**German Financial Cooperation with the „Western Balkan Six Chamber Investment Forum” (WB6 CIF)**

*Regional Challenge Fund*

**Bidding Documents**

**for**

**Procurement of adaptation works on existing building facilities of schools in Budva and in Podgorica,**

**Montenegro**

**Employer: Western Balkans 6 Chamber Investment Forum, Piazza dell Borsa 14, 34121 Trieste, Italy**

represented by

**IPC, Internationale Projekt Consult GmbH**

(on behalf of the Consortium IPC – PLANCO – swisscontact – KPMG)

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PART 1 – Bidding Procedures

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| Section I. Instructions to Bidders |

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| Section I. Instructions to Bidders | |
|  | A. General |
| 1. Scope of Bid | 1.1 In connection with the Invitation for Bids specified in the Bid Data Sheet (**BDS**), the Employer, as specified in the **BDS**, issues these Bidding Documents (“Bidding Documents”) to Bidders (“Bidders”) interested in submitting bids (“Bids”) for the Works described in Section VII, Works Requirements. In case the Works are to be bid as individual contracts (i.e. the slice and package procedure), these are listed in the **BDS**. The National Competitive Bidding (“NCB”) number corresponding to this bidding process is also provided in the **BDS.** |
|  | 1.2 The successful Bidder shall be expected to complete the Works by the Intended Completion Date specified in the BDS and in the Appendix to Bid. |
|  | 1.3 Throughout these Bidding Documents:  (a) The term “in writing” means communicated in written form and delivered against receipt;  (b) Except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and  (c) “Day” means calendar day. |
| 2. Source of Funds | 2.1 The Employer as indicated in the BDS has applied for or received financing (hereinafter called “funds”) from KfW Development Bank (hereinafter called “KfW”) towards the cost of the project named in the BDS. The Employer intends to apply a portion of the funds to eligible payments under the contract(s) resulting from this bidding process. |
| 3. Corrupt and Fraudulent Practices | 3.1 KfW requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Section VI. |
|  | 3.2 In further pursuance of this policy, Bidders shall permit and shall cause its agents to provide information and permit KfW or an agent appointed by KfW to inspect on site all accounts, records and other documents relating to bid submission and contract performance (in the case of award), and to have them audited by auditors or agents appointed by KfW. |
| 4. Eligible Bidders | 4.1 This Bidding is open to all bidders from eligible countries as defined in KfW’s eligibility criteria to bid in Section V, Eligibility Criteria. |
|  | 4.2 The materials, equipment and services to be supplied under the Contract and financed by the KfW may have their origin in any country subject to the restrictions specified in Section V, Eligibility Criteria, and all expenditures under the Contract will not contravene such restrictions. At the Employer’s request, Bidders may be required to provide evidence of the origin of materials, equipment and services. |
|  | 4.3 Government owned enterprises in the Borrower’s country may participate only if they can establish that they (i) are legally and financially autonomous; and (ii) operate under commercial law. No dependent agency of the Borrower or the Sub-borrower under a Bank financed project shall be permitted to bid or submit a proposal for the procurement of goods or works under the project. |
|  | 4.4 A Bidder shall not have a conflict of interest. Any Bidder found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this procurement process, if the Bidder:  (a) Directly or indirectly controls, is controlled by or is under common control with another Bidder; or  (b) Receives or has received any direct or indirect subsidy from another Bidder; or  (c) Has the same legal representative as another Bidder; or  (d) Has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or  (e) Participates in more than one bid in this bidding process, both as an individual firm and as a JV member. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which such Bidder is involved. However, this does not limit the inclusion of the same subcontractor in more than one Bid; or  (f) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the Bid; or  (g) Any of its affiliates has been hired (or is proposed to be hired) by the Employer as Engineer for the Contract implementation; or  (h) Has a close business or family relationship with a professional staff of the Employer (or of the project implementing agency, or of a recipient of a part of the funds) who: (i) are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the KfW throughout the procurement process and execution of the contract. |
|  | 4.5 A Bidder shall not be under suspension from bidding by the Employer as the result of the execution of a Bid–Securing Declaration. |
|  | 4.6 This bidding is open only to eligible Bidders, who will be subject to qualification. |
|  | 4.7 A Bidder shall provide such evidence of eligibility satisfactory to the Employer, as specified in ITB 17.1 or as the Employer shall reasonably request. |
|  | 4.8 Partners in a joint venture shall be jointly and severally liable for the execution of the Contract. |
| 5. Qualifications of the Bidder | 5.1 All bidders shall provide in Section IV, Bidding and Qualification Forms, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary. |
|  | 5.2 To qualify for award of the Contract, bidders shall meet the minimum qualifying criteria specified in the Bid Data Sheet and/or in Section III, Evaluation and Qualification Criteria. |
|  | B. Contents of Bidding Documents |
| 6. Sections of Bidding Documents | 6.1 The Bidding Documents consist of Parts 1, 2, and 3, which include all the Sections specified below, and which should be read in conjunction with any Addenda issued in accordance with ITB 8.  **PART 1 Bidding Procedures**   1. Section I. Instructions to Bidders (ITB); 2. Section II. Bid Data Sheet (**BDS**); 3. Section III. Evaluation and Qualification Criteria; 4. Section IV. Bidding and Qualification Forms; 5. Section V. Eligibility Criteria; 6. Section VI. KfW Policy - Corrupt and Fraudulent Practices - Social and Environmental Responsibility;   **PART 2 Works Requirements**   1. Section VII. Works Requirements;   **PART 3 Conditions of Contract and Contract Forms**   1. Section VIII. General Conditions (GC); 2. Section IX. Particular Conditions (PC); 3. Section X. Contract Forms. |
|  | 6.2 The Invitation for Bids issued by the Employer is not part of the Bidding Documents. |
|  | 6.3 Unless obtained directly from the Employer, the Employer is not responsible for the completeness of the Bidding Documents, responses to requests for clarification, minutes of the pre-Bid meeting (if any), or Addenda in accordance with ITB 8. In case of any contradiction, documents obtained directly from the Employer shall prevail. |
|  | 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents and to furnish with its Bid all information and documentation as is required by the Bidding Documents. |
| 7. Clarification of Bidding Documents, Site Visit, Pre-Bid Meeting | 7.1 A Bidder requiring any clarification of the Bidding Documents shall contact the Employer in writing at the Employer’s address specified in the BDS or raise its enquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The Employer will respond in writing to any request for clarification, provided that such request is received no later than fourteen (14) days prior to the deadline for submission of Bids. The Employer shall forward copies of its response to all Bidders who have acquired the Bidding Documents in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. If so indicated in the BDS, the Employer shall also promptly publish its response at the web page identified in the BDS. Should the Employer deem it necessary to amend the Bidding Documents as a result of a clarification, it shall do so following the procedure under ITB 8 and ITB 22.2. |
|  | 7.2 The Bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the Bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder’s own expense. |
|  | 7.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection. |
|  | 7.4 If so specified in the BDS, the Bidder’s designated representative is invited to attend a pre-bid meeting. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage. |
|  | 7.5 Minutes of the pre-bid meeting, if applicable, including the text of the questions asked by Bidders, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Documents in accordance with ITB 6.3. Any modification to the Bidding Documents that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting. Unless otherwise specified in the BDS nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder. |
| 8. Amendment of Bidding Documents | 8.1 At any time prior to the deadline for submission of Bids, the Employer may amend the Bidding Documents by issuing an Addendum. |
|  | 8.2 Any Addendum issued shall be part of the Bidding Documents and shall be communicated in writing to all who have obtained the Bidding Documents from the Employer in accordance with ITB 6.3. The Employer shall also promptly publish the Addendum on the Employer’s web page in accordance with ITB 7.1. |
|  | 8.3 To give Bidders reasonable time in which to take an Addendum into account in preparing their Bids, the Employer may, at its discretion, extend the deadline for the submission of Bids in accordance with ITB 22.2. |
|  | C. Preparation of BIDS |
| 9. Cost of Bidding | 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer will be in no case responsible or liable for those costs, regardless of the conduct or outcome of the bidding process. |
| 10. Language of Bid | 10.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Employer, shall be written in the language specified in the BDS. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the BDS, in which case, for purposes of interpretation of the Bid, such translation shall govern. |
| 11. Documents Comprising the Bid | 11.1 The Bid shall comprise the following:  (a) Letter of Bid and the Bidding Forms in accordance with ITB 12;  (b) Priced Bill of Quantities or Schedules, in accordance with ITB 12 and 14 and as indicated in the BDS;  (c) Bid Security, in accordance with ITB 19.1;  (d) Qualification Information  (e) Alternative Bids, if permissible in accordance with ITB 13;  (f) Technical Proposal in accordance with ITB 17;  (g) Any other document required in the BDS. |
|  | 11.2 In addition to the requirements under ITB 11.1,  Bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Bid shall be signed by all members and submitted with the Bid, together with a copy of the proposed Agreement. |
|  | 11.3 The Bidder shall furnish information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid. |
| 12. Letter of Bid, Declaration of Undertaking, Qualification Information, | 12.1 The Letter of Bid, the Declaration of Undertaking, the Bidding Forms and Schedules, including the Bill of Quantities for unit price contracts or the Schedule of Prices in case of lump sum contracts, shall be prepared using the relevant forms furnished in Section IV, Bidding and Qualification Forms. The Letter of Bid must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 20.4. All blank spaces shall be filled in with the information requested. |
| 13. Alternative Bids | 13.1 Unless otherwise specified in the BDS, alternative Bids shall not be considered. |
|  | 13.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the BDS, and the method of evaluation shall be included in Section III, Evaluation and Qualification Criteria. |
|  | 13.3 Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the Bidding Documents must first price the Employer’s design as described in the Bidding Documents and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the Employer’s design of the Bidding Documents shall be considered by the Employer. |
|  | 13.4 When specified in the BDS, Bidders are permitted to submit alternative technical solutions for specified parts of the Works, and such parts will beidentified in Section VII, Works Requirements. The methods for their evaluation shall be described in Section III, Evaluation and Qualification Criteria. |
| 14. Bid Prices and Discounts | 14.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Schedules shall conform to the requirements specified below. |
|  | 14.2 The Bidder shall submit a Bid for the whole of the Works described in ITB 1.1, by filling in price(s) for all items of the Works, as identified in Section IV, Bidding and Qualification Forms. The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Bidder shall be deemed covered by the rates for other items in the Bill of Quantities and will not be paid for separately by the Employer. An item not listed in the priced Bill of Quantities shall be assumed to be not included in the Bid, and provided that the Bid is determined substantially responsive notwithstanding this omission, the highest price of the item quoted by substantially responsive Bidders will be added to the Bid price and the equivalent total cost of the Bid so determined will be used for price comparison. |
|  | 14.3 The price to be quoted in the Letter of Bid shall be the total price of the Bid, excluding any discounts offered. |
|  | 14.4 The Bidder shall quote any discounts and the methodology for their application in the Letter of Bid. |
|  | 14.5 Unless otherwise specified in the BDS and the Contract, the rate(s) and price(s) quoted by the Bidder are not subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract. In such a case, the Bidder shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Employer may require the Bidder to justify its proposed indices and weightings. |
|  | 14.6 If so specified in ITB 1.1, Bids are being invited for individual lots (contracts) or for any combination of lots (packages). Bidders wishing to offer discounts for the award of more than one Contract shall specify in their Bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITB 14.4, provided the Bids for all lots (contracts) are opened at the same time. |
|  | 14.7 Unless otherwise specified in the **BDS**, the Bid price shall estimate, as separate amounts, (a) import duties and (b) taxes, fees, levies and other charges, which shall apply, in terms of the Applicable Law, to the Contractor and its sub-Contractors, including their personnel, other than nationals or permanent residents in the Employer’s country as of the date 28 days prior to the deadline for submission of Bids. Unless otherwise stated in the **BDS**, the Contractor and its sub-Contractors are responsible for meeting all tax liabilities arising out of the Contract. |
| 15. Currencies of Bid and Payment | 15.1 The currency(ies) of the Bid and the currency(ies) of payments shall be as specified in the BDS*.* |
|  | 15.2 Bidders may be required by the Employer to justify, to the Employer’s satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the prices shown in the Schedule of Adjustment Data in the Appendix to Bid are reasonable, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders. |
| 16. Documents Establishing the Qualifications of the Bidder | 16.1 In accordance with Section III, Evaluation and Qualification Criteria, qualification applies as specified in ITB 4.5 and the Bidder shall provide the following information as requested in the corresponding information sheets included in Section IV, Bidding and Qualification Forms, unless otherwise stated in the BDS:  (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business of the Bidder; written power of attorney of the signatory of the Bid to commit the Bidder;  (b) total monetary value of construction works performed for each of the last five years;  (c) experience in works of a similar nature and size for each of the last five years, and details of work under way or contractually committed; and clients who may be contacted for further information on those contracts;  (d) major items of construction equipment proposed to carry out the Contract;  (e) qualifications and experience of key site management and technical personnel proposed for the Contract;  (f) reports on the financial standing of the Bidder, such as profit and loss statements and auditor’s reports for the past five years;  (g) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);  (h) authority to seek references from the Bidder’s bankers;  (i) information regarding any litigation, current or during the last five years, in which the Bidder was/is involved, the parties concerned, and the disputed amounts; and awards;  (j) proposals for subcontracting components of the Works amounting to more than 10 percent of the Contract Price. The ceiling for sub contractor's participation is stated in the BDS. |
| 17. Documents Comprising the Technical Proposal | 17.1 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, Schedules and any other information as stipulated in Section IV Bidding and Qualification Forms, in sufficient detail to demonstrate the adequacy of the Bidder’s proposal to meet the Work requirements and the completion time. |
| 18. Period of Validity of Bids | 18.1 Bids shall remain valid for the period specified in the BDSafter the Bid submission deadline date prescribed by the Employer in accordance with ITB 22.1. A Bid valid for a shorter period shall be rejected by the Employer as non-responsive. |
|  | 18.2 In exceptional circumstances, prior to the expiration of the Bid validity period, the Employer may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB 19, it shall also be extended for twenty-eight (28) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its Bid. |
| 19. Bid Security | 19.1 The Bidder shall furnish as part of its Bid a Bid Security as specified in the **BDS**, in original form and in the amount and currency specified in the BDS. |
|  | 19.2 Reserved. |
|  | 19.3 The Bid Security shall be a demand guarantee in the form of an unconditional guarantee issued by a bank or financial institution (such as an insurance, bonding or surety company) from a reputable source from an eligible country as specified in Section V, Eligibility Criteria. If the unconditional guarantee is issued by a financial institution located outside the Employer’s Country, the issuing financial institution shall have a correspondent financial institution located in the Employer’s Country to make it enforceable. The Bid Security shall be submitted either using the Bid Security Form included in Section IV, Bidding and Qualification Forms, or in another substantially similar format approved by the Employer prior to bid submission. The Bid Security shall be valid for forty-two (42) days beyond the original validity period of the Bid, or beyond any period of extension if requested under ITB 18.2. |
|  | 19.4 Any Bid not accompanied by a substantially responsive Bid Security shall be rejected by the Employer as non-responsive. |
|  | 19.5 The Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder’s signing the Contract and furnishing the Performance Security pursuant to ITB 43. |
|  | 19.6 The Bid Security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required Performance Security. |
|  | 19.7 The Bid Security may be forfeited:   * + 1. If a Bidder withdraws its Bid during the period of bid validity specified by the Bidder on the Letter of Bid, or any extension thereto provided by the Bidder; or     2. If the successful Bidder fails to:   (i) Sign the Contract in accordance with ITB 42; or  (ii) Furnish a Performance Security in accordance with ITB 43. |
|  | 19.8 The Bid Security of a JV shall be in the name of the JV that submits the Bid. If the JV has not been legally constituted into a legally enforceable JV at the time of bidding, the Bid Security shall be in the names of all future members as named in the letter of intent referred to in ITB 4.1 and ITB 11.2. |
| 20. Format and Signing of Bid | 20.1 The Bidder shall prepare one original of the Bid comprising the documents as described in ITB 11 and clearly mark them “Original.” Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked “Alternative.” In addition, the Bidder shall submit copies of the Bid, in the number specified in the BDS and clearly mark them “Copy.” In the event of any discrepancy between the original and the copies, the original shall prevail. |
|  | 20.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the BDS and shall be attached to the Bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Bid where entries or amendments have been made shall be signed or initialled by the person signing the Bid. If the person signing on behalf of the Bidder is the owner, member, or director of the Bidder, if the Bidder is a single entity, or of the Bidder’s Lead Member, if the Bidder is a JV, as demonstrated in the Bidder’s Application, then no authorization shall be required. |
|  | 20.3 In case the Bidder is a JV, the Bid shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives. If the JV has not been legally constituted into a legally enforceable JV at the time of bidding, then the Bid shall be signed by every member of the proposed JV. |
|  | 20.4 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialled by the person signing the Bid. |
|  | D. Submission and Opening of Bids |
| 21. Sealing and Marking of Bids | 21.1 The Bidder shall enclose the original and all copies of the Bid, including alternative Bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as “Bid - Original”, “Bid - Alternative” and “Bid - Copy.”  These envelopes containing the original and the copies shall then be enclosed in one single envelope marked “Bid”. |
|  | 21.2 The inner and outer envelopes shall:   1. Bear the name and address of the Bidder; 2. Be addressed to the Employer in accordance with ITB 22.1; 3. Bear the specific identification of this bidding process specified in the **BDS** 1.1; and 4. Bear a warning not to open before the time and date for Bid opening. |
|  | 21.3 If all envelopes are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the Bid. |
| 22. Deadline for Submission of Bids | 22.1 Bids must be received by the Employer in accordance with the instructions, including the address and deadline, specified in the BDS. |
|  | 22.2 The Employer may, at its discretion, extend the deadline for the submission of Bids by amending the Bidding Documents in accordance with ITB 8, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended. |
| 23. Late Submissions | 23.1 The Employer shall not consider any Bid that arrives after the deadline for submission of Bids, in accordance with ITB 22. Any Bid received by the Employer after the deadline for submission of Bids shall be declared late, rejected, and returned unopened to the Bidder. |
| 24. Withdrawal, Substitution, and Modification of Bids | 24.1 A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 20.2. The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices must be:   1. Prepared and submitted in accordance with ITB 20 and ITB 21 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked “Withdrawal”, “Substitution”, “Modification”; and 2. Received by the Employer prior to the deadline prescribed for submission of Bids, in accordance with ITB 22. |
|  | 24.2 Bids requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the Bidders. |
|  | 24.3 No Bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of Bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereof. |
| 25. Bid Opening | 25.1 Except in the cases specified in ITB 23 and 24, the Employer shall publicly open and read out in accordance with ITB 25 all Bids received by the deadline (regardless of the number of Bids received), at the date, time and place specified in the **BDS**, in public and in the presence of Bidders` designated representatives. |
|  | 25.2 First, envelopes marked “Withdrawal” shall be opened and read out and the envelope with the corresponding Bid shall not be opened, but returned to the Bidder. No Bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at the Bid opening. Next, envelopes marked “Substitution” shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at the opening. Envelopes marked “Modification” shall be opened and read out with the corresponding Bid. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at the Bid opening. Only Bids that are opened and read out at Bid opening shall be considered further. |
|  | 25.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the total Bid Price, per lot (contract) if applicable, including any discounts and alternative bids; the presence or absence of a bid security, signed Letter of Bid, Power of Attorney, nominating the Bidder’s authorized representative, Declaration of Undertaking, and any other details as the Employer may consider appropriate. Only discounts and alternative bids read out at bid opening shall be considered for evaluation. The Letter of Bid and the Schedules are to be initialled by a minimum of three representatives of the Employer attending bid opening. At bid opening, the Employer shall neither discuss the merits of any bid nor reject any bid (except for late bids, in accordance with ITB 23.1). |
|  | 25.4 The Employer shall prepare a record of the Bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; Power of Attorney, nominating the Bidder’s authorized representative, and Declaration of Undertaking. The Bidders’ representatives who are present shall be requested to sign the record. The omission of a Bidder’s signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders. |
|  | E. Evaluation and Comparison of Bids |
| 26. Confidentiality | 26.1 Information relating to the examination, evaluation, and comparison of the Bids, and recommendation of contract award shall not be disclosed to Bidders or any other persons not officially concerned with the bidding process until information on Contract award is communicated to all Bidders in accordance with ITB 41. |
|  | 26.2 Any attempt by a Bidder to influence the Employer in the examination, evaluation, and comparison of the Bids, and qualification of the Bidders, or Contract award decisions may result in the rejection of its Bid. |
|  | 26.3 Notwithstanding ITB 26.2, from the time of Bid opening to the time of Contract award, if a Bidder wishes to contact the Employer on any matter related to the bidding process, it shall do so in writing. |
| 27. Clarification of Bids | 27.1 To assist in the examination, evaluation, and comparison of the Bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its Bid, given a reasonable time for a response. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer’s request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Bids, in accordance with ITB 31. |
|  | 27.2 If a Bidder does not provide clarifications of its Bid by the date and time set in the Employer’s request for clarification, its Bid may be rejected. |
| 28. Deviations, Reservations, and Omissions | 28.1 During the evaluation of Bids, the following definitions apply:   1. “Deviation” is a departure from the requirements specified in the Bidding Documents; 2. “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Documents; and 3. “Omission” is the failure to submit part or all of the information or documentation required in the Bidding Documents. |
| 29. Determination of Responsiveness | 29.1 The Employer’s determination of a Bid’s responsiveness is to be based on the contents of the Bid itself, as defined in ITB 11. |
|  | 29.2 A substantially responsive Bid is one that meets the requirements of the Bidding Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,  (a) If accepted, would:  (i) Affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or  (ii) Limit in any substantial way, inconsistent with the Bidding Documents, the Employer’s rights or the Bidder’s obligations under the proposed Contract; or  (b) If rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Bids. |
|  | 29.3 The Employer shall examine the technical aspects of the Bid submitted in accordance with ITB 17, in particular, to confirm that all requirements of Section VII, Works Requirements have been met without any material deviation, reservation or omission. |
|  | 29.4 If a Bid is not substantially responsive to the requirements of the Bidding Documents, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission. |
| 30. Nonmaterial Nonconformities | 30.1 Provided that a Bid is substantially responsive, the Employer may waive any nonmaterial nonconformities in the Bid. |
|  | 30.2 Provided that a Bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid. |
|  | 30.3 Provided that a Bid is substantially responsive, the Employer shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. |
| 31. Correction of Arithmetical Errors | 31.1 Provided that the Bid is substantially responsive, the Employer shall correct arithmetical errors on the following basis:  (a) If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of theEmployer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;  (b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and  (c) If there is a discrepancy between words and figures, the amount in words shall prevail, unless, only for admeasurement contracts, the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above. |
|  | 31.2 Bidders shall be requested to accept correction of arithmetical errors. Failure to accept the correction in accordance with ITB 31.1 shall result in the rejection of the Bid. |
| 32. Conversion to Single Currency | 32.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency as specified in the BDS. |
| 33. Margin of Preference | 33.1 A margin of preference for domestic Bidders shall not apply in National Competitive Bidding. |
| 34. Subcontractors | 34.1 Unless otherwise stated in the BDS, the Employer does not intend to execute any specific elements of the Works by sub-contractors selected in advance by the Employer (nominated sub-contractors). |
| 35. Evaluation of Bids | 35.1 The Employer shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted. |
|  | 35.2 To evaluate a Bid, the Employer shall consider the following:  (a) The Bid price, excluding Provisional Sums unless priced competitively and the provision, if any, for contingencies in the Schedules, but including Daywork items, where priced competitively;  (b) Price adjustment for correction of arithmetic errors in accordance with ITB 31.1;  (c) Price adjustment due to missing items, missing rates, or discounts offered in accordance with ITB 14.2 and 14.4;  (d) Price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 30.3;  (e) Converting the amount resulting from applying (a) to (d) above, if relevant, to a single currency in accordance with ITB 32;  (f) The additional evaluation factors as specified in Section III, Evaluation and Qualification Criteria. |
|  | 35.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in Bid evaluation. |
|  | 35.4 If these Bidding Documents allow Bidders to quote separate prices for different lots (contracts), the methodology to determine the lowest evaluated price of the lot (contract) combinations, including any discounts offered in the Letter of Bid, is specified in Section III, Evaluation and Qualification Criteria. |
|  | 35.5 If the Bid, which results in the lowest Evaluated Bid Price, is significantly lower than the Employer’s estimate, the Employer shall require the Bidder to produce detailed price analyses for any or all items of the Schedules, to demonstrate the internal consistency of those prices with the construction methods, resources and schedule proposed. Notwithstanding the provisions of ITB 14.2 which shall not be applicable, if one or several inconsistencies are evidenced, the Bid shall be declared non-compliant and rejected. If the Bid is seriously unbalanced or front loaded in the opinion of the Employer and after evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract. |
| 36. Comparison of Bids | 36.1 The Employer shall compare the evaluated prices of all substantially responsive Bids established in accordance with ITB 35.2 to determine the lowest evaluated Bid. |
| 37. Qualification of the Bidder | 37.1 The Employer shall determine to its satisfaction whether the eligible Bidder that is selected as having submitted the lowest evaluated cost and substantially responsive Bid meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria. |
|  | 37.2 The determination shall be based upon an examination of the documentary evidence of the Bidder’s qualifications submitted by the Bidder, pursuant to ITB 17. The determination shall not take into consideration the qualifications of other firms such as the Bidder’s subsidiaries, parent entities, affiliates, subcontractors (other than Specialized Subcontractors if permitted in the bidding document), or any other firm(s) different from the Bidder. |
|  | 37.3 An affirmative determination of qualification shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the Bid, in which event the Employer shall proceed to the substantially responsive Bid which offers the next lowest evaluated cost to make a similar determination of that Bidder’s qualifications to perform satisfactorily. |
| 38. Most Advantageous Bid | 38.1 Having compared the evaluated costs of Bids, the Employer shall determine the Most Advantageous Bid. The Most Advantageous Bid is the Bid of the Bidder that meets the Qualification Criteria and whose Bid has been determined to be:  (a) substantially responsive to the bidding document; and  (b) the lowest evaluated cost. |
| 39. Employer’s Right to Reject All Bids | 39.1 The Employer reserves the right to annul the bidding process and reject all Bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all Bids submitted and specifically, bid securities, shall be promptly returned to the Bidders. |
|  | F. Award of Contract |
| 40. Award Criteria | 40.1 Subject to ITB 39.1, the Employer shall award the Contract to the successful Bidder. This is the Bidder whose Bid has been determined to be the Most Advantageous Bid as specified in ITB 38. |
| 41. Notification of Award | 41.1 Prior to the expiration of the period of Bid validity, the Employer shall notify the successful Bidder, in writing, that its Bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the “Letter of Acceptance”) shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the Works and the requirement for the Contractor to remedy any defects therein (hereinafter and in the Conditions of Contract and Contract Forms called “the Contract Price”). Subsequently, the Employer shall also notify all other Bidders of the results of the bidding. |
|  | 41.2 Until a formal contract is prepared and executed, the Letter of Acceptance shall constitute a binding Contract. |
|  | 41.3 The Employer shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 41.1, requests in writing the grounds on which its Bid was not selected. |
|  | 41.4 In exceptional circumstances, the Employer may need to communicate with the successful Bidder, established in terms of ITB 38.1, certain aspects of Contract performance prior to sending the Letter of Acceptance. Should such a need arise, this communication shall be limited to the following topics, as identified in the evaluation report,  (a) coordination of mobilization timing;  (b) coordination of actions or inputs involving the Employer and the Engineer;  (c) technical alternatives offered by the successful Bidder.  Any such discussions and agreements as there shall occur between the Employer and the successful Bidder (1) may not be interpreted as having the same legal effect as the Letter of Acceptance, (2) shall be summarized in Minutes, which shall be attached to the Letter of Acceptance. |
| 42. Signing of Contract | 42.1 Promptly upon notification, the Employer shall send the successful Bidder the Contract Agreement. |
|  | 42.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer. |
| 43. Performance Security | 43.1 Within twenty-eight (28) days of the receipt of the Letter of Acceptance from the Employer, the successful Bidder shall furnish the performance security in accordance with the General Conditions of Contract, subject to ITB 35.5, using for that purpose the Performance Security Form included in Section X, Contract Forms, or another form acceptable to the Employer. If the performance security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Employer. A foreign institution providing a bond shall have a correspondent financial institution located in the Employer’s Country. |
|  | 43.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid security. In that event, the Employer may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily. |

