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Dear Sir/Madam,

Subject: - Feasibility study for the construction of an office building

1. The European Union Delegation to China is planning to award the contract referred to above. The procurement documents consist in this invitation letter, the tender specifications with their annexes and the draft contract.

2. If you are interested in this contract, you should submit a tender in one of the official languages of the European Union.

3. You must submit your tender exclusively on paper, in one original. The tender must be placed inside two closed envelopes addressed as indicated below. The inner envelope should be marked as follows: "CALL FOR TENDERS – NOT TO BE OPENED BY THE INTERNAL MAIL DEPARTMENT". The inner envelope must also contain two closed envelopes, one containing the technical tender and the other the financial tender. Each of these envelopes must clearly indicate the content ("Technical" and "Financial"). The time limit for submission of the tender is 10th May 2017.

You must use one of the means of submission listed below. Receipt is understood as the time at which the tenderer hands over the tender to the post office or courier service or at the reception of the Delegation.

<table>
<thead>
<tr>
<th>Means of submission</th>
<th>Time limit</th>
<th>Evidence</th>
<th>Address for delivery</th>
</tr>
</thead>
<tbody>
<tr>
<td>Post</td>
<td>24:00</td>
<td>Postmark</td>
<td>CALL FOR TENDERS</td>
</tr>
<tr>
<td></td>
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<td>CHNP201740-Feasibility study for the construction of an office building</td>
</tr>
<tr>
<td></td>
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<td>EU Delegation to China, For the attention of Procurement Sector No 15 Dongzhimenwai Dajie, Chaoyang District, Beijing 100600, PR China</td>
</tr>
<tr>
<td>Courier</td>
<td>24:00</td>
<td>Deposit slip of courier service</td>
<td>CALL FOR TENDERS</td>
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<td>CHNP201740-Feasibility study for the construction of an office building</td>
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<td>EU Delegation to China, For the attention of Procurement Sector No 15 Dongzhimenwai Dajie, Chaoyang District, Beijing 100600, PR China</td>
</tr>
<tr>
<td>In person (hand delivery)</td>
<td>17.00 local time in China</td>
<td>Proof of receipt, signed and dated by the agent at the reception of the Delegation</td>
<td>CALL FOR TENDERS</td>
</tr>
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<td>CHNP201740-Feasibility study for the construction of an office building</td>
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<td>EU Delegation to China, For the attention of Procurement Sector No 15 Dongzhimenwai Dajie, Chaoyang District, Beijing 100600, PR China</td>
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</table>
Hand delivery can be received from 8:30 to 17.00 Monday to Fridays. The service is closed on Saturdays, Sundays and official holidays of the contracting authority.

4. Tenders must be:
   - perfectly legible so that there can be no doubt as to words and figures;
   - drawn up using the model reply forms in the tender specifications, where applicable.

5. The period of validity of the tender, during which tenderers may not modify the terms of their tenders in any respect, is 9 months from the date indicated in point 3.

6. Submission of a tender implies acceptance of all the terms and conditions set out in the procurement documents and, where appropriate, waiver of the tenderer's own general or specific terms and conditions. The submitted tender is binding on the tenderer to whom the contract is awarded for the duration of the contract.

7. All costs incurred for the preparation and submission of tenders are to be borne by the tenderers and will not be reimbursed.

8. Contacts between the contracting authority and candidates or tenderers are prohibited throughout the procedure save in exceptional circumstances and under the following conditions only:

Before the date of receipt indicated in point 3:

Upon request, the contracting authority may provide additional information solely for the purpose of clarifying the procurement documents. Any request for additional information must be made in writing only to DELEGATION-CHINA-TENDERS@eeas.europa.eu. The contracting authority is not bound to reply to requests for additional information received less than six working days before the date of receipt of tenders indicated in point 3.

The contracting authority may, on its own initiative, inform interested parties of any error, inaccuracy, omission or any other type of clerical error in the text of the procurement documents.

After the opening of tenders:

If obvious clerical errors in the tender need to be corrected or confirmation of a specific or technical element is necessary, the contracting authority will contact the tenderer provided this does not lead to substantial changes to the terms of the submitted tender.

The contracting authority may negotiate with tenderers the tenders they have submitted, in order to adapt them to the procurement documents and in order to find the most economically advantageous tender. The minimum requirements defined in the procurement documents are not subject to negotiation. During negotiations equal treatment of all tenderers will be ensured. The contracting authority reserves the right not to negotiate and to award the contract on the basis of the tenders initially received.
9. An on-site visit is planned on 25th April at the following address: 15 Dongzhimenwai Dajie. Each tenderer shall send an email at DELEGATION-CHINA-TENDERS@eeas.europa.eu at the latest 3 calendar days prior to the visit to know the time that is allocated to each of them.

10. This invitation to tender is in no way binding on the contracting authority. The contracting authority's contractual obligation commences only upon signature of the contract with the successful tenderer.

11. Up to the point of signature, the contracting authority may cancel the procurement procedure without the tenderers being entitled to claim any compensation. This decision must be substantiated and the tenderers notified.

12. Once the contracting authority has opened the tender, it becomes its property and it shall be treated confidentially.

13. You will be informed of the outcome of this procurement procedure by e-mail only. It is your responsibility to provide a valid e-mail address together with your contact details in your tender and to check this e-mail address regularly.

14. If processing your reply to the invitation to tender involves the recording and processing of personal data (such as your name, address and CV), such data will 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. Unless indicated otherwise, your replies to the questions and any personal data requested are required to evaluate your tender in accordance with the specifications of the invitation to tender and will be processed solely for that purpose by the Head of EU Delegation to China. Details concerning the processing of your personal data are available on the privacy statement at http://eeas.europa.eu/data_protection/index_en.htm

15. Your personal data may be registered in the Early Detection and Exclusion System (EDES) if you are in one of the situations mentioned in Article 106 of the Financial Regulation ¹. For more information, see the Privacy Statement on http://ec.europa.eu/budget/explained/management/protecting/protect_en.cfm

Hans Dietmar SCHWEISGUT
Authorizing Officer

Annexes:
- Tender specifications (Annex I);
- Contract direct contract (Annex II)

ANNEX I-TENDER SPECIFICATION

1. INTRODUCTION

The contracting authority is the European Union (hereinafter referred to as "contracting authority"), represented by the Head of the Delegation of the European Union in China or its duly authorized representative.

The contracting authority plans to conclude a service contract for the provision of providing a feasibility study for the construction of an office building and, possibly, a Residence on a plot of land owned by the European Union, in accordance with the specifications set out below and the contract in annex.

When drawing up their tenders, tenderers shall take into account the provisions in these tender specifications, in the letter of invitation to tender as well as in the contract, which specify the rights and obligations of the contractor, particularly those on payments, performance of the contract, confidentiality, checks and audits.

The model contract that will be used for this contract is attached to the letter of invitation to tender in Annex II. These tender specifications and the tender submitted by the awardee of the contract will be annexed to the contract and therefore be binding on the contracting parties during the implementation of the contract.

A notice for this contract was published on the Delegation website.

2. SUBJECT OF THE CONTRACT

The contractor must provide the human and material resources necessary to provide the service as specified in point 6 of this document.

The place of performance is Beijing.

3. DESCRIPTION OF PUBLIC PROCUREMENT PROCEDURE

Economic operators interested in this contract shall submit their complete tenders, including all documents as described in point 3 by the deadline indicated in the letter of invitation to tender.

An e-mail address and/or a fax number of the tenderer shall be provided in the cover letter. It is the responsibility of the tenderer to regularly consult the e-mails received.

The website on which all procurement documents are published will be updated regularly and it is the tenderer's responsibility to check for updates and modifications during the tendering period.
The evaluation of tenders will be made in the following order:

- access to market,
- exclusion criteria,
- selection criteria,
- award criteria.

If the tender does not pass a category, it will not be evaluated under the following category/ies.

4. **GROUPS OF ECONOMIC OPERATORS AND SUBCONTRACTING**

Tenders can be submitted by a single economic operator or jointly by two or more economic operators.

4.1. **Joint tender**

A joint tender is a situation where a tender is submitted by a group of economic operators. The cover letter to the tender must be signed by a duly authorised representative of each member and indicate the leading member with its e-mail address and/or fax number.

In this case, the tender will clearly identify the division of tasks amongst the different operators.

Once the tender has been submitted, any change in the composition of the tenderer is not allowed, unless in the meantime one or more operators within the tenderer has been subject to a merger or a takeover (universal succession), and shall lead to the rejection of the corresponding tender.

The group will not be required to adopt a specific legal form in order to submit a tender.

If the contract is awarded to a group, the contracting authority may require the group to adopt a specific legal form after the award and prior to the signature of the contract. If the group is legally constituted (consortium), the contracting authority will sign the contract with the entity representing the group (consortium). Otherwise, the contract will be signed with all economic operators of the group. In this case, one of its members will be nominated "the leader" and will have full authority to bind the group and each of its members, and will be in charge of the administrative management of the contract (contact point, invoicing, receiving payments, etc.) on behalf of all other entities. The leader will receive power of attorney from the other members of the group to this end.

In any case, each member of the group will assume joint and several liabilities towards the contracting authority for the performance of the contract as a whole.

The already legally constituted consortium must have its own Legal Entity Form which is different from the Legal Entity Form of each individual member of the group.
4.2. Subcontracting

Subcontracting is allowed but the contractor will retain full liability towards the contracting authority for performance of the contract as a whole.

Tenderers must give an indication of the proportion of the contract that they intend to subcontract and are required to identify all subcontractors whose share of the contract is above 30%.

The subcontractors whose share of the contract is above 30% must comply with the same exclusion and selection criteria on technical and professional capacity applicable to tenderers and shall present exclusion and selection documents.

During contract execution, the change of any subcontractor identified in the tender will be subject to prior written approval of the contracting authority (see art. II.10 of the contract).

5. Eligibility of Economic Operators

5.1. Access to public procurement

Participation in this tender procedure is open on equal terms to all natural and legal persons:

- in one of the European Union Member States;
- in a third country which has a special agreement with the European Union in the field of public procurement on the conditions laid down in the agreement;
- in a country registered as a signatory of the Government Procurement Agreement concluded within the WTO;
- exceptionally, in China and neighbouring countries.

Economic operators, including each member of a joint tender, must confirm that they have their headquarters or domicile in one of the abovementioned States and present the supporting evidence normally acceptable under their own law.

2 FYROM, Albania, Montenegro and Serbia (under the Stabilisation and Association Agreement), Iceland, Norway and Liechtenstein (under the EEA Agreement economic operators from these countries have full access to tendering procedures of the Union institutions, agencies and bodies), Mexico, Chile, Colombia and Peru, Iraq, Korea and Central American countries of Honduras, Nicaragua and Panama.

3 Please check the list of countries at: https://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm.

4 Mainland China, Hong Kong, Macao and Taiwan

5 Countries sharing borders with China are Afghanistan, Bhutan, India, Kazakhstan, Kyrgyzstan, Laos, Mongolia, Myanmar (Burma), Nepal, Pakistan, Russia, Tajikistan and Vietnam.
5.2. Non-exclusion of economic operators

Economic operators who have access to public procurement are evaluated on the basis of the information provided in their tenders for exclusion criteria.

Tenderers shall provide a declaration on exclusion criteria attached to the tender specifications (Annex C) dully filled in, signed and dated by the legally authorised representative.

The declaration on exclusion criteria shall be provided by each member of the group in case of joint tenders, and by an entity on whose capacity it intends to rely and by all identified subcontractors whose share of the contract is above 30%.

Whenever requested by the contracting authority, the candidate or tenderer, as well as the entity on whose capacity the candidate or tenderer intends to rely shall provide the supporting documents confirming the declaration.

