

**Agreement № \_\_\_\_\_**  
On State Procurement  
(Electronic Tender SPA \_\_\_\_\_ )  
Draft Agreement

(Particular conditions will be specified in accordance with the content of tender proposal)

Tbilisi

“ \_\_\_\_ “\_\_\_\_\_” 2018

**Emergency Management Service** (address: №7, Ingorokva str., Tbilisi, bank details: State Treasury, code - TRESGE22, Identification Code - 205350699), hereinafter referred to as the “Purchaser”, represented by its Deputy Head **Aleksandre Onoprishvili**, on the one hand, and **Supplier: IE, NP, LTD, JSC XXXXX**, Identification Code XXXXX

**Address, telephone: XXXXX**

---

**Director: XXXXX**

---

**Bank details: XXXXX; bank code: XXXXX; account number: XXXXX**

---

On the other hand, collectively referred to as the “Parties”, acting in accordance with the Georgian legislation and the law of Georgia “on State Procurement”, we agree on the terms of the Agreement on State Procurement and on conclusion of the Agreement on State Procurement.

## 1. Definition of the Terms Used

1.1 The terms used in the Agreement have the following meaning:

1.1.1 “Agreement on State Procurement” (hereinafter referred to as “Agreement”) - Agreement concluded between the Purchasing Organization and the Supplier, signed by the Parties, with all the documents attached to it, as well as the entire documentation that is indicated in the Agreement;

1.1.2 “Agreement Value” - The total amount to be paid by the Purchasing Organization for the complete and thorough fulfillment of the contractual obligations undertaken by the Supplier with this Agreement;

1.1.3 “Purchasing Organization” (hereinafter – “Purchaser”) - Organization (entity), which carries

out procurement;

1.1.4 “Supplier” – Entity, which delivers services within the present Agreement;

1.1.5 “Day”, “week”, “month” – A calendar day, week, month;

1.1.6 “Goods” – Subject of the Agreement, provided by Article 2 of the present Agreement;

1.2 The terms used in the present Agreement shall have the same meaning as they have under the terms of the Agreement.

## **2. Subject and Agreement Value**

2.1. In accordance with Annex N1 (Price List), lifetime procurement of the boots for firefighter-rescuers (CPV-18800000)

2.2. Agreement Value: \_\_\_\_\_ (Amount in words) GEL.

2.3. Source of funding:

2.3.1. State Budget of 2018 – no more than 50% of contractual value.

2.3.2. State Budget of 2019 – no more than 50% of contractual value.

2.3.3. Amount given by paragraph 2.3.2 will be rectified in accordance with amount given by the bidder after bargaining.

2.4. The Agreement value includes as the value of the subject to be procured, as well as all the expenses incurred by the Supplier to provide the goods, including transportation, with DAP Incoterms condition. The purchasing organization will pay VAT envisaged by Georgian legislation.

## **3. Essential Terms of the Agreement**

3.1. The Supplier undertakes to supply the Purchaser with the procurement object as specified in the present Agreement on the adjoining territory of Tbilisi Sea, in Tbilisi within the following timeframe:

3.1.1. 2000 pairs of the boots – from conclusion of the Agreement till no later than December 10, 2018;

3.1.2. 2000 pairs of the boots – from conclusion of the Agreement till no later than January 31, 2019;

- 3.2. The Supplier is obliged to provide legally and materially flawless procurement object in accordance with the requirements of all applicable norms, standards and regulations.
- 3.3. The Supplier undertakes that the quality of the procurement object will respond to the terms and conditions of the Agreement and satisfy the Purchaser's requirements. The quality should meet the established international standards.
- 3.4. The Purchaser shall undertake to reimburse the Supplier the Agreement value within the terms and conditions of the Agreement.

#### **4. Validity Period of the Agreement**

The present Agreement is effective from the date indicated in the beginning of this document and is **valid including February 28, 2019.**

#### **5. Packaging**

- 5.1. The Supplier shall ensure the adequate packaging of the goods that will protect it from damage or contamination in the transportation process to the destination.
- 5.2. Package type, each fitting dimension and weight should match the established international standards.

#### **6. Warranty and Defective Goods**

- 6.1. The Supplier guarantees the quality of the procurement object for 2 (two) years from concluding the Acceptance and Delivery Act.
- 6.2. During warranty period prescribed by this Agreement, if the defect is discovered by the representative(s) of the Purchaser, the Supplier is obliged to eliminate the discovered defect or ensure replacement of defective goods within reasonable time upon receipt of the notification, but within not more than 30 (thirty) calendar days. If the Supplier does not correct the defect or replace the defective goods within the established timeframe, the Purchaser has right to return the defective good to the Supplier and to request the refund of the relevant expenses

based on the purchasing price. The Supplier is obliged to refund to the Purchaser the amount paid within 10 (ten) business days from the request.