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| Section II. Bid Data Sheet | | | | | |
| **A. Introduction** | | | | | |
| **ITB 1.1** | | | | The Purchaser is the joint initiative of chambers of commerce from the region, chosen by the BMZ as a key executive partner: The Western Balkans 6 Chamber Investment Forum and represented by the Fund Management Unit of the Regional Challenge Fund.  Beneficiary Institutions for this contract are: Public Institution Secondary Mixed School “Danilo Kis” Budva (LOT 1) and Public Institution Electrotehnical Secondary School "Vaso Aligrudic", Podgorica (LOT 2), Montenegro.  For the purpose of the performing construction works, the Purchaser Country is the Beneficiary Country, i.e. Montenegro. | |
| **ITB 1.1** | | | | The name of the NCB is: Procurement of adaptation works on existing building facilities of schools in Budva and in Podgorica, Montenegro  The number and identification of lots (contracts)comprising this NCB are:  RCF/MNE/W/2023/002 – 005/R  LOT 1: Public Institution Secondary Mixed School “Danilo Kis” Budva;  LOT 2: Public Institution Electrotehnical Secondary School "Vaso Aligrudic", Podgorica. | |
| **ITB 2.1** | | | | The name of the Project is: Regional Challenge Fund. | |
| ITB 4.1 | | | | Maximum number of members in the JV shall be: three | |
| ITB 5.2 | | | | 1. Average annual financial amount of construction work over a period of two (2) *years* for Lot 1 at least *660.000,00 EUR*.   Average annual financial amount of construction work over a period of two (2) *years* for Lot 2 at least *282.000,00 EUR*.  Experience as prime contractor in the construction of at least two (2) works contracts of a nature and complexity equivalent to the present works, over the period of five (5) years before the submission deadline.  In case of JV, Consortium or Association the Lead partner must meet not less than fifty (50%) percent of the requirement.   1. The tenderer must demonstrate ability to complete the works defined within this tender dossier and should include a list of the essential equipment and machinery necessary to perform the works defined within Lot 1, as well as a list of the essential equipment and machinery necessary to perform the works defined within Lot 2.   Minimum essential equipment required **per Lot**:   * Trucks min load capacity 3,2 t– 2 pieces * Floor Screed Mortar Mix Machine – 1 piece * Machine for polishing Sand and Cement Screed Floor – 1 piece * Welding machine – 1 piece * Cranes min load capacity 2,3 t or lifting equipment – 1 piece  1. The tenderer must demonstrate ability to complete the works defined within this tender dossier and should include a list of the required staff, as follows:   **For Lot 1:**   * at least one civil engineer with appropriate licence to carry out the construction works at the field – Responsible contractor; * at least one mechanical engineer with appropriate licence to carry out the construction works at the field – Responsible contractor; * at least one electrical engineer with appropriate licence to carry out the construction works at the field – Responsible contractor; * minimum 10 construction workers of all categories.   **For Lot 2:**   * at least one civil engineer with appropriate licence to carry out the construction works at the field – Responsible contractor; * at least one mechanical engineer with appropriate licence to carry out the construction works at the field – Responsible contractor; * at least one electrical engineer with appropriate licence to carry out the construction works at the field – Responsible contractor; * minimum 10 construction workers of all categories.  1. liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than:  * for LOT 1: EUR 99.000,00; * for LOT 2: EUR 42.300,00. | |
| **B. Bidding Documents** | | | | | |
| **ITB 7.1** | | | | For **clarification purposes** only, the Employer’s address is:  Attention: Western Balkans 6 Chamber Investment Forum (WB6-CIF)  Represented by the Fund Management Unit of the Regional Challenge Fund  Address: Trg Božane Vučinić, 10/II, floor 2, ap. no. 5. (next to the Tabacki bridge)  City: Podgorica  ZIP Code: 81000  Country: Montenegro  Electronic mail address: [procurement@rcf-wb6.org](mailto:procurement@rcf-wb6.org)  **Procedure for answering to the Request for Clarifications from Bidders:**  Request for Clarification shall be submitted in writing by e-mail, **in English language**.  Any request for clarification shall be received no later than 14 (fourteen) days prior to the deadline for submission of bids.  The Purchaser will consolidate all the requests for clarification received from the Bidders and will publish them with answers **(in English**) on the following website: <https://rcf-wb6.org/>, at the latest 10 (ten) days prior to the deadline for submission of bids.  The Bidders shall have the obligation to check regularly the above website for clarification of the Bidding Documents. In addition, the Bidders who requested clarifications will receive an e-mail notification that clarification responses have been published on the website.  Any prospective bidders seeking to arrange individual meetings with Employer during the tender period may be excluded from the bidding procedure. | |
| **ITB 7.1** | | | | Web page: <https://rcf-wb6.org> | |
| **ITB 7.4** | | | | A Pre-Bid meeting shall not take place.  A site visit conducted by the Employer shall not be organized.  Bidders are encouraged to visit the site independently at their own expense. | |
| **ITB 8.2** | | | | Corrigenda or Addenda to the Bidding Documents, if any, will be published on the following website: <https://rcf-wb6.org>.  The Bidders shall have the obligation to check regularly the above website for amendments to the Bidding Documents. In addition, if Corrigendum to the Bidding Documents is issued based on clarification requests by the Bidders, the Bidders will receive an e-mail notification that the Corrigendum has been published on the website. | |
| **C. Preparation of Bids** | | | | |
| ITB 10.1 | | | | The language of the Bid is English.  All correspondence exchange shall be in the English language. Language for translation of supporting documents and printed literature is English. |
| **ITB11.1 a-g** | | | | The following schedules shall be submitted with the Bid:  Priced Bill of Quantities. |
| **ITB 11.1** | | | | Not Applicable. |
| **ITB 14.5** | | | | The prices quoted by the Bidder shall be fixed. |
| **ITB 14.7** | | | | No exemption from payment of taxes, duties and other charges applies for this contract.  The bid unit prices quoted includes all (a) import duties and (b) taxes, fees, charges and other charges applicable, within the meaning of applicable law, to the Supplier and its subcontractors, including all costs for their personnel.  The Contractor and its sub-Contractors are responsible for meeting all tax liabilities arising out of the Contract. |
| **ITB 15.1** | | | | The single currency of the Bid and the payment currency shall be EURO. |
| **ITB 16.1 (j)** | | | | The ceiling for subcontractor’s participation shall not exceed 30 percent of the Contract Price. |
| **ITB 17** | | | | The Bid shall include the ESHS Requirements signed by the Bidder as provided for this purpose in Section VII – Works Requirements, 1 b) Specifications for Project Area Environmental, Social, Health and Safety Management (ESHS) for LOT 1.  A Bid not comprising the signed ESHS Requirements for LOT 1 shall be rejected.  LOT 2: N/A |
| **ITB 18.1** | | | | The bid validity period shall be 120 days from the bid submission deadline. |
| **ITB 19.1** | | | | The amount and currency of the **bid security** shall be:  **LOT 1: 6,600.00 EUR;**  **LOT 2: 2,820 EUR.** |
| **ITB 20.1** | | | | In addition to the original Bid, the number of copies is: one (1) paper copies and one (1) digital copy (CD or flash drive).  For digital copy:  A complete bid should be in PDF format. The all Bid pages must be numerated.  In addition, the priced BoQ File with prices be sent in excel format as well. |
| **ITB 20.2** | | | | The written confirmation of authorization to sign on behalf of the Bidder shall consist of a power of attorney established in the name of the signatory of the Bid. If the Bidder is a JV, the power of attorney shall be issued by the Lead Member of the JV. |
| **D. Submission and Opening of Bids** | | | | |
| **ITB 21.1** | | The outer envelope should bear the following information: the title and reference number of the procurement procedure, the Employer’s name and address indicated above, the address and contact e-mail of the Bidder and the words: “Not to be opened before the official public session for the opening of bids” and equivalent in local language “Ne otvarati prije zvaničnog sastanka za javno otvaranje ponuda”. | | |
| **ITB 22.1** | | The Original Bid shall be submitted not later than  Date: 21st of October 2024  Time: 14:00h CET  at the following address, which shall be the controlling address for the purposes of the timely submission of the Bid:  Attention: Western Balkans 6 Chamber Investment Forum (WB6-CIF)  Represented by the Fund Management Unit of the Regional Challenge Fund  Address: Trg Božane Vučinić, 10/II, (next to the Tabački bridge)  Floor-Room number: Floor no. 2, ap. no. 5  City: Podgorica  ZIP Code: 81000  Country: Montenegro  Please note that opening hours of the FMU are 08:30-14:00h | | |
| **ITB 25.1** | | The Bid opening shall take place at:  Address: Trg Božane Vučinić, 10/II, (next to the Tabački bridge)  Floor/ Room number: Floor no. 2, ap. no. 5  City: Podgorica  ZIP Code: 81000  Country: Montenegro  Date: 21st of October 2024  Time: 14:30h CET  No minimum number of Bids is required in order to proceed to bid opening. | | |
| **E. Evaluation and Comparison of Bids** | | | | |
| **ITB 29** | Compliance of the ESHS Methodology (as specified in **BDS** 17) with the ESHS Specifications (Section VII ‑ Works Requirements) shall be determined by using the method specified in Section III Clause 1.2. A Bid for which the ESHS Methodology is not substantially responsive (i.e. without material deviation, reservation or omission) shall be rejected. | | | |
| **ITB 32.1** | The only currency that shall be used for bid preparation, evaluation and comparison purposes is EURO. | | | |
| **ITB 34.1** | Not applicable | | | |
| **ITB 37** | The Employer shall evaluate the qualifications of the responsive Bidders using the factors, methods, criteria, and requirements defined in Section III, Evaluation and Qualification Criteria, to evaluate the qualifications of the Bidders, and no other methods, criteria, or requirements shall be used. | | | |

