Authority harmless for all damages and cost incurred due to any claim brought by any third party including creators and intermediaries for any alleged breach of any intellectual, industrial or other property right based on the Contracting Authority's use as specified in the contract of patents, licenses, drawings, designs, models, or brand or trade-marks, except where such infringement results from compliance with the design or specification provided by the Contracting Authority.

NATURE OF THE SERVICES

ARTICLE 15. THE SCOPE OF THE SERVICES

- 15.1. The scope of the services is specified in Annex II and Annex III.
- 15.2. Where the contract is for an advisory function for the benefit of the Contracting Authority and/or Project Manager in respect of all the technical aspects of the project which may arise out of its implementation, the Contractor shall not have decision-making responsibility.
- 15.3. Where the contract is for management of the implementation of the project, the Contractor shall assume all the duties of management inherent in supervising the implementation of a project, subject to the Project Manager's authority.
- 15.4. If the Contractor is required to prepare a tender dossier, the dossier shall contain all documents necessary for consulting suitable Contractors, manufacturers and suppliers, and for preparing tender procedures with a view to carrying out the works or providing the supplies or services

covered by an invitation to tender. The Contracting Authority shall provide the Contractor with the information necessary for drawing up the administrative part of the tender dossier.

ARTICLE 16. STAFF

- 16.1. For fee-based contracts, the Contractor must inform the Contracting Authority of all staff which the Contractor intends to use for the implementation of the tasks, other than the key experts whose CVs are included in Annex IV. Annex II and/or Annex III shall specify the minimum level of training, qualifications and experience of the staff and, where appropriate, the specialisation required. The Contracting Authority shall have the right to oppose the Contractor's choice of staff.
- 16.2. All those working on the project with the approval of the Contracting Authority shall commence their duties on the date or within the period laid down in Annex II and/or Annex III, or, failing this, on the date or within the periods notified to the Contractor by the Contracting Authority or the Project Manager.
- 16.3. Save as otherwise provided in the contract, those working on the contract shall reside close to their normal place of posting. Where part of the services is to be performed outside the partner country, the Contractor shall keep the Project Manager informed of the names and qualifications of staff assigned to that part of the services.
- 16.4. The Contractor shall:
 - (a) forward to the Project Manager within 30 days of the signature of the contract by both parties, the timetable proposed for placement of the staff;
 - (b) inform the Project Manager of the date of arrival and departure of each member of staff;
 - (c) submit to the Project Manager for its approval a timely request for the appointment of any non-key experts.
- 16.5. The Contractor shall provide its staff with all financial and technical means needed to enable them to carry out their tasks described under this contract efficiently.
- 16.6. No recruitment of an expert by the Contractor can create contractual relations between the expert and the Contracting Authority.

ARTICLE 17. REPLACEMENT OF STAFF

- 17.1. The Contractor shall not make changes to the agreed staff without the prior approval of the Contracting Authority. The Contractor must on its own initiative propose a replacement in the following cases:
 - (a) In the event of death, in the event of illness or in the event of accident of an agreed staff;
 - (b) If it becomes necessary to replace an agreed staff for any other reasons beyond the Contractor's control (e.g. resignation, etc.).
- 17.2. Moreover, in the course of performance, and on the basis of a written and justified request to which the Contractor shall provide its own and the agreed staff's observations, the Contracting Authority can order an agreed staff to be replaced.
- 17.3. Where an agreed staff must be replaced, the replacement must possess at least equivalent qualifications and experience, and the remuneration to be paid to the replacement cannot exceed that received by the agreed staff who has been replaced. Where the Contractor is unable to provide a replacement with equivalent qualifications and/or experience, the Contracting Authority may either decide to terminate the contract, if the proper performance of it is jeopardised, or, if it considers that this is not the case, accept the replacement, provided that the fees of the latter are renegotiated to reflect the appropriate remuneration level.
- 17.4. Additional costs incurred by the replacement of an agreed staff are the responsibility of the Contractor. The Contracting Authority makes no payment for the period when the agreed staff to be replaced is absent. The replacement of any agreed staff, whose name is listed in Annex IV of the contract, must be proposed by the Contractor within 15 calendar days from the first day of the

agreed staff's absence. If after this period the Contractor fails to propose a replacement in accordance with Article 17.3 above, the Contracting Authority may apply liquidated damages up to 10% of the remaining fees of that expert to be replaced. The Contracting Authority must approve or reject the proposed replacement within 30 days.

- 17.5. The partner country may be notified of the identity of the agreed staff proposed to be added or replaced in the contract to obtain its approval. The partner country must not withhold its approval unless it submits duly substantiated and justified objections to the proposed experts in writing to the Contracting Authority within 15 days of the date of the request for approval.

ARTICLE 18. TRAINEES

- 18.1. If required in the terms of reference, the Contractor shall provide training for the period of implementation of the tasks for trainees assigned to it by the Contracting Authority under the terms of the contract.
- 18.2. Instruction by the Contractor of such trainees shall not confer on them the status of employees of the Contractor. However, they must comply with the Contractor's instructions, and with the provisions of article 8, as if they were employees of the Contractor. The Contractor may on reasoned request in writing obtain the replacement of any trainee whose work or conduct is unsatisfactory.
- 18.3. Unless otherwise provided in the contract, allowance for trainees covering notably travel, accommodation and all other expenses incurred by the trainees, shall be borne by the Contracting Authority.
- 18.4. The Contractor shall report at quarterly intervals to the Contracting Authority on the training assignment. Immediately prior to the end of the period of implementation of the tasks, the Contractor shall draw up a report on the result of the training and an assessment of the qualifications obtained by the trainees with a view to their future employment. The form of such reports and the procedure for presenting them shall be as laid down in the terms of reference.

PERFORMANCE OF THE CONTRACT

ARTICLE 19. IMPLEMENTATION OF THE TASKS AND DELAYS

- 19.1. The Special Conditions fix the date on which implementation of the tasks is to commence.
- 19.2. The period of implementation of tasks shall commence on the date fixed in accordance with Article 19.1 and shall be as laid down in the Special Conditions, without prejudice to extensions of the period which may be granted.
- 19.3. If the Contractor fails to perform the services within the period of implementation of the tasks specified in the contract, the Contracting Authority shall, without formal notice and without prejudice to its other remedies under the contract, be entitled to liquidated damages for every day which shall elapse between the end of the period of implementation of the tasks specified in the contract and the actual date of completion of these tasks.
- 19.4. The daily rate for liquidated damages is calculated by dividing the contract value by the number of days of the period of implementation of the tasks, up to a maximum of 15% of the total value of the contract.
- 19.5. If the Contracting Authority has become entitled to claim 15% of the contract value, it may, after giving notice to the Contractor:
- (a) terminate the contract, and;
 - (b) enter into a contract with a third party to complete the services, at the Contractor's cost.

ARTICLE 20. AMENDMENT TO THE CONTRACT

20.1. Any amendment to the contract affecting its object or scope, such as amendment to the total contract amount, replacement of an agreed staff the Curriculum Vitae of which is part of the contract and change of the period of implementation shall be formalised by means of an addendum. Both parties may request an addendum for amendment to the contract according to the following principles:

- (a) An addendum for amendment may be requested only during the period of execution of the contract;
- (b) Any request for an addendum shall be submitted in writing to the other party at least thirty days before the date on which the intended addendum is required to enter into force. In case of special circumstances duly substantiated by the Contractor, the Contracting Authority may accept a different notice period.

The requested party shall notify the requesting party of its decision concerning the request within 30 days from its receipt. There is no automatic amendment without written confirmation by the requested party.

20.2. Additionally, the Project Manager has the power to issue administrative orders requesting an amendment to the contract not affecting its object or scope, including on request of the Contractor, according to the following principles:

- a) The requested contract amendment may take the form of additions, omissions, substitutions, changes in quality, quantity, specified sequence, method or timetable of implementation of the services;
- b) Prior to the issuance of any administrative order, the Project Manager shall notify the Contractor of the nature and the form of the proposed amendment.

The Contractor shall then, without delay, submit to the Project Manager a written proposal containing:

- (i) all measures required to comply with the requested amendment,
- (ii) an updated timetable for implementation of the tasks, and,
- (iii) if necessary, a proposed financial adjustment to the contract, using the contractual fee rates when the tasks are similar. When the tasks are not similar, the contractual fee rates shall be applied when reasonable.

Following receipt of the Contractor's proposal, the Project Manager shall decide as soon as possible whether or not the amendment shall be carried out.

If the Project Manager decides that the amendment shall be carried out, it shall notify the Contractor through an administrative order stating that the Contractor shall carry out the amendment at the prices and under the conditions given in the Contractor's proposal or as modified by the Project Manager in agreement with the Contractor.

- c) On receipt of the administrative order, the Contractor shall carry out the amendments detailed in that administrative order as if such amendments were stated in the contract.
- d) For fee based contracts, administrative orders that have an impact on the contractual budget are limited to transfers within the fees, or transfers from the fees to the Incidental Expenditures, within the limits of Article 20.3.
- e) For global price contracts, administrative orders cannot have an impact on the contractual budget.

20.3. No amendment either by means of addendum or through administrative order shall lead to decreasing the amount within the contractual budget allocated to expenditure verification, or change the award conditions prevailing at the time the contract was awarded.

- 20.4. Any amendment carried out by the Contractor without an administrative order or without an addendum to the contract is not allowed and made at the Contractor's own financial risk.
- 20.5. Where an amendment is required by a default or breach of contract by the Contractor, any additional cost attributable to such amendment shall be borne by the Contractor.
- 20.6. The Contractor shall notify the Contracting Authority of any change of address and bank account using the form in Annex VI to notify any change in its bank account. The Contracting Authority shall have the right to oppose the Contractor's change of bank account. The Contractor shall notify the Contracting Authority of any change of auditor which the Contracting Authority needs to approve.

ARTICLE 21. WORKING HOURS

- 21.1. The days and hours of work of the Contractor or the Contractor's staff shall respect the laws, regulations and customs of the country where the services have to be rendered and the requirements of the services.

