



## INVITATION TO TENDER

TO:

<b>Date of issue:</b>	2017-03-28
<b>Tender no.:</b>	2017-03-07
<b>Contract title:</b>	Non Food Items for Zelikan camp
<b>Closing date:</b>	2017-04-11 (16.00)
<b>Tender opening:</b>	2017-04-12 (09.00)
<b>Contracting Authority:</b>	NCA NIKR  Contact person: Atren A. Shilaimon Tel: 09647504433917 E-mail: <a href="mailto:aas@nca.no">aas@nca.no</a>

### **NCA INVITES YOU TO TENDER FOR SUPPLY OF NON FOOD ITEMS UNDER A FRAMEWORK CONTRACT**

Please find enclosed the following documents, which constitute the tender dossier:

**A – Instructions to tenderers**

**B – Draft Contract including Annexes:**

**Annex 1A: Tender Submission form**

**Annex 1B: Tender Submission form – item list** (Attached in separate excel document - to be completed by the Candidate)

**Annex 2: General Terms and Conditions for Supply Contracts – Ver1 2016**

**Annex 3: Code of Conduct for Contractors**

**NOTE:**

**PLEASE FIND SEPARATE QUOTATION SUBMISSION FORM (ANNEX 1B) IN EXCEL, TO FILL OUT BY SUPPLIER, PRINT, AND ATTACH TO THIS QUATATION.**

We should be grateful if you would inform us by email of your intention to submit or not a proposal.

## A. INSTRUCTIONS TO TENDERERS

### A.1. Scope of supply

The subject of the contract is the supply by the tenderer of the items specified in Annex 1B (separate excel document).

The supplies to be purchased are for use by the Contracting Authority in Northern Iraq Kurdish Region. The tenderer must submit a tender for all lots.

The supplies are described in more details in the item list, Annex 1B.

### Delivery

The above supplies shall be delivered to (new) Zelikan camp (next to existing Nargizlia camp).

### A.2. Cost of Tender

The tenderer shall bear all costs associated with the preparation and submission of his tender and the Contracting Authority will in no case be responsible or liable for these costs, regardless of the conduct or outcome of the tender process.

### A.3. Clarification of tender documents and additional information

Tenderers may submit questions in writing at the latest on the date specified in the timetable in article A.4, specifying the tender no., and the contract title. Information regarding interpretation of this Invitation to tender must be requested in writing to the Contracting Authority's contact person.

Tenderers are not allowed to approach the Contracting Authority for verbal clarification.

Any clarification of the tender dossier given by the Contracting Authority will be submitted to all tenderers at the latest on the date specified in the timetable. If the Contracting Authority provides additional information on the tender dossier, such information will be sent in writing to all other prospective tenderers at the same time.

Any prospective tenderer seeking to arrange individual meetings during the tender period with either the Contracting Authority and/or any other organisation with which the Contracting Authority is associated or linked may be excluded from the tender procedure.

### A.4. Planned timetable

The Contracting Authority reserves the right to alter the dates and time in the following timetable, in which case all tenderers will be informed in writing and a new timetable will be provided.

	Date	Time
Deadline for request for any clarifications from the Contracting Authority	2 April	16:00
Last date on which clarifications are issued by the Contracting Authority	5 April	16:00
Deadline for submission of tenders (closing date)	11 April	16:00
Tender opening session	12 April	09:00
Contract award	14-15 April	-
Contract start	16 - April	-

All times are in the time zone of Iraq.

### A.5. Eligibility and qualification requirements

Tenderers are not eligible if they are in one of the situations listed in article 15 of the General Terms and Conditions for Supply Contracts – Ver1 2016.

Tenderers shall in the Tender Submission Form attest that they meet the above eligibility criteria. If required by the Contracting Authority, the tenderer, which tender is accepted shall further provide evidence satisfactory to the Contracting Authority of its eligibility through certificates issued by competent authorities in its country of establishment or operation, or, if such certificates are not available, through a sworn statement.

Tenderers are also requested to certify that they comply with the Code of Conduct for Contractors.

To give evidence of their capability and adequate resources tenderers shall provide the information and the documents requested in the tender dossier.

#### **A.6. Exclusion from award of contracts**

Contracts may not be awarded to tenderers who, during the procurement procedure:

- (a) are subject to conflict of interest; and/or
- (b) are guilty of misrepresentation in supplying the information required as a condition of participation and eligibility in the tender procedure or fail to supply this information.

#### **A.7. Language of Tenders**

The tenders, all correspondence and documents related to the tender exchanged by the tenderer and the Contracting Authority must be written in English. Supporting documents and printed literature furnished by the tenderer may be in local language.

#### **A.8. Documents and items comprising the Tender**

The tenderer shall complete and submit the following documents and items with his tender:

- Samples of items (to be delivered to NCA Dohuk office) (in case identical item is requested twice – for example in hygiene and replenishment kit – only one sample shall be submitted)
- Copies of tenderer's audited financial statement for the last three years.
- Proposal Submission Forms duly completed and signed by the Candidate. Item list, on separate excel document, shall be printed, stamped and attached. Suppliers are welcome to additionally add excel document on separate USB memory and add to bid.
- List of references, previous similar experiences
- ISO certification for company (if available)
- Documents on company policies (Health, Safety, HR, and Energy or Climate policy) (if available)
- Company registration certificate

#### **A.9. Price**

The price quoted by the supplier shall not be subject to adjustments except as otherwise provided in the conditions of the Contract.

Price shall be quoted in USD, and will be based on the value calculated from the item list, in attached excel document.

The Contracting Authority will pay the successful supplier for each purchase order issued and supplies delivered in accordance with the terms of this Tender dossier, a sum which shall be based on the supplies ordered by the Contracting Authority and delivered by the successful supplier, at the price specified in the Contract.