Section III. Evaluation and Qualification Criteria

This Section contains all the criteria that the Employer shall use to evaluate the Bids and to determine the qualification of Bidders. In accordance with ITB 35 and ITB 37, no other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding and Qualification Forms.

Wherever a Bidder is required to state a monetary amount, Bidders should indicate the EUR equivalent using the rate of exchange determined as follows:

1. For construction turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar year;
2. Value of single contract - Exchange rate prevailing on the date of the contract.

Exchange rates shall be taken from the publicly available source identified in the ITB 32.1. Any error in determining the exchange rates in the Bid may be corrected by the Employer.

1. **Evaluation of Bids**

In addition to the criteria listed in ITB 35.2 (a) – (e) the following criteria shall apply:

**1.1 Assessment of adequacy of Technical Proposal with Requirements**

The assessment of the Technical Proposal submitted by a Bidder shall comprise

(a) Site Organization,

(b) Method Statement,

(c) Construction Time Schedule

(d) sufficiently detailed supply sources, in accordance with requirements specified in Section VII, Works Requirements.

A Bid not comprising Technical Proposal or a Bid for which the Technical Proposal is not substantially responsive (i.e. with material deviation, reservation or omission) shall be rejected.

**1.2 Assessment of adequacy of the Environmental, Social, Health and Safety (ESHS) Methodology**

The signed ESHS Requirements for LOT 1 (Annex 3) submitted by the Bidder shall be evaluated to determine whether they are substantially responsive (i.e. without material deviation, reservation or omission) to the requirements specified in Section VII, Works Requirements – ESHS Specifications. A Bid which is not substantially responsive (i.e. with material deviation, reservation or omission) shall be rejected.

1. **Evaluation of** **Eligibility and Qualification**

**2.1 Eligibility**

This Bidding is open to all bidders from eligible countries as defined in ITB 4 and KfW’s eligibility criteria to bid in Section V, Eligibility Criteria.

**2.2 Qualification**

To qualify for award of the Contract, bidders shall meet the following minimum qualifying criteria

1. Average annual financial amount of construction work over a period of two (2) *years* of at least:

* LOT 1: 660.000,00 EUR;
* LOT 2: 282.000,00 EUR.

1. Experience as prime contractor in the construction of at least two (2) works contracts of a nature and complexity equivalent to the present works, over the period of five (5) years before the submission deadline.

In case of JV, Consortium or Association the Lead partner must meet not less than fifty (50%) percent of the requirement.

(c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment **per Lot**:

* Trucks min load capacity 3,2 t– 2 pieces
* Floor Screed Mortar Mix Machine – 1 piece
* Machine for polishing Sand and Cement Screed Floor – 1 piece
* Welding machine – 1 piece
* Cranes min load capacity 2,3 t or lifting equipment – 1 piece

(d) a presentation of the bidders’ organization, including the total number of personnel employed and a list of the personnel proposed for execution of the contract (per each Lot):

(i).Contract Manager – with five years’ experience in works of an equivalent nature and volume, including no less than three years as Manager.

(ii) Graduate Civil Engineer (Certified - Licensed Engineer) – Construction and construction-craft with five years’ experience in works of an equivalent nature and volume.

(iii) Graduated Mechanical Engineer (Certified - Licensed Engineer) with five years’ experience in works of an equivalent nature and volume

(iv) Graduated Electrical Engineer (Certified - Licensed Engineer) with five years’ experience in works of an equivalent nature and volume.

(e) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than:

LOT 1: EUR 99.000,00

LOT 2: EUR 42.300,00

A consistent history of litigation or arbitration awards against the Applicant or any partner of a Joint Venture may result in disqualification.

Section IV. Bidding and Qualification Forms

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|  |
| --- |
| Letter of Bid |

*[The Bidder shall prepare his Letter of Bid on a Letterhead paper specifying his name and address]*

Date:

NCB No.:

To: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

We, the undersigned, declare that:

1. We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB 8).
2. We have no conflict of interest in accordance with ITB 4;
3. We have not been suspended nor declared ineligible by the Employer based on execution of a Bid Securing Declaration in the Employer’s country in accordance with ITB 4.4;
4. We offer to execute in conformity with the Bidding Documents the following Works:

;

1. The Total price of our Bid, excluding VAT any discounts offered in item (g) below is:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ EURO

VAT\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ EURO

The Total price of our Bid, including VAT\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ EURO

* + - 1. The discounts, if any, offered are: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ %
      2. The Total price of our Bid, including VAT and including discounts, if any, is:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_EURO

1. Our Bid shall be valid for a period of 120 days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
2. If our Bid is accepted, we commit to obtain a performance security in accordance with ITB 42 of the Bidding Documents;
3. Weare not participating, as a Bidder, in more than one Bid in this bidding process in accordance with ITB 4.4(e);

;

(j) We understand that this Bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed; and

(k) We acknowledge and agree that the Employer reserves the right to annul the bidding process and reject all Bids at any time prior to contract award without thereby incurring any liability to us;

(l) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any type of fraud and corruption.