The successful tenderer, including each member of the group in case of joint tender, to whom the contract is to be awarded shall provide, within a time limit defined by the contracting authority and preceding the signature of the contract, the evidence referred to in paragraph "Evidence upon request", confirming the declaration.

The contracting authority may waive the obligation for a candidate or tenderer to submit the documentary evidence if it has already been submitted for another procurement procedure and provided the documents were issued not more than one year earlier and are still valid at the date of their request by the contracting authority. In such cases, the candidate or tenderer must declare on its honour that the documentary evidence has already been provided in a previous procurement procedure and confirm that there has been no change in the situation.

The contracting authority may also waive the obligation for a candidate or tenderer to submit the documentary evidence if it can access it on a national database free of charge.

5.3. Selection of economic operators

Tenderers must prove their legal, regulatory, economic, financial, technical and professional capacity to perform the services subject to this call for tender by meeting the selection criteria and minimum requirements listed in points 5.3.1, 5.3.2 and 5.3.3 hereafter.

The contracting authority may request the tenderer to provide the documents mentioned as supporting documents on selection criteria in the declaration on their honour and in this tender specifications before the signature of the contract and within a deadline given by the contracting authority.

If a tenderer is relying on the capacities of other entities (e.g. parent company, other company in the same group, or third party) in order to achieve the required level of economic, financial, technical and professional capacity, its tender must contain a signed and dated statement by the concerned entity declaring firmly that the relevant resources shall be made at the disposal of the tenderer for the performance of this contract.
contracting authority will verify whether the entities on whose the tenderer intends to rely fulfil the relevant selection criteria. The tenderer may only rely on the technical and professional capacities of other entities where the latter will perform the services or works for which these capacities is required.

If an entity provides the whole or a very large part of the financial capacity to the tenderer, the contracting authority may demand that the said entity be jointly liable for the performance of the contract. It may require that it signs the contract or that it provides a joint and several first-demand guarantees, should that tenderer be awarded the contract. If this entity is required to sign the contract, it has to have access to public procurement and shall not be in an exclusion situation as indicated in point 5.1 and 5.2 of the tender specifications.

5.3.1. Legal and regulatory capacity criteria and evidence

The economic operators shall meet the following conditions:

- be enrolled in a relevant professional or trade register, except for international organisations,

for service contracts, hold a particular authorisation proving that it is authorised to perform the contract in its country of establishment or be a member of a specific professional organisation.

The economic operators are required to have the following:

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<thead>
<tr>
<th>Evidence on selection criteria:</th>
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<tbody>
<tr>
<td>5.3.1. Legal and regulatory capacity</td>
</tr>
<tr>
<td>5.3.1 a statement from the relevant authority of the country in which the candidate has its domicile or headquarters proving that the candidate is allowed to provide services described under point 6 in that country.</td>
</tr>
<tr>
<td>At least one economic operator involved in the tender (it shall be the one who will be responsible for the relevant part of the contract during its performance)</td>
</tr>
<tr>
<td>Subcontractors whose share of the contract is above 30 %</td>
</tr>
</tbody>
</table>

5.3.2. Economic and financial capacity criteria and evidence

Tenderers must prove the financial and economic capacity to perform this contract by meeting the following criteria:

<table>
<thead>
<tr>
<th>Evidence on selection criteria:</th>
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</thead>
<tbody>
<tr>
<td>5.3.2. Economic and financial capacity</td>
</tr>
<tr>
<td>5.3.2 a declaration of the annual turnover concerning the services subject to this tender (see point 6) during the last one financial year for which accounts have been closed</td>
</tr>
<tr>
<td>At least one economic operator involved in the tender (it shall be the</td>
</tr>
<tr>
<td>Subcontractors whose share of the</td>
</tr>
</tbody>
</table>
concerning the same legal entity.

**Minimum capacity level required:**

The average annual turnover concerning the services subject to this tender (see point 6) for the last one financial year for which account has been closed must be at least CNY 800,000.

In case the candidate is a group of economic operators, a consolidated assessment of the minimum capacity levels of all the members together will be made.

### 5.3.3. Technical and professional capacity criteria and evidence

Tenderers must prove the technical and professional capacity to perform this contract by meeting the following criteria:

**Evidence on selection criteria:**

**5.3.3. Technical and professional capacity**

5.3.3 a list of the services contracts of the candidate/tenderer relevant to the services indicated under point 6, concerning at least one financial year, with the annual contract value, the duration (start and end date) and the client.

**Minimum capacity level required:**

The candidates/tenderers must provide at least 2 clients' reference letters in the fields related to the contracts as described in point 6 during the last one financial year specifying whether the services have been carried out in a professional manner in compliance with the contractual terms. These proofs letters must relate to any of the services included in the list under point 6.

In case the candidate/tenderer is a group of economic operators, a consolidated assessment of the minimum capacity levels of all the members together will be made.

### 6. Technical specifications

**6.1. OBJECTIVE, PURPOSE & EXPECTED RESULTS**

**Overall objective:**

The overall objective of the Delegation of the European Union to China and Mongolia is to obtain a feasibility study for the construction of an office building and, possibly, a Residence on a plot of land owned by the European Union. This office building should host the Delegation of the European Union to China and Mongolia and the Residence, its Ambassador.
There is an existing building on the plot of land. The feasibility study should include the conditions of its demolition.

**Purpose:**

The purpose of this assignment is to provide a clear picture and understanding on the possibility of advancing with the said project.

To this end, technical assistance services are to be made available for a feasibility study, eventually enabling the Contracting Authority to launch a procurement process (international tender) for detailed design and supervision services on one hand and for demolition and construction works on the other hand.

Upon signature of the contract, the successful tenderer will have one month's time to provide the Contracting Authority with the feasibility study.

**Plot of land concerned:**

It consists in a land of +/- 6,144 sqm, located at 15, Dongzhimenwai Dajie, Sanlitun, 100600 Beijing, China. The overall dimensions of the rectangular shaped plot are +/- 96m by 64m.

**Responsible body:**

The financial and implementation management of the contract will be assured by the Delegation of the European Union to China and Mongolia as the contracting authority. The point of contact is:

M. Bruno Devos, Head of Administration
Delegation of the European Union to China and Mongolia
15, Dongzhimenwai Dajie
Sanlitun
100600 Beijing
China

**Results to be achieved by the consultant:**

A feasibility study containing all elements necessary to:

i) Establish preliminary technical and financial framework;

ii) Enable the client to assess the option to build the Delegation premises and possible Residence corresponding the most to its needs and obligations;

iii) Take all necessary decisions in relation to conceptual orientations and further proceedings;

iv) Enable the launching of the next study phases.
6.2. SCOPE OF WORKS

Tasks that are part of the assignment

The consultant is expected to take into consideration the following tasks:

- Make sure that the compound shall comply with all the local building standards, regulations and rules in force in China and with the building standards of the European Union's Headquarters;
- Assessment of needs in terms of floor space, infrastructures and security by the Delegation of the European Union, including services and logistics;
- Compilation of all relevant maps of the project area, including geological-, topographic-, planimetric- and road maps;
- Issuing existing site plans, undertaking of site survey and transformation into standard CAD format (AutoCAD or other agreed format);
- Particular attention should be paid to maximum heights and distances from compound borders, taking into consideration security, urban planning and parking considerations;
- Particular attention should be paid to the mandatory ratio between built area and green area;
- Analysis of access scheme including traffic requirements, access roads and parking spaces;
- Analysis and survey of all other associated infrastructures that are to be considered for planning (water, sewerage, electricity etc.);
- Analysis of national and municipal planning regulations, land use regulations, building codes (security etc.), zoning requirements and other possible planning restrictions;
- Analysis of national administrative procedures for the different phases of council planning and building approvals and authorizations;
- Listing of all other accompanying studies that may be required in the planning process in order to comply with national regulations (security, fire, environment etc.);
- Establishment of provisional time line for study, detailed design and construction phases including time needed for planning approval by local authorities;
- Appraisal of preliminary financial costs for additional studies and the different schematic design orientations to be developed based on construction costs/sqm of local reference projects;
- Appraisal of financial costs for demolition of existing building, construction of the new one and any possible fee to pay to authorities for the demolition and construction project.

Deliverables

As part of the feasibility study, the following deliverables shall be generated by the consultant, in line with these terms of reference and the tasks set out above:
• Summary of all main project constraints: land use, urban planning regulations, geological and topographic constraints, traffic, security, administrative procedures, technical constraints, etc.;
• Note on the architectural scheme proposed;
• Preliminary design plans. A basic design project shall be proposed, provided it is compliant with the requirement set out in this document. The project shall contain the following:
  o Site plan (scale 1/200) including all the buildings within compound boundaries as well as the properties in the immediate vicinity of it.
  o Floor plans, Sections, Elevations (scale 1/50). The representations shall provide an image of the project in relation to its surrounding context.
  o 3D renderings
  o All diagrams and explanations necessary for a proper understanding of the project.
• Summary of estimate costs for all additional studies necessary during the design process up until launch of the call for tender for works;
• Provisional cost estimate of the necessary studies, demolition and construction works, fees, etc. broken down into main chapters.

Important notes:

• The feasibility study is likely to be the starting point of detailed design studies for an European Union office building and possible Residence. Such studies will be assigned as a result of a call for tender for architectural services. In taking part to this contract, the consultant for the present feasibility study must therefore acknowledge that the study can be used by the European Union and its representatives at their entire discretion. He therefore agrees to concede to the European Union his artistic and intellectual rights related to this particular project.
• The consultant is fully aware that, by accepting this assignment, he is bound by an obligation of confidentiality. He therefore agrees to sign a clause of no disclosure prior to the commencement of the contract. Any failure to terms set out in this memorandum will engage his liability towards the European Union.

6.3. GENERAL FRAMEWORK FOR REQUIREMENTS

Functionality and representativeness

Delegation offices have multiple functions. They are first of all the work place of all Delegation staff. Secondly, they are the venue of regular coordination meetings with...
Member States represented in the country and of various other types of meetings. Finally, they are a place for receiving visitors of different levels including high level visitors.

The office premises have to be suitable for all these functions. The office area should provide sufficient flexibility for the changing needs, composition and size of Delegation staff.

Meeting rooms for large gatherings with external visitors should normally be separated from the main office area (administrative area) and provide for easy access for those large groups of visitors.

At places where high level visitors will be welcomed such as entrances, the office of the Head of Delegation and its ancillaries, the representation area,... attention should be paid to the appropriate room finishes.

The Delegation buildings should convey an image of solemnity and reliability to the visitor. They should also provide a welcoming atmosphere for the personnel and visitors. The design and the materials used should be adequate for the representative function but discrete and not opulent.

The colours in the working environment should be chosen to avoid monotony that might affect well-being at work. The textures and the various materials used should all help create a sober but pleasant, convivial and warm working atmosphere.

**Office building and construction regulations**

In general, the office building shall comply with all the local building standards, regulations and rules in force in the host country and with the buildings standards of European Union’s Headquarters.

The present document contains a non-exhaustive list of European Union's requirements for the construction of new buildings. The comprehensive list of requirements to which this document is referring to is called: "Manual of standard building specifications" (known as MIT), drafted by OIB – Version 12 December 2011. It can be freely downloaded on the following link: http://ec.europa.eu/oib/pdf/mit-standard-building-specs_en.pdf.

The performance criteria of the abovementioned MIT are considered as the reference to achieve.

However, various performance criteria adapted to local conditions can be proposed for acceptance to the contracting authority. In case of discrepancies, the higher standard shall apply. In case of conflict between local and Headquarters building standards, the latter prevail.