ARTICLE 22. LEAVE ENTITLEMENT

- 22.1. For fee-based contracts, the annual leave to be taken during the period of implementation of the tasks shall be at a time approved by the Project Manager.
- 22.2. For fee-based contracts, the fee rates are deemed to take into account the annual leave of up to 2 months for the Contractor's staff during the period of implementation of the tasks. Consequently, days taken as annual leave shall not be considered to be working days.
- 22.3. The Contractor shall only be paid for the days actually worked. Any cost related to sick or casual leave shall be covered by the Contractor. The Contractor shall inform the Project Manager of any impact of such leave on the period of implementation of the tasks.

ARTICLE 23. INFORMATION

- 23.1. The Contractor shall provide any information relating to the services and the project to the Project Manager, the European Commission, the European Court of Auditors or any person authorised by the Contracting Authority.
- 23.2. The Contractor shall allow the Project Manager or any person authorised by the Contracting Authority or the Contracting Authority itself to inspect or audit the records and accounts relating to the services and to make copies thereof both during and after provision of the services.

ARTICLE 24. RECORDS

- 24.1. The Contractor shall keep full accurate and systematic records and accounts in respect of the services in such form and detail as is sufficient to establish accurately that the number of working days and the actual incidental expenditure identified in the Contractor's invoice(s) have been duly incurred for the performance of the services.
- 24.2. For fee-based contracts, timesheets recording the days or hours worked by the Contractor's staff shall be maintained by the Contractor. The timesheets filled in by the experts shall be confirmed on a monthly basis by the Contractor and shall be approved by the Project Manager or any person authorised by the Contracting Authority or the Contracting authority itself. The amounts invoiced by the Contractor must correspond to these timesheets. Time spent travelling exclusively and necessarily for the purpose of the implementation of the contract, by the most direct route, may be included in the numbers of days or hours, as appropriate, recorded in these timesheets. Travel undertaken by the expert for mobilisation and demobilisation as well as for leave purposes shall not be considered as working days. A minimum of 7 hours worked are deemed to be equivalent to one day worked. For all experts, their time input shall be rounded to the nearest whole number of days worked for the purposes of invoicing.
- 24.3. Any records must be kept for a seven year period after the final payment made under the contract. These documents comprise any documentation concerning income and expenditure and any

inventory, necessary for the checking of supporting documents, including timesheets, plane and transport tickets, pay slips for the remuneration paid to the experts and invoices or receipts for incidental expenditure. In case of failure to maintain such records the Contracting Authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Articles 34 and 36.

ARTICLE 25. VERIFICATIONS, CHECKS AND AUDITS BY EUROPEAN UNION BODIES

- 25.1. The Contractor shall allow the European Commission, the European Anti-Fraud Office and the European Court of Auditors to verify, by examining the documents and to make copies thereof or by means of on-the-spot checks, including checks of documents (original or copies), the implementation of the contract. In order to carry out these verifications and audits, European Union bodies mentioned above shall be allowed to conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document relevant to the financing of the contract. The Contractor shall ensure that on-the-spot accesses is available at all reasonable times, notably at the Contractor's offices, to its computer data, to its accounting data and to all the information needed to carry out the audits, including information on individual salaries of persons involved in the contract. The Contractor shall ensure that the information is readily available at the moment of the audit and, if so requested, that data be handed over in an appropriate form. These inspections may take place up to seven years after the final payment.
- 25.2. Furthermore, the Contractor shall allow the European Anti-Fraud Office to carry out checks and verification on the spot in accordance with the procedures set out in the European Union legislation for the protection of the financial interests of the European Union against fraud and other irregularities.
- 25.3. To this end, the Contractor undertakes to give appropriate access to staff or agents of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors to the sites and locations at which the contract is carried out, including its information systems, as well as all documents and databases concerning the technical and financial management of the project and to take all steps to facilitate their work. Access given to agents of the European Commission, European Anti-Fraud Office and the European Court of Auditors shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject. Documents shall be easily accessible and filed so as to facilitate their examination. The Contractor shall inform the Contracting Authority of their precise location.
- 25.4. The Contractor guarantees that the rights of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors to carry out audits, checks and verification shall be equally applicable, under the same conditions and according to the same rules as those set out in this Article, to any subcontractor or any other party benefiting from EU budget/EDF funds.
- 25.5. Failure to comply with the obligations set forth in Article 25.1 to 25.4 constitutes a case of serious breach of contract.

ARTICLE 26. INTERIM AND FINAL REPORTS

- 26.1. Unless otherwise provided in the Terms of Reference, the Contractor shall draw up interim reports and a final report during the period of implementation of the tasks. These reports shall consist of a narrative section and a financial section. The format of such reports is as notified to the Contractor by the Project Manager during the period of implementation of the tasks.
- 26.2. All invoices must be accompanied by an interim or final report. All invoices for fee-based contracts must also be accompanied by an up to date financial report and an invoice for the actual costs of the expenditure verification. The structure of the interim or final financial report shall be the same as that of the contractually approved budget (Annex V). This financial report shall indicate, at a minimum, the expenditure of the reporting period, the cumulative expenditure and the balance available.

- 26.3. Immediately prior to the end of the period of implementation of the tasks, the Contractor shall draw up a final progress report together which must include, if appropriate, a critical study of any major problems which may have arisen during the performance of the contract.
- 26.4. This final progress report shall be forwarded to the Project Manager not later than 60 days after the end of the period of implementation of the tasks. Such report shall not bind the Contracting Authority.
- 26.5. Where the contract is performed in phases, the implementation of each phase shall give rise to the preparation of a final progress report by the Contractor.
- 26.6. Interim and final progress reports are covered by the provisions of Article 14.

ARTICLE 27. APPROVAL OF REPORTS AND DOCUMENTS

- 27.1. The approval by the Contracting Authority of reports and documents drawn up and forwarded by the Contractor shall certify that they comply with the terms of the contract.
- 27.2. Where a report or document is approved by the Contracting Authority subject to amendments to be made by the Contractor, the Contracting Authority shall prescribe a period for making the amendments requested.
- 27.3. Where the final progress report is not approved, the dispute settlement procedure is automatically invoked.
- 27.4. Where the contract is performed in phases, the implementation of each phase shall be subject to the approval, by the Contracting Authority, of the preceding phase except where the phases are carried out concurrently.
- 27.5. The Contracting Authority's time limit for accepting reports or documents shall be considered included in the time limit for payments indicated in Article 29, unless otherwise specified in the Special Conditions.

PAYMENTS & DEBT RECOVERY

ARTICLE 28. EXPENDITURE VERIFICATION

- 28.1. No expenditure verification report is required for global price contracts.
- 28.2. Before payments are made for fee-based contracts an external auditor must examine and verify the invoices and the financial reports sent by the Contractor to the Contracting Authority. The auditor shall meet the requirements set out in the Terms of Reference for expenditure verification and shall be approved by the Contracting Authority.
- 28.3. The auditor must satisfy itself that relevant, reliable and sufficient evidence exists that:
 - (a) the experts employed by the Contractor for the contract have been working as evidenced on the contract (as corroborated by independent, third-party evidence, where available) for the number of days claimed in the Contractor's invoices and in the financial reporting spreadsheet submitted with the interim progress reports; and
 - (b) the amounts claimed as incidental expenditure have actually and necessarily been incurred by the Contractor in accordance with the requirements of the terms of reference of the contract.

On the basis of its verification, the auditor submits to the Contractor an expenditure verification report in accordance with the model in Annex VII.
- 28.4. The Contractor grants the auditor all access rights mentioned in Article 25.
- 28.5. The Contracting Authority reserves the right to require that the auditor be replaced if considerations which were unknown when the contract was signed cast doubt on the auditor's independence or professional standards.

ARTICLE 29. PAYMENT AND INTEREST ON LATE PAYMENT

- 29.1. Payments will be made in accordance with one of the options below, as identified in the Special Conditions.

Option 1: Fee-based contract:

The Contracting Authority will make payments to the Contractor in the following manner:

1. A first payment of pre-financing, if requested by the Contractor, of an amount up to maximum 20% of the maximum contract value stated in point 2 of the contract, within 30 days of receipt by the Contracting Authority of an invoice, of the contract signed by both parties, and of a financial guarantee if requested, as defined in Article 30.
2. Six-monthly further interim payments, as indicated in the Special Conditions, within 60 days of the Contracting Authority receiving an invoice accompanied by an interim progress report and an expenditure verification report, subject to approval of those reports in accordance with Article 27. Such interim payments shall be of an amount equivalent to the costs incurred on the basis of the expenditure verification reports. When 80 % of the maximum contract value stated in point 2 of the contract has been paid (pre-financing and interim payments) the amounts due to the contractor shall be deducted from the pre-financing payment until it is completely reimbursed before any additional payment is made.
3. The invoices must be paid such that the sum of payments does not exceed 90% of the maximum contract value stated in point 2 of the contract; the 10% being the minimum final payment.
4. The balance of the final value of the contract after verification, subject to the maximum contract value stated in point 2 of the contract, after deduction of the amounts already paid, within 90 days of the Contracting Authority receiving a final invoice accompanied by the final progress report and a final expenditure verification report, subject to approval of those reports in accordance with Article 27.

Option 2: Global price contract:

If the contract is not divided between different outputs that the Contracting Authority can approve independently, or has a duration of less than two years, the Contracting Authority will make payments to the Contractor in the following manner:

1. a pre-financing payment if requested by the Contractor, of an amount up to 40% of the contract value stated in point 2 of the contract within 30 days of receipt by the Contracting Authority of an invoice, of the contract signed by both parties, and of a financial guarantee if requested, as defined in Article 30;
2. the balance of the contract value stated in point 2 of the contract within 90 days of the Contracting Authority receiving a final invoice accompanied by the final progress report, subject to approval of that report in accordance with Article 27.