Name of the Bidder**\***

Name of the person duly authorized to sign the Bid on behalf of the Bidder**\*\***

Title of the person signing the Bid

Signature of the person named above

Date signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_

**\***: In the case of the Bid submitted by a JV specify the name of the JV as Bidder

\*\*: Person signing the Bid shall have the power of attorney given by the Bidder to be attached with the Bid

**Declaration of Undertaking**

Reference name of the Application/Offer/Contract: ("**Contract**")[[1]](#footnote-1)

1. We recognise and accept that KfW only finances projects of the Project Executing Agency (“PEA”)[[2]](#footnote-2) subject to its own conditions which are set out in the Funding Agreement it has entered into with the PEA. As a matter of consequence, no legal relationship exists between KfW and our company, our Joint Venture or our Subcontractors under the Contract. The PEA retains exclusive responsibility for the preparation and implementation of the Tender Process and the performance of the Contract.
2. We hereby certify that neither we nor any of our board members or legal representatives nor any other member of our Joint Venture including Subcontractors under the Contract are in any of the following situations:

2.1)  being bankrupt, wound up or ceasing our activities, having our activities administered by courts, having entered into receivership, reorganisation or being in any analogous situation;

2.2)  having been convicted by a final judgment or a final administrative decision or a preliminary investigation/charge is pending against us for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings, or have been subject to (financial) sanctions and/or embargo pro- visions by the United Nations, the European Union or the Federal Republic of Ger- many. This exclusion criterion is also applicable to legal persons whose shares (or the majority thereof) are owned or de facto controlled by natural or legal persons against whom such judgments, administrative decisions, (financial) sanctions and/or embargoes have been imposed and – in the case of (financial) sanctions and/or embargoes – these restrictive measures continue to apply;

2.3)  having been convicted by a final court decision or a final administrative decision by a court, the European Union, national authorities in the Partner Country or in Ger- many for Sanctionable Practice in connection with a Tender Process or the perfor- mance of a Contract or for an irregularity affecting the EU’s financial interests (in the event of such a conviction, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this conviction is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction);

2.4)  having been subject within the past five years to a Contract termination fully settled against us for significant or persistent failure to comply with our contractual obliga- tions during such Contract performance, unless this termination was challenged and dispute resolution is still pending or has not confirmed a full settlement against us;

2.5)  not having fulfilled the applicable fiscal obligations with regard to the payment of taxes at the respective tax residence and in the country of origin of the PEA (contrac- tors based in Annex 1 countries (https://www.consilium.europa.eu/de/policies/eu-list-of-non-co- operative-jurisdictions/) must submit a fully completed and legally countersigned declaration of tax conformity (Appendix1 to the Declaration of Undertaking) in addition to the Declaration of Undertaking at the time of award of the contract/contract review. This shall become an integral part of the contract. Failure to submit may result in exclusion from the awarding procedure. For contractors based in countries not listed as Annex I countries, only the Declaration of Under- taking must be submitted, and not the declaration of tax conformity);

2.6)  being subject to an exclusion decision of the World Bank or any other multilateral development bank and being listed on the website http://www.worldbank.org/debarr or respectively on the relevant list of any other multilateral development bank (in the event of such exclusion, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this exclusion is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction); or

2.7)  being guilty of misrepresentation in supplying the information required as a condition of participation in the Tender.

1. We hereby certify that neither we, nor any of the members of our Joint Venture or any of our Subcontractors under the Contract are in any of the following situations of conflict of interest:

3.1)  being an affiliate controlled by the PEA or a shareholder controlling the PEA, unless the stemming conflict of interest has been brought to the attention of KfW and re- solved to its satisfaction;

3.2)  having a business or family relationship with a PEA's staff involved in the Tender Process or the supervision of the resulting Contract, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;

3.3)  being controlled by or controlling another Applicant or Bidder, or being under com- mon control with another Applicant or Bidder, or receiving from or granting subsidies directly or indirectly to another Applicant or Bidder, having the same legal repre- sentative as another Applicant or Bidder, maintaining direct or indirect contacts with another Applicant or Bidder which allows us to have or give access to information contained in the respective Applications or Offers, influencing them or influencing decisions of the PEA;

3.4)  being engaged in a Consulting Services activity, which, by its nature, may be in conflict with the assignments that we would carry out for the PEA;

3.5)  in the case of procurement of Works, Plant or Goods:

* + 1. having prepared or having been associated with a Person who prepared spec- ifications, drawings, calculations and other documentation to be used in the Tender Process of this Contract;
    2. having been recruited (or being proposed to be recruited) ourselves or any of our affiliates, to carry out works supervision or inspection for this Contract;

1. If we are a state-owned entity, and compete in a Tender Process, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.
2. We undertake to bring to the attention of the PEA, which will inform KfW, any change in situation with regard to points 2 to 4 here above.
3. In the context of the Tender Process and performance of the corresponding Contract:

6.1)  neither we nor any of the members of our Joint Venture nor any of our Subcontrac- tors under the Contract have engaged or will engage in any Sanctionable Practice, or violate the Guidelines during the Tender Process and in the case of being awarded a Contract will engage in any Sanctionable Practice during the perfor- mance of the Contract;

6.2)  neither we nor any of the members of our Joint Venture or any of our Subcontractors under the Contract shall acquire or supply any equipment nor operate in any sectors under an embargo of the United Nations, the European Union or Germany; and

6.3)  we commit ourselves to complying with and ensuring that our Subcontractors and major suppliers under the Contract comply with international environmental and labour standards, consistent with laws and regulations applicable in the country of implementation of the Contract and the fundamental conventions of the International Labour Organisation[[3]](#footnote-3) (ILO) and international environmental treaties. Moreover, we shall implement environmental and social risks mitigation measures when specified in the relevant environmental and social management plans or other similar docu- ments provided by the PEA and, in any case, implement measures to prevent sexual exploitation and abuse and gender-based violence.

1. In the case of being awarded a Contract, we, as well as all members of our Joint Venture partners and Subcontractors under the Contract will, (i) upon request, provide information relating to the Tender Process and the performance of the Contract and (ii) permit the PEA and KfW or an agent appointed by either of them, and in the case of financing by the Eu- ropean Union also to European institutions having competence under European Union law, to inspect the respective accounts, records and documents, to permit on-the-spot checks and to ensure access to sites and the respective project.
2. In the case of being awarded a Contract, we, as well as all our Joint Venture partners and Subcontractors under the Contract undertake to preserve above mentioned records and documents in accordance with applicable law, but in any case, for at least six years from the date of fulfillment or termination of the Contract. Our financial transactions and financial statements shall be subject to auditing procedures in accordance with applicable law. Fur- thermore, we accept that our data (including personal data) generated in connection with the preparation and implementation of the Tender Process and the performance of the Contract are stored and processed according to the applicable law by the PEA and KfW.

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ In the capacity of: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Duly empowered to sign in the name and on behalf of[[4]](#footnote-4):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature:

Dated:

**Appendix 1**

*Appendix1 to the Declaration of Undertaking*

**Declaration of tax conformity – binding confirmation for legal persons**

**[Name of company]**

I hereby confirm with my signature that:

1. I am authorised to make this declaration on behalf of the above company;
2. the company properly pays all taxes in accordance with the tax laws of the country in which the company is domiciled;
3. the company is not currently nor has been in the past involved in any legal proceedings concerning the taxation of the company;
4. the company will duly pay taxes that may arise from the provision of contracted services;
5. all information and statements provided in advance are complete, accurate in terms of content and currently correct.

.............................. ................... .......................................................

(Place) (Date) (Name of the consultant)

.......................................................

(Signature(s))

**Appendix 1**

*Appendix1 to the Declaration of Undertaking*

**Declaration of tax conformity – binding confirmation for natural persons**

I hereby confirm with my signature that:

1. I make this declaration in my name/on my own account;
2. I duly pay taxes that I am obliged to pay under the tax law of my country of residence;
3. I am not currently involved in tax law court proceedings, nor have I been in the past;
4. I will duly pay taxes that may arise from the provision of contracted services;
5. I have filled in all the information and statements of this confirmation in full, ac- curately in terms of content and that they are up to date at this time.

.............................. ................... ..................................................

(Place) (Date) (Name of the person)

..................................................

(Signature)

### Bill of Quantities

Please refer to the Annex 1\_BoQ

|  |
| --- |
| Technical Proposal |

* Site Organization and Method Statement
* Construction Time Schedule
* Personnel proposed
* Equipment proposed
* Power of Attorney

Qualification Forms

*[The information to be filled in by* ***bidders*** *in the following pages shall be used for purposes of qualification as provided for in ITB 5. This information shall not be incorporated in the Contract. Attach additional pages as necessary. Pertinent sections of attached documents should be translated into English].*

|  |  |
| --- | --- |
| **1. Individual Bidders or Individual Members of Joint Ventures** | 1.1 Constitution or legal status of Bidder: *[attach copy]*  Place of registration: *[insert]*  Principal place of business: *[insert]*  Power of attorney of signatory of Bid: *[attach]*   * 1. Average annual financial amounts of construction works performed during the last *[insert number pursuant to* ***BDS sub clause 5.2(a)****]* years *[insert amounts in the national currency equivalent]*   1.3 Number *[insert number pursuant to* ***BDS sub clause 5.2 (b)****]* of works of a nature and amount similar to the Works performed as prime Contractor over the last *[insert number pursuant to* ***BDS sub clause 5.2 (b)****] years*. *[The amounts should be indicated in the same currency used for Item 1.2 above. Also list details of work under way or committed, including expected completion date(s).]* |

|  |  |  |  |
| --- | --- | --- | --- |
| Project name and country | Name of client and contact person | Type of work performed and year of completion | Value of contract  (national currency equivalent) |
| (a)  (b) |  |  |  |

|  |  |
| --- | --- |
|  | 1.4 Major items of Contractor’s Equipment proposed for carrying out the Works*. . [List all information requested below. Refer also to ITB Sub-Clause 5.2 (c).]* |

|  |  |  |  |
| --- | --- | --- | --- |
| Item of equipment | Description, make, and age (years) | Condition (new, good, poor) and number available | Owned, leased (from whom?), or to be purchased (from whom?) |
| (a)  (b) |  |  |  |

|  |  |
| --- | --- |
|  | 1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. *[Attach biographical data and valid Licence. Refer also to BDS Section III \_2.2 Qualifications (d), (e ).* |

|  |  |  |  |
| --- | --- | --- | --- |
| Position | Name | Years of experience (general) | Years of experience in proposed position |
| (a)  (b) |  |  |  |

|  |  |
| --- | --- |
|  | 1.6 Proposed subcontracts and firms involved. Refer to GC Clause 7., if any. |

|  |  |  |  |
| --- | --- | --- | --- |
| Sections of the Works | Value of subcontract | Subcontractor  (name and address) | Experience in similar work |
| (a)  (b) |  |  |  |

|  |  |
| --- | --- |
|  | 1.7 Financial reports for the last *5* years: balance sheets, profit and loss statements, auditors’ reports, etc. *[List below and attach copies.].*  *1.8* Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of support documents. *Refer also to BDS 5.2 (d)*  1.9 Name, address, and telephone, telex, and facsimile numbers of banks that may provide references if contacted by the Employer.  1.10 Information on current litigation(s) in which the Bidder is involved. |
|  |  |

|  |  |  |
| --- | --- | --- |
| Other party(ies) | Cause of dispute | Amount involved |
| (a)  (b) |  |  |

|  |  |
| --- | --- |
|  | 1.11 Proposed Program (Site Organization and Metod Statement, Construction Schedule), Descriptions, drawings, and charts, as necessary, to comply with the requirements of the Bidding Documents. |
| **2. Joint Ventures** | 2.1 The information listed in 1.1 - 1.10 above shall be provided for each partner of the joint venture.  2.2 The information in 1.11 above shall be provided for the joint venture.  2.3 Attach the power of attorney of the signatory(ies) of the Bid authorizing signature of the Bid on behalf of the joint venture.  2.4 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that:  (a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;  (b) one of the partners shall be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and  (c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge. |
| **3. Additional Requirements** | 3.1 Bidders should provide any additional information required in the BDS. |

Form: Power of Attorney

Bidder must attach here a Power of Attorney authorizing their empowered representative to submit the Bid and to commit the Bidder to a contract. The Power of Attorney must give the name, address and capacity of the person so empowered and must be signed and dated by a person duly authorized. In case of JV Power of Attorney to the leader must be given by the empowered representative of the company.

Minutes of board meetings or other documents authorizing the signatory of the Power of Attorney must be attached. The person who grants the Power of Attorney must be duly authorized to do so and the Bidder must provide written evidence of this.

If the Original Power of Attorney is drafted in other language than English, Bidders are required to attach also the authorized English translation.

For example, in case of JV the form could be as follows:

**Declaration of Joint and Several Liability**

**Power of Attorney to the Leader of the Consortium**

***[not applicable to individual tenderers]***

…………………………………… [add name of company] hereby declares to be jointly and individually bound by the terms and conditions of the bid and contract documents for above-mentioned contract with the consortium partners and to accept, if the bid is successful, joint and several liability with these partners for the performance of the contract towards the PEA.

…………………………………… [add name of the lead company of the consortium] shall hereby be appointed to act for and on behalf of the consortium and all its consortium members during all stages of the bidding for and the performance of above-mentioned contract, including payments.

Signature

Name

Position

Section V. Eligibility Criteria

**Eligibility in KfW-Financed Procurement**

1. Consulting Services, Works, Goods, Plant and Non-Consulting Services are eligible for KfW financing regardless of the country of origin of the Contractors (including Subcontractors and suppliers for the execution of the Contract), except where an international embargo or sanction by the United Nations, the European Union or the German Government applies.
2. Applicants/Bidders (including all members of a Joint Venture and proposed or engaged Subcontractors) shall not be awarded a KfW-financed Contract if, on the date of submission of their Application/Offer or on the intended date of Award of a Contract, they:

2.1 are bankrupt or being wound up or ceasing their activities, are having their activities administered by courts, have entered into receivership, or are in any analogous situation;

2.2 have been

(a) convicted by a final judgement or a final administrative decision or subject to financial sanctions by the United Nations, the European Union and/or the German Government for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings; this criterion of exclusion is also applicable to legal Persons, whose majority of shares are held or factually controlled by natural or legal Persons which themselves are subject to such convictions or sanctions;

(b) convicted by a final court decision or a final administrative decision by a court, the European Union or national authorities in the Partner Country or in Germany for Sanctionable Practice during any Tender Process or the performance of a Contract or for an irregularity affecting the EU’s financial interests, unless they provide supporting information together with their Declaration of Undertaking (Form available as Appendix to the Application/Offer which shows that this conviction is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction;

2.3 have been subject within the past five years to a Contract termination fully settled against them for significant or persistent failure to comply with their contractual obligations during Contract performance, unless this termination was challenged and the dispute resolution is still pending or has not confirmed a full settlement against them;

2.4 have not fulfilled applicable fiscal obligations regarding payments of taxes either in the country where they are constituted or the PEA’s country;

2.5 are subject to an exclusion decision of the World Bank or any other multilateral development bank and are listed in the respective table with debarred and cross-debarred firms and individual available on the World Bank’s website or any other multilateral development bank unless they provide supporting information together with their Declaration of

Undertaking which shows that this exclusion is not relevant in the context of this Contract or

2.6 have given misrepresentation in documentation requested by the PEA as part of the Tender Process of the relevant Contract.

1. State-owned entities may compete only if they can establish that they (i) are legally and financially autonomous, and (ii) operate under commercial law. To be eligible, a state-owned entity shall establish to KfW’s satisfaction, through all relevant documents, including its charter and other information KfW may request, that it: (i) is a legal entity separate from their state (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to their state, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt.