The Contractor guarantees that the price specified in this Tender dossier, is the maximum price that shall remain firm and shall not be increased during the entire term of the Contract, provided however, that in the event that the successful supplier is able to offer the Contracting Authority a discounted price on placement of bulk contracts, the unit price shall be reduced for specific contracts.

By signing this Contract, the Contractor certifies that the Contracting Authority, for transactions resulting from this Tender dossier is not being charged more than other clients for similar supplies and similar bulk orders and within similar circumstances.

**VAT and/or any sales tax applicable to the purchase of supplies shall be indicated separately in the Quotation Submission Form.**

**A.10. Validity**

Tenders shall remain valid and open for acceptance for 30 days after the closing date for the submission of tenders.

Prior to the expiry of the original tender validity period, the Contracting Authority may ask tenderers in writing to extend this period. Tenderers that agree to do so will not be permitted to modify their tenders. If they refuse, their participation in the tender procedure will be terminated.

**A.11. Submission of tenders and closing date**

Tenders must be received at the address mentioned below by hand or post not later than the closing date and time specified in the time table article A.5. Any tenders received after that time will not be considered. Tenders shall be submitted in a sealed envelope bearing the following information:

NCA Office, Diylar Street, KRO, Dohuk  
NCA Logistics  
Tender no.: 2017-03-08 NFI Zelikan Camp

**NOT TO BE OPENED BEFORE THE TENDER OPENING SESSION.**

No tender may be changed or withdrawn after the deadline has passed.

**A.12. Tender opening and evaluation**

Tenders are invited to attend the tender opening. Tenders are requested to advise the contact person, at least one day in advance of the tender opening if they will attend.

Tender opening will take place at NCA Dohuk Office, at the time and date specified in article A.5. Tenderer's representatives who are present shall sign a register indicating their attendance.

At the tender opening, only the tenderers' names, the total amount of the tenders and any discount offered will be read aloud and recorded.

Prior to the detailed evaluation of the tenders, the evaluation committee, (established by the Contracting Authority for the purposes of this tender procedure), shall ascertain whether the tenders meet the eligibility requirements; have been properly signed, are substantially responsive to the tender documents; have any material errors in computation; and are otherwise generally in order.

If a tender is not substantially responsive i.e. it contains material deviations from or reservations to the terms, conditions and specifications in the tender dossier, it shall not be considered further.

After analysing the substantially responsive tenders, the evaluation committee will examine the technical admissibility and samples of each tender. Deviations from the specifications may be considered if deemed to be in the best interest of the Contracting Authority.

Tenders determined to be substantially responsive and technically compliant will be checked by the evaluation committee for any arithmetic errors. Where there is a discrepancy between the amounts in the figures and words, the amount in words will govern. Where there are discrepancies between the unit price and the line item total, derived from multiplying the unit rate by the quantity, the unit rate as quoted will govern. If a tenderer refuses to accept the correction, his tender will be rejected.

**A.13. Award of Contract and criteria**

The Contracting Authority reserves the right to accept all or part of your quotation, whichever is in its best financial interest.

The Contracting Authority reserves the right to award the Contract with more than one supplier whose quotation has been determined to be substantially responsive to this Request for Quotation (RFQ), and who has offered the lowest ranked prices, provided further that the supplier has demonstrated the capability and resources to carry out the Contract effectively.

**Evaluation**

The evaluation method will be the quality and cost based selection. A two-stage procedure shall be utilized to evaluate the suppliers: a quality evaluation and a financial evaluation. The suppliers will be ranked according to their combined quality and financial scores according to the table below. The supplier with the highest overall score will be selected.

Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights 40% for the technical proposal; and 60% for the offered price. Each proposal's overall score shall therefore be:  $St \times 40\% + Sf \times 60\%$ .

**Technical evaluation**

Technical evaluation		Maximum Points	Criteria
1	Quality of items	60	Supplier shall submit samples of requested items. A technical quality evaluation by experts will take place, ranking relevant items.  Higher score will be given to suppliers who provide quality items, from established brands, suitable for distribution in Zelikan camp setting.
2	Delivery time and capacity, warehouse storage etc.	10	Points will be based on delivery time and suppliers warehouse capacity.
3	Candidate's relevant experience in the field of assignment	10	Similar experience, providing NFIs to camps or similar situations.  Full score will be given suppliers who have supplied NFI items to two or more clients in similar context, with clear contact details to client.

			Clients may be contacted to ensure good quality of provided services.
4	Candidate's CSR related policies – e.g. HR policy, health and safety policy, energy policy, climate policy, Global Compact membership etc.	10	Provide documentation of policies.  Full score will be given candidates who provides two or more documented company polices.
5	CSR related certifications e.g. ISO 26000/50001/140000 or SA80000	10	Provide documented ISO certification.  Full score will be given supplier who provide documented ISO certification for company.
<b>Total Technical Score</b>		<b>100</b>	

### Financial evaluation

Each proposal shall be given a financial score. The lowest Financial Proposal (Fm) will be given a financial score (Sf) of 100 points. Financial proposal is based on the assumed total cost for the items according to attached excel document. The formula for determining the financial scores shall be the following:

$Sf = 100 \times FM/F$ , in which

Sf is the financial score

FM is the lowest price and

F is the price of the proposal under evaluation

#### **A.14. Signature and entry into force of the Contract**

Prior to the expiration of the period of the tender validity, the Contracting Authority will inform the successful tenderer in writing that its tender has been accepted and inform the non-successful tenderers in writing about the result of the evaluation process.

Within 3 days of receipt of the contract, not yet signed by the Contracting Authority, the successful tenderer must sign and date the contract and return it, to the Contracting Authority. On signing the contract, the successful tenderer will become the Contractor and the contract will enter into force once signed by the Contracting Authority.