If the contract has a duration of at least two years and if the budget is divided between different outputs that the Contracting Authority can approve independently, the Contracting Authority will make payments to the Contractor in the following manner:

1. a pre-financing payment if requested by the Contractor, of an amount up to 40% of the contract value stated in point 2 of the contract within 30 days of receipt by the Contracting Authority of an invoice, of the contract signed by both parties, and of a financial guarantee if requested, as defined in Article 30;
2. one interim payment at the end of each 12 months of implementation of the contract, of an amount corresponding to the outputs delivered, within 60 days of the

Contracting Authority receiving an invoice accompanied by an interim progress report, subject to approval of this report in accordance with Article 27;

3. The invoices must be paid such that the sum of payments does not exceed 90% of the maximum contract value stated in point 2 of the contract; the 10% being the minimum final payment.
4. the balance of the contract value stated in point 2 of the contract within 90 days of the Contracting Authority receiving a final invoice accompanied by the final progress report, subject to approval of that report in accordance with Article 27.

29.2. The date of payment shall be the date on which the paying account is debited. The invoice shall not be admissible if one or more essential requirements are not met. Without prejudice to Article 36.2, the Contracting Authority may halt the countdown towards this deadline for any part of the invoiced amount disputed by the Project Manager by notifying the Contractor that part of the invoice is inadmissible, either because the amount in question is not due or because the relevant report cannot be approved and the Contracting Authority thinks it necessary to conduct further checks. In such cases, the Contracting Authority shall not unreasonably withhold any undisputed part of the invoiced amount but may request clarification, alteration or additional information, which shall be produced within 30 days of the request. The countdown towards the deadline shall resume on the date on which a correctly formulated invoice is received by the Contracting Authority. If part of the invoice is disputed, the undisputed amount of the invoice shall not be withheld and must be paid according to the payment schedule set in Article 29.1.

29.3. Once the deadline referred to above has expired, the Contractor - unless it is a government department or public body in an EU Member State - shall, within two months of receiving late payment, receive default interest:

- at the rate applied by the European Central Bank to its main refinancing transactions in euro, as published in the Official Journal of the European Union, C series, where payments are in euro,
- at the rediscount rate applied by the central bank of the country of the Contracting Authority if payments are in the currency of that country,

on the first day of the month in which the time-limit expired, plus eight percentage points. The interest be payable for the time elapses between the expiry of the payment deadline (exclusive) and the date on which the Contracting Authority's account is debited (inclusive).

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

29.4. Payments due by the Contracting Authority shall be made into the bank account mentioned on the financial identification form completed by the Contractor. A new financial identification form must be used to report any change of bank account and must be attached to the invoice.

29.5. Payments shall be made in euro or in the national currency as specified in the Special Conditions. The Special Conditions shall lay down the administrative or technical conditions governing payments of pre-financing, interim and/or final payments made in accordance with the General Conditions. Where payment is in euro, for the purposes of the Provision for incidental expenditure, actual expenditure shall be converted into euro at the rate published on the Infor-Euro on the first working day of the month in which the invoice is dated. Where payment is in the national currency, it shall be converted into the national currency at the rate published on the Infor-Euro on the first working day of the month in which the payment is made.

29.6. For fee-based contracts, invoices shall be accompanied by copies of, or extracts from, the corresponding approved timesheets referred to in Article 24.2 to verify the amount invoiced for the time input of the experts. A minimum of 7 hours worked are deemed to be equivalent to one day

worked. For all experts, their time input must be rounded to the nearest whole number of days worked for the purposes of invoicing.

- 29.7. Payment of the final balance shall be subject to performance by the Contractor of all its obligations relating to the implementation of all phases or parts of the services and to the approval by the Contracting Authority of the final phase or part of the services. Final payment shall be made only after the final progress report and a final statement, identified as such, shall have been submitted by the Contractor and approved as satisfactory by the Contracting Authority.
- 29.8. The payment obligations of the European Commission under the contract shall cease at most 18 months after the end of the period of implementation of the tasks, unless the contract is terminated in accordance with these General Conditions.
- 29.9. Prior to, or instead of, terminating the contract as provided for in Article 36, the Contracting Authority may suspend payments as a precautionary measure without prior notice.
- 29.10. Where the award procedure or the performance of the contract proves to have been subject to substantial errors, irregularities or fraud attributable to the Contractor, the Contracting Authority may in addition to the possibility to suspend the performance of the contract in accordance with Article 35.2 and terminate the contract as provided for in Article 36, refuse to make payments and/or recover amounts already paid, in proportion to the seriousness of the errors irregularities or fraud.
- 29.11. If the contract is terminated for any reason whatsoever, the guarantee securing the pre-financing may be invoked forthwith in order to repay the balance of the pre-financing still owed by the Contractor, and the guarantor shall not delay payment or raise objection for any reason whatever.

ARTICLE 30. FINANCIAL GUARANTEE

- 30.1. Unless otherwise provided for in the Special Conditions, the Contractor shall provide a financial guarantee for the full amount of the pre-financing payment. The financial guarantee shall be in the format provided for in the contract and may be provided in the form of a bank guarantee, a banker's draft, a certified cheque, a bond provided by an insurance and/or bonding company, an irrevocable letter of credit or a cash deposit made with the Contracting Authority. If the financial guarantee is to be provided in the form of a bank guarantee, a banker's draft, a certified cheque or a bond, it shall be issued by a bank or bonding and/or insurance company approved by the Contracting Authority. This financial guarantee shall remain valid until it is released by the Contracting Authority in accordance with Article 30.5 or Article 30.6, as appropriate. Where the Contractor is a public body the obligation for a financial guarantee may be waived depending on a risk assessment made.
- 30.2. The financial guarantee shall be provided on the letterhead of the financial institution using the template provided in Annex VI.
- 30.3. Should the financial guarantee cease to be valid and the Contractor fail to re-validate it, either a deduction equal to the amount of the pre-financing may be made by the Contracting Authority from future payments due to the Contractor under the contract, or the Contracting Authority shall give formal notice to the Contractor to provide a new guarantee on the same terms as the previous one. Should the Contractor fail to provide a new guarantee, the Contracting Authority may terminate the contract.
- 30.4. If the contract is terminated for any reason whatsoever, the financial guarantee may be invoked forthwith in order to repay any balance still owed to the Contracting Authority by the Contractor, and the guarantor shall not delay payment or raise objection for any reason whatsoever.
- 30.5. For fee-based contracts, the financial guarantee shall be released when the prefinancing is reimbursed in accordance with Article 29.1.
- 30.6. For global price contracts, (i) if the contract is not divided between different outputs that the Contracting Authority can approve independently, or has a duration of less than two years, the financial guarantee shall remain in force until the final payment has been made, and (ii) if the contract has a duration of at least two years and if the budget is divided between different outputs

that the Contracting Authority can approve independently, the financial guarantee shall be released when the prefinancing is reimbursed in accordance with Article 29.1.

ARTICLE 31. RECOVERY OF DEBTS FROM THE CONTRACTOR

- 31.1. The Contractor undertakes to repay any amounts paid in excess of the final amount due to the Contracting Authority before the deadline indicated in the debit note which is 45 days from the issuing of that note.
- 31.2. Should the Contractor fail to make repayment within the above deadline; the Contracting Authority may (unless the Contractor is a government department or public body of an EU Member State) increase the amounts due by adding interest:
- (a) at the rediscount rate applied by the central bank of the country of the Contracting Authority if payments are in the currency of that country,
 - (b) at the rate applied by the European Central Bank to its main refinancing transactions in euro, as published in the Official Journal of the European Union, C series, where payments are in euro,
- on the first day of the month in which the time-limit expired, plus eight percentage points. The default interest shall be incurred over the time which elapses between the date of the payment deadline, and the date on which the payment is actually made. Any partial payments shall first cover the interest thus established.
- 31.3. Amounts to be repaid to the Contracting Authority may be offset against amounts of any kind due to the Contractor. This shall not affect the party's right to agree on payment in installments.
- 31.4. Bank charges arising from the repayment of amounts due to the Contracting Authority shall be borne entirely by the Contractor.
- 31.5. Without prejudice to the prerogative of the Contracting Authority, if necessary, the European Union may as a donor proceed itself to the recovery by any means.

ARTICLE 32. REVISION OF PRICES

- 32.1. The contract shall be at fixed prices, which shall not be revised.

ARTICLE 33. PAYMENT TO THIRD PARTIES

- 33.1. Orders for payments to third parties may be carried out only after an assignment made in accordance with Article 3. The assignment shall be notified to the Contracting Authority.
- 33.2. Notification of beneficiaries of the assignment shall be the sole responsibility of the Contractor.
- 33.3. In the event of a legally binding attachment of the property of the Contractor affecting payments due to it under the contract and without prejudice to the time limit laid down in Article 29, the Contracting Authority shall have 30 days, starting from the day when it receives notification of the definitive lifting of the obstacle to payment, to resume payments to the Contractor.

BREACH OF CONTRACT, SUSPENSION AND TERMINATION

ARTICLE 34. BREACH OF CONTRACT

- 34.1. Either party commits a breach of contract where it fails to perform its obligations in accordance with the provisions of the contract.
- 34.2. Where a breach of contract occurs, the party injured by the breach is entitled to the following remedies:
- a) damages; and/or

- b) termination of the contract.
- 34.3. Damages may be either:
- a) general damages; or
 - b) liquidated damages.
- 34.4. Should the Contractor fail to perform any of its obligations in accordance with the provisions of the contract, the Contracting Authority is without prejudice to its right under article 34.2, also entitled to the following remedies;
- a) suspension of payments; and/or
 - b) reduction or recovery of payments in proportion to the failure's extent.
- 34.5. Where the Contracting Authority is entitled to damages, it may deduct such damages from any sums due to the Contractor or call on the appropriate guarantee.
- 34.6. The Contracting Authority shall be entitled to compensation for any damage which comes to light after the contract is completed in accordance with the law governing the contract.