Section VI. KfW Policy – Sanctionable Practice – Social and Environmental Responsibility

1. **Sanctionable Practice**

The PEA and the Contractors (including all members of a Joint Venture and proposed or engaged Subcontractors) must observe the highest standard of ethics during the Tender Process and performance of the Contract.

By signing the Declaration of Undertaking the Contractors declare that (i) they did not and will not engage in any Sanctionable Practice likely to influence the Tender Process and the corresponding Award of Contract to the PEA’s detriment, and that (ii) in case of being awarded a Contract they will not engage in any Sanctionable Practice.

Moreover, KfW requires to include in the Contracts a provision pursuant to which Contractors must permit KfW and in case of financing by the European Union also to European institutions having competence under European law to inspect the respective accounts, records and documents relating to the Tender Process and the performance of the Contract , and to have them audited by auditors appointed by KfW.

KfW reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

(a) reject an Offer for Award of Contract if during the Tender Process the Bidder who is recommended for the Award of Contract has engaged in Sanctionable Practice, directly or by means of an agent in view of being awarded the Contract;

(b) declare misprocurement and exercise its rights on the ground of the Funding Agreement with the PEA relating to suspension of disbursements, early repayment and termination if, at any time, the PEA, Contractors or their legal representatives or Subcontractors have engaged in Sanctionable Practice during the Tender Process or performance of the Contract without the PEA having taken appropriate action in due time satisfactory to KfW to remedy the situation, including by failing to inform KfW at the time they knew of such practices.

KfW defines, for the purposes of this provision, the terms set forth below as follows:

|  |  |
| --- | --- |
| **Coercive Practice** | The impairing or harming, or threatening to impair or harm, directly or indirectly, any person or the property of the person with a view to influencing improperly the actions of a person. |
| **Collusive Practice** | An arrangement between two or more persons designed to achieve an improper purpose, including influencing improperly the actions of another person. |
| **Corrupt Practice** | The promising, offering, giving, making, insisting on, receiving, accepting or soliciting, directly or indirectly, of any illegal payment or undue advantage of any nature, to or by any person, with the intention of influencing the actions of any person or causing any person to refrain from any action. |
| **Fraudulent Practice** | Any action or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial benefit or to avoid an obligation. |
| **Obstructive Practice** | Means (i) deliberately destroying, falsifying, altering or concealing evidence material to the investigation or the making of false statements to investigators, in order to materially impede an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice, or threatening, harassing or intimidating any Person to prevent them from disclosing their knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) any act intended to materially impede the exercise of KfW's access to contractually required information in connection with an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice. |
| **Sanctionable Practice** | Any Coercive Practice, Collusive Practice, Corrupt Practice, Fraudulent Practice or Obstructive Practice (as such terms are defined herein) which is unlawful under the Financing Agreement. |

1. **Social and Environmental Responsibility**

Projects financed in whole or partly in the framework of Financial Cooperation have to ensure compliance with international Environmental, Social, Health and Safety (ESHS) standards (including issues of sexual exploitation and abuse and gender based violence) Contractors in KfW-financed projects shall consequently undertake in the respective Contracts to:

1. comply with and ensure that all their Subcontractors and major suppliers, i.e. for major supply items comply with international environmental and labour standards, consistent with applicable law and regulations in the country of implementation of the respective Contract and the fundamental conventions of the International Labour Organisation[[5]](#footnote-5) (ILO) and international environmental treaties and;
2. implement any environmental and social risks mitigation measures, as identified in the environmental and social impact assessment (ESIA) and further detailed in the environmental and social management plan (ESMP) as far as these measures are relevant to the Contract and implement measures for the prevention of sexual exploitation and abuse and gender-based violence.

PART 2 – Works Requirements

|  |
| --- |
| Section VII. Works Requirements |

Contents

1. Specifications

1. Technical Specifications

Please refer to Annex 2\_Techical Specification

1. Specifications for Project Area Environmental, Social, Health and Safety Management (ESHS)

NOTE:

Expenses of implementing ESHS Requirements are included in the BoQ unit prices for LOT 1 and not charged separately.

Please refer to Annex 3\_ESMP Documents

2. Drawings

Please refer to Annex 4\_Drawings

PART 3 – Conditions of Contract (CC) and Contract Forms

**Section VIII. General Conditions (GC)**

**PRELIMINARY PROVISIONS**

**Article 1 – Definitions**

1.1. The headings and titles in these general conditions shall not be taken as part thereof or be taken into consideration in the interpretation of the contract.

1.2. Where the context so permits, words in the singular shall be deemed to include the plural and vice versa, and words in the masculine shall be deemed to include the feminine and vice versa.

1.3. Words designating persons or parties shall include firms and companies and any organisation having legal capacity.

**Article 2 – Language of the Contract**

2.1. The language of the contract and of all communications between the contractor, contracting authority and supervisor or their representatives shall be as stated in the particular conditions.

**Article 3 - Order of precedence of contract documents**

3.1.The order of precedence of the contract documents shall be as stated in the contract.

**Article 4 – Communications**

4.1. Any written communications between the contracting authority and/or the supervisor on the one hand, and the contractor on the other hand, shall state the contract title and identification number and shall be sent by post, cable, telex, facsimile transmission, e-mail or personal delivery, to the appropriate addresses designated by those parties for that purpose in the particular conditions.

4.2. If the sender requires evidence of receipt, it shall state such requirement in its communication and shall demand such evidence of receipt whenever there is a deadline for the receipt of the communication. In any event, the sender shall take all the necessary measures to ensure timely receipt of its communication.

4.3. Wherever the contract provides for the giving or issue of any notice, consent, approval, certificate or decision, unless otherwise specified such notice, consent, approval, certificate or decision shall be in writing and the words ‘notify’, ‘consent’, ‘certify’, ‘approve’ or ‘decide’ shall be construed accordingly. Any such consent, approval, certificate or decision shall not unreasonably be withheld or delayed.

**Article 5 - Supervisor and supervisor's representative**

5.1. The supervisor shall carry out the duties specified in the contract. Except as expressly stated in the contract, the supervisor shall not have authority to relieve the contractor of any of its obligations under the contract.

5.2. The supervisor may, from time to time, while retaining ultimate responsibility, delegate to the supervisor's representative any of the duties and authority vested in the supervisor and he may at any time revoke such delegation or replace the representative. Any such delegation, revocation or replacement shall be in writing and shall not take effect until a copy thereof has been delivered to the contractor. The administrative order which determines the duties, authority and identity of the supervisor's representative shall be issued by the supervisor at the moment of the commencement order. The role of the supervisor’s representative shall be to supervise and inspect works and to test and examine the materials employed and the quality of workmanship. Under no circumstances will the supervisor’s representative be empowered to relieve the contractor of its obligations under the contract or – save where express instructions to that effect are given below or in the contract – order works resulting in an extension of the period of implementation of tasks or additional costs to be paid by the contracting authority or introduce variants in the nature or scale of the works.

5.3. Any communication given by the supervisor's representative to the contractor in accordance with the terms of such delegation shall have the same effect as though it had been given by the supervisor, provided that:

* 1. any failure on the part of the supervisor's representative to disapprove any work, materials or plant shall not prejudice the authority of the supervisor to disapprove such work, materials or plant and to give the instructions necessary for the rectification thereof;
  2. the supervisor shall be at liberty to reverse or vary the contents of such communication.

5.4. Instructions and/or orders issued in writing by the supervisor shall be considered an administrative order. Such orders shall be dated, numbered and entered by the supervisor in a register, and copies thereof delivered by hand, where appropriate, to the contractor's representative.

**Article 6 - Assignment**

6.1. An assignment shall be valid only if it is a written agreement by which the contractor transfers its contract or part thereof to a third party.

6.2. The contractor shall not, without the prior consent of the contracting authority, assign the contract or any part thereof, or any benefit or interest thereunder, except in the following cases:

* + 1. a charge, in favour of the contractor's bankers, of any monies due or to become due under the contract; or
    2. the assignment to the contractor's insurers of the contractor's right to obtain relief against any other person liable in cases where the insurers have discharged the contractor's loss or liability.

6.3. For the purpose of Article 6.2 the approval of an assignment by the contracting authority shall not relieve the contractor of its obligations for the part of the contract already performed or the part not assigned for which the contractor's performance guarantee may be kept.

6.4. If the contractor has assigned its contract without authorization, the contracting authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Article 63 and 64.

6.5. Assignees must satisfy the eligibility criteria applicable for the award of the contract and they cannot fall under the exclusion criteria described in the tender dossier.

6.6. Before giving its approval, the contracting authority should receive as needed a performance guarantee which may be requested for the full contract, a pre-financing guarantee and retention guarantee, from the assignees.

**Article 7 – Subcontracting**

7.1. A subcontract shall be valid only if it is a written agreement by which the contractor entrusts performance of a part of the contract to a third party. Simple plant hire, labour only and supply contracts are not considered or construed ‘subcontracts’ for the purpose of this article.

7.2. The contractor shall request to the contracting authority the authorisation to subcontract. The request must indicate the elements of the contract to be subcontracted and the identity of the subcontractors. Within 30 days of receipt of this request, the contracting authority must either extend the delay for a maximum of 15 days or notify the contractor of its decision, stating reasons should he withhold such authorization. If the contracting authority fails to notify its decision within the time limit referred to above, the request is deemed to be approved at the end of the time limit.

7.3. Subcontractors must satisfy the eligibility criteria applicable for the award of the contract. They cannot fall under the exclusion criteria described in the tender dossier and the contractor shall ensure that subcontractors are not subject to restrictive measures of the United Nations, European Union or the German Government.

7.4. Subject to Articles 7.6 and 52, no subcontract creates contractual relations between any subcontractor and the contracting authority.

7.5. The contractor shall be responsible for the acts, defaults and negligence of its sub-contractors and their agents or employees, as if they were the acts, defaults or negligence of the contractor, its agents or employees. The approval by the contracting authority of the sub-contracting of any part of the contract or of the subcontractor to perform any part of the works shall not relieve the contractor of any of its obligations under the contract.

7.6. If a subcontractor has undertaken any continuing obligation for a period exceeding that of the defects liability period under the contract towards the contractor in respect of the work executed or the goods, materials, plant or services supplied by the subcontractor, the contractor shall, at any time after the expiration of the defects liability period, transfer immediately to the contracting authority, at the contracting authority's request and cost, the benefit of such obligation for the unexpired duration thereof. If the contractor fails to effect such a transfer, the said continuing obligation(s) shall be transferred automatically.

7.7. If the contractor enters into a subcontract without approval, the contracting authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Article 63 and 64.

7.8. If a subcontractor is found by the contracting authority or the supervisor to be incompetent in discharging its duties, the contracting authority or the supervisor may request the contractor to forthwith remove the subcontractor from the site and either to provide a subcontractor with qualifications and experience acceptable to the contracting authority as a replacement, or to resume the implementation of the tasks itself.

**OBLIGATIONS OF THE CONTRACTING AUTHORITY**

**Article 8 – Supply of documents**

8.1. Save where otherwise provided in the particular conditions, within 30 days of the signing of the contract, the supervisor shall provide to the contractor, free of charge, a copy of the drawings prepared for the implementation of tasks as well as two copies of the specifications and other contract documents. The contractor may purchase additional copies of these drawings, specifications and other documents, insofar as they are available. Upon the final acceptance, the contractor shall return to the supervisor all drawings, specifications and other contract documents.

8.2. The contracting authority co-operates with the contractor to provide information that the latter may reasonably request in order to perform the contract.

8.3. Unless it is necessary for the purposes of the contract, the drawings, specifications and other documents provided by the contracting authority shall not be used or communicated to a third party by the contractor without the prior consent of the supervisor.

8.4. The supervisor shall have authority to issue to the contractor administrative orders incorporating such supplementary documents and instructions as shall be necessary for the proper and adequate execution of the works and the remedying of any defects therein.

**Article 9 – Access to site**

9.1. The contracting authority shall, in due time and in conformity with the progress of the works, place the site and access thereto at the disposal of the contractor in accordance with the approved programme of implementation of tasks referred to in Article 17. The contractor grants appropriate access to other persons as set out in the particular conditions or as instructed.

9.2. Any land procured for the contractor by the contracting authority shall not be used by the contractor for purposes other than the implementation of tasks.

9.3. The contractor shall preserve any facilities placed at its disposal in a good state while it is in occupation and shall, if so required by the contracting authority or the supervisor, restore them to their original state on completion of the contract, taking into account normal wear and tear.

9.4. The contractor shall not be entitled to any payment for improvements resulting from work carried out on its own initiative.

**Article 10 – Assistance with local regulations**

10.1. The contractor may request the assistance of the contracting authority in obtaining copies of laws, regulations and information on local customs, orders or by-laws of the country in which the works are executed, which may affect the contractor in the performance of its obligations under the contract. The contracting authority may provide the assistance requested to the contractor at the contractor's cost.

10.2. Subject to the provisions of the laws and regulations on foreign labour of the country in which the works are to be executed, the contracting authority provides reasonable assistance to the contractor, at its request, for its application for any visas and permits required by the law of the country in which the works are executed, including work and residence permits, for the personnel whose services the contractor and the contracting authority consider necessary, as well as residence permits for their families.

**Article 11 – Delayed payments to the contractor's personnel**

11.1. Where there is a delay in the payment to the contractor's employees of wages and salaries owing and of the allowances and contributions laid down by the law of the country in which the works are executed, the contracting authority may give notice to the contractor that within 15 days of the notice the contracting authority intends to pay such wages, salaries, allowances and contributions direct. Should the contractor contest that such payments are due, it shall make representations to the contracting authority with reasons, within the 15-day period. If the contracting authority, having considered such representations, is of the opinion that payment of the wages and salaries should be made, it may pay such wages, salaries, allowances and contributions out of amounts due to the contractor. Failing this, the contracting authority may obtain a contribution under any of the guarantees provided for in these general conditions. Any action taken by the contracting authority under this Article shall not relieve the contractor of its obligations to its employees, except to the extent that any obligation may be satisfied by this action. The contracting authority shall not assume any responsibility towards the contractor's employees by this action.

**OBLIGATIONS OF THE CONTRACTOR**

**Article 12 – General obligations**

12.1. The contractor shall, with due care and diligence, design the works to the extent stated in the contract, execute and complete the works in accordance with the contract and with the supervisor instructions, and shall remedy any defects in the works.

12.2. The contractor shall provide all superintendence, personnel, materials, plant, equipment and all other items, of a temporary or permanent nature required in and for such design, execution, completion and remedying of any defects, insofar as specified in, or may be reasonably inferred from the contract.