If the successful tenderer fails to sign and return the contract within the days stipulated, the Contracting Authority may consider the acceptance of the tender to be cancelled without prejudice to the Contracting Authority's right to, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the Contracting Authority.

#### **A.15. Cancellation for convenience**

The Contracting Authority may for its own convenience and without charge or liability cancel the tender process at any stage.

**B. DRAFT FRAMEWORK CONTRACT (SUPPLY)**

**CONTRACT TITLE: NON FOOD ITEMS FOR ZELIKAN CAMP**

**Contract no.: <Number>**

**Instructions to candidates: at this stage of the Request for Proposals this document is for your information and intended to make you aware of the contractual provisions. The information missing in this document will be filled in when a Contractor has been selected, and the “draft” Contract will then become the “final” Contract” between the Contracting Authority and the successful Contractor.**

<Insert name and address>  
("The Contracting Authority"),

of the one part,

and

<Insert name and address of supplier>  
("the Contractor")

of the other part,

have agreed as stipulated in the attached document.

The Contract is done in English in <three> originals, <two> originals being for the Contracting Authority and one original being for the Contractor.

**For the Contractor**

**For the Contracting Authority**

Name:

Name:

Title:

Title:

Signature:

Signature:

Date:

Date:

## **Special Conditions**

### **B.1. Scope of Supply**

The subject of the contract is the supply, of the supplies described in Annex 2.

The Contractor acknowledges that:

- a) the Contracting Authority is not obligated to place any minimum number of purchase orders with the Contractor, pursuant to this contract;
- b) the Contracting Authority shall not be liable for any cost in the event that no purchase order is placed under this contract; and
- c) this contract is non exclusive, and the Contracting Authority is entitled to procure the same or similar supplies from other Contractors, as it sees fit.

### **B.2. Commencement Date**

The Contract shall commence after signature of this contract by both parties.

### **Expiry Date**

The contract expires 30 Sep 2017. However the contract shall remain in force and effect until the end of the warranty liability period as defined in article 4 in the General Terms and Conditions for Supply Contracts – ver4 2012.

### **B.3. Terms and Termination**

The contract is valid for a period of 5 months, and commences on the commencement date and expires at midnight on the expiry date, unless earlier termination in accordance with the General Terms and Conditions of this contract.

The Contracting Authority shall be entitled to renegotiate the contract for a further period of 6 months on similar terms and conditions, by giving the Contractor written notice of its intention to renegotiate the contract not less than 30 days prior to the expiry date, provided however that:

In the event of a breach of the contract, the Contracting Authority may terminate the contract as per General Terms and Conditions article 8 and 11.

### **B.4. Confirmation of Purchase Order**

The Contract shall be implemented through purchase orders, which will be placed by the Contracting Authority according to the terms and conditions in the Contract.

The Contractor shall acknowledge receipt of a purchase order by signing and returning the Purchase order within 3 working days of its receipt.

### **B.5. Delivery**

The supplies shall be delivered to (new) Zelikan camp in accordance with this Contract and with the quantities and other instructions specified in the Purchase order. All risk of loss or damage to the supplies shall remain with the Contractor until physical delivery takes place in accordance with the Contract.

Delivery shall not exceed the number of days stulated by the Contractor in Annex 2, from the date of receipt of a purchase order by the Contractor, and the Contractor acknowledges that lead time for delivery is defined as the time from receipt of a purchase order and the manufacturing period until supplies are available for dispatch from the point of origin.

### **B.6. Packing Instructions**



The supplies shall be contained or packed in a manner adequate to protect the supplies while in transit to the consignee. The Contractor shall be responsible for any damage or loss, which has resulted from faulty or inadequate packing. The Contractor warrants that the cost of packing is included in the cost offered for the items.

**B.7. Shipping documents required**

The following documents shall be submitted to the forwarding agent:

- a) Invoice (one original + two copies)
- b) Proof of delivery (Options: Signed - Waybill / Delivery Note / Goods Received Note / Packing list) (one original + two copies)

**B.8. Price**

The Contracting Authority shall pay the Contractor for each purchase order issued and supplies delivered in accordance with the terms of this contract, a sum which shall be based on the supplies ordered by the Contracting Authority and delivered by the Contractor, at the price specified in this contract.

The Contractor guarantees that the price specified in this contract, are the maximum price that shall remain firm and shall not be increased during the entire term of this contract, provided however, that in the event that the Contractor is able to offer the Contracting Authority a discounted price on placement of bulk contracts, the unit price shall be reduced for specific contracts

By signing this contract, the Contractor certifies that the Contracting Authority, for transactions resulting from this contract is not being charged more than other clients for similar supplies and similar bulk orders and within similar circumstances.

**B.9. Payment**

Payment shall be made in USD, by bank transfer to the following account:

Account Number:  
Name of Bank:  
Address of Bank:  
Account name:  
Swift Code:

100% payment will be made by the Contracting Authority within 30 days after delivery of supplies and upon receipt of the following documents:

- Invoice (one original + two copies)
- Proof of delivery (Options: Signed - Waybill / Delivery Note / Goods Received Note / Packing list) (one original + two copies)

**B.10. Warranty**

The Contractor will meet without limitation the warranty obligations as stated in the General Terms and Conditions for Supply contracts Ver1 2016article 4.

**B.11. Order of precedence of contract documents**

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

1. This contract
2. Technical Data Form (Annex 1) including clarifications before the deadline for submission of tenders, and
3. The Contractors technical offer, including clarification from the Contractor provided during the evaluation
4. Tender Submission Form (Annex 2)

5. The General Terms and Conditions for Supply Contracts – Ver4 2012. (Annex 3)
6. The Code of Conduct for Suppliers (Annex 4)

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

**B.12. Language**

The language of the Contract, The Purchase Order and of all written communications between the Contractor and the Contracting Authority shall be English.

