



INVITATION TO TENDER

TO:

All interested suppliers:

Date of issue:	25 Aug. 2022
Tender no.:	PR-KBL-22-280
Contract title:	Supply of COVID 19 WASH kits
Closing date:	25 Sept 2022, 03:30 PM, Kabul Afghanistan Time.
Tender opening:	26 Sept. 2022, 10:00 Am, Kabul Afghanistan Time.
Contracting Authority:	NCA Afghanistan Email: Afghan.operations@nca.no

NCA AFGHANISTAN INVITES YOU TO INTERNATIONAL OPEN TENDER FOR SUUPLY AND DELIVERY OF COVID 19 WASH KITS

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

A – Instructions to tenderers

B – Draft Contract including Annexes:

Annex 1: Technical data form (to be completed by the tenderer)

Annex 2: Tender Submission form (to be completed by the tenderer)

Annex 3: General Terms and Conditions for Supply Contracts

Annex 4: Code of Conduct for Contractors

Tender guarantee (to be completed by the tenderer)

Performance guarantee (to be completed by the tenderer)

If this document is a PDF format, upon request a complete copy of the above documents can be forwarded in a WORD format for electronic completion. It is forbidden to make alterations in the text.

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 and related services

The subject of the contract is the supply of 44,600 COVID 19 WASH kits and its delivery DDP to regional warehouses in Kandahar and Balkh provinces and each kit include the following items:

Specifications for Covid-19 WASH Kits					
Item No.	Parameter	Characteristics (Contracting Authorities minimum requirement)	Unit	Quantity	Required delivery time and Place
1.	Antiseptic soap (Dettol) - 125gm	For hand washing, bathing (125-gram bars minimum)	Bars/ Pcs	4	
2.	Plastic soap-case	Good quality	Pcs	1	
3.	Plastic Jerry Can (10 liters- White)	For collection and water storage	Pcs	1	
4.	2 Litre Ewer (AFTABA)	For hand washing in place of handwashing stations	Pcs	1	
5.	Reusable facemasks	For preventing the spread of Covid-19	Pcs	2	
6.	Hand sanitizer gel (500 ml)	For preventing the spread of Covid-19	Pcs	1	
7.	COVID 19 Fact Sheet-	Size: A4	Pcs	1	
8.	Case/Bag for each kit	Plastic/Hard paper.	Pcs	1	
Total Number of Kits Required: 44,600 Kits					

The supplies to be purchased are for use by the Contracting Authority in its NCA UNDP ICRA Project in Afghanistan.

The supplies are described in more details in the Technical data form, Annex 1.

a) Delivery

The above supplies shall be delivered to DDP Centres of Balkh and Kandahar Provinces as per above required delivery time.

b) Specifications

The supplies must comply fully with the technical specifications set out in the tender dossier (technical data form, Annex 1) and conform in all respects with the quantities, models, samples, measurements and other instructions. Deviations from the specifications may be considered only if deemed to be in the best interest of the Contracting Authority.

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	12 th Sept. 2022	03:30 PM
Last date on which clarifications are issued by the Contracting Authority	15 th Sept. 2022	03:30 PM
Deadline for submission of tenders (closing date)	25 th Sept. 2022	03:30 PM
Tender opening session	26 th Sept. 2022	10:00 AM
Contract award	02 nd Oct. 2022	10:00 AM
Contract start	05 th Oct. 2022	10:00 AM
Expected delivery date	15 th Oct. 2022	10.00 AM

All times are in the time zone of Afghanistan.

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.

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 comprising the Tender

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

- a) Tender submission form (Annex 2) with supporting documents
- b) Technical data form (Annex 1) with supporting documents

The following documents shall in addition be submitted with the tender

- a) Copies of tenderer's audited financial statement for the years 2019 and 2020.
- b) Experience in similar supplies in the past 5 years, two contracts with the value equivalent to at least 50%, tenderer's offer with I/NGOS.
- c) Evidence of any quality accreditation.
- d) Tenderer's company registration certificate
- e) Sample of Covid-19 WASH Kit (to be provided with tender submission)

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 US Dollars.

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.

Tax

Withholding Tax on Subcontractor:

Government withholding Tax: Pursuant to Article 72 in the Afghanistan Tax law effective March 21, 2009, NCA is required withhold "contractor" taxes from the gross amount payable to all Afghan for-profit subcontractor/vendors with aggregate amount of AFN 500,000.00 or greater and transfer this to the Ministry of Finance. In accordance with this requirement, NCA shall withhold 2% tax from all gross invoices from subcontractors/vendors under this Agreement with active AISA or Ministry of Commerce License. For subcontractors /vendors without active AISA or Ministry of Commerce license, NCA shall withhold seven percent 7% "contractor" tax per current Afghanistan Tax law.