For the purposes of safety legislation, buildings occupied by the European Union’s departments are treated as private buildings. By contrast, premises which are specifically intended to receive the public, such as info-points, reception offices and the like, are
treated as public buildings. Any building must comply with the relevant health and safety regulations.

**Energy consumption**

Beside potential equipment such as solar panels, etc. special attention should be paid, early in the design process, to energy saving design options.

For security purposes, and also for energy saving purposes, the proportion of window openings relatively to solid walls must be calculated adequately. In general, large windows and curtain walls shall therefore be avoided.

Natural shading should be envisaged to the extent possible. Trees, building's overall shape, external blinds, colours of materials (in particular colour of the roof) and any other architectural option are among the elements that should be taken advantage of in order to reduce as much as possible the use of air-conditioning and heating throughout premises. Energy saving equipment will then come second in the priority order.

**Other architectural specificities**

As already explained, this document contains a non-exhaustive list of requirements for the construction of a European Union office building. Complete and detailed information can be found in MIT ("Manual of standard building specifications").

Below is a reminder of basic architectural considerations for building design:

- Fire prevention, in particular, compartmentation issues;
- Building accessibility and facilities for the disabled (additional information to be provided at a later stage);
- According to MIT, the ideal façade module for office space is 1.20 meters, but could also be between 1.20 m and 1.40 m in width;
- Partitioning: modular and dismountable partition walls are to be preferred to adapt the offices and meeting rooms to the changing needs of the Delegation.
- All the premises shall be equipped with false ceiling (minimum plenum 20 cm)
- Ceilings' heights shall in general be 2.6m (3.5m on ground floor and 2.2m on basement floors and technical areas).

**Space calculation**

**Size of the office premises:**

As a general rule, European Union Delegation offices should have a maximum size of 35 sqm per post. The basic formula for this calculation is as follows: Number posts x 35 sqm = maximum space allocated for the office building. Current number of posts is 95.
The surface calculated in this way includes all areas in the delegation offices such as, but not limited to:

- Offices (single, shared, open space);
- Meeting rooms;
- Entrance hall, reception and waiting area;
- Horizontal and vertical circulations (corridors, internal staircases, elevators etc.);
- Technical areas (IT and server room, security technical room etc.);
- Ancillary spaces: archives, copy rooms, kitchenettes, cafeteria, lavatories etc.;
- Specific security areas.

Areas not to be taken into account in the calculation are (although they might be necessary in the project):

- parking space;
- areas in basements (unless they can be used as offices if presence of natural light) or meeting rooms;
- areas that are entirely dedicated to technical equipment (machine rooms for elevators, chillers etc.);
- outdoor storage rooms for gardening and other equipment.

**Composition and type of offices:**

As a general rule, and in order to ensure efficient use of the space within the frame described above, offices should comprise a mixture of individual offices, shared offices for 2 to 4 people and open space areas.

As a reference, the size of the offices should be within the following range:

- Single office in general: 10 sqm minimum to 16 sqm maximum.
- Shared office: between 8 sqm (minimum) and 10 sqm (maximum) per person.
- Open space office: 7 sqm (minimum) - 8 sqm (maximum) per person

In line with the above recommendations, and taking into consideration:

- the need of a large conference room (+/- 150 sqm). This room should be independent of the office building;
- the need of a representation area (+/- 300 sqm), attached to the large conference room, composed of kitchen and toilets facilities, cloakroom (for 50 guests), dining room (for 30 guests) and living areas;
- the colocation of 2 partners (+/- 150 sqm each);
- possible trainees (+/- 100 sqm),

the space requirements for the **European Union office** are set around 4,200 – 4,400 sqm.

**Size of the Residence:**
The Residence should be independent of the office building. It could be attached to the representation area or not. The space requirements for the Residence are set around 300 sqm.

Finally, parking facilities for 50 cars maximum should be analysed. Underground parking possibilities should be considered. Specific issues associated with building underground (protection against flooding) should be considered early in the design process.

### 6.4. SECURITY

Special care should be paid to security issues throughout the design of the office building and Residence. The security systems will be supplied from Europe and installed by an EU contractor. However, the consultant will be required to take account of the below security requirements during the preliminary design phase.

#### Compound perimeter and perimeter wall:

In principle all traffic of visitors inside the security perimeter wall will be controlled. Access for visitors will be granted at the guards post at the main gate. Entrance for visitors' cars will be limited to allowed visitors.

The entire perimeter of the compound must be closed off by means of a perimeter wall in order to avoid intrusion. The perimeter of the compound should be made of a concrete wall of at least 2.6m height. The opportunity to install wall spikes on top of the surrounding perimeter wall will be discussed with the European Union during the project phase. Requirements for the wall spikes will be provided accordingly.

Beside security constraints, the design of the perimeter wall shall however take into consideration the representativeness imposed on it.

#### Guard post, pedestrian entrance, vehicle entrance and drivers' room:

Along the perimeter of the compound, facing the street, there shall be a guard house at the main entrance to monitor and oversee the entrance and exit of staff and visitors (pedestrians and vehicles). The guard post is composed of an office for up to 3 guards having a direct view to the street and from one side a direct view to the entrance with an inspection area, from the other side, a direct view to the exit. Additional room must be foreseen to enable inspection of visitors. Localisation and plans shall be agreed upon with the European Union representatives.

A template layout will be provided to the consultant at the latest at the commencement of the contract implementation. Additional information regarding construction specifications will be provided during subsequent design phases.

As regards the pedestrian entrance point, the purpose is to check the identity of delegation staff and visitors incoming and outgoing from the compound.
Next to the guard house, a room for 5 drivers shall be foreseen, maximum 30 sqm, including kitchenette, bathroom facilities and shower.

In the immediate vicinity of the guard post, the vehicle entrance point shall have a metallic sliding entrance gate.

**Delivery:**

The outside of the building shall be designed to allow for easy access for service operations, such as delivery of supplies and publications, removals and removal of dustbin containers. If possible, the compound should have an unloading dock for lorries, or a dedicated unloading area located away from external or internal roadways, or a garage access able to admit a lorry. Designers are to liaise with local requirements for garbage truck access.

**Stand-off:**

For security purposes, the favored setback distance for the main office building is set at 30 meters from main road. However, the maximum setback distance will be provided by the consultant early in the design process. Additional risk mitigating measure might then be provided by Delegation' security officer in case stand-off distance is not in line with requirements.

**Building envelope:**

In principle building's external envelope shall be made of reinforced concrete. Masonry construction should be avoided.

The proportion of window openings relatively to solid walls must be carefully looked into (see remarks above).

**Internal layout:**

For information, basic information regarding specific security premises is provided hereunder:

- **Entrance area:**

  To enable visitors and Delegation staff identification, a proper entrance area with an entry SAS (Secured Airlock System), a pre-SAS (pre-entrance check point) and reception must be constructed at the main entrance of the office building. From building main entrance to the administrative area, staff and visitors will therefore have to pass through three successive doors at the SAS and pre-SAS areas. The SAS shall have a surface between 3 m² to 5 m². It comprises 2 interlocking doors. Walls of the SAS, pre-SAS and Reception will be considered as heavy security walls. Detailed specifications will be provided at a later stage.
After having gone through the SAS and pre-SAS areas, incoming visitors will enter into a lobby area (waiting room).

- Security Rooms:

Within the administrative area of the Delegation, there shall be 2 interconnected security rooms, of 8 sqm each. The rooms must be located close to the central part of the building. In no case, shall the rooms be located next to a façade wall nor a stairwell, an elevator shaft nor lavatories. Walls of these rooms will be considered as heavy security walls. Detailed specifications will be provided at a later stage.

- Technical room:

It is the room dedicated to security server, maximum 15 sqm. The room must be located close to the central part of the building. In no case, shall the room be located next to a façade wall nor a stairwell, an elevator shaft nor lavatories. Walls of this room will be considered as heavy security walls. Detailed specifications will be provided at a later stage.

7. EVALUATION OF TENDERS ON THE BASIS OF THE AWARD CRITERIA

The tenderers shall provide the "Statement of compliance with the tender documents" at Annex 1 duly dated and signed in order to be considered technically compliant.

The technically compliant tenders are evaluated in order to award the contract to the tender offering the lowest price: the contract is awarded to the lowest tender that satisfies the minimum requirements set in the technical specifications.

7.1. Technical tender

The technical quality of the tenders will be evaluated on the basis of documents provided by the tenderers in the technical tender with regard to the minimum requirements stated in point 6 Technical specifications. Only the financial tenders of those meeting all minimum technical requirements will be considered for the award.

7.2. Financial tender

The prices for the tender must be tendered:

- in CNY;
- all inclusive. This means that, unless otherwise mentioned in these tender specifications, prices tendered for shall include all the costs to be incurred by the tenderers in order to provide the services;
- using the unit price schedule (Annex A)

During the validity of the tender and the implementation of the contract, prices cannot be revised.
The price schedule is binding during implementation of the contract.

8. **Content of the Tender**

Tenderers shall submit all the requested documents listed here.

The tender will contain:

1. a cover letter presenting the name of the tenderer, including all entities in case of joint tender, and identified subcontractors whose share of the contract is above 30%, and the name of the single contact person in relation to this tender. The cover letter must indicate the proportion of the contract to be subcontracted. In case of joint tender, the cover letter must be signed by a duly authorised representative for each operator and indicate the leading member with its e-mail address. It is the responsibility of the tenderers to consult regularly the e-mails received;

2. In case of subcontracting, a letter of intent for each subcontractor whose share of the contract is above 30% stating their willingness to provide the services foreseen in the tender and in line with the present tender specifications;

3. declaration on honour on the exclusion and selection criteria (point 5.2 & 5.3); (Annex C)

4. Tenderer Information (Annex B)

**In addition to the above, tenderers shall submit all the requested documents listed below under "technical envelope" and "financial envelope".**

**8.1. Technical envelope**

(a) Statement of compliance with the tender documents annex duly filled an signed (Annex 1);

(b) A description of the tender submitted. In case of joint tender or subcontracting, the tenderer will explain in detail its tender including detailing the tasks which will be performed by each member of a joint tender and each subcontractor whose share of the contract is higher than 30% (Annex 2);

(c) Statement of compliance with the tender specifications (Annex 3);

**8.2. Financial envelope**

(d) The duly completed and signed price schedule (Annex A)
ANNEX I – TECHNICAL TENDER

Statement of compliance with the tender documents

I, .................. , the undersigned, being the authorised legal representative of .................................................[to be completed with the name of the tenderer; for joint tenders, this must include all members], hereby declare that we have examined and accept without reserve or restriction all the terms and conditions set out in the invitation to tender, in the tender specifications and in the draft contract for the tender procedure referred to above and, where appropriate, waive the tenderer's own general or specific terms and conditions. We offer to provide the services on the basis of our technical tender and our financial tender which do not diverge in any way from the requirements described in the tender documents as drafted by the contracting authority. Our tender complies with all the technical requirements indicated in the tender specifications.

We also undertake to respect these requirements scrupulously during the performance of the contract in case we become the awardee of the contract.

Name of the legal representative of the tenderer:

Signature: Date:
ANNEX 2 – TECHNICAL TENDER

- A description of the tender submitted.