**B.13. Notices**

Any written communication relating to this contract between the Contracting Authority and the Contractor must state the contract title and contract number, and must be sent by e-mail or by hand to the addresses identified in this contract.

**B.14. General Terms and Conditions**

The Contracting Authorities' General Terms and Conditions attached shall apply to this contract and all purchase orders subsequently issued pursuant to this contract. In the case of any inconsistencies, the following order of precedence shall prevail:

- a) the purchase order
- b) the contract

## ANNEX 1A: TENDER SUBMISSION FORM

(PLEASE FIND ANNEX 1B – ATTACHED SEPARATE EXCEL DOCUMENT)

Company information	
Parent company (legal name)	
Street name and no.	
City	
Postal code	
Country	
Phone no.	
Email	
Website	
Sales Manager (name)	
Director (Name)	
Other contact (Title and Name)	
Does your company have CSR related policies in place – e.g. health and safety policy, HR policy, staff policy, energy policy, climate policy or is a member of Global Compact. Please state which policies. ( <u>please attach</u> )	
Is your company e.g. ISO 26000/50001/14000 certified or SA8000 certified? ( <u>please attach</u> )	
Does your company have a Code of Conduct? ( <u>please attach</u> )	

References				
Name and country of customer	Type of contract	Value	Contact name	Phone and email

After having read your Invitation to Tender no. 2017-03-08 for supply of Non Food Items for Zelikan camp dated 2017-03-28, and after having examined the Tender Dossier, I/we hereby offer to execute and complete the Contract in conformity with all conditions in the Tender dossier for the sum indicated in our financial proposal. On behalf of the company, we hereby;

- Accept, without restrictions, all the provisions in the Invitation to Tender including General terms and Conditions for Supply contracts – Ver4 2012, with annexes.
- Provided that a contract is issued by the Contracting Authority we hereby commit to furnish any or all items at the price offered and deliver same to the designated points within the delivery time stated above.
- Certify and attest that we meet the eligibility criteria of article stated in the Instructions to Tenderers.
- Certify and attest compliance with the Code of Conduct for Contractors in Annex 4.

The above declarations will become an integrated part of the contract and misrepresentation will be regarded as grounds for termination.

- In the event the contract is awarded to us, we request that payments under the contract be made to the following account: [insert all necessary references].
- Our tender is valid for a period of 30 days after the closing date in accordance with instructions to tenders.

Signature and stamp:

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Signed by:

**The tenderer**

Name of the company

Address

Telephone no.

Email

Name of contact person

Date

# GENERAL TERMS AND CONDITIONS FOR SUPPLY CONTRACTS – VER1 2016

## DEFINITIONS

In these general terms and conditions the terms:

- a) "Purchase Order" and "Contract" are used interchangeably and cover also "purchase contract" and/or "supply contract" or any other contract, whichever its denomination, to which these general terms and conditions are made applicable,
- b) "Seller" and "Contractor" are used interchangeably and shall also cover the term "Supplier" used in any contract as defined above.
- c) "Buyer" and "Contracting Authority" are used interchangeably.
- d) "Goods" and "supplies" are used interchangeably, to designate the supplies object of the Contract as defined above.
- e) The Contracting Authority's "partners" are the organisations to which the Contracting Authority is associated or linked.

## 1. DELIVERY TERMS

Notwithstanding any Incoterm 2010 used in a purchase order or similar document, it is the responsibility of the Seller to obtain any export license or other governmental authorisation for export.

## 2. PAYMENT

2.1 Payment will be as indicated in the purchase order. Unless otherwise stated in the purchase order, payment terms will be 30 days from receipt of goods and relevant documentation. Payments will only be made by cheque or bank transfer to the Suppliers company bank account.

2.2 Payment made by the Contracting Authority does not imply any acceptance of Goods or related services. Unless otherwise stated in the purchase order, prices are fixed.

## 3. INSPECTION AND ACCEPTANCE OF THE GOODS

3.1. All Goods shall be subject to inspection and testing by the Contracting Authority or its designated representatives, to the extent practicable, at all times and places, including the period of manufacture and, in any event, prior to formal acceptance by the Contracting Authority.

3.2. Neither the carrying out of any inspections of the Goods nor any failure to undertake any such inspections shall release the Seller of any of its warranties or the performance of any obligations under the Contract.

3.3. The Goods shall be taken over by the Contracting Authority when they have been delivered to final destination in accordance with the Contract, have satisfactorily passed the required tests, or have been successfully installed and commissioned as the case may be, and a certificate of acceptance has been issued.

3.4. Under no circumstances shall the Contracting Authority be required, or deemed to, accept any Goods that do not conform to the specifications or requirements of the Contract. The Contracting Authority may condition acceptance of the Goods to the successful completion of acceptance tests. In no case shall the Contracting Authority be obligated to accept any Goods unless and until the Contracting Authority has had a reasonable opportunity to (i) inspect the Goods following their delivery at final destination, (ii) proceed with and complete satisfactory tests, or (iii) be satisfied of installation and commissioning of the equipment, as the case may be, and whichever is the latest. Payment by the Contracting Authority does not imply acceptance of the Goods.

3.5. If the Contracting Authority fails to issue an acceptance certificate within a period of 45 days from actual delivery of the Goods at final destination, successful completion of the tests, successful installation and commissioning, whichever is the latest, the Contracting Authority shall be deemed to have issued the acceptance certificate on the last day of that 45-day period. The issue of the acceptance certificate shall not release the Seller of any of its warranties under the Contract, including those of article 4.

3.6. Notwithstanding any other rights of, or remedies available to, the Contracting Authority under the Contract, in case any of the Goods are defective or otherwise do not conform to the Contract, the Contracting Authority may, at its sole option, reject or refuse to accept the Goods, and the Seller shall promptly proceed in accordance with article 4.3.