6.3. The defect includes material and legal defect, manufacturing defect, loss of characteristics enshrined by the Agreement or other operational features during normal operation, etc.

6.4. The requirements set forth in warranty terms are valid throughout the warranty period, regardless of expiration of the Agreement

6.5. The Purchaser is entitled to refuse acceptance of the total volume or the part of the goods, in the case of defective, improperly packaged goods, goods found during the inspection done before the shipment, delivered without the required documentation.

## 7. Control of Execution of the Agreement, Inspection Team

7.1. Control over the Supplier's fulfillment of the contractual obligations is carried out by the relevantly authorized person(s) (Inspection Team) from the side of the Purchaser, in particular, **the duly authorized person(s) of Finance and Logistics Department of Emergency Management Service.**

7.2. The Inspection Team evaluates compatibility of volume, quality and timeframe of delivery of the goods to be delivered and/or already delivered, to the requirements of the Agreement and controls the fulfillment of the conditions of the Agreement, which is carried out periodically, as during delivery of the goods, as well as during whole period of validity of this Agreement in accordance with the requirements of the Purchaser.

7.3. The Inspection Team inspects the delivered service systematically, at its own discretion.

7.4. The Purchaser reserves the right to conduct additional expertise at any stage of the fulfillment of the Agreement.

7.5. Control is carried out before the process of shipment of the goods, as well as after the completion, while its acceptance and delivery.

7.6. The Supplier is obliged to eliminate all defects at its expenses identified as a result of inspection and replacement of defective goods, as explained in Article 6 of the Agreement.

## 8. Rule of Delivery and Acceptance of Procurement Object

- 8.1. Goods or part of the Goods to be provided shall be deemed delivered only after conclusion of the Acceptance and Delivery Act. Delivery is carried out on the basis of Acceptance and Delivery Act, according to delivery place.
- 8.2. The Acceptance and Delivery Act shall be drawn up, from the side of the Purchaser, by the duly authorized person(s) - **the duly authorized person(s) of Finance and Logistics Department of Emergency Management Service.**
- 8.3. The fact of delivery and acceptance of the goods is confirmed by the Acceptance and Delivery Act, which confirms the acceptance of the goods enshrined by the Agreement and its Annexes and is the basis for money transfer of second tranche.
- 8.4. For the purposes of the present Agreement, provision of goods inappropriate or incompatible with the requirements set out in the Agreement shall not be considered as provided. In this case, the Acceptance and Delivery Act shall not be concluded.
- 8.5. The Supplier shall eliminate defects, revealed as a result of receipt and / or final examination done before the shipment of the procurement object (its part) at its own expenses.

## 9. Payment

- 9.1. The Purchaser is obliged to pay the cost of the goods delivered within the terms and conditions set out in the present Agreement;
- 9.2. Form of payment will be non-cash;
- 9.3. Payment will be made in GEL;
- 9.4. The Supplier is obliged to submit the actual value of the service (excluding the value added tax) and the corresponding documentation.
- 9.5. The payment will be made step by step by the Purchaser, in accordance with concluded Acceptance and Delivery Act on actually provided goods and Georgian Legislation, after providing relevant documentation for payment (if “Purchaser” is VAT payer, after drawing up the waybill and/or invoice in cases prescribed by Georgian Legislation (the Supplier is obliged to indicate the number of the present Agreement on waybill, and on invoice in cases prescribed by Georgian Legislation, otherwise the Purchases reserves the right to refuse acceptance of aforementioned payment document))

During two budget years:

- With state budget of 2018 – no more than 50% of contractual value.( Advance Payment)
- Remaining amount will be paid by the Purchase to the Supplier from the state budget of 2019, within 10 (ten) business days after conclusion of Acceptance and Delivery Act on provided goods by the end of January, 2019.

9.6. Only the cost of those delivered services will be reimbursed within the scope of the Agreement, which is confirmed by the Act on relevant volume and quality by the Purchaser.

9.7. Prepayment (advance payment) may be used in accordance paragraph 10 of the Agreement.

### **10. Advance Payment Bond**

10.1. Prepayment (Advance Payment) shall be used in an amount no more than 50% of contractual value from funding source of state budget of 2018. Prepayment is possible in case of submitting unconditional and irrevocable advance payment bond on the relevant advance payment, issued by the banking institution, licensed by the National Bank of Georgia or by the insurance company licensed by LEPL Insurance State Supervision Service of Georgia in national currency – GEL, which means that the Purchaser shall receive the amount prescribed by the guarantee if it provides the bank with the written form, where there will be indicated that the supplier breached the agreement.