- In case of joint tender or subcontracting, the tenderer will explain in detail their tender including detailing the tasks which will be performed by each member of a joint tender and each subcontractor whose share of the contract is higher than 30%.
# ANNEX 3 – TECHNICAL TENDER

## Statement of compliance with the tender specifications

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

<table>
<thead>
<tr>
<th>(only for natural persons) himself or herself</th>
<th>(only for legal persons) the following legal person:</th>
</tr>
</thead>
<tbody>
<tr>
<td>ID or passport number:</td>
<td>Full official name:</td>
</tr>
<tr>
<td></td>
<td>Official legal form:</td>
</tr>
<tr>
<td></td>
<td>Statutory registration number:</td>
</tr>
<tr>
<td></td>
<td>Full official address:</td>
</tr>
<tr>
<td></td>
<td>VAT registration number:</td>
</tr>
</tbody>
</table>

Declares whether the person mentioned in the box above is able to provide the service which compliance with the following tender specifications or not

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
</table>

**Minimum requirements**

Be capable of carrying out the tasks described in point 6.2

| □ | □ |

Full name

Date

Signature
ANNEX A – FINANCIAL TENDER

Price schedule in CNY

<table>
<thead>
<tr>
<th>Total price in CNY</th>
</tr>
</thead>
<tbody>
<tr>
<td>For the total duration of the contract – carrying out the tasks described in point 6 of the Tender Specifications</td>
</tr>
</tbody>
</table>

When filling in this table, tenderers shall fill in the unit prices for each item and will not modify, add or subtract any item. Failing this, their tender will be eliminated.

Name of tenderer:

Name of the legal representative of the tenderer:

Date: Signature:

Name of tenderer (to be filled in case of a joint tender):

Name of the legal representative of the tenderer:

Date: Signature:
## ANNEX B – TENDERER INFORMATION

<table>
<thead>
<tr>
<th>The tenderer's business name / 投标人的企业名称</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Address / 地址</td>
<td></td>
</tr>
<tr>
<td>Post Code / 邮编</td>
<td></td>
</tr>
<tr>
<td>Tel / 电话</td>
<td></td>
</tr>
<tr>
<td>Fax / 传真</td>
<td></td>
</tr>
<tr>
<td>Email / 邮箱</td>
<td></td>
</tr>
<tr>
<td>Web Site (if applicable) / 网址 (如适用)</td>
<td></td>
</tr>
<tr>
<td>Legal Status / 公司类型</td>
<td></td>
</tr>
<tr>
<td>Names and positions of the person legally authorised to sign the contract / 法定授权签署合同人员的姓名及职务</td>
<td></td>
</tr>
<tr>
<td>Contact person for this tender (Name, Function) / 联系人及职务</td>
<td></td>
</tr>
</tbody>
</table>

15, Dongzhimenwai Dajie, Sanlitun, 100600 Beijing, China. Tel +(8610) 8454 8000; Fax +(8610) 6532 1720
Page 26 of 32
**ANNEX C – DECLARATION ON HONOUR ON EXCLUSION CRITERIA AND SELECTION CRITERIA**

Comments *in grey italics in square brackets* are to be deleted and/or replaced by appropriate data.

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

<table>
<thead>
<tr>
<th>(only for natural persons) himself or herself</th>
<th>(only for legal persons) the following legal person:</th>
</tr>
</thead>
<tbody>
<tr>
<td>ID or passport number:</td>
<td>Full official name:</td>
</tr>
<tr>
<td></td>
<td>Official legal form:</td>
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<td></td>
<td>Statutory registration number:</td>
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<tr>
<td></td>
<td>Full official address:</td>
</tr>
<tr>
<td></td>
<td>VAT registration number:</td>
</tr>
</tbody>
</table>

> declares whether the person mentioned in the box above is in one of the following situations or not:

<table>
<thead>
<tr>
<th>SITUATION OF EXCLUSION CONCERNING THE PERSON</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) it is bankrupt, subject to insolvency or</td>
<td>□</td>
<td>□</td>
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<tr>
<td>winding up procedures, its assets are being</td>
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<tr>
<td>administered by a liquidator or by a court,</td>
<td>□</td>
<td>□</td>
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<tr>
<td>it is in an arrangement with creditors,</td>
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<tr>
<td>its business activities are suspended or it</td>
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<td>□</td>
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<tr>
<td>is in any analogous situation arising from</td>
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<tr>
<td>a similar procedure provided for under national legislation or regulations;</td>
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<tr>
<td>b) it has been established by a final</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>judgement or a final administrative decision</td>
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<tr>
<td>that the person is in breach of its obligations</td>
<td>□</td>
<td>□</td>
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<tr>
<td>relating to the payment of taxes or social</td>
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<tr>
<td>security contributions in accordance with the</td>
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<tr>
<td>law of the country in which it is established,</td>
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<tr>
<td>with those of the country in which the contracting</td>
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<tr>
<td>authority is located or those of the country of the performance of the contract;</td>
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<tr>
<td>c) it has been established by a final</td>
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<td>□</td>
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<tr>
<td>judgement or a final administrative decision</td>
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<tr>
<td>that the person is guilty of grave professional</td>
<td>□</td>
<td>□</td>
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<tr>
<td>misconduct by having violated applicable laws</td>
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<tr>
<td>or regulations or ethical standards of the</td>
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<td>□</td>
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<tr>
<td>profession to which the person belongs, or</td>
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<tr>
<td>by having engaged in any wrongful conduct which</td>
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<td>□</td>
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<tr>
<td>has an impact on its professional credibility</td>
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<tr>
<td>where such conduct denotes wrongful intent or</td>
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<td>□</td>
</tr>
<tr>
<td>gross negligence, including, in particular, any of the following:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) fraudulently or negligently misrepresenting</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>information required for the verification of</td>
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<tr>
<td>the absence of grounds for exclusion or the fulfilment of</td>
<td>□</td>
<td>□</td>
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<tr>
<td>selection criteria or in the performance of a contract;</td>
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<td></td>
</tr>
</tbody>
</table>
(ii) entering into agreement with other persons with the aim of distorting competition;  

(iii) violating intellectual property rights;  

(iv) attempting to influence the decision-making process of the contracting authority during the award procedure;  

(v) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;  

d) it has been established by a final judgement that the person is guilty of any 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;  

(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;  

(iii) participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA;  

(iv) money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council;  

(v) terrorist-related offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA, respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision;  

(vi) child labour or other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council;  

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;  

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;  

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:
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.

<table>
<thead>
<tr>
<th>Only for legal persons other than Member States and local authorities, otherwise delete this table</th>
</tr>
</thead>
<tbody>
<tr>
<td>declares whether 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 the company directors, members of the management or supervisory bodies, and cases where one natural person holds a majority of shares) is in one of the following situations or not:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SITUATIONS OF EXCLUSION CONCERNING NATURAL PERSONS WITH POWER OF REPRESENTATION, DECISION-MAKING OR CONTROL OVER THE LEGAL PERSON</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Situation (c) above (grave professional misconduct)</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Situation (d) above (fraud, corruption or other criminal offence)</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Situation (e) above (significant deficiencies in performance of a contract)</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Situation (f) above (irregularity)</td>
<td>□</td>
<td>□</td>
</tr>
</tbody>
</table>

| declares whether 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 or not: |

<table>
<thead>
<tr>
<th>SITUATIONS OF EXCLUSION CONCERNING NATURAL OR LEGAL PERSONS ASSUMING UNLIMITED LIABILITY FOR THE DEBTS OF THE LEGAL PERSON</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Situation (a) above (bankruptcy)</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
</tbody>
</table>
Situation (b) above (breach in payment of taxes or social security contributions) ☐ ☐ ☐

- declares whether the person mentioned in the first box on page 1 is in one of the following situations or not:

<table>
<thead>
<tr>
<th>Grounds for Rejection from This Procedure</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>h) has not distorted competition by being previously involved in the preparation of procurement documents for this procurement procedure;</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>i) has provided accurate, sincere and complete information to the contracting authority within the context of this procurement procedure;</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>- acknowledges that 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.</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

Remedial Measures

If the person declares one of the situations of exclusion listed above, it should indicate the measures it has taken to remedy the exclusion situation, thus demonstrating its reliability. They 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 appropriately illustrates the remedial measures taken should be provided in annex to this declaration. This does not apply for the situations referred in point (d) of this declaration.

Evidence Upon Request

Upon request and within the time limit set by the contracting authority the person shall provide information on the persons that are members of the administrative, management or supervisory body, as well as the following evidence concerning the person or 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.

If the person already submitted such evidence for the purpose of another procedure, its issuing date does not exceed one year and it is still valid, the person shall declare on its honour that the documentary evidence has already been provided and confirm that no changes have occurred in its situation.
 declares whether the person mentioned in the first box on page 1 complies with the selection criteria as provided in the tender specifications:

<table>
<thead>
<tr>
<th>SELECTION CRITERIA</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) It has the legal and regulatory capacity to pursue the professional activity needed for performing the contract as required in section 5.3.1 of the tender specifications;</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>(b) It fulfills the applicable economic and financial criteria indicated in section 5.3.2 of the tender specifications;</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>(c) It fulfills the applicable technical and professional criteria indicated in section 5.3.3 of the tender specifications.</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

 declares that the person mentioned in the first box on page 1 will be 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.

Full name  Date  Signature
ANNEX II – DRAFT CONTRACT
SERVICE CONTRACT
NUMBER – CHNP201740

1. The European Union (‘the Union’), represented by the European Union Delegation to China (‘the contracting authority’) represented for the purposes of signing this contract by Mr. Hans Dietmar SCHWEISGUT, Head of Delegation, on the one part, and

2. [Full official name]
[Official legal form]¹
[Statutory registration number]²
[Full official address]
[VAT registration number]

[appointed as the leader of the group by the members of the group that submitted the joint tender]

[For joint tenders, repeat these data as many times as there are contractors and continue numbering]

([collectively] ‘the contractor’), represented for the purposes of the signature of this contract by [forename, surname, function of legal representative and name of company in the case of a joint tender],

[The parties identified above and hereinafter collectively referred to as ‘the Contractor’ shall be jointly and severally liable vis-à-vis the contracting authority for the performance of this contract.]³

on the other part,

¹ Delete if contractor is a natural person or a body governed by public law.
² Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.
³ Option to be kept for joint tenders and for consortia not legally constituted.
HAVE AGREED

to the special conditions, the general conditions for service contracts and the following annexes:

Annex I – Tender specifications (reference No \[complete\] of \[insert date\])

Annex II – Contractor’s tender (reference No \[complete\] of \[insert date\])

[Annex III – Power of Attorney \[option applicable to joint tenders and consortia not legally constituted\]]

[Insert other annexes]

which form an integral part of this contract (‘the contract’).

This contract sets out the obligations of the parties during and after the duration of this contract.

All documents issued by the contractor (end-user agreements, general terms and conditions, etc.) except its tender are held inapplicable, unless explicitly mentioned in the special conditions of this contract. In all circumstances, in the event of contradiction between this contract and documents issued by the contractor, this contract prevails, regardless of any provision to the contrary in the contractor’s documents.


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I. SPECIAL CONDITIONS

I.1. ORDER OF PRIORITY OF PROVISIONS

If there is any conflict between different provisions in this contract, the following rules must be applied:

(a) The provisions set out in the special conditions take precedence over those in the other parts of the contract.
(b) The provisions set out in the general conditions take precedence over those in the other annexes.
(c) The provisions set out in the tender specifications (Annex I) take precedence over those in the tender (Annex II).

I.2. SUBJECT MATTER

The subject matter of the contract is the provision of a feasibility study for the construction of an office building and, possibly, a Residence on a plot of land owned by the European Union.

I.3. ENTRY INTO FORCE AND DURATION

I.3.1 The contract enters into force on the date on which the last party signs it.

I.3.2 The performance of the contract cannot start before its entry into force.

I.3.3 The duration of the performance of the contract shall not exceed 3 months. Performance of the contract shall start from the date of entry into force of the contract. The period of performance of the contract may be extended only with the express written agreement of the parties before the expiration of such period.