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

Note: If the supplier request NCA to pay the amount in Cash, then **4.5%** of the total amount of the supplier shall be deducted as Hawala fee.

A.10. Validity

Tenders and tender guarantees 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 and **Sample Kits**, 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 Afghanistan

Attention: NCA ICRA Project Procurement

Address: House#: 1071, Opposite of the Technical & Vocational Deputy (TVET) Old Sarai Ghazni, District# , Kabul Afghanistan

Tender receipt Deadline: 25 Sept. 2022, 03:30 PM, Kabul Afghanistan Time.

Tender no.: PR-KBL-22-280

NOT TO BE OPENED BEFORE THE TENDER OPENING SESSION ON <26 SEPTEMBER 2022, 10:00; AM KABUL AFGHANISTAN TIME>

All tenders must be submitted in one original, marked "original".

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 **Conference Room, NCA office** at the time and date specified in article A.4. 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 of each tender, classifying it as technically compliant or non-compliant. 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.

To obtain the best value for money, **50% of the evaluation will be based on price and 50% on as sample submitted**. The samples will be return to all the unsuccessful suppliers once the evaluation is completed.

A.13. Award of Contract

The Contracting Authority will award the contract to the tenderer whose tender has been determined to be substantially responsive to the tender dossier and technically compliant, and who has offered the lowest price, provided further that the tenderer has demonstrated the capability and resources to carry out the contract effectively.

The Contracting Authority aims to purchase goods that minimise the environmental impact. Therefore, NCA reserves the right to choose a Supplier based on environmentally sustainable criteria such as packaging, life span, durability, recyclability, etc. over quotations that do not meet these standards.

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

The Contracting Authority will award the contract to the tenderers whose tender has been determined to be substantially responsive to the tender dossier and technically compliant, and who has offered the lowest ranked prices, provided further that the tenderer has demonstrated the capability and resources to carry out the contract effectively. The lowest ranked prices include equal both financial and technical aspects of the criteria, as stated in paragraph 8 article A13.

The Contracting Authority aims to purchase goods that minimise the environmental impact. Therefore, NCA reserves the right to choose a Supplier based on environmentally sustainable criteria such as packaging, life span, durability, recyclability, etc. over quotations that do not meet these standards.

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

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 unsuccessful tenderers in writing about the result of the evaluation process.

The Contracting Authority reserves the right to adjust the quantities within a range of +/- 25% to remain within the available funds.)

Within <7> 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.

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. CONTRACT (SUPPLY)

CONTRACT TITLE: Supply of COVID 19 WASH kits

Contract no.: PR-KBL-22-280

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.

ANNEX 1: TECHNICAL DATA FORM

Tenderers are requested to complete the following template.

The following technical specifications are provided in the format of a checklist. They are compulsory as a minimum standard and will be the only basis for the evaluators to assess the technical compliance of the equipment presented in the tenders. Deviations from the specifications may be considered only if deemed to be in the best interest of the Contracting Authority.

Manufacturers' names, catalogue numbers and model designations appearing in the list are for reference only. Tenders for other equipment that is equal in function, quality and performance to that listed will be given full consideration.

In order to make sure that no single specification is left out from your tender by mistake, it is recommended that you use the checklist as a tool to present your tender.

Specifications for Covid-19 WASH Kits						
Item No.	Parameter	Characteristics (Contracting Authorities minimum requirement)	Quantity	Unit	Comply (Yes/No)	Required delivery time and Place
	Antiseptic soap (Dettol) - 125gm	For hand washing, bathing (125-gram bars minimum)	4	Bars/ Pcs		
2.	Plastic soap-case	Good quality	1	Pcs		
3.	Plastic Jerry Can (10 liters- White)	For collection and water storage	1	Pcs		
4.	2 Litre Ewer (AFTABA)	For hand washing in place of handwashing stations	1	Pcs		
5.	Reusable facemasks	For preventing the spread of Covid-19	2	Pcs		
6.	Hand sanitizer gel (500 ml)	For preventing the spread of Covid-19	1	Pcs		
7.	COVID 19 Fact Sheet-	Size: A4	1	Pcs		
8.	Case/Bag for each kit	Plastic/Hard paper.	1	Pcs		
Total Number of Kits Required: 44,600 Kits						

ANNEX 2: TENDER SUBMISSION FORM

Submitted by (name of company):	
Contact Person:	