## 4. WARRANTY OBLIGATIONS

4.1. Without limitation of any other warranties stated in or arising under the Contract, or resulting from statutory rights under applicable product liability law, the Seller warrants and represents that:

- a) the Goods, including all packaging and packing thereof, conform to the specifications of the Contract, are fit for the purposes for which such Goods are ordinarily used and for the purposes expressly made known to the Seller, and shall be of even quality, free from faults and defects in design, material, manufacture and workmanship under normal use in the conditions prevailing in the country of final destination;
- b) that the Goods are securely contained, packaged and marked, taking into consideration the mode(s) of shipment in a manner so as to protect the Goods during delivery to their ultimate destination;
- c) if the Seller is not the original manufacturer of the Goods, the Seller shall provide the Contracting Authority with the benefit of all manufacturers' warranties in addition to the present warranties;
- d) the Goods are of the quality, quantity and description required by the Contract;
- e) the Goods are new and unused; and
- f) the Goods are free from any right of claim by any third-party and unencumbered by any title or other rights, including any liens or security interests and claims of infringement of any intellectual property rights, including, but not limited to, patents, trademarks, copyright and trade secrets.

4.2. Unless provided otherwise in the Contract, all warranties shall remain fully valid for a period of one year after acceptance of the Goods by the Contracting Authority.

4.3. During any period in which the Seller's warranties are effective, upon notice by the Contracting Authority that the Goods do not conform to the requirements of the Contract, the Seller shall promptly and at its own expense correct such non-conformities or, in case of its inability to do so, replace the defective Goods with goods of the same or better quality or fully reimburse the Contracting Authority for the purchase price paid for the defective goods including freight costs to the final destination. The Seller shall pay all costs relating to the repair or return of the Goods as well as the costs relating to the delivery to final site of any replacement goods to the Contracting Authority. If having been notified by any means, the Seller fails to remedy the defect within 30 days, the Contracting Authority may proceed to take such remedial action as may be necessary, at the seller's risk and expense and without prejudice to any other rights which the Contracting Authority may have against the Seller under the Contract.

4.4. The Seller shall indemnify and hold harmless the Contracting Authority from and against any and all suits, actions or administrative proceedings, claims and demands from third-parties, losses, damages, costs, and expenses of any nature, including legal fees and expenses, which the Contracting Authority may suffer as a result of any infringement by the Seller of the warranties specified in article 4.1.

## 5. AFTER SALES SERVICE

The Seller shall be able to handle requests from the Contracting Authority for technical assistance, maintenance, service and repairs of the Goods supplied.

## 6. LIQUIDATED DAMAGES FOR DELAY

Subject to force majeure, if the Seller fails to deliver any of the Goods or to perform any of the services within the time period specified in the Contract, the Contracting Authority may, without prejudice to any other rights and remedies, deduct from the total price stipulated in the Contract an amount of 2.5% of the price of such goods for each commenced week of delay.

However, the ceiling of these penalties is 10% of the total Contract price.

## 7. FORCE MAJEURE

Neither Party shall be considered to be in default nor in breach of its obligations under the Contract if the performance of such obligations is prevented by any event of force majeure arising after the date the Contract becomes effective.

For the purposes of this Article, the term "force majeure" means strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars whether declared or not, blockades, insurrection, riots, epidemics, landslides, earthquakes, volcanic activity, storms, lightning, unseasonal floods, washouts, civil disturbances, explosions and any other similar unforeseeable events which are beyond the Parties' control and cannot be overcome by due diligence.

If either Party considers that any circumstances of force majeure have occurred which may affect performance of its obligations, it shall promptly notify the other Party and the Contracting Authority, giving

# GENERAL TERMS AND CONDITIONS FOR SUPPLY CONTRACTS – VER1 2016

details of the nature, the probable duration and the likely effect of the circumstances. Unless otherwise directed by the Contracting Authority in writing, the Seller shall continue to perform its obligations under the Contract as far as is reasonably practicable, and shall employ every reasonable alternative means to perform any obligations that the event of force majeure does not prevent it from performing. The Seller shall not employ such alternative means unless directed to do so by the Contracting Authority.

## 8. TERMINATION FOR CONVENIENCE

The Contracting Authority may, for its own convenience and without charge, cancel all or any part of the Contract. If the Contracting Authority terminate this Contract in whole or in part upon written notice to the Seller, the Contracting Authority shall be responsible for the actual costs incurred by the Seller as a direct result of such termination which are not recoverable by either (i) the sale of the goods affected to other parties within a reasonable time, or (ii) the exercise by the Seller, in a commercially reasonable manner, of other mitigation measures. Any claim by the Seller for such actual costs shall be deemed waived by the Seller unless submitted in writing to the Contracting Authority within thirty (30) calendar days after the Contracting Authority notified the Seller of the termination.

## 9. VARIATIONS

The Contracting Authority may at any time by written instruction vary the quantities of the Goods by 25 percent above or below the original Contract price. The Contracting Authority may also order variations including additions, omissions, substitutions, changes in quality, form, character, and kind of the Goods, related services to be provided by the Seller, as well as method of shipment, packing, place of delivery and sequence and timing of delivery. No order for a variation may result in the invalidation of the Contract, but if any such variation causes an increase or decrease in the price of or the time required for performance under this Contract, and except where a variation is necessitated by a default of the Seller, an equitable adjustment shall be made in the Contract price, or delivery schedule, or both, and the Contract shall be amended by way of an addendum. The unit prices used in the Seller's tender or quotation shall be applicable to the quantities procured under the variation.

## 10. APPLICABLE LAW AND DISPUTES

The Contract is governed by, and shall be construed in accordance with the laws of the country of establishment of the Contracting Authority.