I.4. PRICE

I.4.1. Price of the contract and maximum amount

The price payable under this contract excluding renewals, reimbursement of expenses and price revision is CNY [amount in figures and in words].

I.4.2. Price revision index

Price revision is not applicable to this contract.

I.4.3. Reimbursement of expenses

Reimbursement of expenses is not applicable to this contract.

I.5. PAYMENT ARRANGEMENTS

I.5.1. Pre-financing

Pre-financing is not applicable to this contract.
I.5.2. Interim payment

Interim payment is not applicable to this contract.

I.5.3. Payment

1. The contractor may claim the payment of the balance in accordance with Article II.21.6.

The contractor must send an invoice in CNY in paper format for payment due under the contract, as provided for in the tender specifications and accompanied by the Final progress report.

2. The contracting authority must approve the submitted documents or deliverables and pay within 30 days from receipt of the invoice.

3. If the contracting authority has observations to make, it must send them to the contractor and suspend the time limit for payment in accordance with Article II.21.7.

The contractor has 5 days to submit additional information or corrections or a new version of the documents if the contracting authority requires it.

4. The contracting authority must give its approval and pay within the remainder of the time-limit indicated in point (2.) unless it rejects partially or fully the submitted documents or deliverables.

I.6. GUARANTEES

Guarantees are not applicable to this contract.

I.6.1. Performance guarantee

Performance guarantee is not applicable to this contract.

I.6.2. Retention money guarantee

Retention money guarantee is not applicable to this contract

I.7. BANK ACCOUNT

Payments must be made to the contractor’s bank account denominated in CNY, identified as follows:

Name of bank:

Full address of branch:

Exact denomination of account holder:

Full account number including bank codes:
I.8. COMMUNICATION DETAILS

For the purpose of this contract, communications must be sent to the following addresses:

Contracting authority:

European External Action Service
Delegation of the European Union to China.

No 15 Dongzhimenwai Dajie, Chaoyang District 100600, Beijing

Email: DELEGATION-CHINA@eeas.europa.eu

Contractor:

[Full name]
[Function]
[Company name]
[Full official address]
E-mail: [complete]

I.9. DATA CONTROLLER

For the purpose of Article II.9, the data controller is the Head of the Delegation of the European Union to China.

I.10. EXPLOITATION OF THE RESULTS OF THE CONTRACT

I.10.1. Detailed list of modes of exploitation of the results

In accordance with Article II.13.1 whereby the Union acquires ownership of the results as defined in this contract, including the tender specifications, these results may be used for any of the following modes of exploitation:

(a) use for its own purposes:

• making available to the staff of the contracting authority;
• making available to the persons and entities working for the contracting authority or cooperating with it, including contractors, subcontractors whether legal or

---

4 BIC or SWIFT code for countries with no IBAN code.
5 This article must be adapted with care. All information is in the Explanatory note on IPR on: http://myintracomm.ec.testa.eu/hudweb/EN/imp/procurement/Documents/ipr-note-en.pdf
natural persons, Union institutions, agencies and bodies, Member States’ institutions;

- installing, uploading, processing;
- arranging, compiling, combining, retrieving;
- copying, reproducing in whole or in part and in unlimited number of copies.]

(b) distribution to the public in hard copies, in electronic or digital format, on the internet including social networks as a downloadable or non-downloadable file;

(c) communication through press information services;

(d) inclusion in widely accessible databases or indexes, such as via ‘open access’ or ‘open data’ portals, or similar repositories, whether freely accessible or accessible only upon subscription;

(e) modifications by the contracting authority or by a third party in the name of the contracting authority, including:

- shortening;
- summarising;
- modifying the content, the dimensions;
- making technical changes to the content (necessary correction of technical errors), adding new parts or functionalities, changing functionalities, providing third parties with additional information concerning the result (e.g. source code) with a view to making modifications;
- addition of new elements, paragraphs, titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound;
- addition of metadata, for text and data-mining purposes; addition of right-management information; addition of technological protection measures;
- preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation;
- extracting a part or dividing into parts;
- translating, inserting subtitles, dubbing in different language versions:
  - languages used within EU;
  - languages of candidate countries;

(f) rights to authorise, license, or sub-license in case of licensed pre-existing rights, the modes of exploitation set out in any of the points (a) to (e) to third parties.
(g) other adaptations which the parties may later agree; in such case, the following rules apply: the contracting authority must consult the contractor. If necessary, the contractor must in turn seek the agreement of any creator or other right holder and must reply to the contracting authority within one month by providing its agreement, including any suggestions of modifications, free of charge. The contractor may refuse the intended modification only if a creator can demonstrate that the intended modification may harm his/her honour or reputation, thereby violating his/her moral rights.

I.10.2. Licence or transfer of pre-existing rights

All pre-existing rights incorporated in the results, if any, are licensed to the Union as set out in Article II.13.2.

I.10.3. Provision of list of pre-existing rights and documentary evidence

The contractor must provide the contracting authority with a list of pre-existing rights as set out in Article II.13.4 together with the invoice for payment of the balance at the latest.

I.11. Termination by either party

Either party may, terminate the contract by sending formal notification to the other party with one month written notice.
If the contract is terminated:
(a) neither party is entitled to compensation;
(b) the contractor is entitled to payment only for the services provided before termination takes effect.
The second, third and fourth paragraphs of Article II.18.4 apply.

I.12. Applicable law and settlement of disputes

I.12.1. The contract is governed by Union law, complemented, where necessary, by the law of the People's Republic of China.

I.12.2. The courts of the People's Republic of China have exclusive jurisdiction over any dispute regarding the interpretation, application or validity of the contract.

SIGNATURES

For the contractor, For the contracting authority,

[Company name/forename/surname/position] [forename/surname/position]

Signature: ___________________________ Signature: ___________________________

Done at Beijing, [date] Done at Beijing, [date]

In duplicate in English.
II. GENERAL CONDITIONS FOR THE SERVICE CONTRACT

II.1. DEFINITIONS

For the purpose of this contract, the following definitions (indicated in italics in the text) apply:

'Back office': the internal system(s) used by the parties to process electronic invoices;

'Confidential information or document': any information or document received by either party from the other or accessed by either party in the context of the performance of the contract, that any of the parties has identified in writing as confidential. It may not include information that is publicly available;

'Conflict of interest': a situation where the impartial and objective performance of the contract by the contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other shared interest with the contracting authority or any third party related to the subject matter of the contract;

'Creator': means any natural person who contributes to the production of the result;

'EDI message' (electronic data interchange): a message created and exchanged through the electronic transfer, from computer to computer, of commercial and administrative data using an agreed standard;

'e-PRIOR': the service-oriented communication platform that provides a series of web services and allows the exchange of standardised electronic messages and documents between the parties. This is done either through web services, with a machine-to-machine connection between the parties' back office systems (EDI messages), or through a web application (the supplier portal). The Platform may be used to exchange electronic documents (e-documents) such as electronic requests for services, electronic specific contracts, electronic acceptance of services and electronic invoices between the parties. Technical specifications (i.e. the interface control document), details on access and user manuals are available at the following website:
http://ec.europa.eu/dgs/informatics/supplier_portal/documentation/documentation_en.htm

'Force majeure': any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the contract. The situation or event must not be attributable to error or negligence on the part of the parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults of service, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as force majeure, unless they stem directly from a relevant case of force majeure;

'Formal notification' (or 'formally notify'): form of communication between the parties made in writing by mail or email, which provides the sender with compelling evidence that the message was delivered to the specified recipient;

'Fraud': any intentional act or omission affecting the Union's financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents or to non-disclosure of information in violation of a specific obligation;
‘Interface control document’: the guideline document which lays down the technical specifications, message standards, security standards, checks of syntax and semantics, etc. to facilitate machine-to-machine connection. This document is updated on a regular basis;

‘Irregularity’: any infringement of a provision of Union law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the Union’s budget.

‘Notification’ (or ‘notify’): form of communication between the parties made in writing including by electronic means;

‘Performance of the contract’: the execution of tasks and delivery of the purchased services by the contractor to the contracting authority;

‘Personnel’: persons employed directly or indirectly or contracted by the contractor to perform the contract;

‘Pre-existing material’: any material, document, technology or know-how which exists prior to the contractor using it for the production of a result in the performance of the contract;

‘Pre-existing right’: any industrial and intellectual property right on pre-existing material; it may consist in a right of ownership, a licence right and/or right of use belonging to the contractor, the creator, the contracting authority as well as to any other third parties;

‘Professional conflicting interest’: a situation in which the contractor’s previous or ongoing professional activities affect its capacity to perform the contract to an appropriate quality standard.

‘Related person’: any person who has the power to represent the contractor or to take decisions on its behalf;

‘Result’: any intended outcome of the performance of the contract, whatever its form or nature, which is delivered and finally or partially approved by the contracting authority. A result may be further defined in this contract as a deliverable. A result may, in addition to materials produced by the contractor or at its request, also include pre-existing materials;

‘Substantial error’: any infringement of a contract provision resulting from an act or omission, which causes or might cause a loss to the Union’s budget.

‘Supplier portal’: the e-PRIOR portal, which allows the contractor to exchange electronic business documents, such as invoices, through a graphical user interface; its main features can be found in the supplier portal overview document available on: http://ec.europa.eu/dgs/informatics/supplier_portal/doc/um_supplier_portal_overview.pdf

II.2. ROLES AND RESPONSIBILITIES IN THE EVENT OF A JOINT TENDER

In the event of a joint tender submitted by a group of economic operators and where the group does not have legal personality or legal capacity, one member of the group is appointed as leader of the group.
II.3. SEVERABILITY

Each provision of this contract is severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the contract. This does not affect the legality, validity or enforceability of any other provisions of the contract, which continue in full force and effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute provision which corresponds as closely as possible with the actual intent of the parties under the illegal, invalid or unenforceable provision. The replacement of such a provision must be made in accordance with Article II.11. The contract must be interpreted as if it had contained the substitute provision as from its entry into force.

II.4. PERFORMANCE OF THE CONTRACT

II.4.1 The contractor must provide services of high quality standards, in accordance with the state of the art in the industry and the provisions of this contract, in particular the tender specifications and the terms of its tender.

II.4.2 The contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU6.

II.4.3 The contractor must obtain any permit or licence required in the State where the services are to be provided.

II.4.4 All periods specified in the contract are calculated in calendar days, unless otherwise specified.

II.4.5 The contractor must not present itself as a representative of the contracting authority and must inform third parties that it is not part of the European public service.

II.4.6 The contractor is responsible for the personnel who carry out the services and exercises its authority over its personnel without interference by the contracting authority. The contractor must inform its personnel that:

(a) they may not accept any direct instructions from the contracting authority; and
(b) their participation in providing the services does not result in any employment or contractual relationship with the contracting authority.

II.4.7 The contractor must ensure that the personnel performing the contract and any future replacement personnel possess the professional qualifications and experience required to provide the services, as the case may be on the basis of the selection criteria set out in the tender specifications.

II.4.8 At the contracting authority’s reasoned request, the contractor must replace any member of personnel who:

6 OJ L 94 of 28.03.2014, p. 65
(a) does not have the expertise required to provide the services; or 
(b) has caused disruption at the premises of the contracting authority.

The contractor bears the cost of replacing its personnel and is responsible for any delay in providing the services resulting from the replacement of personnel.

II.4.9 The contractor must record and report to the contracting authority any problem that affects its ability to provide the services. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

II.5. COMMUNICATION BETWEEN THE PARTIES

II.5.1 Form and means of communication

Any communication of information, notices or documents under the contract must:

(a) be made in writing in paper or electronic format in the language of the contract;
(b) bear the contract number;
(c) be made using the relevant communication details set out in Article 1.8; and 
(d) be sent by mail, email or, for the documents specified in the special conditions, via e-PRIOR.