ARTICLE 35. SUSPENSION OF THE CONTRACT

- 35.1. The Contractor shall, on the order of the Contracting Authority, suspend the execution of the contract or any part thereof for such time or times and in such manner as the Contracting Authority may consider necessary. The suspension shall take effect on the day the Contractor receives the order or at a later date when the order so provides.
- 35.2. Suspension of the contract in the event of presumed substantial errors or irregularities or fraud: The contract may be suspended in order to verify whether presumed substantial errors or irregularities or fraud occurred during the award procedure or the performance of the contract. If these are not confirmed, performance of the contract shall resume as soon as possible.
- 35.3. During the period of suspension, the Contractor shall take such protective measures as may be necessary.
- 35.4. Additional expenses incurred in connection with such protective measures may be added to the contract price, unless:
- a) otherwise provided for in the contract; or
 - b) such suspension is necessary by reason of some breach or default of the Contractor; or
 - c) the presumed substantial errors or irregularities or fraud mentioned in article 35.2 are confirmed and attributable to the Contractor.
- 35.5. The Contractor shall only be entitled to such additions to the contract price if it notifies the Project Manager, within 30 days after receipt of the order to suspend execution of the contract, of its intention to claim them.
- 35.6. The Contracting Authority, after consulting the Contractor, shall determine such additions to the contract price and/or extension of the period of performance to be granted to the Contractor in respect of such claim as shall, in the opinion of the Contracting Authority be fair and reasonable.
- 35.7. The Contracting Authority shall, as soon as possible, order the Contractor to resume the contract suspended or inform the Contractor that it terminates the contract. If the period of suspension exceeds 90 days and the suspension is not due to the Contractor's breach or default, the Contractor may, by notice to the Contracting Authority, request to proceed with the contract within 30 days, or terminate the contract.

ARTICLE 36. TERMINATION BY THE CONTRACTING AUTHORITY

- 36.1. The Contracting Authority may, at any time and with immediate effect, subject to Article 36.8, terminate the contract, except as provided for under Article 36.2.

36.2. Subject to any other provision of these General Conditions the Contracting Authority may, by giving seven days' notice to the Contractor, terminate the contract in any of the following cases where:

- (a) the Contractor is in serious breach of contract for failure to perform its contractual obligations;
- (b) the Contractor fails to comply within a reasonable time with the notice given by the Project Manager requiring it to make good the neglect or failure to perform its obligations under the contract which seriously affects the proper and timely performance of the services;
- (c) the Contractor refuses or neglects to carry out any administrative orders given by the Project Manager;
- (d) the Contractor assigns the contract or subcontracts without the authorisation of the Contracting Authority;
- (e) the Contractor is bankrupt, subject to insolvency or winding up procedures, is having its assets administered by a liquidator or by the courts, has entered into an arrangement with creditors, has suspended business activities, or is in any analogous situation arising from a similar procedure provided for under any national law or regulations relevant to that Contractor;
- (f) any organisational modification occurs involving a change in the legal personality, nature or control of the Contractor, unless such modification is recorded in an addendum to the contract;
- (g) any other legal disability hindering performance of the contract occurs;
- (h) the Contractor fails to provide the required guarantees or insurance, or the person providing the earlier guarantee or insurance is not able to abide by its commitments;
- (i) the Contractor has been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;
- (j) it has been established by a final judgment or a final administrative decision or by proof in possession of the Contracting Authority that the Contractor has been guilty of fraud, corruption, involvement in a criminal organisation, money laundering or terrorist financing, terrorist related offences, child labour or other forms of trafficking in human beings or has committed an irregularity;
- (k) the Contractor, in the performance of another contract financed by the EU budget/EDF funds, has been declared to be in serious breach of contract, which has led to its early termination or the application of liquidated damages or other contractual penalties or which has been discovered following checks, audits or investigations by the European Commission, the Contracting Authority, OLAF or the Court of Auditors;
- (l) after the award of the contract, the award procedure or the performance of the contract proves to have been subject to substantial errors, irregularities or fraud;
- (m) the award procedure or the performance of another contract financed by the EU budget/EDF funds proves to have been subject to substantial errors, irregularities or fraud which are likely to affect the performance of the present contract;
- (n) the Contractor fails to perform its obligation in accordance with Article 8 and Article 9;
- (o) the Contractor is unable to provide a suitable replacement to an expert, the absence of which affects the proper performance of the contract.

The cases of termination under points (e), (i), (j), (l), (m) and (n) may refer also to persons who are members of the administrative, management or supervisory body of the Contractor and/or to persons having powers of representation, decision or control with regard to the Contractor.

The cases of termination under points (a), (e), (f), (g), (i), (j), (k), (l), (m) and (n) may refer also to persons jointly and severally liable for the performance of the contract.

The cases under points (e), (i), (j), (k), (l), (m) and (n) may refer also to subcontractors.

- 36.3. Termination shall be without prejudice to any other rights or powers under the contract of the Contracting Authority and the Contractor. The Contracting Authority may, thereafter, complete the services itself, or conclude any other contract with a third party, at the Contractor's own expense. The Contractor's liability for delay in completion shall immediately cease when the Contracting Authority terminates the contract without prejudice to any liability thereunder that may already have arisen.
- 36.4. Upon termination of the contract or when it has received notice thereof, the Contractor shall take immediate steps to bring the services to a close in a prompt and orderly manner and to reduce expenditure to a minimum.
- 36.5. The Project Manager shall, as soon as possible after termination, certify the value of the services and all sums due to the Contractor as at the date of termination.
- 36.6. The Contracting Authority shall not be obliged to make any further payments to the Contractor until the services are completed. After the services are completed, the Contracting Authority shall recover from the Contractor the extra costs, if any, of completing the services, or shall pay any balance still due to the Contractor.
- 36.7. If the Contracting Authority terminates the contract pursuant to Article 36.2, it shall, in addition to the extra costs for completion of the contract and without prejudice to its other remedies under the contract, be entitled to recover from the Contractor any loss it has suffered up to the value of the services which have not been satisfactorily completed unless otherwise provided for in the Special Conditions.
- 36.8. Where the termination is not due to an act or omission of the Contractor, force majeure or other circumstances beyond the control of the Contracting Authority, the Contractor shall be entitled to claim in addition to sums owed to it for work already performed, an indemnity for loss suffered.
- 36.9. This contract shall be automatically terminated if it has not given rise to any payment in the two years following its signing by both parties.

ARTICLE 37. TERMINATION BY THE CONTRACTOR

- 37.1. The Contractor may, after giving 14 days' notice to the Contracting Authority, terminate the contract if the Contracting Authority:
 - a) fails for more than 120 days to pay the Contractor the amounts due after the expiry of the time limit stated in Article 29; or
 - b) consistently fails to meet its obligations after repeated reminders; or
 - c) suspends the progress of the services or any part thereof for more than 90 days for reasons not specified in the contract, or not attributable to the Contractor's breach or default.
- 37.2. Such termination shall be without prejudice to any other rights of the Contracting Authority or the Contractor acquired under the contract.
- 37.3. In the event of such termination, the Contracting Authority shall pay the Contractor for any loss or damage the Contractor may have suffered. Such additional payment must not be such that the total payments exceed the amount specified in Article 2 of the contract.

ARTICLE 38. FORCE MAJEURE

- 38.1. Neither party shall be considered to be in default or in breach of its obligations under the contract if the performance of such obligations is prevented by any circumstances of *force majeure* which arise after the date of notification of award or the date when the contract becomes effective.
- 38.2. The term *force majeure*, as used herein covers any unforeseeable events, not within the control of either party and which by the exercise of due diligence neither party is able to overcome such as acts of God, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars whether declared or not, blockades, insurrection, riots, epidemics, landslides, earthquakes, storms,

lightning, floods, washouts, civil disturbances, explosions.. A decision of the European Union to suspend the cooperation with the partner country is considered to be a case of force majeure when it implies suspension of funding the contract.

- 38.3. Notwithstanding the provisions of Article 19 and Article 36, the Contractor shall not be liable for liquidated damages or termination for breach or default if, and to the extent that, its delay in performance or other failure to perform its obligations under the contract is the result of an event of *force majeure*. The Contracting Authority shall similarly not be liable, notwithstanding the provisions of Article 29 and Article 37, for payment of interest on delayed payments, for non-performance or for termination by the Contractor for breach or default, if, and to the extent that, the Contracting Authority's delay or other failure to perform its obligations is the result of *force majeure*.
- 38.4. If either party considers that any circumstances of force majeure have occurred which may affect performance of its obligations it shall promptly notify the other party and the Project Manager giving details of the nature, the probable duration and the likely effect of the circumstances. Unless otherwise directed by the Project Manager in writing, the Contractor shall continue to perform its obligations under the contract as far as is reasonably practicable, and shall seek all reasonable alternative means for performance of its obligations which are not prevented by the force majeure event. The Contractor shall not put into effect such alternative means unless directed so to do by the Project Manager.
- 38.5. For a fee-based contract, if the Contractor incurs additional costs in complying with the Project Manager's directions or using alternative means under Article 38.4 the amount thereof shall be certified by the Project Manager.
- 38.6. If circumstances of *force majeure* have occurred and continue for a period of 180 days then, notwithstanding any extension of time for completion of the contract that the Contractor may by reason thereof have been granted, either party shall be entitled to serve upon the other 30 days' notice to terminate the contract. If at the expiry of the period of 30 days the situation of *force majeure* persists, the contract shall be terminated and, in consequence thereof under the law governing the contract, the parties shall be released from further performance of the contract.

ARTICLE 39. DECEASE

- 39.1. If the Contractor is a natural person, the contract shall be automatically terminated if that person dies. However, the Contracting Authority shall examine any proposal made by its heirs or beneficiaries if they have notified their wish to continue the contract.
- 39.2. Where the Contractor consists of a number of natural persons and one or more of them die, a report shall be agreed between the parties on the progress of the contract and the Contracting Authority shall decide whether to terminate or continue the contract in accordance with the undertaking given by the survivors and by the heirs or beneficiaries, as the case may be.
- 39.3. In the cases provided for in Articles 39.1 and 39.2, persons offering to continue to implement the contract shall notify the Contracting Authority thereof within 15 days of the date of decease. The decision of the Contracting Authority shall be notified to those concerned within 30 days of receipt of such a proposal
- 39.4. Such persons shall be jointly and severally liable for the proper implementation of the contract to the same extent as the deceased Contractor. Continuation of the contract shall be subject to the rules relating to establishment of any guarantee provided for in the contract.