12.3. The contractor shall take full responsibility for the adequacy, stability and safety of all operations and methods of construction under the contract.

12.4. The contractor shall comply with any administrative orders given to him. Where the contractor considers that the requirements of an administrative order go beyond the authority of the supervisor or of the scope of the contract, the contractor shall give notice, with reasons, to the supervisor. If the contractor fails to notify within the 30-day period after receipt thereof, he shall be barred from so doing. Execution of the administrative order shall not be suspended because of this notice.

12.5. The contractor shall supply, without delay, any information and documents to the contracting authority or the KfW upon request, regarding the conditions in which the contract is being executed.

12.6. The contractor shall respect and abide by all laws and regulations in force in the country in which the works are executed and shall ensure that its personnel, their dependants, and its local employees also respect and abide by all such laws and regulations. The contractor shall indemnify the contracting authority against any claims and proceedings arising from any infringement by the contractor, its employees and their dependants of such laws and regulations.

12.7. Subject to Article 12.9, the contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to the performance of the contract without the prior consent of the contracting authority. The contractor shall continue to be bound by this undertaking after completion of the tasks and shall obtain from each member of its personnel the same undertaking. However, use of the contract’s reference for marketing or tendering purposes does not require prior approval of the contracting authority, except where the contracting authority declares the contract to be confidential.

12.8. If the contractor acts on behalf of or is a joint venture or consortium of two or more persons, all such persons shall be jointly and severally bound in respect of the obligations under the contract, including any recoverable amount. The person designated by the consortium to act on its behalf for the purposes of this contract shall have the authority to bind the consortium. The composition or the constitution of the joint venture or consortium, including the share distribution between its members, shall not be altered without the prior consent of the contracting authority. Any alteration of the composition or the constitution of the joint venture or consortium without the prior consent of the contracting authority may result in the termination of the contract.

12.9. Save where the KfW requests or agrees otherwise, the contractor shall take all relevant measures to ensure the highest visibility to the financial contribution of the KfW. Additional communication activities required by the KfW are described in the particular conditions. The Parties will consult immediately and endeavour to remedy any detected shortcomings in implementing the visibility and, if applicable, communication requirements set out in this Article and in the particular conditions. Failure to perform the obligations set out in this article and in the particular conditions can constitute a breach of contract in the sense of Article 63 of these general conditions and can lead to corresponding measures taken by the contracting authority, including suspension of payment and/or a reduction of the final payment in proportion of the seriousness of the breach of obligations.

12.10. Any records must be kept for a 7-year period after the final payment is made under the contract. In case of failure to maintain such the contracting authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Article 63 and 64.

***Article 12a) – Code of conduct***

12a.1 The contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of its profession. It shall refrain from making public statements about the project or services without the contracting authority's prior approval. It shall not commit the contracting authority in any way whatsoever without its prior consent and shall make this obligation clear to third parties. Physical abuse or punishment, or threats of physical abuse, sexual abuse or exploitation, harassment and verbal abuse, as well as other forms of intimidation shall be prohibited. The contractor shall also provide to inform the contracting authority of any breach of ethical standards or code of conduct as set in the present Article. In case the contractor is aware of any violations of the abovementioned standards he shall report in writing within 30 days to the contracting authority.

12a.2 The contractor and its personnel shall respect human rights and applicable data protection rules.

12a.3 The contractor shall respect environmental legislation applicable in the country in which the works are executed and internationally agreed core labour standards, i.e. the ILO core labour standards, conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation, and the abolition of child labour, as well as applicable obligations established by these Conventions:

* Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;
* Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);
* Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention);
* Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10 September 1998, and its 3 regional Protocols.

12a.4 The contractor or any of its sub-contractors, agents or personnel shall not abuse of its entrusted power for private gain. The contractor or any of its sub-contractors, agents or personnel shall not receive or agree to receive from any person or offer or agree to give to any person or procure for any person, gift, gratuity, commission or consideration of any kind as an inducement or reward for performing or refraining from any act relating to the performance of the contract or for showing favour or disfavour to any person in relation to the contract. The contractor shall comply with all applicable laws and regulations and codes relating to anti-bribery and anti-corruption.

12a.5 The payments to the contractor under the contract shall constitute the only income or benefit it may derive in connection with the contract. The contractor and its personnel must not exercise any activity or receive any advantage inconsistent with their obligations under the contract.

12a.6 The execution of the contract shall not give rise to unusual commercial expenses. Unusual commercial expenses are commissions not mentioned in the contract or not stemming from a properly concluded contract referring to the contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commission paid to a company which has every appearance of being a front company. The KfW may carry out documentary or on-the-spot checks it deems necessary to find evidence in case of suspected unusual commercial expenses. The respect of the code of conduct set out in the present Article constitutes a contractual obligation. Failure to comply with the code of conduct is always deemed to be a breach of the contract under Article 63 of the General Conditions. In addition, failure to comply with the provision set out in the present Article can be qualified as grave professional misconduct that may lead either to suspension or termination of the contract, without prejudice to the application of administrative sanctions including exclusion from participation in future contract award procedures.

***Article 12b) – Conflict of interest***

12b.1 The contractor shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of the contract. Such conflict of interests may arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which may arise during performance of the contract must be notified to the contracting authority without delay. In the event of such conflict, the contractor shall immediately take all necessary steps to resolve it.

12b.2 The contracting authority reserves the right to verify that such measures are adequate and may require additional measures to be taken if necessary. The contractor shall ensure that its personnel, including its management, is not placed in a situation which could give rise to conflict of interests. Without prejudice to its obligation under the contract the contractor shall replace, immediately and without compensation from the contracting authority, any member of its personnel exposed to such a situation.

12b.3 The contractor shall refrain from any contact which would compromise its independence or that of its personnel.

12b.4 The contractor shall limit its role in connection with the project to the provision of the works described in the contract.

12b.5 The contractor and anyone working under its authority or control in the performance of the contract or on any other activity shall be excluded from access to other KfW funds available under the same project. However, if the contractor is able to prove that his involvement in a previous stage of the project does not constitute unfair competition, he may participate, subject to the prior approval of the contracting authority.

**Article 13 – Superintendence of the works**

13.1. The contractor shall itself superintend the works or shall appoint a representative to do so. Such appointment shall be submitted to the supervisor for approval within 30 days of the signature of the contract. The supervisor shall approve or refuse the appointment within 10 days. The approval may at any time be withdrawn. Should the supervisor refuse the representative appointed within the deadline, or withdraw approval of the appointment, it shall set out the grounds on which its decision is based, and the contractor shall submit an alternative appointment without delay. The address of the contractor's representative shall be deemed to be the address for service given by the contractor.

13.2. If the supervisor withdraws its approval of the contractor's representative, the contractor shall, as soon as is practicable, after receiving notice of such withdrawal, remove the representative from the works and replace it with another representative approved by the supervisor.

13.3. The contractor's representative shall have full authority to make any decision necessary for the execution of the works, to receive and carry out administrative orders and to countersign the work register referred to in Article 39 or attachment, where appropriate. In any event, the contractor shall be responsible for ensuring that the works are carried out satisfactorily including ensuring that the specifications and administrative orders are adhered to by its own employees and by its sub-contractors and their employees.

**Article 14 – Personnel**

14.1. The persons employed by the contractor must be sufficient in number and permit the optimum use of the human resources of the country in which the works are executed. Such employees must have the skills and experience necessary to ensure due progress and satisfactory execution of the works. The contractor shall immediately replace all employees indicated by the supervisor, in a letter stating reasons, as likely to jeopardize the satisfactory execution of the works.

14.2. The contractor shall make its own arrangements for the engagement of all personnel and labour. The rates of remuneration and the general working conditions, as laid down by the law of the country in which the works are executed, shall apply as a minimum to employees on the site.

**Article 15 – Performance guarantee**

15.1. The contractor shall, together with the return of the countersigned contract, furnish to the contracting authority a guarantee for the full and proper performance of the contract. The amount of the guarantee shall be as specified in the particular conditions and shall be in the range of 5 and 10% of the amount of the contract price including any amounts stipulated in addenda to the contract.

15.2. The performance guarantee shall be held against payment to the contracting authority for any loss resulting from the contractor's failure to perform its obligations under the contract.

15.3. The performance guarantee shall be in the format provided for in the contract and may be provided in the form of a bank guarantee, a banker's draft, a certified cheque, a bond provided by an insurance and/or bonding company, an irrevocable letter of credit or a cash deposit made with the contracting authority. If the performance guarantee is to be provided in the form of a bank guarantee, a banker's draft, a certified cheque or a bond, it shall be issued by a bank or bonding and/or insurance company approved by the contracting authority.

15.4. Unless stated otherwise in the particular conditions, the performance guarantee shall be denominated in the types and proportions of currencies in which the original contract is payable.

15.5. No payments shall be made in favour of the contractor prior to the provision of the guarantee. The guarantee shall continue to remain valid until the date of the issuing of the signed final statement of account referred to in Article 51.

15.6. During the performance of the contract, if the natural or legal person providing the guarantee (i) is not able or willing to abide by its commitments, (ii) is not authorised to issue guarantees to contracting authorities, or (iii) appears not to be financially reliable, the guarantee shall be replaced. The contracting authority shall give formal notice to the contractor to provide a new guarantee on the same terms as the previous one. Should the contractor fail to provide a new guarantee, the contracting authority may terminate the contract.

15.7. The contracting authority shall demand payment from the guarantee of all sums for which the guarantor is liable under the guarantee due to the contractor's default under the contract, in accordance with the terms of the guarantee and up to the value thereof. The guarantor shall, without delay, pay those sums upon first demand by the contracting authority and the guarantor may not raise any objection for any reason whatsoever. Prior to making any claim under the performance guarantee, the contracting authority shall notify the contractor stating the nature of the default in respect of which the claim is to be made.

15.8. Unless the particular conditions provide otherwise, the performance guarantee shall be released within 60 days of the issuing of the signed final statement of account referred to in Article 51, for its total amount except for amounts which are the subject of amicable settlement, conciliation, arbitration or litigation.

**Article 16 - Liabilities, insurance and security arrangements**

16.1. Liabilities

1. Liability for damage to works

Without prejudice to Article 61 (defects liability) and Article 66 (force majeure), the contractor shall assume (i) full responsibility for maintaining the integrity of the works and (ii) the risk of loss and damage, whatever their cause, until the final acceptance as foreseen in Article 62. Compensation for damage to the works resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to one million euros if the contract value is less than or equal to one million euros. If the contract value is greater than one million euros, compensation for damages resulting from the contractor's liability shall be capped to the contract value. However, compensation for loss or damage resulting from fraud or gross negligence of the contractor, its personnel, its subcontractors and any person for which the contractor is answerable, can in no case be capped. After the final acceptance as foreseen in Article 62, the contractor shall remain responsible for any breach of its obligations under the contract for such period as may be determined by the law governing the contract, or by default for a period of 10 years.

1. Contractor's liability in respect of the contracting authority

At any time, the contractor shall be responsible for and shall indemnify the contracting authority for any damage caused, during the performance of the works, to the contracting authority by the contractor, its personnel, its subcontractors and any person for which the contractor is answerable. Compensation for damage resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to one million euros if the contract value is less than or equal to one million euros. If the contract value is greater than one million euros, compensation for damages resulting from the contractor's liability shall be capped to the contract value. However, compensation for loss or damage resulting from the contractor's liability in case of bodily injury, including death, can in no case be capped. The same applies to compensation for any damages of any kind resulting from fraud or gross negligence of the contractor, its personnel, its subcontractors and any person for which the contractor is answerable.

1. Contractor's liability in respect of third parties

The contractor shall, at its own expense, indemnify, protect and defend, the contracting authority, its agents and employees, from and against all actions, claims, losses or damage, direct or indirect, of whatever nature (hereinafter ‘claim(s)’) arising from any act or omission by the contractor, its personnel, its subcontractors and/or any person for which the contractor is answerable, in the performance of the duties. The contracting authority must notify any third party claim to the contractor as soon as possible after the contracting authority becomes aware of them. If the contracting authority chooses to challenge and defend itself against the claim(s), the contractor shall bear the reasonable costs of defence incurred by the contracting authority, its agents and employees. Under these general conditions, the agents and employees of the contracting authority, as well as the contractor's personnel, its subcontractors and any person for which the contractor is answerable are considered to be third parties. The contractor shall treat all claims in close consultation with the contracting authority. Any settlement or agreement settling a claim requires the prior express consent of the contracting authority and the contractor.

16.2. Insurance

1. Insurance – general issues

At the latest together with the return of the countersigned contract, and for the period of implementation of tasks, the contractor shall ensure that itself, its personnel, its subcontractors and any person for which the contractor is answerable, are adequately insured with insurance companies recognized on the international insurance market, unless the contracting authority has given its express written consent on a specific insurance company.

At the latest together with the return of the countersigned contract, the contractor shall provide the contracting authority and the supervisor with all cover notes and/or certificates of insurance showing that the contractor's obligations relating to insurance are fully respected. The contractor shall submit without delay, whenever the contracting authority or the project manager so requests, an updated version of the cover notes and/or certificates of insurance.

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

Whenever possible, the contractor shall ensure that the subscribed insurance contracts contain a waiver of recourse in favour of the contracting authority and the supervisor, their agents and employees.

The purchase of adequate insurances by the contractor shall in no case exempt it from its statutory and/or contractual liabilities. As a minimum, the insurances listed hereafter shall provide cover up to the minimum contractual liabilities laid down in pursuance of Article 16.1 or minimum statutory liabilities laid down in pursuance of the applicable national legislation, whichever is the highest.

The contractor shall fully bear the consequences of a total or partial lack of coverage, and to the full discharge of the contracting authority and the supervisor.

The contractor shall ensure that its personnel, its subcontractors and any person for which the contractor is answerable comply with the same insurance requirements imposed to it under this contract. In case of default of insurance or inadequate insurance of its personnel, its subcontractors or any person for which the contractor is answerable, the contractor shall indemnify the contracting authority and the supervisor from all consequences resulting therefrom.

Under its own responsibility and without prejudice to the obligation to take out all insurance covering its obligations under this contract, the contractor shall ensure that all compulsory insurances are subscribed in compliance with the laws and regulations in force in the country in which the works are executed. It shall also ensure that all possible statutory obligations applying to the coverage are complied with.

The contracting authority and the supervisor shall not bear any liability for the assessment and adequacy of insurance policies taken out by the contractor with their contractual and/or statutory obligations.

1. Insurance – Specific issues

1. Insurance for damage to third parties

The contractor shall take out a civil liability insurance covering bodily injury and property damage that may be caused to third parties by reason of the execution of the works, as well as during the defects liability period. The insurance policy must specify that the contracting authority's and the supervisor's personnel, as well as that of other contractors and third parties located on site are considered third parties under this insurance, which shall be unlimited for bodily injury.