Any dispute or breach of contract arising under this Contract shall be solved amicably if at all possible. If not possible and unless provided otherwise in the Contract, it shall be submitted to, and settled by, the competent court in the country of establishment of the Contracting Authority, in accordance with the national law of that country.

## 11. REMEDIES FOR DEFAULT

11.1. The Seller shall be considered in default under the Contract if:

- he fails to deliver any or all of the Goods within the period specified in the Contract;
- he fails to perform any other obligations under the Contract;
- his declarations in respect of his eligibility (article 15) and/or in respect of article 13 (Child labour and forced labour) and article 14 (Mines), appear to have been untrue, or cease to be true;
- he engages in the practices described in article 16 (corrupt practices).

11.2. Upon occurrence of an event of Seller's default, and without prejudice to any other rights or remedies of the Contracting Authority under the Contract, the Contracting Authority shall be entitled to one or several of the following remedies:

- liquidated damages for delay under article 7;
- any of the remedies specified in article 4.3;
- refuse to accept all or part of the Goods;
- general damages;
- termination of the Contract.

11.3. Upon termination of the Contract by the Contracting Authority under this article, the Seller shall follow the Contracting Authority's instructions for immediate steps to bring to a close in a prompt and orderly manner the performance of any obligations under the Contract, in such a way as to reduce expenses to a minimum. The Contracting Authority shall have no other liability than paying the Seller the goods which have already been accepted in accordance with article 3, and shall be entitled to deduct from any such sums:

- any liquidated or general damages due by the Seller;
- and/or any sums due by the Seller under article 4.3;

- and/or any excess cost occasioned by a replacement procurement from other sources.

The Contracting Authority shall also be entitled to call any pre-financing or performance guarantee provided by the Seller under the Contract.

## 12. OFFICIALS

The Seller warrants that no official of the Contracting Authority and/or its partner has received or will be offered by the Seller any direct or indirect benefit arising from this Contract.

## 13. CHILD LABOUR AND FORCED LABOUR

The Seller warrants that it and its affiliates comply with the UN *Convention on the Rights of the Child* - UNGA Doc A/RES/44/25 (12 December 1989) with Annex – and that it or its affiliates has not made or will not make use of forced or compulsory labour as described in the *Forced Labour Convention* and in the *Abolition of Forced Labour Convention 105* of the International Labour Organization. Furthermore the Seller warrants that it, and its affiliates, respect and uphold basic social rights and working conditions for their employees.

## 14. MINES

The Seller warrants that it and its affiliates are NOT engaged in any development, sale or manufacture of anti-personnel mines and/or cluster bombs or components utilized in the manufacture of anti-personnel mines and/or cluster bombs.

## 15. INELIGIBILITY

By signing the purchase order, the Seller certifies that he is NOT in one of the situations listed below:

- (a) He is bankrupt or being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) He has been convicted of an offence concerning his professional conduct by a judgement that has the force of *res judicata*;
- (c) He has been guilty of grave professional misconduct proven by any means that the Contracting Authority can justify;
- (d) He has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country of the Contracting Authority or those of the country where the Contract is to be performed;
- (e) He has been the subject of a judgement that has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity;
- (f) Following another procurement procedure carried out by the Contracting Authority or one of their partners, he has been declared to be in serious breach of contract for failure to comply with his contractual obligations.

## 16. CORRUPT PRACTICES

The Seller and his personnel shall refrain from performing, condoning or tolerating any corrupt, fraudulent, collusive or coercive practices, whether such practices are in relation with the performance of the Contract or not. "Corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value as an inducement or reward for doing or forbearing to do any act in relation to the Contract or any other contract with the Contracting Authority, or for showing favour or disfavour to any person in relation to the Contract or any other contract with the Contracting Authority.

The payments to the Contractor under the Contract shall constitute the only income or benefit the Seller may derive in connection with the Contract and neither he nor his personnel shall accept any commission, discount, allowance, indirect payment or other consideration in connection with, or in relation to, or in discharge of, his obligations under the Contract.

Transactions are undertaken with due consideration to the arm's length principle (ALP) in that the parties to transactions are independent and on an equal footing.

The execution of the Contract shall not give rise to unusual commercial expenses. Unusual commercial expenses are commissions not mentioned in the Contract or not stemming from a properly concluded contract referring to the Contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven,

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commissions paid to a recipient who is not clearly identified or commission paid to a company which has the appearance of being a front company.

## **17. DISCRETION AND CONFIDENTIALITY**

The Seller shall treat all documents and information received in connection with the contract as private and confidential, and shall not, save in so far as may be necessary for the purposes of the performance thereof, publish or disclose any particulars of the contract or the project without the prior consent in writing of the Contracting Authority. It shall, in particular, refrain from making any public statements concerning the project or the delivery without the prior approval of the Contracting Authority.

## **18. CHECKS AND AUDITS**

The Seller shall permit the Contracting Authority or its representative to inspect, at any time, records including financial and accounting documents and to make copies thereof and shall permit the Contracting Authority or any person authorized by it, including its Back Donors, at any time, to have access to its financial accounting documents and to audit such records and accounts both during and after the implementation of the Contract. In particular, the Contracting Authority may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in case of suspected unusual commercial expenses.

## **19. LIABILITY**

Under no circumstances or for no reason whatsoever will the Back Donor entertain any request for indemnity or payment directly submitted by the Contracting Authorities Contractors.

# GENERAL TERMS AND CONDITIONS FOR SUPPLY CONTRACTS – VER1 2016



**NORWEGIAN CHURCH AID**  
actalliance

## Code of conduct for contractors Ethical principles and standards

**By this Code of Conduct**, the Contracting Authority applies ethics to procurement. We expect our contractors to act socially and environmentally responsible and actively work for the implementation of the standards and principles in this Code of Conduct. The Code of Conduct is applicable for all our contractors who supply goods, services and works to our operations and projects.