SETTLEMENT OF DISPUTES AND APPLICABLE LAW

ARTICLE 40. SETTLEMENT OF DISPUTES

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

- 40.2. Once a dispute has arisen, a party shall notify the other party of the dispute, stating its position on the dispute and any solution which it envisages, and requesting an amicable settlement. The other party shall respond to this request for amicable settlement within 30 days, stating its position on the dispute. Unless the parties agree otherwise, the maximum time period laid down for reaching an amicable settlement shall be 120 days from the date of the notification requesting such a procedure. Should a party not agree to the other party's request for amicable settlement, should a party not respond in time to that request or should no amicable settlement be reached within the maximum time period, the amicable settlement procedure is considered to have failed.
- 40.3. In the absence of an amicable settlement, a party may notify the other party requesting a settlement through conciliation by a third person. If the European Commission is not a party to the contract, it may accept to intervene as conciliator. The other party shall respond to the request for conciliation within 30 days. Unless the parties agree otherwise, the maximum time period laid down for reaching a settlement through conciliation shall be 120 days from the notification requesting such a procedure. Should a party not agree to the other party's request for conciliation, should a party not respond in time to that request or should no settlement be reached within the maximum time period, the conciliation procedure is considered to have failed.
- 40.4. If the amicable settlement procedure and, if so requested, the conciliation procedure fails, each party may refer the dispute to either the decision of a national jurisdiction or arbitration, as specified in the Special Conditions.

ARTICLE 41. APPLICABLE LAW

- 41.1. This contract shall be governed by the law of the country of the Contracting Authority or, where the Contracting Authority is the European Commission, by the European Union law supplemented as appropriate by Belgian law.

DATA PROTECTION

ARTICLE 42. DATA PROTECTION

- 42.1. Any personal data included in the contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. The data shall be processed solely for the purposes of the performance, management and monitoring of the contract by the Contracting Authority without prejudice to possible transmission to the bodies charged with monitoring or inspection in application of EU law. The Contractor shall have the right to access his/her personal data and to rectify any such data. Should the Contractor have any queries concerning the processing of his/her personal data, s/he shall address them to the Contracting Authority. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.
- 42.2. Where the contract requires processing personal data, the Contractor may act only under the supervision of the data controller, in particular with regard to the purposes of processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.
- 42.3. The data shall be confidential within the meaning of Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data. The Contractor shall limit access to the data to staff strictly needed to perform, manage and monitor the contract.
- 42.4. The Contractor undertakes to adopt technical and organisational security measures to address the risks inherent in processing and in the nature of the personal data concerned in order to:
- a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:

- aa) unauthorised reading, copying, alteration or removal of storage media;
- ab) unauthorised data input, unauthorised disclosure, alteration or erasure of stored personal data;
- ac) unauthorised persons from using data-processing systems by means of data transmission facilities;
- b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- c) record which personal data have been communicated, when and to whom;
- d) ensure that personal data processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
- e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- f) design its organisational structure in such a way that it meets data protection requirements.

* * *



Terms of Reference

Baseline Analysis on Quality Management in Public Administration and Public Services (QM in PA and PS) in the Western Balkans

1. Background

The Regional School of Public Administration (ReSPA) is the inter-governmental organization for enhancing regional cooperation, promoting shared learning and supporting the development of public administration in the Western Balkans. ReSPA Members are Albania, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia, while Kosovo*¹ is a beneficiary and observer. ReSPA's purpose is to help governments in the Western Balkan region develop better public administration, public services and overall governance systems for their citizens and businesses, and prepare them for membership in the European Union (EU). Since its inception, ReSPA has contributed to the development of human resources and administrative capacities through training programmes and innovative cooperation mechanisms such as the exchange of good practices, peer reviews and development of know-how.

European Commission (EC) provides directly managed funds for support of ReSPA activities (research, training and networking programmes) in line with the EU accession process. So far, two EC Grants have been implemented by ReSPA during the period 2010-2015. The new EC grant will support the main objective of ReSPA Programme of Work in 2016-2017: Improving regional cooperation in the field of public administration reform (PAR) and EU integration and strengthening administrative capacities in the beneficiaries. This objective will be achieved through the following three pillars:

- 1) European Integration Pillar: Increased capacity of public administration in the ReSPA Members necessary for successful conducting of the European Integration process;
- 2) Public Administration Reform Pillar: Facilitated and enhanced cooperation and exchange of experience in PAR and European Integration activities in ReSPA Members;
- 3) Governance for Growth Pillar: Ensured effective coordination of the implementation of the Governance for Growth pillar of the South East Europe (SEE) 2020 Strategy.

2. Description of the Assignment

During April 2015, valuable data on Quality Management (QM) in the Western Balkans has been received from the PAR network members and from a PAR network event in Ohrid, FYROM. It was confirmed that no QM baseline study has been developed in the Western Balkans. Also, all of the initiatives dealing with QM systems have not been widespread and institutionalised to the highest extent, with the exception of the FYROM case.

¹ * This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and ICJ Advisory opinion on the Kosovo Declaration of independence

In July 2015, a ReSPA expert Working Group on Quality of Public Administration and Public Services (WG QPAS) has been established. Following consultations and expressed interest of the Working Group Members, it has been decided that ReSPA should conduct a regional analysis devoted to Quality Management in the Western Balkans, particularly focusing on the organisational aspects of central government. It is planned for the assignment to take place from September 2016 until the end of January 2017.

3. Objectives

The main objective of the assignment is to contribute to the improvement of public administrations and public services in the Western Balkans.

More specifically, the comparative study will contribute to an analysis of the required institutional and legislative framework and identification of strengths, weaknesses and possible impediments for different QM systems and instruments implementation in the Western Balkans.

3. Duties and responsibilities

3.1 Briefing and de-briefing sessions organized by the Contracting Authority

It is envisaged that the the contractor will be represented by two engaged experts to the assignment (team leader and one another) at the meetings which will be held as follows: Preparatory meeting with ReSPA staff will be held at ReSPA premises in September 2016; The meeting on the intermediate results will be organised with the members of the ReSPA Working Group on Quality in Public Administration and Services at ReSPA premises in the first week of November 2016. Final event will be organised in the course of January 2017 during which the research analysis should be presented and elaborated. Lat two events (presentation of intermediary results and final event) are envisaged to last for 2 days.

3.2 Production of a Baseline Analysis

The baseline analysis will encompass: (i) quality management systems in the region and EU, (ii) quality management tools and best practices in the region and EU, (iii) current state of affairs of QM in the countries of the region, and (iv) production of a guideline for implementation of a QM system in the mentioned countries. The final draft of the baseline will be submitted to ReSPA by 16 December 2016.

Methodology of the work will be comprised of the desk research and interviews/questionnaires with the public officials from the relevant Public Administration institutions. The Contractor should collect and analyse primary and secondary data from the Western Balkans region covering: Albania, Bosnia and Herzegovina, Kosovo*, FYROM, Montenegro and Serbia. A more detailed methodology, including sample description (qualitative and quantitative aspect), will be expected from the tenderers. Delivery of the study will be in electronic version only.

The Contractor must comply with the latest Communication and Visibility Manual for EU External Actions (see http://ec.europa.eu/europeaid/work/visibility/index_en.htm).

3. Presentation of the Baseline analysis

The study will be formally presented in the region, at a venue yet to be decided, where it is envisaged that the Team Leader jointly with additional expert ² will present the background, methodology, key findings, conclusions and recommendations in the form of a Power Point presentation. The launching event is planned to be held in the last week of January 2017.

4. Study content

The study content is envisaged to have at least the following structure::

Executive Summary

1. Introduction - Description and Definition of Terms and Values (reference resources may be OECD publication e.g. Governance at a Glance, EU PA principles produced by SIGMA, etc) – between 3 - 5 pages
 - Principles of Public Management, Governance and Excellence
 - Organisational Culture
 - EU PA Principles and link to QM systems
 - Political Leadership
 - Added Value of QM - How QM affects Public Administration

2. Quality Management Tools and Best Practices (in the Region and EU)
(Linking the tools with the EU PA Principles and SEE2020 – 5th Pillar Governance for Growth and defining the Tools which are recommended to reach PA Principles (list of tools to be observed)) – between 5 - 7 pages
 - Understanding users' needs and expectations
 - Direct contact with citizens and businesses
 - Indirect feedback and representation
 - Mystery shopping
 - Life events and customer journey mapping
 - Improving processes to benefit public service users
 - Process re-engineering
 - Administrative simplification
 - Meeting user expectations of easy access to services
 - The one-stop shop (OSS)
 - Multi-channel service delivery
 - Using e-Government to access faster, cheaper, better services
 - Information to interaction
 - Interoperability and 'once only'
 - Moving towards digital by default
 - Committing to service standards and measuring satisfaction
 - Service charters
 - Measuring and managing satisfaction
 - Conclusions, key messages and inspiration for future action

3. Quality Management Systems (Region and EU) – between 4 - 8 pages
(Linking the tools to PA Principles and SEE2020)

² the contractor will be represented by two engaged experts to the assignment (team leader and one another)

(PA Principles (Sigma) and TQM (CAF))

- ISO 9001
 - EFQM
 - CAF
 - (Sectoral Integrated Management Systems)
4. Current state of affairs of QM in the countries of the Region – between 4 - 7 pages
 - History of QM implementation (if any)
 - Institutions involved in QM
 - Legal framework
 - Human capital (capacity building activities)
 - Areas for improvement (any other aspect)
 5. Partnership with NGOs and Professional Organisations enhancing QM – between 2 - 4 pages
 - Professional QM organizations
 - Think tanks involved in QM
 - Research Institutes involved in QM
 - Academic institutions engaged in the subject
 - International / Donor funded projects in the subject (past, current or planned for the near future)
 6. Guideline for implementation of QM in the Countries/Region – between 4 - 7 pages
 - Institutional aspect
 - Legal aspect
 - Capacity Building aspect
 - How to link QM and PAR policies
 - Which Government Support is required for the Use QM
 - Which external support is required
 7. Techniques/Systems to Implement Quality management in a specific country – between 3 – 5 pages
 - Designing an Implementation of Plan – guideline
 - Overcoming Barriers to implement Quality management and introduce Change - advices
 - Which next steps need to be undertaken
 8. Conclusions and Recommendations (regional and country level) – between 2 – 3 pages
 - Common Guidelines
 - Country Specific Recommendations with special emphasise on policy recommendations

Bibliography and Sources of Information

5. Obligations of the Contractor and Contracting Authority

It is envisaged that the Contractor will appoint a Team Leader to oversee assignment implementation as a part of its quality assurance system.