If a party requests written confirmation of an e-mail within a reasonable time, the other party must provide an original signed paper version of the communication as soon as possible.

The parties agree that any communication made by email has full legal effect and is admissible as evidence in judicial proceedings.

II.5.2 Date of communications by mail and email

Any communication is deemed to have been made when the receiving party receives it, unless this contract refers to the date when the communication was sent.

E-mail is deemed to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in Article 1.8. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the contracting authority is deemed to have been received by the contracting authority on the date on which the department responsible referred to in Article 1.8 registers it.

*Formal notifications* are considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the message was delivered to the specified recipient.

II.5.3 Submission of e-documents via e-PRIOR

If provided for in the special conditions, the exchange of electronic documents (e-documents) such as invoices between the parties is automated through the use of the e-PRIOR platform.
This platform provides two possibilities for such exchanges: either through web services (machine-to-machine connection) or through a web application (the supplier portal).

The contracting authority takes the necessary measures to implement and maintain electronic systems that enable the supplier portal to be used effectively.

In the case of machine-to-machine connection, a direct connection is established between the parties’ back offices. In this case, the parties take the measures necessary on their side to implement and maintain electronic systems that enable the machine-to-machine connection to be used effectively. The electronic systems are specified in the interface control document. The contractor (or leader in the case of a joint tender) must take the necessary technical measures to set up a machine-to-machine connection and at its own cost.

If communication via the supplier portal or via the web services (machine-to-machine connection) is hindered by factors beyond the control of one party, it must notify the other immediately and the parties must take the necessary measures to restore this communication.

If it is impossible to restore the communication within two working days, one party must notify the other that alternative means of communication specified in Article II.5.1 will be used until the supplier portal or the machine-to-machine connection is restored.

When a change in the interface control document requires adaptations, the contractor (or leader in the case of a joint tender) has up to six months from receipt of the notification to implement this change. This period can be shortened by mutual agreement of the parties. This period does not apply to urgent measures required by the security policy of the contracting authority to ensure integrity, confidentiality and non-repudiation of information and the availability of e-PRIOR, which must be applied immediately.

II.5.4 Validity and date of e-documents

The parties agree that any e-document, including related attachments exchanged via e-PRIOR:

- (a) is considered as equivalent to a paper document;
- (b) is deemed to be the original of the document;
- (c) is legally binding on the parties once an e-PRIOR authorised person has performed the ‘sign’ action in e-PRIOR and has full legal effect; and
- (d) constitutes evidence of the information contained in it and is admissible as evidence in judicial proceedings.

The parties expressly waive any rights to contest the validity of such a document solely on the grounds that communications between the parties occurred through e-PRIOR or that the document has been signed through e-PRIOR. If a direct connection is established between the parties’ back offices to allow electronic transfer of documents, the parties agree that an e-document, sent as mentioned in the interface control document, qualifies as an EDI message.

If the e-document is dispatched through the supplier portal, it is deemed to have been legally issued or sent when the contractor (or leader in the case of a joint tender) is able to successfully submit the e-document without any error messages. The generated PDF and XML document for the e-document are considered as a proof of receipt by the contracting authority.
In the event that an e-document is dispatched using a direct connection established between the parties' back offices, the e-document is deemed to have been legally issued or sent when its status is 'received' as defined in the interface control document.

When using the supplier portal, the contractor (or leader in the case of a joint tender) can download the PDF or XML message for each e-document for one year after submission. After this period, copies of the e-documents are no longer available for automatic download from the supplier portal.

II.5.5 Authorised persons in e-PRIOR

The contractor submits a request for each person who needs to be assigned the role of ‘user’ in e-PRIOR. These persons are identified by means of the European Communication Authentication Service (ECAS) and authorised to access and perform actions in e-PRIOR within the permissions of the user roles that the contracting authority has assigned to them.

User roles enabling these e-PRIOR authorised persons to sign legally binding documents such as specific tenders or specific contracts are granted only upon submission of supporting documents proving that the authorised person is empowered to act as a legal representative of the contractor.

II.6. LIABILITY

II.6.1 The contracting authority is not liable for any damage or loss caused by the contractor, including any damage or loss to third parties during or as a consequence of performance of the contract.

II.6.2 If required by the relevant applicable legislation, the contractor must take out an insurance policy against risks and damage or loss relating to the performance of the contract. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the contractor must provide evidence of insurance coverage to the contracting authority.

II.6.3 The contractor is liable for any loss or damage caused to the contracting authority during or as a consequence of performance of the contract, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its personnel or subcontractors, the contractor is liable for the whole amount of the damage or loss.

II.6.4 If a third party brings any action against the contracting authority in connection with the performance of the contract, including any action for alleged breach of intellectual property rights, the contractor must assist the contracting authority in the legal proceedings, including by intervening in support of the contracting authority upon request. If the contracting authority’s liability towards the third party is established and that such liability is caused by the contractor during or as a consequence of the performance of the contract, Article II.6.3 applies.

II.6.5 If the contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they are all jointly and severally liable to the contracting authority for the performance of the contract.
II.6.6 The contracting authority is not liable for any loss or damage caused to the contractor during or as a consequence of performance of the contract, unless the loss or damage was caused by wilful misconduct or gross negligence of the contracting authority.

II.7. CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS

II.7.1 The contractor must take all the necessary measures to prevent any situation of conflict of interest or professional conflicting interest.

II.7.2 The contractor must notify the contracting authority in writing as soon as possible of any situation that could constitute a conflict of interest or a professional conflicting interest during the performance of the contract. The contractor must immediately take action to rectify the situation.

The contracting authority may do any of the following:

(a) verify that the contractor’s action is appropriate;
(b) require the contractor to take further action within a specified deadline;

II.7.3 The contractor must pass on all the relevant obligations in writing to:

(a) its personnel;
(b) any natural person with the power to represent it or take decisions on its behalf;
(c) third parties involved in the performance of the contract, including subcontractors.

The contractor must also ensure that the persons referred to above are not placed in a situation which could give rise to conflicts of interest.

II.8. CONFIDENTIALITY

II.8.1 The contracting authority and the contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally relating to the performance of the contract and identified in writing as confidential.

II.8.2 Each party must:

(a) not use confidential information or documents for any purpose other than to perform its obligations under the contract without the prior written agreement of the other party;
(b) ensure the protection of such confidential information or documents with the same level of protection as its own confidential information and in any case with due diligence;
(c) not disclose, directly or indirectly, confidential information or documents to third parties without the prior written agreement of the other party.

II.8.3 The confidentiality obligations set out in this Article are binding on the contracting authority and the contractor during the performance of the contract and for as long as the information or documents remain confidential unless:

(a) the disclosing party agrees to release the receiving party from the confidentiality obligation earlier;
(b) the confidential information or documents become public through other means than a breach of the confidentiality obligation;

(c) the applicable law requires the disclosure of the confidential information or documents.

II.8.4 The contractor must obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the performance of the contract, a commitment that they will comply with this Article. At the request of the contracting authority, the contractor must provide a document providing evidence of this commitment.

II.9. PROCESSING OF PERSONAL DATA

II.9.1 Any personal data included in the contract must be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 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. Such data must be processed by the data controller solely for the purposes of the performance, management and monitoring of the contract. This does not affect its possible transmission to bodies entrusted with monitoring or inspection tasks in application of Union law.

II.9.2 The contractor has the right to access its personal data and the right to rectify any such data. The contractor should address any queries concerning the processing of its personal data to the data controller.

II.9.3 The contractor has right of recourse at any time to the European Data Protection Supervisor.

II.9.4 If the contract requires the contractor to process any personal data, the contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights

II.9.5 The contractor must grant personnel access to the data to the extent strictly necessary for the performance, management and monitoring of the contract.

II.9.6 The contractor must adopt appropriate technical and organisational security measures giving due regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

(a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:

(i) unauthorised reading, copying, alteration or removal of storage media;

(ii) unauthorised data inputting, as well as any unauthorised disclosure, alteration or erasure of stored personal data;

(iii) unauthorised use of 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 being processed on behalf of third parties can be processed
only in the manner prescribed by the contracting authority;

(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.

II.10. SUBCONTRACTING

II.10.1 The contractor must not subcontract and have the contract performed by third parties
beyond the third parties already mentioned in its tender without prior written
authorisation from the contracting authority.

II.10.2 Even if the contracting authority authorises subcontracting, the contractor remains
bound by its contractual obligations and is solely responsible for the performance of
this contract.

II.10.3 The contractor must ensure that the subcontract does not affect the rights of the
contracting authority under this contract, particularly those under Articles II.8, II.13
and II.24.

II.10.4 The contracting authority may request the contractor to replace a subcontractor found
to be in a situation provided for in points (d) and (e) of Article II.18.1.

II.11. AMENDMENTS

II.11.1 Any amendment to the contract must be made in writing before all contractual
obligations have been fulfilled.

II.11.2 Any amendment must not make changes to the contract that might alter the initial
conditions of the procurement procedure or result in unequal treatment of tenderers.

II.12. ASSIGNMENT

II.12.1 The contractor must not assign the rights and obligations arising from the contract,
including claims for payments or factoring, without prior written authorisation from
the contracting authority. In such cases, the contractor must provide the contracting
authority with the identity of the intended assignee.

II.12.2 Any right or obligation assigned by the contractor without authorisation is not
enforceable against the contracting authority.
II.13. INTELLECTUAL PROPERTY RIGHTS

II.13.1. Ownership of the rights in the results

The Union acquires irrevocably worldwide ownership of the results and of all intellectual property rights under the contract. The intellectual property rights so acquired include any rights, such as copyright and other intellectual or industrial property rights, to any of the results and to all technological solutions and information created or produced by the contractor or by its subcontractor in performance of the contract. The contracting authority may exploit and use the acquired rights as stipulated in this contract. The Union acquires all the rights from the moment the contracting authority approves the results delivered by the contractor. Such delivery and approval are deemed to constitute an effective assignment of rights from the contractor to the Union.

The payment of the price includes any fees payable to the contractor about the acquisition of ownership of rights by the Union including for all forms of exploitation and of use of the results.

II.13.2. Licensing rights on pre-existing materials

Unless provided otherwise in the special conditions, the Union does not acquire ownership of pre-existing rights under this contract.

The contractor licenses the pre-existing rights on a royalty-free, non-exclusive and irrevocable basis to the Union, which may use the pre-existing materials for all the modes of exploitation set out in this contract. All pre-existing rights are licensed to the Union from the moment the results are delivered and approved by the contracting authority.

The licensing of pre-existing rights to the Union under this contract covers all territories worldwide and is valid for the duration of intellectual property rights protection.

The payment of the price as set out in the contract is deemed to also include any fees payable to the contractor in relation to the licensing of pre-existing rights to the Union, including for all forms of exploitation and of use of the results.

Where performance of the contract requires that the contractor uses pre-existing materials belonging to the contracting authority, the contracting authority may request that the contractor signs an adequate licence agreement. Such use by the contractor will not entail any transfer of rights to the contractor and is limited to the needs of this contract.