2. Works insurance

The contractor shall take out a ‘Contractor All Risk’ insurance to the joint benefit of itself, its subcontractors, the contracting authority and the supervisor.

This insurance shall cover all damage to which the works included in the contract may be subject, including damage due to a defect or a design flaw of the plans, the building materials or the implementation for which the contractor is responsible under the contract and the damages due to natural events. This insurance shall also cover damage to existing goods and properties of the contracting authority and of the supervisor.

This insurance shall also cover the equipment and the temporary works on the site up to their total value of reconstruction/replacement.

1. Motor insurance

The contractor shall take out insurance covering all vehicles used by the contractor or its subcontractors (whether they own them or not) in connection with the contract.

1. Insurance against accidents at work

The contractor shall take out insurance policies providing coverage of the contractor itself, its personnel, its subcontractors and any person for which the contractor is answerable, in case of an accident at work or on the way to work. It shall ensure that its subcontractors do the same. It indemnifies the contracting authority against any claims that its employees or those of its subcontractors could have in this regard. For its permanent expatriate personnel, where appropriate, the contractor shall in addition comply with the laws and regulations applicable in the country of origin.

1. Insurance of liability related to the soundness of the works

The contractor shall take out insurance covering in full its liability that may be triggered with regard to the soundness of the works even after final acceptance, as foreseen by the law of the country in which the works are executed.

16.3. The contractor shall put in place security measures for its personnel commensurate with the physical danger possibly facing them in the country in which they work. The contractor shall be responsible for monitoring the level of physical risk to which its personnel are exposed and for keeping the contracting authority informed of the situation. If the contracting authority or the contractor becomes aware of an imminent threat to the life or health of any of the contractor's personnel, the contractor must take immediate emergency action to remove the individuals concerned to safety. If the contractor takes such action, he must communicate this immediately to the supervisor.

**Article 17 – Programme of implementation of tasks**

17.1. Notwithstanding any work programme submitted as part of its tender, the contractor shall provide the supervisor with a programme of implementation of tasks, broken down by activity and by month within 30 days of the signature of the contract.

This programme includes at least the following information:

1. the order and time limits within which the contractor proposes to carry out the works;
2. the time limits within which submission and approval of the drawings are required;
3. an organisation chart containing the names, qualifications and curricula vitae of the personnel responsible for the site;
4. a general description of the method including the sequence, by month and by nature, which the contractor proposes to carry out the works;
5. a plan for the setting out and organisation of the site and
6. such further details and information as the supervisor may reasonably require.

17.2. The supervisor shall return these documents to the contractor with its approval or any relevant remarks within ten days of receipt, save where the supervisor, within those ten days, notifies the contractor of its wish for a meeting in order to discuss the documents submitted.

17.3. If the supervisor fails to notify its decision or remarks or wish for a meeting within these 10 days, the programme submitted is deemed approved.

17.4. The approval of the programme by the supervisor shall not relieve the contractor from any of its obligations under the contract.

17.5. No material alteration to the programme shall be made without the approval of the supervisor. If, however, the progress of the works does not conform to the programme, the supervisor may instruct the contractor to submit a revised programme in accordance with the procedure laid down in Article 17.

**Article 18 – Detailed breakdown of prices**

18.1. If not provided in its tender and where necessary for the purposes of the contract, the contractor shall provide a detailed breakdown of its rates and prices within no more than 20 days following the supervisor's reasoned request.

18.2. Within 30 days of notification of the award of contract, the contractor shall provide to the supervisor for its information only, a detailed cash flow estimate, in quarterly periods, of all payments which may be due to the contractor under the contract. The contractor shall subsequently supply revised cash flow estimates at quarterly intervals, if so required by the supervisor. The communication shall not impose any liability whatsoever on the contracting authority or the supervisor.

**Article 19 - Contractor's drawings and execution studies**

19.1. The contractor shall submit to the supervisor for approval at its own expense, all design and construction drawings and other documents and objects necessary for the proper execution of the contract, and in particular:

1. drawings, documents, samples and/or models as may be specified in the contract within the time limits and procedures laid down therein or in the programme of implementation of tasks;
2. drawings as the supervisor may reasonably require for the implementation of tasks.
3. plans, drawings and calculations needed to provide evidence of the stability and resistance of the structures, including foundation design and detailed reinforcement plan. These calculations and surveys should be sustained by sufficient site investigations and should be submitted in triplicate to the supervisor for approval at least 30 days before commencing construction of the works in question.

19.2. The supervisor shall return to the contractor the drawings, documents, samples, models, design calculations, objects and other documents required under Article 19.1 with either its endorsement or its remarks within the time limits referred to in the contract or the approved programme of implementation of tasks or, if no time limit is specified, within 15 days of receipt. In the light of the complexity or the number of documents submitted for approval, if the supervisor cannot send its endorsement or its remarks within the time limit mentioned above, the supervisor shall send within 15 days of receipt a holding reply, indicating another time limit by which it will send its endorsement or its remarks, taking into account the relative urgency and complexity of the matter. If the supervisor fails to notify its endorsement, remarks or holding reply within the time limits referred above, the drawings, documents, samples, models, design calculations, objects and other documents submitted to the supervisor according to Article 19.1 shall be deemed to be approved at the end of the time limits specified above.

19.3. Approved drawings, documents, samples and models shall be signed or otherwise identified by the supervisor and shall not be departed from except as otherwise instructed by the supervisor. Any contractor's drawings, documents, samples or models which the supervisor refuses to approve, shall be modified to meet the requirements of the supervisor and resubmitted by the contractor for approval. Within 15 days of being notified of the supervisor’s remarks, the contractor shall make the requisite corrections, adjustments etc. to the documents, drawings, design calculations etc. The corrected or adjusted documents, drawings, design calculations etc. shall be resubmitted for the supervisor’s approval under the same procedure.

19.4. The contractor shall supply additional copies of approved drawings in the form and number stated in the contract or in subsequent administrative orders.

19.5. The approval of any drawings, documents, samples or models by the supervisor shall not relieve the contractor from any of its obligations under the contract.

19.6. The supervisor shall have the right at all reasonable times to inspect all drawings, documents, samples or models relating to the contract at the contractor's premises.

19.7. Before provisional acceptance of the works, the contractor shall supply operation and maintenance manuals together with drawings to the contracting authority, which shall be in such detail as will enable the contracting authority to operate, maintain, adjust and repair all parts of the works. Unless otherwise stated in the particular conditions, the manuals and drawings shall be in the language of the contract. The works shall not be considered to be completed for the purpose of provisional acceptance until such manuals and drawings have been supplied to the contracting authority.

**Article 20 – Sufficiency of tender prices**

20.1. Subject to any additional provisions which may be laid down in the particular conditions, the contractor shall be deemed to have inspected and examined the site and its surroundings and to have satisfied itself before submitting its tender, as to the nature of the ground and sub-soil, and to have taken into account the form and nature of the site, the extent and nature of the work and materials necessary for the completion of the works, the means of communication with and access to the site, the accommodation it may require and in general to have obtained for itself all necessary information as to risks, contingencies and all other circumstances influencing or affecting its tender.

20.2. The contractor shall be deemed to have satisfied itself before submitting its tender as to the correctness and sufficiency of the tender and of the rates and prices stated in the bill of quantities or price schedule which shall, except in so far as it is otherwise provided in the contract, cover all its obligations under the contract.

20.3. Since the contractor is deemed to have determined its prices on the basis of its own calculations, operations and estimates, it shall carry out without additional charge any work which is the subject of any item whatsoever in its tender for which it neither indicates a unit price nor a lump sum.

**Article 21 – Exceptional risks**

21.1. If during the execution of the works the contractor encounters artificial obstructions or physical conditions which could not reasonably have been foreseen by an experienced contractor, and if the contractor is of the opinion that additional costs will be incurred and/or an extension of the period of implementation of tasks will be necessary as a result of this, it shall give notice to the supervisor in accordance with Articles 35 and/or 55. The contractor shall specify in such notice the artificial obstructions and/or physical conditions, giving details of the anticipated effects thereof, the measures it is taking or intends to take and the extent of the anticipated delay in or interference with the execution of the works.

21.2. Following receipt of the notice, the supervisor may inter alia:

1. require the contractor to provide an estimate of the cost of the measures it is taking or intends to take;
2. approve measures referred to in Article 21.2 (a) with or without modification;
3. give written instructions as to how the artificial obstructions or physical conditions are to be dealt with;
4. order an amendment to, a suspension, or termination of the contract.

21.3. To the extent that the supervisor decides that the whole or part of the said artificial obstructions or physical conditions could not reasonably have been foreseen by an experienced contractor, the supervisor shall:

1. take into account any delay suffered by the contractor as a result of such obstructions or conditions in determining any extension of the period of implementation of tasks to which the contractor is entitled under Article 35; and/or
2. in case of artificial obstructions or physical conditions other than weather conditions, determine additional payments due to the contractor in accordance with Article 55.

21.4. Weather conditions shall not entitle the contractor to claims under Article 55.

21.5. If the supervisor decides that the artificial obstructions or physical conditions could, in whole or in part, have been reasonably foreseen by an experienced contractor, he shall so inform the contractor as soon as practicable.

**Article 22 – Safety on sites**

22.1. The contractor shall have the right to forbid access to the site to any person not involved in the performance of the contract, with the exception of persons authorised by the supervisor or the contracting authority.

22.2. The contractor shall ensure the safety on sites during the whole period of execution and shall be responsible for taking the necessary steps, in the interests of its employees, agents of the contracting authority and third parties, to prevent any loss or accident which may result from carrying out the works.

22.3. The contractor shall take all essential steps, on its own responsibility and at its expense, to ensure that existing structures and installations are protected, preserved and maintained. It shall be responsible for providing and maintaining at its expense all lighting, protection, fencing and security equipment which proves necessary for the proper implementation of the tasks, or which may reasonably be required by the supervisor.

22.4. If, during the implementation of the tasks, urgent measures are necessary to obviate any risk of accident or damage or to ensure security following any accident or damage, the supervisor shall give formal notice to the contractor to do what is necessary. If the contractor is unwilling or unable to undertake the necessary measures, the supervisor may carry out the work at the expense of the contractor to the extent that the contractor is liable.

**Article 23 – Safeguarding adjacent properties**

23.1. On its own responsibility and at its expense, the contractor shall take all the precautions required by good construction practice and by the prevailing circumstances to safeguard adjacent properties and avoid causing any abnormal disturbance therein.

23.2. The contractor shall indemnify the contracting authority against the financial consequences of all claims by neighbouring landowners or residents to the extent that the contractor is liable and to the extent that the damage to adjacent properties is not the result of a hazard created through the design or method of construction imposed by the contracting authority or the supervisor upon the contractor.

**Article 24 – Interference with traffic**

24.1. The contractor shall ensure that the works and installations do not cause damage to, or obstruct traffic on, communication links such as roads, railways, waterways and airports, save as permitted under the particular conditions. It shall, in particular, take account of weight restrictions when selecting routes and vehicles.

24.2. Any special measures which the contractor considers necessary or which are specified in the particular conditions or which are required by the contracting authority in order to protect or strengthen sections of roads, tracks or bridges, shall be at the expense of the contractor, whether or not they are carried out by the contractor. The contractor shall inform the supervisor of any special measures it intends to take before carrying them out. The repair of any damage caused to roads, tracks or bridges by the transport of materials, plant or equipment shall be at the expense of the contractor.

**Article 25 – Cables and conduits**

25.1. Where, in the course of carrying out the works, the contractor encounters benchmarks indicating the course of underground cables, conduits and installations, it shall keep such benchmarks in position or replace them, should execution of the works have necessitated their temporary removal. Such related operations require the authorisation of the supervisor.

25.2. The contractor shall be responsible for the preservation, removal and replacement, as the case may be, of the cables, conduits and installations specified by the contracting authority in the contract and for the cost thereof.

25.3. Where the presence of cables, conduits and installations has not been specified in the contract but is revealed by benchmarks and references, the contractor shall be under a general duty of care and similar obligations regarding preservation, removal and replacement to those set out above. In this case, the contracting authority shall compensate it for expenditure, to the extent that such work is necessary for the execution of the contract.

25.4. However, the obligations to remove and replace cables, conduits and installations and the expenditure resulting therefrom shall not be the responsibility of the contractor if the contracting authority decides to accept that responsibility. The same shall apply where this obligation and the expenditure resulting therefrom devolve upon another specialist administration or an agent.

25.5. When any work on the site is likely to cause disturbances in or damage to a public utility service, the contractor shall immediately inform the supervisor in writing, giving a reasonable period of notice so that suitable measures may be taken in time to allow work to continue normally.

**Article 26 – Setting-out**

26.1. The contractor shall be responsible for:

1. the accurate setting-out of the works in relation to original marks, lines and levels of reference given by the supervisor;
2. the correctness, of the position, levels, dimensions and alignment of all parts of the works; and
3. the provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities.

26.2. If, at any time during the execution of the works, any error appears in the position, levels, dimensions or alignment of any part of the works, the contractor, shall, if the supervisor so requires, at the contractor's cost, rectify such error to the satisfaction of the supervisor, unless such error is based on incorrect data supplied by the supervisor which an experienced contractor exercising due care would not have discovered, in which case the contracting authority shall be responsible for the cost of rectification.

26.3. The checking of any setting-out or of any line or level by the supervisor shall not in any way relieve the contractor of its responsibility for the accuracy thereof and the contractor shall carefully protect and preserve all benchmarks, sight-rails, pegs and other items used in setting-out the works.

**Article 27 – Demolished materials**

27.1. Where the contract includes demolition work, materials and articles obtained therefrom shall, unless the particular conditions and /or the law of the country in which the works are executed otherwise provide and subject to the provisions of Article 28, become the property of the contractor.

27.2. Should the particular conditions reserve to the contracting authority the right of ownership of materials or all or part of the articles obtained from the demolition work, the contractor shall take all the necessary precautions to ensure that these are preserved. It shall be liable for any destruction of, or damage to, such materials or articles caused by it or its agents.

27.3. Irrespective of the use to which the contracting authority intends to put the materials or articles, in respect of which it reserves the right of ownership, all costs incurred in transporting and storing them and all warehouse charges at the place indicated by the supervisor shall be borne by the contractor for any carriage not exceeding 1000 meters.

27.4. Save where the particular conditions provide otherwise, the contractor shall, at its expense, progressively remove rubble and other demolition materials, rubbish and debris from the site.

**Article 28 – Discoveries**

28.1. Discoveries of any interest whatsoever made during excavation or demolition work shall be brought immediately to the attention of the supervisor. The supervisor shall decide how such discoveries are to be dealt with, taking due account of the law of the country in which the works are executed.