10.2. The Validity Period of the advance payment bond shall exceed the validity period of the Agreement at least 30 (thirty) calendar days;

10.3. The Purchaser is obliged to make advance payment to the Supplier, no more than 50% of contractual value, within 10 (ten) business days after submission of the advance payment bond of relevant amount by the Supplier;

10.4. The amount issued as an advance payment, shall be considered during final payment, after which the Purchaser returns the advance payment bond to the Supplier on the basis of written request. The remaining amount shall be paid in accordance with the conditions prescribed by this Article, after full deduction of amount received as an advance payment.

## 11. Guarantee on Fulfillment of the Agreement

- 11.1. For the purposes of ensuring fulfillment of the Agreement, the Supplier is obliged to submit an advance payment bond on fulfillment of the Agreement before conclusion of the Agreement, which constitutes an integral part of the Agreement and which should be unconditional and irrevocable, i.e. the Purchaser shall receive the sums assured under the advance payment bond, if it provides the bank with the written form, where there will be indicated that the supplier breached the agreement.
- 11.2. The unconditional and irrevocable advance payment bond on the fulfillment of the Agreement shall be provided from the banking institution, licensed by the National Bank of Georgia or by the insurance company licensed by LEPL Insurance State Supervision Service of Georgia, in national currency – GEL;
- 11.3. In case of submitting the bank guarantee from foreign banks, the Supplier shall submit the "Performance Bond" (in national currency - GEL) issued on the basis of abovementioned bank guarantee from the banking institution, licensed by the National Bank of Georgia or by the insurance company licensed by LEPL Insurance State Supervision Service of Georgia. The bank guarantee and related documentation shall be submitted in Georgian language (if the documents and / or information are submitted in a foreign language, they shall be accompanied by notarized Georgian translation);
- 11.4. The Performance Bond for ensuring the fulfillment of the Agreement shall indicate the number of the application uploaded in unified electronic system concerning this procurement and identification code of the bidder;
- 11.5. Irrevocable unconditional Performance Bond for ensuring the fulfillment of the Agreement is \_\_% of the Agreement value;
- 11.6. The validity period of the Performance Bond providing the fulfillment of the Agreement shall exceed the validity period of the Agreement at least 30 (thirty) calendar days;
- 11.7. The Performance Bond presented in order to ensure fulfillment of the Agreement shall be used for the penalties, penalty sanctions and / or compensation for damages due to the violation of the obligation by the Supplier;
- 11.8. After fulfillment of the contractual obligations by the Supplier or in case of termination of the Agreement due to reasons, independent of the Supplier, the Purchaser shall return the

guarantee of the fulfillment of the Agreement and its related documentation to the Supplier within 14 days in case of written request.

## **12. Amendments to the Agreement**

- 12.1. No deviation or change in the terms of the Agreement shall be admissible except the case, when there is a written agreement signed by the both Parties.
- 12.2. If the necessity of changing the terms of the Agreement arises due to any unforeseen reasons, the initiator of the amendment is obliged to provide the other Party with the relevant information in writing.
- 12.3. No change is acceptable if it is followed by an increase of the Agreement value or deterioration of the conditions for the Purchaser, except for the cases provided by Article 398 of the Civil Code of Georgia, and according to the requirements of the law of Georgia „on State Procurement” and the Order N12 of June 14, 2017 of the Head of State Procurement Agency “on Approval of the Rules on Electronic Tender”.
- 12.4. The price may be increased in case of circumstances envisaged by Article 398 of the Civil Code of Georgia. The Agreement value cannot be increased by more than 10% of the Agreement value.
- 12.5. Reduction of the Agreement value is possible due to the value of the goods actually delivered.
- 12.6. In the event that it is necessary to increase or decrease the total number of goods envisaged by the Agreement, the payment will be made by the Purchaser according to the cost of the goods actually delivered and in case of increase of the quantity, the unit price, envisaged by the Agreement, will not increase.
- 12.7. Any amendment to the terms of the Agreement, which is carried out in compliance with the requirements of this Article, constitutes an integral part of the Agreement.

## **13. Failure to Comply with the Terms of the Agreement**

- 13.1. The Parties shall comply with the obligations under this Agreement duly, in good faith and in compliance with the required quality and at the time and place agreed upon by the Agreement; The Parties will be responsible for failure to comply with the terms of the



Agreement or not complying with the terms of the Agreement in good faith and in accordance with Georgian legislation;

13.2. Except for the force majeure circumstances, contracting Parties' failure to fulfill the terms of the present Agreement or / and delay in execution of the present Agreement, penalty sanctions are applied, the form, amount, conditions of entry into force and the payment terms of which are defined by this Article of the present Agreement.