II.13.3. Exclusive rights

The Union acquires the following exclusive rights:

(a) reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the results by any means (mechanical, digital or other) and in any form, in whole or in part;
(b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the results in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes the communication and broadcasting by cable or by satellite;
(c) distribution: the exclusive right to authorise or prohibit any form of distribution of results or copies of the results to the public, by sale or otherwise;
(d) rental: the exclusive right to authorise or prohibit rental or lending of the results or of copies of the results;
(e) adaptation: the exclusive right to authorise or prohibit any modification of the results;
(f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the results, and any other alteration of the results, subject to the respect of moral rights of authors, where applicable;
(g) where the results are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilization of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
(h) where the results are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
(i) where the results are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
(j) where the results are or include know-how: the right to use such know-how as is necessary to make use of the results to the full extent provided for by this contract, and the right to make it available to contractors or subcontractors acting on behalf of the contracting authority, subject to their signing of adequate confidentiality undertakings where necessary;
(k) where the results are documents:

(i) the right to authorise the reuse of the documents in conformity with the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, ‘reuse’ and ‘document’ have the meaning given to it by this Decision;
(ii) the right to store and archive the results in line with the document management rules applicable to the contracting authority, including digitisation or converting the format for preservation or new use purposes;

(l) where the results are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:

(i) end-user rights, for all uses by the Union or by subcontractors which result from this contract and from the intention of the parties;
(ii) the rights to decompile or disassemble the software;

(m) to the extent that the contractor may invoke moral rights, the right for the contracting authority, except where otherwise provided in this contract, to publish the results with or without mentioning the creator(s)’ name(s), and the right to decide when and whether the results may be disclosed and published.

The contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the Union on all parts of the results, be they created by the contractor or consisting of pre-existing materials.
Where *pre-existing materials* are inserted in the *results*, the contracting authority may accept reasonable restrictions impacting on the above list, provided that the said materials are easily identifiable and separable from the rest, that they do not correspond to substantial elements of the *results*, and that, should the need arise, satisfactory replacement solutions exist, at no additional costs to the contracting authority. In such case, the contractor will have to clearly inform the contracting authority before making such choice and the contracting authority has the right to refuse it.

### II.13.4. Identification of pre-existing rights

When delivering the *results*, the contractor must warrant that, for any use that the contracting authority may envisage within the limits set in this contract, the *results* and the *pre-existing material* incorporated in the *results* are free of claims from *creators* or from any third parties and all the necessary *pre-existing rights* have been obtained or licensed.

To that effect, the contractor must establish a list of all *pre-existing rights* to the *results* of this contract or parts thereof, including identification of the rights' owners. If there are no *pre-existing rights* to the *results*, the contractor must provide a declaration to that effect. The contractor must provide this list or declaration to the contracting authority together with the invoice for payment of the balance at the latest.

### II.13.5. Evidence of granting of pre-existing rights

Upon request by the contracting authority, the contractor must provide evidence that it has the ownership or the right to use all the listed *pre-existing rights*, except for the rights owned or licensed by the Union. The contracting authority may request this evidence even after the end of this contract.

This evidence may refer, for example, to rights to: parts of other documents, images, graphs, fonts, tables, data, software, technical inventions, know-how, IT development tools, routines, subroutines or other programs ('background technology'), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

This evidence must include, as appropriate:

- (a) the name and version number of a software product;
- (b) the full identification of the work and its author, developer, *creator*, translator, data entry person, graphic designer, publisher, editor, photographer, producer;
- (c) a copy of the licence to use the product or of the agreement granting the relevant rights to the contractor or a reference to this licence;
- (d) a copy of the agreement or extract from the employment contract granting the relevant rights to the contractor where parts of the *results* were created by its *personnel*;
- (e) the text of the disclaimer notice if any.

Provision of evidence does not release the contractor from its responsibilities if it is found that it does not hold the necessary rights, regardless of when and by whom this fact is revealed.

The contractor also warrants that it possesses the relevant rights or powers to execute the transfer and that it has paid or has verified payment of all due fees including fees due to collecting societies, related to the final *results*.
II.13.6. Quotation of works in the result

In the result, the contractor must clearly point out all quotations of existing works. The complete reference should include as appropriate, the following: name of the author, title of the work, date and place of publication, date of creation, address of publication on the internet, number, volume and other information that allows the origin to be easily identified.

II.13.7. Moral rights of creators

By delivering the results, the contractor warrants that the creators will not object to the following on the basis of their moral rights under copyright:

(a) that their names be mentioned or not mentioned when the results are presented to the public;
(b) that the results be divulged or not after they have been delivered in their final version to the contracting authority;
(c) that the results be adapted, provided that this is done in a manner which is not prejudicial to the creator’s honour or reputation.

If moral rights on parts of the results protected by copyright may exist, the contractor must obtain the consent of creators regarding the granting or waiver of the relevant moral rights in accordance with the applicable legal provisions and be ready to provide documentary evidence upon request.

II.13.8. Image rights and sound recordings

If natural persons appear in a result or their voice or any other private element is recorded in a recognisable manner, the contractor must obtain a statement by these persons (or, in the case of minors, by the persons exercising parental authority) giving their permission for the described use of their image, voice or private element and, on request, submit a copy of the permission to the contracting authority. The contractor must take the necessary measures to obtain such consent in accordance with the applicable legal provisions.

II.13.9. Copyright notice for pre-existing rights

When the contractor retains pre-existing rights on parts of the results, reference must be inserted to that effect when the result is used as set out in Article I.10.1, with the following disclaimer: ‘© — year — European Union. All rights reserved. Certain parts are licensed under conditions to the EU’, or with any other equivalent disclaimer as the contracting authority may consider best appropriate, or as the parties may agree on a case-by-case basis. This does not apply where inserting such reference would be impossible, notably for practical reasons.

II.13.10. Visibility of Union funding and disclaimer

When making use of the results, the contractor must declare that they have been produced under a contract with the Union and that the opinions expressed are those of the contractor only and do not represent the contracting authority’s official position. The contracting authority may waive this obligation in writing or provide the text of the disclaimer.
II.14. FORCE MAJEURE

II.14.1 If a party is affected by force majeure, it must immediately notify the other party, stating the nature of the circumstances, their likely duration and foreseeable effects.

II.14.2 A party is not liable for any delay or failure to perform its obligations under the contract if that delay or failure is a result of force majeure. If the contractor is unable to fulfil its contractual obligations owing to force majeure, it has the right to remuneration only for the services actually provided.

II.14.3 The parties must take all necessary measures to limit any damage due to force majeure.

II.15. LIQUIDATED DAMAGES

II.15.1. Delay in delivery

If the contractor fails to perform its contractual obligations within the applicable time limits set out in this contract, the contracting authority may claim liquidated damages for each day of delay using the following formula:

\[ 0.3 \times \left( \frac{V}{d} \right) \]

where

\( V \) is the price of the relevant purchase or deliverable or result or, failing that, the price specified in Article I.4.1;

\( d \) is the duration specified for delivery of the relevant purchase or deliverable or result or, failing that, the duration of performance of the contract specified in Article I.3.3 expressed in days.

Liquidated damages may be imposed together with a reduction in price under the conditions laid down in Article II.16.

II.15.2. Procedure

The contracting authority must formally notify the contractor of its intention to apply liquidated damages and the corresponding calculated amount.

The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the contractor submits observations, the contracting authority, taking into account the relevant observations, must notify the contractor:

(a) of the withdrawal of its intention to apply liquidated damages; or

(b) of its final decision to apply liquidated damages and the corresponding amount.
II.15.3. Nature of liquidated damages

The parties expressly acknowledge and agree that any amount payable under this Article is not a penalty and represents a reasonable estimate of fair compensation for the damage incurred due to failure to provide the services within the applicable time limits set out in this contract.

II.15.4. Claims and liability

Any claim for liquidated damages does not affect the contractor’s actual or potential liability or the contracting authority’s rights under Article II.18.

II.16. REDUCTION IN PRICE

II.16.1. Quality standards

If the contractor fails to provide the service in accordance with the contract (‘unperformed obligations’) or if it fails to provide the service in accordance with the expected quality levels specified in the tender specifications (‘low quality delivery’), the contracting authority may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This includes in particular cases where the contracting authority cannot approve a result, report or deliverable as defined in Article I.5 after the contractor has submitted the required additional information, correction or new version.

A reduction in price may be imposed together with liquidated damages under the conditions of Article II.15.

II.16.2. Procedure

The contracting authority must formally notify the contractor of its intention to reduce payment and the corresponding calculated amount.

The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the contractor submits observations, the contracting authority, taking into account the relevant observations, must notify the contractor:

(a) of the withdrawal of its intention to reduce payment; or

(b) of its final decision to reduce payment and the corresponding amount.

II.16.3. Claims and liability

Any reduction in price does not affect the contractor’s actual or potential liability or the contracting authority’s rights under Article II.18.
II.17. SUSPENSION OF THE PERFORMANCE OF THE CONTRACT

II.17.1. Suspension by the contractor

If the contractor is affected by force majeure, it may suspend the performance of the contract. The contractor must immediately notify the contracting authority of the suspension. The notification must include a description of the force majeure and state when the contractor expects to resume the performance of the contract.

The contractor must notify the contracting authority as soon as it is able to resume performance of the contract, unless the contracting authority has already terminated the contract.

II.17.2. Suspension by the contracting authority

The contracting authority may suspend the performance of the contract or any part of it:

(a) if the procedure for awarding the contract or the performance of the contract proves to have been subject to substantial errors, irregularities or fraud;

(b) in order to verify whether the presumed substantial errors, irregularities or fraud actually occurred.

The contracting authority must formally notify the contractor of the suspension. Suspension takes effect on the date of formal notification, or at a later date if the formal notification so provides.

The contracting authority must notify the contractor as soon as possible whether:

(a) it is lifting the suspension; or
(b) it intends to terminate the contract under Article II.18.1(f) or (j).

The contractor is not entitled to compensation for suspension of any part of the contract.

II.18. TERMINATION OF THE CONTRACT

II.18.1. Grounds for termination by the contracting authority

The contracting authority may terminate the contract in the following circumstances:

(a) if provision of the services under the contract has not actually started within 15 days of the scheduled date and the contracting authority considers the new date proposed, if any, unacceptable, taking into account Article II.11.2;
(b) if the contractor is unable, through its own fault, to obtain any permit or licence required for performance of the contract;
(c) if the contractor does not perform the contract in accordance with the tender specifications or is in breach of another substantial contractual obligation.
(d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 106(1) of the Financial Regulation;

(e) if the contractor or any related person is subject to any of the situations provided for in points (c) to (f) of Article 106(1) or to Article 106(2) of the Financial Regulation.

(f) if the procedure for awarding the contract or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud;

(g) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;

(h) if the contractor is in a situation that could constitute a conflict of interest or a professional conflicting interest as referred to in Article II.7;

(i) if a change to the contractor’s legal, financial, technical, organisational or ownership situation is likely to substantially affect the performance of the contract or substantially modify the conditions under which the contract was initially awarded;

(j) in the event of force majeure, where either resuming implementation is impossible or the necessary ensuing amendments to the contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;

II.18.2. Grounds for termination by the contractor

The contractor may terminate the contract if:

(a) it has evidence that the contracting authority has committed substantial errors, irregularities or fraud in the procedure for awarding the contract or the performance of the contract;

(b) the contracting authority fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to perform the contract as provided for in the tender specifications.

II.18.3. Procedure for termination

A party must formally notify the other party of its intention to terminate the contract and the grounds for termination.

The other party has 30 days following the date of receipt to submit observations, including the measures it has taken to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

If the other party submits observations, the party intending to terminate must formally notify it either of the withdrawal of its intention to terminate or of its final decision to terminate.

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In the cases referred to in points (a) to (d) and (g) to (i) of Article II.18.1 and in Article II.18.2, the date on which the termination takes effect must be specified in the formal notification.

In the cases referred to in points (e), (f) and (j) of Article II.18.1, the termination takes effect on the day following the date on which the contractor receives notification of termination.