The Contractor must ensure that experts are adequately supported and equipped, providing support facilities to their team of experts (backstopping) during the implementation of the contract, as required.

The Contractor shall be responsible for all reporting under the contract and advise, propose, coordinate and implement all of the above in accordance with ReSPA's requirements.

The Contractor is expected to provide reports and written contributions that require minimum editorial and English corrections by the Contracting Authority.

No specific facilities will be provided to the Contractor.

The Contractor shall be responsible to provide backstopping services for the assignment, administration and financial management, and for the provision of technical experts as defined in the Terms of Reference and the Technical Proposal to ensure the efficient implementation of this assignment.

The Contractor is expected to provide Galley proof (original and signed) and to ensure legality of the inputs. All writing and material to be provided by the Contractor during this assignment will be original and the Contractor will work to the highest ethical standards and, in particular, will avoid: a. Unlawful violation of any personal right of privacy; b. Unlawful defamation of any person or entity; c. Breach of any copyright material, literary or publicity right of any person or entity; d. Violation of any law of the jurisdiction(s) in which the Contractor is located while fulfilling the assignment e. Plagiarism or improper attribution of others' work.

All costs relating to the provision of experts (including any applicable travel and subsistence/per diems – with the exception of the presentation of the study) and direction/backstopping costs of the assignment must be included in the overall fee rates of the experts.

Per diems (according to the official EU per diem rate for related countries <https://ec.europa.eu/europeaid/sites/devco/files/perdiem-rate-20150318.pdf>) and travel costs will be reimbursed by the Contracting authority, for the envisaged events and required expert presence specified in 3.1. *Briefing and de-briefing sessions organized by the Contracting Authority.*

Expert profile requirements

Note that civil servants and other staff of public administrations are not eligible for this assignment.

All experts must be independent and free from conflicts of interest in the responsibilities they take on.

5.1 Team Leader

Qualifications and skills:

- University level qualification (University Degree awarded on completion of at least three years study in a University or equivalent institution);
- Excellent communication and reporting skills.
- Fluency in spoken and written English.
- Full computer literacy.

General professional experience:

- At least 10 years experience of working in public administrations and/or with the development and implementation of quality management systems.
- Management of studies and/or reports in relevant fields.

Specific professional experience:

- Familiarity of quality management systems and public administrations in the Western Balkans.
- Experience of working with international organisations is an asset.

5.2 Pool of experts

Whilst the ideal is the engagement of one national expert per country (Albania, Bosnia and Herzegovina, Kosovo*, FYROM, Montenegro and Serbia), the minimum is a team of experts to be proposed by the tenderer, meeting the following general profile, who can cover the respective countries.

Qualifications and skills:

- University level qualification (University Degree awarded on completion of at least three years study in a University or equivalent institution).
- Excellent communication and reporting skills.
- Good command of spoken and written English
- The team should be able to cover materials and communication in all of the languages spoken in ReSPA Members (Albania, Bosnia and Herzegovina, FYROM, Montenegro, Serbia) and Kosovo*
- Full computer literacy.

General professional experience:

- At least 7 years experience of professional experience working in fields related to the assignment.
- Inputs to studies and/or reports in relevant fields.

Specific professional experience:

- Familiarity with public administrations and quality management systems in the respective Western Balkans countries.

6. Duration of the assignment and allocated budget

Initiation of the study is foreseen to commence during September 2016 while the assignment should be finalised by the end of January 2017. The final outputs will be subject to ReSPA approval before payment is executed.

The budget allocated for this assignment shall not exceed 51.000 EUR.

7. Specific instructions

All information and documentation received during the assignment shall be treated with the utmost confidentiality.

ANNEX III: ORGANISATION & METHODOLOGY

To be completed by the tenderer

Please provide the following information:

1. RATIONALE

- Any comments you have on the Terms of Reference for the successful execution of activities, in particular regarding the objectives and expected results, thus demonstrating the degree of understanding of the contract. Your opinion on the key issues related to the achievement of the contract objectives and expected results.
- An explanation of the risks and assumptions affecting the execution of the contract.

2. STRATEGY

- An outline of the approach proposed for contract implementation.
- A list of the proposed tasks you consider necessary to achieve the contract objectives.
- Inputs and outputs.

3. BACKSTOPPING

- A description of the support facilities (back-stopping) that the contractor will provide to the team of experts during execution of the contract. The back-up function will be assessed in the evaluation and should be carefully explained in the organisation and methodology, including the list of staff, units, capacity of permanent staff regularly intervening as experts on similar projects, provision of expertise in the region/country or origin as well as partner countries, organisational structure, etc. which are supposed to ensure that function, as well as the available quality systems and knowledge capitalisation methods and tools, within the respective members of the consortium.
- A description of any subcontracting arrangements with a clear indication of the tasks that will be entrusted to subcontractors and a statement by the tenderer guaranteeing the eligibility of subcontractors.

4. INVOLVEMENT OF ALL MEMBERS OF THE CONSORTIUM

- If a tender is submitted by a consortium, a description of the input from each member of the consortium and the distribution and interaction of tasks and responsibilities between them. Furthermore, the involvement of all members of the consortium will be considered added value in the tender evaluation. If the tender is submitted by a single company, the total of available points for this part in the evaluation grid will be allocated.

5. TIMETABLE OF WORK

- The timing, sequence and duration of the proposed tasks, taking into account travel time.
- The identification and timing of major milestones in executing the contract, including an indication of how the achievement of these would be reflected in any reports, particularly those stipulated in the Terms of Reference.

Organisation & methodology

- The methodologies contained in the offer should include a work plan indicating the envisaged resources to be mobilised.

6. LOG FRAME

A logical framework reflecting the considerations described in items 1 – 3 (see the Project Cycle Management Manual available from the PCM Home page:

https://ec.europa.eu/europeaid/aid-delivery-methods-project-cycle-management-guidelines-vol-1_en).

ANNEX IV: KEY EXPERTS

Name of expert	Proposed position	Years of experience	Age	Educational background	Specialist areas of knowledge	Experience in partner country	Languages and degree of fluency (VG, G, W)

CURRICULUM VITAE

Proposed role in the project:

Family name:

First names:

Date of birth:

Nationality:

Civil status:

Education:

Institution (Date from - Date to)	Degree(s) or Diploma(s) obtained:

Language skills: Indicate competence on a scale of 1 to 5 (1 - excellent; 5 - basic)

Language	Reading	Speaking	Writing

Membership of professional bodies:

Other skills: (e.g. Computer literacy, etc.)

Present position:

Years within the firm:

Key qualifications: (Relevant to the project)

Specific experience in the region:

Country	Date from - Date to

Professional experience

Date from - Date to	Location	Company & reference person ¹ (name & contact details)	Position	Description

Other relevant information (e.g., Publications)

¹ The Contracting Authority reserves the right to contact the reference persons. If you can not provide a reference, please provide a justification.

ANNEX V: BUDGET

Global price: _____ EUR



FINANCIAL IDENTIFICATION

PRIVACY STATEMENT

http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm#en

Please use CAPITAL LETTERS and LATIN CHARACTERS when filling in the form.

BANKING DETAILS ①

ACCOUNT NAME ②

IBAN/ACCOUNT NUMBER ③

CURRENCY

BIC/SWIFT CODE

BRANCH CODE ④

BANK NAME

ADDRESS OF BANK BRANCH

STREET & NUMBER

TOWN/CITY

POSTCODE

COUNTRY

ACCOUNT HOLDER'S DATA

AS DECLARED TO THE BANK

ACCOUNT HOLDER

STREET & NUMBER

TOWN/CITY

POSTCODE

COUNTRY

REMARK

BANK STAMP + SIGNATURE OF BANK REPRESENTATIVE ⑤

DATE (Obligatory)

SIGNATURE OF ACCOUNT HOLDER (Obligatory)

- ① Enter the final bank data and not the data of the intermediary bank.
- ② This does not refer to the type of account. The account name is usually the one of the account holder. However, the account holder may have chosen to give a different name to its bank account.
- ③ Fill in the IBAN Code (International Bank Account Number) if it exists in the country where your bank is established
- ④ Only applicable for US (ABA code), for AU/NZ (BSB code) and for CA (Transit code). Does not apply for other countries.
- ⑤ It is preferable to attach a copy of RECENT bank statement. Please note that the bank statement has to confirm all the information listed above under 'ACCOUNT NAME', 'ACCOUNT NUMBER/IBAN' and 'BANK NAME'. With an attached statement, the stamp of the bank and the signature of the bank's representative are not required. The signature of the account-holder and the date are ALWAYS mandatory.



PLEASE COMPLETE AND SIGN THIS FORM AND ATTACH COPIES OF OFFICIAL SUPPORTING DOCUMENTS (REGISTER(S) OF COMPANIES, OFFICIAL GAZETTE, VAT REGISTRATION, ETC.)

LEGAL ENTITY

PRIVACY STATEMENT

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

Please use CAPITAL LETTERS and LATIN CHARACTERS when filling in the form.

PRIVATE/PUBLIC LAW BODY WITH LEGAL FORM

OFFICIAL NAME ①			
BUSINESS NAME (if different)			
ABBREVIATION			
LEGAL FORM			
ORGANISATION TYPE	FOR PROFIT	NGO ②	YES NO
	NON FOR PROFIT		
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.