This Code of Conduct and its related principles and standards are based on recommendations from the Norwegian Initiative for Ethical Trade (IEH)<sup>1</sup>, the UN Global Compact principles<sup>2</sup> and ECHO's Humanitarian Aid Guidelines for Procurement 2011<sup>3</sup>.

### General Conditions

The Code of Conduct defines the ethical requirements and standards for our contractors, whom we expect to sign and respect the Code of Conduct, and work actively towards the implementation hereof. By signing the Code of Conduct contractors agree to place ethics central to their business activities.

The provision of the ethical standards constitutes minimum rather than maximum standards. International and national laws shall be complied with, and where the provisions of law and the Contracting Authority's standards address the same subject, the highest standard shall apply.

It is the responsibility of the contractor to assure that their contractors and subcontractors comply with the ethical requirements and standards set forth in this Code of Conduct.

The Contracting Authority acknowledge that implementing ethical standards and ensuring ethical behaviour in our supply chain is a continuous process and a long term commitment for which we also have a responsibility. In order to achieve high ethical standards for procurement we are willing to engage in dialogue and collaboration with our contractors. In addition we expect our contractors to be open and willing to engage in dialogue with us to implement ethical standards for their businesses.

Unwillingness to co-operate or serious violations of the Code of Conduct will lead to termination of contracts.

### Human Rights and Labour Rights

Contractors must at all times protect and promote human- and labour rights and work actively to address issues of concern. As a minimum they are obliged to comply with the following ethical standards:

- **Respect for Human Rights** (UN Universal Declaration of Human Rights)  
The basic principles of the Universal Human Rights are that all human beings are born free and equal in dignity and in rights, and everyone has the right to life, liberty and security of the person. Contractors must not flaunt their responsibility to uphold and promote the Human Rights toward employees and the community in which they operate.
- **Non exploitation of Child Labour** (UN Child Convention on the Rights of the Child, and ILO Convention C138 & C182)  
Contractors must not engage in the exploitation of child labour<sup>4</sup> and contractors must take the necessary steps to prevent the employment of child labour. A child is defined as a person under the age of 18 and children shall not be engaged in labour that compromise their health, safety, mental and social development, and schooling. Children under the age of 15 (in developing countries 14) may not be engaged in regular work, but children

above the age of 13 (in developing countries 12) can be engaged in light work if it does not interfere with compulsory schooling and is not harmful to their health and development.

- **Employment is freely chosen** (ILO Convention C29 & C105)  
Contractors must not make use of forced or bonded labour and must respect workers freedom to leave their employer.
- **Freedom of association and the right to collective bargaining** (ILO Convention C87 & C98)  
Contractors must recognise workers right to join or form trade unions and bargain collectively, and should adopt an open attitude towards the activities of trade unions (even if this is restricted under national law).
- **Living wages are paid** (ILO convention C131)  
As a minimum, national minimum wage standards or ILO wage standards must be met by contractors. Additionally a living wage must be provided. A living wage is contextual, but must always meet basic needs such as food, shelter, clothing, health care and schooling and provide a discretionary income<sup>5</sup> - which is not always the case with a formal minimum wage.
- **No discrimination in employment** (ILO Convention C100 & C111 and the UN Convention on Discrimination against Women)  
Contractors must not practice discrimination in hiring, salaries, job termination, retiring, and access to training or promotion - based on race, national origin, caste, gender, sexual orientation, political affiliation, disability, marital status, or HIV/AIDS status.
- **No harsh or inhumane treatment of employees**  
The use of physical abuse, disciplinary punishment, sexual abuse, the threat of sexual and physical abuse, and other forms of intimidation may never be practiced by contractors.
- **Working conditions are safe and hygienic** (ILO Convention C155)  
Contractors must take adequate steps to provide safe and hygienic working environments. Additionally workers safety must be a priority and adequate steps must be taken to prevent accidents and injury to health associated with or occurring in the course of work.
- **Working hours are not excessive** (ILO Convention C1 & C14)  
Contractors must ensure that working hours comply with national law and international standards. A working week of 7 days should not exceed 48 hours and employees must have one day off per week. Overtime shall be compensated, limited and voluntary.
- **Regular employment is provided** (ILO Convention C143)  
All Work performed must be on the basis of a recognised employment relationship established through international conventions and national law. Contractors must protect vulnerable group's regular employment under these laws and conventions and must provide workers with a written contract.
- **Condition outside the workplace**  
**Property rights and traditional use of resources**  
In case of conflicts with local societies about the use of land or other natural resources, the parties, must through negotiations secure respect for individual and collective rights to areas and resources based on custom/practice. This also applies to cases where the rights are not formalised.

1. <http://etiskhandel.no/noop/search.php?l=no&query=Guidelines+for+procurement>

2. <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>

3. [http://ec.europa.eu/echo/partners/humanitarian\\_aid/procurement\\_guidelines\\_en.htm](http://ec.europa.eu/echo/partners/humanitarian_aid/procurement_guidelines_en.htm)

4. The definition of Child Labour can be found at: <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle5.html> and <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138>

5. Discretionary income is the amount of an individual's income that is left for spending, investing, or saving after taxes and personal necessities (such as food, shelter, and clothing) have been paid.



### *Marginalized groups*

The production and sourcing of raw materials for production must not contribute to harm the livelihood of marginalized groups, e.g. by occupying large land areas or other natural resources the groups in question are dependent on.

### **International Humanitarian Law**

Contractors linked to armed conflicts or operating in armed conflict settings shall respect civilian's rights under International Humanitarian Law and not be engaged in activities which directly or indirectly initiate, sustain, and/or exacerbate armed conflicts and violations of International Humanitarian Law<sup>6</sup>. Contractors are expected to take a 'do no harm' approach to people affected by armed conflict.