PRICE SCHEDULE (Price and currency to be inserted by tenderer)

Specifications for Covid-19 WASH Kits						
Item No.	Parameter	Characteristics (Contracting Authorities minimum requirement)	Unit	Quantity	Currency US \$	
					Unit Price including Delivery & Transport	Total Price
1.	Antiseptic soap (Dettol) - 125gm	For hand washing, bathing (125-gram bars minimum)	Bars/ Pcs	4		
2.	Plastic soap-case	Good quality	Pcs	1		
3.	Plastic Jerry Can (10 liters- White)	For collection and water storage	Pcs	1		
4.	2 Litre Ewer (AFTABA)	For hand washing in place of handwashing stations	Pcs	1		
5.	Reusable facemasks	For preventing the spread of Covid-19	Pcs	2		
6.	Hand sanitizer gel (500 ml)	For preventing the spread of Covid-19	Pcs	1		
7.	COVID 19 Fact Sheet-	Size: A4	Pcs	1		
8.	Case/Bag for each kit	Plastic/Hard paper.	Pcs	1		
Sub-total for 1 Kit						
Total Price for 44,600 Kits DDP Kandahar & Balkh Centres						

Note: The prices include 2% governmental taxes, 4.5 % Hawala fees and it includes the Delivery and transportation of the Kits to South zone at Kandahar warehouse and North zone at Balkh warehouse.

Information required by the Contracting Authority:	Information to be entered by tenderer in the below columns:
Delivery date:	
<Incoterm> Point of shipment	
Delivery time to <Incoterm> Point of shipment	
Delivery time to final destination	

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.	
Is your company e.g. ISO 26000/50001/14000 certified or SA8000 certified? Please state which.	
Does your company have a Code of Conduct?	

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

After having read your Invitation to Tender no PR-KBL-22-280 for supply of Supply of COVID 19 WASH kits dated 25 Aug. 2022, 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, 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.

Any subsequent Contract related to this Proposal will be subject to the Contracting Authorities General Terms and Conditions for Supply Contracts and the Code of Conduct for Contractors available through the below link. Printed versions are available on request.

<https://www.kirkensnodhjelp.no/en/about-nca/for-contractors/>

Signature and stamp:

Signed by:

The tenderer

Name of the company

Address

Telephone no.

Email

Name of contact person

Date

Conditions

A.1. Scope of Supply

The subject of the Contract is the supply of **Covid-19 WASH Kits** by the Supplier as described in A.1 Instructions to tenderers.

A.2. Delivery terms:

The supplies shall be delivered latest by 15th Oct. 2022 to DDP to both Kandahar and Balkh provinces.

The place of acceptance of the supplies shall be at the delivery place.

A.3. Partial shipment

The shipment can be done in bulk for both south and north zone. Partial delivery is allowed.

A.4. Packing

The goods shall be contained or packed in a manner adequate to protect the goods while in transit to consignee. The supplier shall be responsible for any damage or loss which can be shown to have resulted from faulty or inadequate packing.

Any costs to final destination due to excess weight to be for suppliers account.

A.5. Payment terms

Payments will be done within 30 days after delivery of supplies as follow, 100% on completed deliveries. Invoicing for partial delivery will be allowed.

- I. Invoice (one original + one copy)
- II. Proof of delivery (Signed - Waybill / Delivery Note / Goods Received Note / Packing list) (one original + two copies)
- III. Warranty Certificate (one original)
- IV. Pre-shipment Inspection Certificate (one original)
- V. Any other document/certificate required for import/export of supplies

An invoice in English must be submitted to the Contracting Authority.

Payment shall be made in US \$ by bank transfer to the following account:

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

A.6. Entry into force of Purchase Order

The Purchase Order shall enter into force and effect after signature by both parties of this Purchase Order.

Order of Precedence of Contract Documents

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

1. This Purchase Order/Contract.
2. The bid submission form.
3. The General Terms & Conditions for Supply Contracts
4. Code of Conduct for Contractors

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.

For the Contractor

Name

Title

Signature

Date

For the Contracting Authority

Name

Title

Signature

Date

This Purchase Order shall be signed and stamped by the supplier and returned to <the Contracting Authority> <contact information> latest within <five> working days from date of receipt.

GENERAL TERMS AND CONDITIONS FOR SUPPLY CONTRACTS – VER2 2018

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

- b) 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 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, 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.

20. ELECTRONIC SCREENING

NCA may be required to verify the identity of its suppliers/contractors and to check that its suppliers/contractors have not been involved in illegal activities. NCA reserves the right to use electronic screening tools for this purpose.