TABLE WITH CORRESPONDING FIELD DENOMINATION BY COUNTRY

ISO CODE	MAIN REGISTRATION NUMBER
AT	Firmenbuchnummer (FN) ZentraleVereinregister (ZVR-Zahl) Ordnungsnummer
BE	Numéro d'entreprise Ondernemingsnummer Unternehmensnummer
BG	Булстат (Bulstat Code) Единен идентификационен код (ЕИК/ПИК) Unified Identification Code (UIC)
CY	Αριθμός Εγγραφής Αριθμός Μητρώου
CZ	Identifikační číslo (IČO)
DE	Handelsregister Genossenschaftsregister (Nummer de Firma) Vereinsregister (Nummer des Vereins) Nummer der Partnerschaft (Partnerschaftsregister)
DK	Det centrale virksomhedsregister (CVR-nummer)
EE	Registrikood
ES	HOJA number
FI	Yritys- ja yhteisötunnus (Y-tunnus) Företags- och organisationsnummer (FO-nummer) Business Identity code (Business ID)
FR	Immatriculation au Registre de Commerce et de Sociétés (RCS) Système Informatique du Répertoire des Entreprises (SIRENE)
GB	Company number
GR	ΑΡΙΘΜΟΣ Γ.Ε.ΜΗ (Γενικού Εμπορικού Μητρώου) Δικηγορικός Σύλλογος Αθηνών (Δ.Σ.Α)
HR	Matični broj subjekta (MBS) Pod registarskim Brojem Matični broj obrta (MBO) Registarski Broj kakladnog
HU	Cégjegyzékszám
IE	Company number Grouping registration number in Ireland
IT	Repertorio Economico Amministrativo (REA)
LT	Kodas
LU	Registre de commerce et des sociétés RCS Numéro d'immatriculation Handelsregisternummer
LV	Vienotais Reģistrācijas Numurs

MT	Registration number Register of Voluntary Organisation (Identification number)
NL	Kamer van Koophandel (KvK-nummer) Dossiernummer
PL	REGON
PT	Numero de identificação de pessoa colectiva (NIPC)
RO	Numar de ordine in registrul comertului Numarul inscrierii in registrul special
SE	Organisationsnummer
SI	Matična številka
SK	Identifikačné číslo (ICO)

LIST OF ENTITIES INVITED TO SUBMIT A TENDER

Title: Baseline Analysis on Quality Management in Public Administration and Public Services (QM in PA and PS) in the Western Balkans

Item no.	Institution Name	Address	Contact
1.	C&M (Consulting & Management)	Albania	info@cmalbania.al
2.	ACN (Albanian Consulting Network)	Albania	office@albconsulting.org
3.	KDZ - Zentrum für Verwaltungsforschung	Austria	prorok@kdz.or.at
4.	The European Consultants Organisation (ECO)	Brussels, Belgium	cli@eco3.be
5.	School of Economics and Business	Bosnia and Herzegovina	eldin.mehic@efsa.unsa.ba
6.	Association for Quality in Bosnia and Herzegovina's	Bosnia and Herzegovina	kvalitet@bih.net.ba
7.	Enterprise Development Agency (EDA)	Bosnia and Herzegovina	eda@edabl.org
8.	Sense Consulting	Croatia	sense@senseconsulting.eu
9.	Creative Development Alternatives) - CREDA	Czech Republic	info@credaconsulting.com
10.	Quality Management Solutions - QMS	Denmark	lyonsqms@bigpond.com

Item no.	Institution Name	Address	Contact
11.	IARM -Institute for Accreditaion of the Republic of Macedonia	Macedonia	iarm.gov.mk
12.	EIPA- The European Institute of Public Administration (EIPA)	Netherlands	n.thijs@eipa.eu
13.	European Policy Centre - CEP	Serbia	milena.lazarevic@europeanpolicy.org
14.	Euro Plus Consulting & Management	Slovakia	europlus@europlus.sk
15.	IPS Institute	Slovenia	info@ips-institute.si
16.	SOGES S.p.a	Italy	milano@sogesnetwork.eu
17.	LATVIAN SCHOOL OF PUBLIC ADMINISTRATION	Latvia	vas@vas.gov.lv
18.	Zygon Baltic Consulting - ZBC	Latvia	zygon@zygon.lv
19.	LITHUANIAN INSTITUTE OF PUBLIC ADMINISTRATION - LIPA	Lithuania	livadis@livadis.lt
20.	BONAIR SA	Poland	info@bonair.com.pl
21.	Open Management Education Center - OMEC	Poland	info@omec.eu
22.	SIPU-Swedish Institute for Public Administration	Sweden	info@sipuinternational.se
23.	Public Administration International (PAI)	United Kingdom	pai@public-admin.co.uk
24.	<u>Lola Institute</u>	Serbia	dragomir.ilic@li.rs

Item no.	Institution Name	Address	Contact
25.	<u>InterConsulting</u>	Serbia	office@interconsulting.biz
26.	<u>QAS (Sistem za obezbjeđenje i unapređenje kvaliteta)</u>	Montenegro	office@qas.ac.me
27.	<u>ISME Institute for Standardization of Montenegro</u>	Montenegro	isme@cg.yu
28.	Institut Alternativa	Montenegro	info@institutalternativa.org

EVALUATION GRID FOR GLOBAL PRICE CONTRACTS

Title: Baseline Analysis on Quality Management in Public Administration and Public Services (QM in PA and PS) in the Western Balkans

	Maximum
Organisation and methodology	
Rationale	25
Strategy	40
Back-up function	5
Involvement of all members of the consortium	5
Timetable of activities	25
Overall total score	100

Strengths	
Weaknesses	

NB Only tenders with average scores of at least 75 points qualify for the financial evaluation

ADMINISTRATIVE COMPLIANCE GRID

Contract title :	Baseline Analysis on Quality Management in Public Administration and Public Services (QM in PA and PS) in the Western Balkans	Reference :	ReSPA/EC/SER/001-16
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Tender envelope number	Tenderer's name (Leader) (Nationality)	Other members of the consortium if any Name (Nationality)	Within deadline?	Tender submission form duly completed and only 1 tender per tenderer?	Eligible nationality (all parties including subcontractors if known)?	Tenderer's declaration (signed by each consortium member, if appropriate)?	Language as required?	Economic & financial capacity? (OK/a/b/...) ¹	Professional capacity? (OK/a/b/...)	Technical capacity? (OK/a/b/...)	Organisation & methodology exists?	Key experts (list + CVs)(For contracts requiring key experts)?	Key experts are present in only one tender as key experts(For contracts requiring key experts)?	All key experts have signed statements of exclusivity & availability(For contracts requiring key experts)?	Sub-contracting statement acceptable?	Overall decision? (Accept / Reject)
1																
2																
3																
4																
5																
6																

Chairperson's name	
Chairperson's signature	
Date	

¹ Enter 'OK' if all criteria have been satisfied, otherwise enter 'a', 'b', 'c', etc to record any criteria which have not been satisfied

SERVICE TENDER SUBMISSION FORM

Ref: ReSPA/EC/SER/001-16

Contract title: Baseline Analysis on Quality Management in Public Administration and Public Services (QM in PA and PS) in the Western Balkans

Please supply one signed tender submission form (including signed statements of exclusivity and availability from all key experts proposed, if applicable, a completed financial identification form and a completed legal entity file (only for the Leader) and declarations from the Leader and all members (if you are in a consortium), together with three copies. The attachments to this submission form (i.e. declarations, statements, proofs) may be in original or copy. If copies are submitted, the originals must be dispatched to the Contracting Authority upon request. For economical and ecological reasons, we strongly recommend that you submit your files on paper (no plastic folders or dividers). We also suggest you use double-sided printing as much as possible.

Tenders submitted by consortiums (i.e., either a permanent, legally-established grouping or a grouping constituted informally for a specific tender procedure) must follow the instructions applicable to the consortium leader and its members.

1. SUBMITTED by (i.e. the identity of the Tenderer)

	Name(s) and address(es) of legal entity or entities submitting this tender
Leader ¹	
Member	
Etc. ...	

2. CONTACT PERSON (for this tender)

Name	
Organisation	
Address	
Telephone	
Fax	
e-mail	

¹ Add/delete additional lines for consortium members as appropriate. **Note that subcontractors are not considered to be consortium members.** If this tender is being submitted by an individual legal entity, the name of that legal entity should be entered as 'Leader' (and all other lines should be deleted). Any change in the identity of the Leader and/or any consortium members between the deadline for receipt of tenders set in the Instructions to tenderers and the award of the contract is not permitted without the prior approval in writing of the Contracting Authority.

3. DECLARATION(S)

As part of its tender, each legal entity identified under point 1 of this form, including every consortium member, must submit a signed declaration using the attached format.

4. STATEMENT

I, the undersigned, being the authorised signatory of the above tenderer (for consortiums, this must include all consortium members), hereby declare that we have examined and accept without reserve or restriction the entire contents of the tender dossier for the tender procedure referred to above. We offer to provide the services requested in the tender dossier on the basis of the following documents, which comprise our Technical offer, and our Financial offer, which is submitted in a separate, sealed envelope:

- Organisation & Methodology
- Key experts (comprising a list of the key experts and their CVs), if required

- Tenderer's declaration (for a consortium, this must include one from every consortium member)
- Statements of exclusivity and availability signed by each of the key experts, if required
- Completed financial identification form (see Annex VI to the draft contract) providing details of the bank account into which payments under the proposed contract should be made in the event that we are awarded the contract (or the financial identification number or a copy of the financial identification form provided to the Contracting Authority on an earlier occasion, unless it has changed in the meantime)
- Completed legal entity file (or the legal entity number allocated. Alternatively a copy of the legal entity file provided to the Contracting Authority on an earlier occasion, unless the legal status has changed in the meantime)
- Duly authorised signature: an official document (statutes, power of attorney, notary statement, etc.) proving that the person who signs on behalf of the company/joint venture/consortium is duly authorised to do so.
- Documentary proof or statements required under the law of the country where we are effectively established (or each of the companies in case of a consortium), to show that we do not fall into any of the exclusion situations listed in Section 2.3.3 of the Practical Guide. This evidence or these documents or statements must carry a date, which is not more than one year before the date of submission of the tender. In addition, a statement is furnished stating that the situations described in these documents have not changed since then.
- Documentary evidence of the financial and economic capacity as well as the technical and professional capacity according to the selection criteria specified in the contract notice.

We understand that our tender may be rejected if we propose key experts who have been involved in preparing this project or hire such staff as advisers in the preparation of our tender and that we may also be subject to exclusion from other tender procedures and contracts funded by the EU/EDF.

We are fully aware that, for a consortium, the composition of the consortium cannot be changed in the course of the tender procedure, unless the Contracting Authority gives its prior approval in writing. We are also aware that the consortium members would have joint and several liability towards the Contracting Authority concerning participation in both the above tender procedure and any contract awarded to us as a result of it.