In addition, at the request of the contracting authority and regardless of the grounds for termination, the contractor must provide all necessary assistance, including information, documents and files, to allow the contracting authority to complete, continue or transfer the services to a new contractor or internally, without interruption or adverse effect on the quality or continuity of the services. The parties may agree to draw up a transition plan detailing the contractor’s assistance unless such plan is already detailed in other contractual documents or in the tender specifications. The contractor must provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

II.18.4. Effects of termination

The contractor is liable for damage incurred by the contracting authority as a result of the termination of the contract including the cost of appointing another contractor to provide or complete the services, unless the damage was caused by the situation specified in Article II.18.1 (j) or in Article II.18.2. The contracting authority may claim compensation for such damage.

The contractor is not entitled to compensation for any loss resulting from the termination of the contract, including loss of anticipated profits, unless the loss was caused by the situation specified in Article II.18.2.

The contractor must take all appropriate measures to minimise costs, prevent damage and cancel or reduce its commitments.

Within 60 days of the date of termination, the contractor must submit any report, deliverable or result and any invoice required for services that were provided before the date of termination.

In the case of joint tenders, the contracting authority may terminate the contract with each member of the group separately on the basis of points (d), (e) or (g) of Article II.18.1, under the conditions set out in Article II.11.2.

II.19. INVOICES, VALUE ADDED TAX AND E-INVOICING

II.19.1. Invoices and value added tax

Invoices must contain the contractor’s (or leader’s in the case of a joint tender) identification data, the amount, the currency and the date, as well as the contract reference.

Invoices must indicate the place of taxation of the contractor (or leader in the case of a joint tender) for value added tax (VAT) purposes and must specify separately amounts not including VAT and amounts including VAT.
The contracting authority is exempt from all taxes and duties, including VAT, in accordance with Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union.

The contractor (or leader in the case of a joint tender) must complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for performance of the contract are exempt from taxes and duties, including VAT.

II.19.2. E-invoicing

If provided for in the special conditions, the contractor (or leader in the case of a joint tender) submits invoices in electronic format if the conditions regarding electronic signature specified by Directive 2006/112/EC on VAT are fulfilled, i.e. using a qualified electronic signature or through electronic data interchange.

Reception of invoices by standard format (pdf) or email is not accepted.

II.20. PRICE REVISION

If a price revision index is provided in Article I.4.2, this Article applies to it.

Prices are fixed and not subject to revision during the first year of the contract.

At the beginning of the second and every following year of the contract, each price may be revised upwards or downwards at the request of one of the parties.

A party may request a price revision in writing no later than three months before the anniversary date of entry into force of the contract. The other party must acknowledge the request within 14 days of receipt.

At the anniversary date, the contracting authority must communicate the final index for the month in which the request was received, or failing that, the last provisional index available for that month. The contractor establishes the new price on this basis and communicates it as soon as possible to the contracting authority for verification.

II.21. PAYMENTS AND GUARANTEES

II.21.1. Date of payment

Payments are deemed to be effected on the date when they are debited to the contracting authority’s account.

II.21.2. Currency

Payments are made in euros or in the currency provided for in Article I.7.

II.21.3. Conversion

The contracting authority makes any conversion between the euro and another currency at the daily euro exchange rate published in the Official Journal of the European Union, or failing that, at the monthly accounting exchange rate, as established by the European Commission and published on the website indicated below, applicable on the day when it issues the payment order.
The contractor makes any conversion between the euro and another currency at the monthly accounting exchange rate, established by the Commission and published on the website indicated below, applicable on the date of the invoice.

http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/infoeuro_en.cfm

II.21.4. Costs of transfer

The costs of the transfer are borne as follows:

(a) the contracting authority bears the costs of dispatch charged by its bank;
(b) the contractor bears the costs of receipt charged by its bank;
(c) the party causing repetition of the transfer bears the costs for repeated transfer.

II.21.5. Pre-financing, performance and money retention guarantees

If, as provided for in Articles 1.5 or 1.6, a financial guarantee is required for the payment of pre-financing, as performance guarantee or as retention money guarantee, it must fulfil the following conditions:

(a) the financial guarantee is provided by a bank or a financial institution approved by the contracting authority or, at the request of the contractor and with the agreement of the contracting authority, by a third party;
(b) the guarantor stands as first-call guarantor and does not require the contracting authority to have recourse against the principal debtor (the contractor).

The contractor bears the cost of providing such guarantee.

Pre-financing guarantees must remain in force until the pre-financing is cleared against interim payments or payment of the balance. Where the payment of the balance takes the form of a debit note, the pre-financing guarantee must remain in force for three months after the debit note is sent to the contractor. The contracting authority must release the guarantee within the following month.

Performance guarantees cover compliance with substantial contractual obligations until the contracting authority has given its final approval for the service. The performance guarantee must not exceed 10 % of the total price of the contract. The contracting authority must release the guarantee fully after final approval of the service, as provided for in the contract.

Retention money guarantees cover full delivery of the service in accordance with the contract including during the contract liability period and until its final approval by the contracting authority. The retention money guarantee must not exceed 10 % of the total price of the contract. The contracting authority must release the guarantee after the expiry of the contract liability period as provided for in the contract.

The contracting authority must not request a retention money guarantee where it has requested a performance guarantee.

II.21.6. Interim payments and payment of the balance

The contractor (or leader in the case of a joint tender) must send an invoice for interim payment, as provided for in Article 1.5 or in the tender specifications.
The contractor (or leader in the case of a joint tender) must send an invoice for payment of the balance within 60 days of the end of the period of provision of the services, as provided for in Article I.5 or in the tender specifications.

Payment of the invoice and approval of documents does not imply recognition of the regularity, authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

II.21.7. Suspension of the time allowed for payment

The contracting authority may suspend the payment periods specified in Article I.5 at any time by notifying the contractor (or leader in the case of a joint tender) that its invoice cannot be processed. The reasons the contracting authority may cite for not being able to process an invoice are:

(a) because it does not comply with the contract;
(b) because the contractor has not produced the appropriate documents or deliverables; or
(c) because the contracting authority has observations on the documents or deliverables submitted with the invoice.

The contracting authority must notify the contractor (or leader in the case of joint tender) as soon as possible of any such suspension, giving the reasons for it.

Suspension takes effect on the date the contracting authority sends the notification. The remaining payment period resumes from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the contractor (or leader in the case of a joint tender) may request the contracting authority to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of this Article and the new document produced is also rejected, the contracting authority reserves the right to terminate the contract in accordance with Article II.18.1(c).

II.21.8. Interest on late payment

On expiry of the payment periods specified in Article I.5, the contractor (or leader in the case of a joint tender) is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros (the reference rate) plus eight points. The reference rate is the rate in force, as published in the C series of the Official Journal of the European Union, on the first day of the month in which the payment period ends.

Suspension of the payment period as provided for in Article II.21.7 is not considered as giving rise to late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of payment as defined in Article II.21.1.
However, when the calculated interest is EUR 200 or less, it must be paid to the contractor (or leader in the case of a joint tender) only if it requests it within two months of receiving late payment.

II.22. REIMBURSEMENTS

II.22.1 If provided for in the special conditions or in the tender specifications, the contracting authority must reimburse expenses directly connected with the provision of the services either when the contractor provides it with supporting documents or on the basis of flat rates.

II.22.2 The contracting authority reimburses travel and subsistence expenses on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.

II.22.3 The contracting authority reimburses travel expenses as follows:

(a) travel by air: up to the maximum cost of an economy class ticket at the time of the reservation;
(b) travel by boat or rail: up to the maximum cost of a first class ticket;
(c) travel by car: at the rate of one first class rail ticket for the same journey and on the same day;

In addition, the contracting authority reimburses travel outside Union territory if it has given its prior written approval for the expenses.

II.22.4 The contracting authority reimburses subsistence expenses on the basis of a daily subsistence allowance as follows:

(a) for journeys of less than 200 km for a return trip, no subsistence allowance is payable;
(b) the daily subsistence allowance is payable only on receipt of supporting documents proving that the person concerned was present at the destination;
(c) the daily subsistence allowance takes the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport including transport to and from the airport or station, insurance and sundries;
(d) the daily subsistence allowance is reimbursed at the flat rates specified in Article I.4.3;
(e) accommodation is reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Article I.4.3.

II.22.5 The contracting authority reimburses the cost of shipment of equipment or unaccompanied luggage if it has given prior written approval for the expense.

II.23. RECOVERY

II.23.1 If an amount is to be recovered under the terms of the contract, the contractor must repay the contracting authority the amount in question.
II.23.2. Recovery procedure

Before recovery, the contracting authority must formally notify the contractor of its intention to recover the amount it claims, specifying the amount due and the reasons for recovery and inviting the contractor to make any observations within 30 days of receipt.

If no observations have been submitted or if, despite the observations submitted, the contracting authority decides to pursue the recovery procedure, it must confirm recovery by formally notifying a debit note to the contractor, specifying the date of payment. The contractor must pay in accordance with the provisions specified in the debit note.

If the contractor does not pay by the due date, the contracting authority may, after informing the contractor in writing, recover the amounts due:

(a) by offsetting them against any amounts owed to the contractor by the Union or by the European Atomic Energy Community;
(b) by calling in a financial guarantee if the contractor has submitted one to the contracting authority;
(c) by taking legal action.

II.23.3. Interest on late payment

If the contractor does not honour the obligation to pay the amount due by the date set by the contracting authority in the debit note, the amount due bears interest at the rate indicated in Article II.21.8. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the contracting authority receives the full amount owed.

Any partial payment is first entered against charges and interest on late payment and then against the principal amount.

II.23.4. Recovery rules in the case of joint tender

If the contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article II.6 (liability). The contracting authority first claims the full amount to the leader of the group.

If the leader does not pay by the due date and if the amount cannot be offset in accordance with Article II.23.2 (a), the contracting authority may claim the full amount to any other member of the group by notifying the debit note already sent to the leader under Article II.23.2.

II.24. Checks and Audits

II.24.1 The contracting authority and the European Anti-Fraud Office may check or require an audit on the performance of the contract. This may be carried out either by OLAF's own staff or by any outside body authorised to do so on its behalf.

Such checks and audits may be initiated at any moment during the performance of the contract and up to five years starting from the payment of the balance.
The audit procedure is initiated on the date of receipt of the relevant letter sent by the contracting authority. Audits are carried out on a confidential basis.

II.24.2 The contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of five years starting from the payment of the balance.

II.24.3 The contractor must grant the contracting authority’s staff and outside personnel authorised by the contracting authority the appropriate right of access to sites and premises where the contract is performed and to all the information, including information in electronic format, needed to conduct such checks and audits. The contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format.

II.24.4 On the basis of the findings made during the audit, a provisional report is drawn up. The contracting authority or its authorised representative must send it to the contractor, who has 30 days following the date of receipt to submit observations. The contractor must receive the final report within 60 days following the expiry of that deadline to submit observations.

On the basis of the final audit findings, the contracting authority may recover all or part of the payments made in accordance with Article II.23 and may take any other measure which it considers necessary.

II.24.5 In accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities’ financial interests against fraud and other irregularities and Regulation (EU, Euratom) No 883/2013 of the European Parliament and the Council of 11 September 2013 concerning investigation conducted by the European Anti-Fraud Office, the European Anti-Fraud Office may carry out investigations, including on-the-spot checks and inspections, to establish whether there has been fraud, corruption or any other illegal activity under the contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

The investigations may be carried out at any moment during the provision of the services and up to five years starting from the payment of the balance.

II.24.6 The Court of Auditors has the same rights as the contracting authority, particularly right of access, for the purpose of checks and audits.