13.3. If the Supplier fails to fulfill the terms of supplying the goods, provided by the present Agreement (term of performance, quality of service, peculiarities of the goods ... ) and / or it violates the principle of good faith, the Purchaser is entitled:

- a) to terminate this Agreement and impose fine on the Supplier for improper performance in the amount of 5 % of the Agreement Value or
- b) to charge the Supplier by 0.15% of the Agreement Value for every delinquent day in case of delay in provision of the goods enshrined by Annex N1 of the Agreement or in case of violation of the conditions prescribed by Articles 3 and 6 of this Agreement;

13.4. If within the extended period of time, determined by 13.3. „b“ paragraph of the present Agreement, the amount of penalty will reach **5%** of the Agreement Value and the Supplier will not be able to fully deliver goods and / or will not eliminate the detected shortcomings (if any), the Purchaser is entitled to terminate the present Agreement and the Supplier shall be fined by **5%** of the Agreement Value for the improper performance of the Agreement.

13.5. The Purchaser may make a decision on the termination of the present Agreement as well as:

- a) If the Purchaser has become aware that due to some reasons, independent from it, it cannot fulfill the obligations undertaken by the Agreement;
- b) In case of the Supplier's bankruptcy;
- c) If it becomes known for the Purchaser, that the documents asserting the qualification of the Supplier appears to be fraudulent (in case there is such request);
- d) In other cases prescribed by Georgian legislation.

13.6. In cases indicated in 13.5 paragraph of this Article, the Purchaser is obliged to pay the cost to the Supplier for actually provided goods.

- 13.7. Imposed penalty sanctions shall be paid within no later than 1 (one) month after the Party is informed on and acquainted with the decision.
- 13.8. Payment of the penalty does not relieve the Supplier from performing the basic obligations.

#### 14. Force Majeure

- 14.1. Termination of the terms of the Agreement or suspension of any of them shall not be considered as the failure to comply with the terms and obligations under the Agreement if it is provided due to the force majeure circumstances and the mentioned fact will not result the use of penalty sanctions and not returning the guarantee on fulfillment of the Agreement to the Supplier.
- 14.2. For the purposes of this Article, "Force-Majeure" means insurmountable conditions for the Parties, circumstances outside of their control, which are not related to errors and negligence of the Purchaser and / or Supplier and which have an unforeseen character. Such circumstances may be caused by war, natural disasters, epidemics, quarantine, embargo on goods delivery, sharp decline in budgetary assignments, etc.
- 14.3. In case of force majeure circumstances, the contracting Party, for which it is impossible to fulfill its obligations, shall immediately send a written notice to the other Party concerning such circumstances and their causes. If the sender does not receive a written response from the other Party, it shall continue to fulfill the obligations under the Agreement, according to its discretion, expediency and capacity and it seeks to find alternative ways to fulfil its obligations that are independent of the influence of force majeure circumstances.
- 14.4. In the event when any condition prescribed by the Agreement is changed due to force majeure circumstances, the amendment shall be signed as a written agreement of the Parties.
- 14.5. For the Purchaser the force majeure circumstances defined by this Article shall be taken into consideration only if the Supplier represents the relevant documentation on confirmation / certification of force majeure circumstances issued by the Georgian Chamber of Commerce and Industry.

## 15. Settlement of Disputes

- 15.1. The Purchaser and the Supplier shall make every effort to resolve all disagreements and disputes, arising out between them about Agreement or other related components, in the course of direct negotiation process.
- 15.2. If the Purchaser and the Supplier cannot resolve the dispute within 30 (thirty) calendar days after the commencement of such negotiations, any Party of the dispute can apply to the Common Courts of Georgia in accordance with prescribed rules.

## 16. Other Provisions

- 16.1. The terms not covered by the present Agreement are regulated in accordance with Georgian legislation.
- 16.2. The present Agreement is drawn up in Georgian, in three copies, having an equal legal force, one of which is given to the Supplier and two - to the Purchaser.
- 16.3. Any correspondence related to the present Agreement shall be fulfilled in Georgian.
- 16.4. The article(s), paragraph(s) of the "Agreement" are numbered and titled only for convenience and this fact is not given any importance for the interpretation of the "Agreement". In case of an error / difference in the titles or denomination of the article(s), paragraph(s) and / or subparagraph(s) of the "Agreement", article(s), paragraph(s) and / or subparagraph(s) having the relevant content shall be applied.
- 16.5. In case of mechanical and / or technical error and / or defects in the text of the "Agreement", "the Parties" shall examine and explain the error and / or defect in accordance with the relevant sentence(s) and / or content of the Agreement. If the error and / or the defects are inconsistent with the appropriate sentence / sentences or their content, it (the error / defect) will not have (shall not be granted) any meaning regarding the content of the "Agreement".
- 16.6. The Agreement shall enter into force upon signature.

## 17. The Parties:

**The Purchaser:** /

**The Supplier:** /