This tender is subject to acceptance within the validity period stipulated in clause 6 of the Instructions to tenderers. Signed on behalf of the tenderer:

Name	
Signature	
Date	

**FORMAT OF THE DECLARATION REFERRED TO IN POINT 3
OF THE TENDER SUBMISSION FORM**
To be submitted on the headed notepaper of the legal entity concerned

<Date>

<Name and address of the Contracting Authority — see points 5 & 25 of the contract notice >

Your ref: < Publication reference >

Dear Sir/Madam

TENDERER'S DECLARATION

In response to your letter of invitation to tender for the above contract, we <Name(s) of legal entity or entities> hereby declare that we:

- are submitting this tender [on an individual basis] * [as member of the consortium led by < name of the leader> [ourselves]] * for this contract. We confirm that we are not participating in any other tender for the same contract in any form (as a member — including leader — in a consortium or as an individual Candidate);
- agree to abide by the ethics clauses in Section 13 of the Instructions to Tenderers and have no professional conflicting interests and/or any relation with other short-listed candidates or other parties in the tender procedure or behaviour which may distort competition at the time of submitting this tender according to Section 2.3.6 of the Practical Guide;
- [have attached a current list of the enterprises in the same group or network as ourselves] [are not part of a group or network] *;
- will inform the Contracting Authority immediately if there is any change in the above circumstances at any stage during the tender procedure or during implementation of the tasks;
- fully understand and accept that if the above-mentioned persons participate in spite of being in any of the situations listed in Section 2.3.3.1. of the Practical Guide or if the declarations or information provided prove to be false they may be subject to rejection from this procedure and to administrative sanctions in the form of exclusion and financial penalties representing 2% to 10% of the total estimated value of the contract being awarded and that this information may be published on the Commission website in accordance with the conditions set in Section 2.3.4 of the Practical Guide;
- are aware that, for the purposes of safeguarding the financial interests of the EU, our personal data may be transferred to internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel or to the European Anti-Fraud Office.

We understand that our tender and the expert may be excluded if we propose the same key expert as another tenderer or if we propose a key expert who is engaged in an EU/EDF financed project if the input from his/her position in that contract could be required on the same dates as his/her work under this contract.

[* Delete as applicable]

We understand that if we fail to respond within the delay after receiving the notification of award, or if the information provided is proved false, the award may be considered null and void.

Yours faithfully,

<Signature of authorised representative of the legal entity >

< Name and position of authorised representative of the legal entity >

STATEMENT OF EXCLUSIVITY AND AVAILABILITY²

PUBLICATION REF: _____

I, the undersigned, hereby declare that I agree to participate exclusively with the tenderer < tenderer name > in the above-mentioned service tender procedure. This includes that I will not be proposed as a replacement expert in this tender procedure. I declare that I am able and willing to work for the period(s) set for the position for which my CV has been included if this tender is successful, namely:

From	To	Availability
< start of period 1 >	< end of period 1 >	[full time] [part time]
< start of period 2 >	< end of period 2 >	[full time] [part time]
< etc. >		

I confirm that I do not have a confirmed engagement³ as key expert in another EU/EDF-funded project, or any other professional activity, incompatible in terms of capacity and timing with the above engagements.

By making this declaration, I understand that I am not allowed to offer my services as an expert to any other tenderer participating in this tender procedure. I am fully aware that if I do so, I will be excluded from this tender procedure, the tenders will be rejected, and I may also be subject to exclusion from other tender procedures and contracts funded by the EU/EDF.

I also declare that I am not in a situation of conflict of interest or unavailability and commit to inform the tenderer(s) of any change in my situation.

I acknowledge that I have no contractual relations with the Contracting Authority and in case of dispute concerning my contract with the Contractor I shall address myself to the latter and/or to the competent jurisdictions.

[For information, I have signed a Statement of Exclusivity and Availability for the following tender(s):

Tender reference	Submission deadline for the tender	Tendered engagement
< tender reference >	< date >	[full time] [part time]
< tender reference >	< date >	[full time] [part time]
< etc. >		

Should I receive a confirmed engagement I declare that I will accept the first engagement offered to me chronologically. Furthermore I will notify the tenderer immediately of my unavailability.]

Name	
Signature	
Date	

² To be completed by all key experts.

³ The engagement of an expert is confirmed if the expert is committed to work as a key expert under a signed contract financed by the EU general budget or the EDF or if he/she is a key expert in a tender which has received a notification of award. The date of confirmation of the engagement in the latter case is that of the notification of award to the Contractor.

Declaration on honour on exclusion criteria and selection criteria

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

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

I – SITUATION OF EXCLUSION CONCERNING THE PERSON

(1) declares that the above-mentioned person is in one of the following situations:	YES	NO
(a) it is bankrupt, subject to insolvency or winding up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors, its business activities are suspended or it is in any analogous situation arising from a similar procedure provided for under national legislation or regulations;	<input type="checkbox"/>	<input type="checkbox"/>
(b) it has been established by a final judgement or a final administrative decision that the person is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the law of the country in which it is established, with those of the country in which the contracting authority is located or those of the country of the performance of the contract;	<input type="checkbox"/>	<input type="checkbox"/>
(c) it has been established by a final judgement or a final administrative decision that the person is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:		
(i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;	<input type="checkbox"/>	<input type="checkbox"/>
(ii) entering into agreement with other persons with the aim of distorting competition;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) violating intellectual property rights;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) attempting to influence the decision-making process of the contracting authority during the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>
(v) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>
(d) it has been established by a final judgement that the person is guilty of the following:		

(i) fraud, within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995;	<input type="checkbox"/>	<input type="checkbox"/>
(ii) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of EU Member States, drawn up by the Council Act of 26 May 1997, and in Article 2(1) of Council Framework Decision 2003/568/JHA, as well as corruption as defined in the legal provisions of the country where the contracting authority is located, the country in which the person is established or the country of the performance of the contract;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
(v) terrorist-related offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA, respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision;	<input type="checkbox"/>	<input type="checkbox"/>
(vi) child labour or other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
(e) the person has shown significant deficiencies in complying with the main obligations in the performance of a contract financed by the Union's budget, which has led to its early termination or to the application of liquidated damages or other contractual penalties, or which has been discovered following checks, audits or investigations by an Authorising Officer, OLAF or the Court of Auditors;	<input type="checkbox"/>	<input type="checkbox"/>
(f) it has been established by a final judgment or final administrative decision that the person has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95;	<input type="checkbox"/>	<input type="checkbox"/>
(g) for the situations of grave professional misconduct, fraud, corruption, other criminal offences, significant deficiencies in the performance of the contract or irregularity, the applicant is subject to: <ul style="list-style-type: none"> i.facts established in the context of audits or investigations carried out by the Court of Auditors, OLAF or internal audit, or any other check, audit or control performed under the responsibility of an authorising officer of an EU institution, of a European office or of an EU agency or body; ii.non-final administrative decisions which may include disciplinary measures taken by the competent supervisory body responsible for the verification of the application of standards of professional ethics; iii.decisions of the ECB, the EIB, the European Investment Fund or international organisations; iv.decisions of the Commission relating to the infringement of the Union's competition rules or of a national competent authority relating to the infringement of Union or national competition law; or v.decisions of exclusion by an authorising officer of an EU institution, of a European office or of an EU agency or body. 	<input type="checkbox"/>	<input type="checkbox"/>

II – SITUATIONS OF EXCLUSION CONCERNING NATURAL PERSONS WITH POWER OF REPRESENTATION, DECISION-MAKING OR CONTROL OVER THE LEGAL PERSON

Not applicable to natural persons, Member States and local authorities

(2) declares that a natural person who is a member of the administrative, management or supervisory body of the above-mentioned legal person, or who has powers of representation, decision or control with regard to the above-mentioned legal person (this covers company directors, members of management or supervisory bodies, and cases where one natural person holds a majority of shares) is in one of the following situations:	YES	NO	N/A
Situation (c) above (grave professional misconduct)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (d) above (fraud, corruption or other criminal offence)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (e) above (significant deficiencies in performance of a contract)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (f) above (irregularity)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

III – SITUATIONS OF EXCLUSION CONCERNING NATURAL OR LEGAL PERSONS ASSUMING UNLIMITED LIABILITY FOR THE DEBTS OF THE LEGAL PERSON

(3) declares that a natural or legal person that assumes unlimited liability for the debts of the above-mentioned legal person is in one of the following situations:	YES	NO	N/A
Situation (a) above (bankruptcy)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (b) above (breach in payment of taxes or social security contributions)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

IV – GROUNDS FOR REJECTION FROM THIS PROCEDURE

(4) declares that the above-mentioned person:	YES	NO
(h) has distorted competition by being previously involved in the preparation of procurement documents for this procurement procedure.	<input type="checkbox"/>	<input type="checkbox"/>

V – REMEDIAL MEASURES

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

VI – EVIDENCE UPON REQUEST

Upon request and within the time limit set by the contracting authority the person must provide information on the persons that are members of the administrative, management or supervisory body. It must also provide the following evidence concerning the person itself and concerning the natural or legal persons which assume unlimited liability for the debt of the person:

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

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

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

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

Document	Full reference to previous procedure
<i>Insert as many lines as necessary.</i>	

VII – SELECTION CRITERIA

(5) declares that the above-mentioned person complies with the selection criteria applicable to it individually as provided in the tender specifications:	YES	NO	N/A
(a) It has the legal and regulatory capacity to pursue the professional activity needed for performing the contract as required in the tender specifications;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) It fulfills the applicable economic and financial criteria indicated in the tender specifications;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) It fulfills the applicable technical and professional criteria indicated in the tender specifications.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(6) if the above-mentioned person is the sole tenderer or the leader in case of joint tender , declares that:	YES	NO	N/A
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(d) the tenderer, including all members of the group in case of joint tender and including subcontractors if applicable, complies with all the selection criteria for which a consolidated assessment will be made as provided in the tender specifications.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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VII – EVIDENCE FOR SELECTION

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

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

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

Document	Full reference to previous procedure
<i>Insert as many lines as necessary.</i>	

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

Full name

Date

Signature