Additionally, Contractors shall not be engaged in any other illegal activity.

### **Involvement in Weapon Activities**

The Contracting Authority advocates for the Ottawa Convention against landmines and the Convention on Cluster Munitions against cluster bombs. Contractors shall not engage in any development, sale, or manufacturing of anti-personnel mines, cluster bombs or components, or any other weapon which feed into violations of International Humanitarian Law or is covered by the Geneva Conventions and Protocols.

### **Protection of the Environment**

The Contracting Authority wishes to minimise the environmental damages applied to nature via our procurement activities and we expect our suppliers and contractors to act in an environmentally responsible manner. This involves respecting applicable national and international environmental legislation and acting in accordance with the Rio Declaration.

As a minimum contractors should address issues related to proper waste management, ensuring recycling, conservation of scarce resources, and efficient energy use.

### **Anti-Corruption**

Corruption is by the Contracting Authority defined as the misuse of entrusted power for private gain and it includes bribery, fraud, embezzlement and extortion. The Contracting Authority holds a great responsibility to avoid corruption and ensure high standards of integrity, accountability, fairness and professional conduct in our business relations. Contractors are expected to have the same approach by undertaking good and fair business ethics and practices, take action to prevent and fight corruption, and abide by international conventions as well as international and national laws. To fight corruption and promote transparency, contractors who are confronted with corrupt practices are advised to file a complaint in the NCA Complaint Mechanism<sup>7</sup>.

A contractor's involvement in any form of corrupt practice during any stage of a selection process, in relation to the performance of a contract or in any other business context is unacceptable and will lead to the rejection of bids or termination of contracts.

### **List of International Conventions and Treaties covered by this Code of Conduct for Contractors**

- UN Universal Declaration of Human Rights, 1948; <http://www.un.org/en/documents/udhr/index.shtml>
- UN Guiding Principles on Business and Human Rights, 2011; [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)
- Geneva Conventions I-IV, 1949 and additional Protocols; <http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/index.jsp>
- ILO Declaration on Fundamental Principles and Rights at Work, 1998; <http://www.ilo.org/declaration/lang--en/index.htm> and [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_095898.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_095898.pdf)
- UN Child Convention on the Rights of the Child, 1990; <http://www2.ohchr.org/english/law/crc.htm>

6. This includes pillage/looting which is the unlawful taking of private property for personal or private gain based on force, threats, intimidation, pressure and through a position of power accomplished due to the surrounding conflict.

7. <http://www.kirkensnodhjelp.no/en/About-NCA/About-NCA/Accountability-Commitments/nca-complaints-handling-system/>

- C182, Worst Forms of Child Labour Convention, 1999; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182>
- C138, Minimum Age Convention, 1973; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138>
- C87, Freedom of Association and Protection of the Right to Organise Convention, 1948; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087>
- C98, Right to Organise and Collective Bargaining Convention, 1949; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C098>
- C29, Forced Labour Convention, 1930; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C029>
- C105, Abolition of Forced Labour Convention, 1957; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C105>
- C131, Minimum Wage Fixing Convention, 1970; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C131>
- C100, Equal Remuneration Convention, 1951; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C100>
- C111, Discrimination (Employment and Occupation) Convention, 1958; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C111>
- The UN Convention on the Elimination on All Forms of Discrimination against Women 1979; <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>
- C1, Hours of Work (Industry) Convention, 1919; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C001>
- C14, Weekly Rest (Industry) Convention, 1921; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C014>
- C143, Migrant Workers (Supplementary Provisions) convention, 1975; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C143>
- C155, Occupational Safety and Health Convention, 1981; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C155>
- The Rio Declaration on Environment and Development, 1992; <http://www.unep.org/Documents/Multilingual/Default.asp?DocumentID=78&ArticleID=1163&lang=en>
- The Ottawa Convention, 1997; [http://www.apminebanconvention.org/fileadmin/pdf/mbc/text\\_status/Ottawa\\_Convention\\_English.pdf](http://www.apminebanconvention.org/fileadmin/pdf/mbc/text_status/Ottawa_Convention_English.pdf)
- The Convention on Cluster Munitions, 2007; <http://www.clusterconvention.org/files/2011/01/Convention-ENG1.pdf>
- C138, Minimum Age Convention, 1973; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138>
- C87, Freedom of Association and Protection of the Right to Organise Convention, 1948; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087>
- C98, Right to Organise and Collective Bargaining Convention, 1949; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C098>
- C29, Forced Labour Convention, 1930; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C029>
- C105, Abolition of Forced Labour Convention, 1957; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C105>
- C131, Minimum Wage Fixing Convention, 1970; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C131>
- C100, Equal Remuneration Convention, 1951; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C100>

- C111, Discrimination (Employment and Occupation) Convention, 1958; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C111>
- The UN Convention on the Elimination on All Forms of Discrimination against Women 1979; <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>
- C1, Hours of Work (Industry) Convention, 1919; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C001>
- C14, Weekly Rest (Industry) Convention, 1921; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C014>
- C143, Migrant Workers (Supplementary Provisions) convention, 1975; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C143>
- C155, Occupational Safety and Health Convention, 1981; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C155>
- The Rio Declaration on Environment and Development, 1992; <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=78&ArticleID=1163&I=en>
- The Ottawa Convention, 1997; [http://www.apminebanconvention.org/fileadmin/pdf/mbc/text\\_atus/Ottawa\\_Convention\\_English.pdf](http://www.apminebanconvention.org/fileadmin/pdf/mbc/text_atus/Ottawa_Convention_English.pdf)
- The Convention on Cluster Munitions, 2007; <http://www.clusterconvention.org/files/2011/01/Convention-ENG1.pdf>