28.2. The contracting authority reserves the right of ownership of materials found during the excavation and demolition work carried out on land belonging to it, subject to compensating the contractor for any special efforts.

28.3. Artefacts, antiquities and natural, numismatic, or other objects which are of scientific interest, and also rare objects or objects made of precious metals found during excavation or demolition work shall be the property of the contracting authority.

28.4. In the event of disagreements, the contracting authority shall have sole authority to decide as to the qualifications set out in Articles 28.1 and 28.3.

**Article 29 – Temporary works**

29.1. The contractor shall carry out at its expense all the temporary works to enable the works to be carried out. The contractor shall submit to the supervisor the drawings for temporary works which the contractor intends to use, such as cofferdams, scaffolding, trusses and shuttering. The contractor shall take into account any observations made by the supervisor while assuming responsibility for these drawings.

29.2. Where the design of particular temporary works is specified in the particular conditions to be the responsibility of the contracting authority, the supervisor shall provide the contractor with all drawings necessary in reasonable time to enable the contractor to undertake the temporary works in accordance with its programme. In such cases, the contracting authority shall be solely responsible for the safety and adequacy of the design. However, the contractor shall be responsible for the proper construction.

**Article 30 – Soil studies**

30.1. Subject to the particular conditions and to the technical specifications, the contractor shall make available to the supervisor, the personnel and equipment necessary for carrying out any soil survey which the supervisor considers reasonably necessary. The contractor shall be compensated for the actual cost of the manpower and equipment used or made available in such work, plus a reasonable profit, if not already provided for in the contract.

**Article 31 – Overlapping contracts**

31.1. The contractor shall, in accordance with the requirements of the supervisor, afford all reasonable opportunities for carrying out their work to any other contractors employed by the contracting authority and their workmen, to the workmen of the contracting authority and of any other public authorities who may be employed on or near the site in the execution of any work not included in the contract, or of any contract which the contracting authority may enter into in connection with, or ancillary to, the works.

31.2. If, however, the contractor, on the written request of the supervisor, makes available to any such contractor, or public authority, or to the contracting authority, any roads or ways for the maintenance of which the contractor is responsible, or permits the use by any such other persons of the contractor's temporary works, scaffolding or other equipment on the site, or provides any other service of whatsoever nature, which was not provided for in the contract, the contracting authority shall pay to the contractor in respect of such use or service, such sums and/or grant such extension of time, as shall, in the opinion of the supervisor, be reasonable.

31.3. The contractor shall not by reason of Article 31 be relieved of any of its obligations under the contract nor shall it be entitled to any claims other than those provided for in Article 31.2.

31.4. In no circumstances may difficulties arising with regard to one contract entitle the contractor to modify or delay implementation of other contracts. Similarly, the contracting authority may not take advantage of such difficulties to suspend payments due under another contract.

**Article 32 – Patents and licenses**

32.1. Save where otherwise provided in the particular conditions, the contractor shall indemnify and hold the contracting authority and the supervisor harmless for all damages and cost incurred due to any claim brought by any third party including creators and intermediaries for any alleged or actual violations of intellectual, industrial or other property rights of any kind whatsoever based on the contracting authority's use as specified in the contract of patents, licenses, drawings, designs, models, or brand or trademarks, except where such infringement results from compliance with the design or specification provided by the contracting authority and/or the supervisor.

32.2. All industrial, intellectual and other property rights (including but not limited to patent rights and copyright) developed in connection with the tasks by or on behalf of the contractor, including but not limited to any rights in any documents prepared for the purpose of the contract or the tasks, shall remain vested in the contractor but the contracting authority shall have an irrevocable, royalty-free, non-exclusive license of the above-mentioned rights for the purpose of the contract.

Such license shall carry the right to grant sub-licenses and shall be transferable by the contracting authority to third parties without the consent of the contractor being required.

All industrial, intellectual and other property rights (including but not limited to patent rights and copyright) developed in connection with the tasks by or on behalf of the contracting authority, including but not limited to any rights in any documents prepared for the purpose of the contract or the tasks, shall remain vested in the contracting authority but the contractor shall have the right at its cost to copy, use and obtain communication of these documents for the purpose of the contract.

Upon and notwithstanding any termination of the contract howsoever arising, as well as after completion of the tasks, the contracting authority shall continue to have the benefit of the license referred to in Article 32.2, first paragraph.

**IMPLEMENTATION OF THE TASKS AND DELAYS**

**Article 33 – Commencement orders**

33.1. The supervisor issues an administrative order notifying the contractor of the date on which the period of implementation of tasks must start.

33.2. Save where the parties agree otherwise, the period of implementation of tasks shall not start before:

1. in conformity with Article 9, the site, or part of the site has been placed at the disposal of the contractor according to the progress of the work set out in the programme of implementation of tasks approved by the supervisor;
2. the documents mentioned under Article 8.1 have been provided to the contractor.

33.3. Save where the parties agree otherwise, the period of implementation of tasks shall start no later than 180 days following notification of award of the contract.

**Article 34 – Period of implementation of tasks**

34.1. The period of implementation of tasks shall be as laid down in the particular conditions, without prejudice to extensions of the period which may be granted under Article 35.

34.2. If provision is made for distinct periods of implementation of tasks for separate lots, in cases where one contractor is awarded more than one lot per contract, the periods of implementation of tasks for the separate lots will not be accumulated.

**Article 35 - Extension of the period of implementation of tasks**

35.1. The contractor may request an extension to the period of implementation of tasks if it is or will be delayed in completing the contract by any of the following reasons:

1. exceptional weather conditions in the country in which the works are executed which may affect the implementation of the tasks;
2. artificial obstructions or physical conditions which could not reasonably have been foreseen by an experienced contractor;
3. administrative orders affecting the date of completion other than those arising from the contractor's default;
4. failure of the contracting authority to fulfil its obligations under the contract;
5. any suspension of the works which is not due to the contractor's default;
6. force majeure;
7. any other causes referred to in these general conditions which are not due to the contractor's default.

35.2. If the contractor considers itself to be entitled to any extension of the period of implementation under the contract, the contractor shall:

1. give notice to the supervisor of its intention to make such a request no later than 15 days after the contractor became aware, or should have become aware of the event or circumstance giving rise to the request. If the contractor fails to give notice of a request for extension of the period of implementation within such period of 15 days, the period of implementation shall not be extended and the contracting authority shall be discharged from all liability in connection with the request; and
2. submit to the supervisor full and detailed particulars of the request, within 30 days from the above notification unless otherwise agreed between the contractor and the supervisor, in order that such request may be investigated.

35.3. Within 30 days from receipt of the contractor's detailed particulars of the request, the supervisor shall, by notice to the contractor after due consultation with the contracting authority and, where appropriate, the contractor, grant such extension of the period of implementation as may be justified, either prospectively or retrospectively, or inform the contractor that it is not entitled to an extension.

**Article 36 - Delays in implementation of the tasks**

36.1. If the contractor fails to complete the works within the time period(s) specified in the contract, the contracting authority shall, without formal notice and without prejudice to its other remedies under the contract be entitled to liquidated damages for every day or part thereof which shall elapse between the end of the period specified for implementation of tasks or extended period of implementation of tasks under Article 35 and the actual date of completion, at the rate and up to the maximum amount specified in the particular conditions. If the works have been the subject of partial acceptance in accordance with Article 59, the liquidated damages specified in the particular conditions may be reduced in the proportion which the value of the accepted part bears to the value of the whole of the works.

36.2. If the contracting authority has become entitled to the maximum claim under Article 36.1 it may, after giving notice to the contractor:

1. seize the performance guarantee; and/or
2. terminate the contract; and/or
3. enter into a contract with a third party at the contractor's cost for the provision of the balance of the works.

**Article 37 – Amendments**

37.1. Contract amendments must be formalised by a contract addendum signed by both parties or by an administrative order issued by the supervisor except if the amendments result from the application of the contract.

37.2. The supervisor shall have the power to order any amendment to any part of the works necessary for the proper completion and/or functioning of the works. Such amendments by administrative order may include additions, omissions, substitutions, changes in quality, quantity, form, character, kind, position, dimension, level or line and changes in the specified sequence, method or timing of execution of the works. No administrative order shall have the effect of invalidating the contract, but the financial effect, if any, of all such amendments shall be valued in accordance with Articles 37.5 and 37.7.

37.3. All administrative orders shall be issued in writing, it being understood that:

1. if, for any reason, the supervisor finds it necessary to give an order orally, it shall as soon as possible thereafter confirm the order by an administrative order;
2. if the contractor confirms in writing an oral order given for the purpose of Article 37.3 (a) and the confirmation is not contradicted in writing forthwith by the supervisor, the supervisor shall be deemed to have issued an administrative order;
3. no administrative order is required to increase or decrease the quantity of any work where such increase or decrease is the result of the quantity exceeding or being less than that stated in the bill of quantities or price schedule, as the result of measurement laid down in Article 49.

37.4. Save as provided by Article 37.3 prior to issuing an administrative order, the supervisor shall notify the contractor of the nature and form of such amendment. The contractor shall then, without delay, submit to the supervisor a written proposal containing:

1. a description of the tasks to be implemented or the measures to be taken and a programme for execution;
2. any necessary amendments to the programme of implementation of tasks or to any of the contractor's obligations resulting from this contract; and
3. any adjustment to the contract price in accordance with the rules set out in Article 37.

37.5. Following the receipt of the contractor's submission referred to in Article 37.4, the supervisor shall, after due consultation with the contracting authority and, where appropriate, the contractor, decide without delay whether or not to accept the amendment. If the supervisor accepts the amendment, it shall notify the contractor through an administrative order stating that the contractor shall carry out the amendment at the prices and under the conditions given in the contractor's submission referred to in Article 37.4 or as modified by the supervisor in accordance with Article 37.6.

37.6. The supervisor shall, for all amendments ordered by it in accordance with Article 37.3 and 37.5, ascertain the prices in accordance with the following principles:

1. where work is of similar character and executed under similar conditions as work priced in the bill of quantities or price schedule, it shall be valued at such rates and prices contained therein;
2. where work is not of a similar character or is not executed under similar conditions, the rates and prices in the contract shall be used as the basis for valuation as far as is reasonable, failing which the supervisor shall make a fair valuation;
3. if the nature or amount of any amendment relative to the nature or amount of the whole contract or to any part thereof is such that, in the opinion of the supervisor, any rate or price contained in the contract for any item of work is, by reason of such amendment, rendered unreasonable, the supervisor shall fix such rate or price as he thinks reasonable and proper in the circumstances;
4. where an amendment is required by a default or breach of contract by the contractor, any additional cost attributable to such amendment shall be borne by the contractor.

37.7. On receipt of the administrative order, the contractor shall carry out the requested amendment according to the following principles:

1. The contractor will be bound by these general conditions as if the amendment requested by administrative order were stated in the contract.
2. The contractor shall not delay the execution of the administrative order pending the granting of any extension of time for completion or adjustment to the contract price.
3. Where the administrative order precedes the adjustment to the contract price, the contractor shall keep records of the costs of undertaking the amendment and of the time expended thereon. Such records shall be open to inspection by the supervisor at all reasonable times.

37.8. Where on provisional acceptance an increase or reduction in the total value of the works resulting from an administrative order, or from some other circumstance which is not caused by the contractor's default, exceeds 15% of the initial contract price (or as amended by addendum), the supervisor shall, after consulting the contracting authority and the contractor, determine any addition to or reduction from the contract price as a consequence of applying Article 37.6. The sum so determined shall be based on the amount by which the increase or decrease in value of the works exceeds 15%. The supervisor shall notify the sum to the contracting authority and the contractor, and adjust the contract price accordingly.

37.9. The contractor shall notify the contracting authority of any change of bank account. The contracting authority shall have the right to oppose the contractor's change of bank account.

**Article 38 – Suspension**

38.1. Suspension by administrative order of the supervisor:

The contractor shall, on the order of the supervisor, suspend the progress of the works or any part thereof for such time or times and in such manner as the supervisor may consider necessary. The suspension shall take effect on the day the contractor receives the order or at a later date when the order so provides. The supervisor shall, as soon as possible, instruct the contractor to resume the contract suspended.

38.2. Suspension by notice of the contractor:

Any default in payment of more than 30 days under any certificate issued by the supervisor from the expiry of the time-limit referred to in Article 44.3(b) entitles the contractor, after giving not less than 30 days' notice to the contracting authority, to suspend the work, or reduce the rate of the work, unless and until the contractor has received reasonable evidence of payment or payment.

The contractor's action shall not prejudice its entitlements to interest for delayed payment under Article 53.1 and to termination under Article 65.1.

If the contractor subsequently receives such evidence or payment before giving notice of termination, the contractor shall resume normal working as soon as reasonably practicable and, unless the parties agree otherwise, no later than 30 days after receiving the evidence or the payment.

38.3. Suspension in the event of presumed breach of obligations, irregularities or fraud:

The contract may be suspended in order to verify whether presumed breach of obligations or irregularities or fraud occurred during the award procedure or the performance of the contract. If these are not confirmed, performance of the contract shall resume as soon as possible.

38.4. During the period of suspension, the contractor shall take such protective measures as may be necessary to safeguard the works, plant, equipment and site against any deterioration, loss or damage. Additional expenses incurred in connection with such protective measures may be added to the contract price, unless:

1. otherwise provided for in the contract; or
2. such suspension is necessary by reason of some breach or default of the contractor; or
3. such suspension is necessary by reason of normal climatic conditions on site; or
4. such suspension is necessary for the safety or the proper execution of the works or any part thereof insofar as such necessity does not arise from any act, breach or default by the supervisor or the contracting authority or from any of the exceptional risks referred to in Article 21, or
5. the presumed breach of obligations or irregularities or fraud mentioned in Article 38.3 are confirmed and attributable to the contractor.

38.5. The contractor shall introduce claims for additional payment or extension of the period of implementation in accordance with Articles 35 and 55.

38.6. If the period of suspension exceeds 180 days and the suspension is not due to the contractor's breach or default, the contractor may, by notice to the supervisor, request to proceed with the contract within 30 days, or terminate the contract.

38.7. The contracting authority shall, as soon as possible, order the contractor to resume the contract suspended or inform the contractor that it terminates the contract.

**MATERIALS AND WORKMANSHIP**

**Article 39 – Work register**

39.1. A work register shall, unless otherwise provided by the particular conditions, be kept on the site by the supervisor, who shall enter in it at least the following information:

1. the weather conditions, interruptions of work owing to inclement weather, hours of work, number and type of workmen employed on the site, materials supplied, equipment in use, equipment not in working order, tests carried out in situ, samples dispatched, unforeseen circumstances, as well as orders given to the contractor;
2. detailed statements of all the quantitative and qualitative elements of the work done and the supplies delivered and used, capable of being checked on the site and relevant in calculating payments to be made to the contractor.

39.2. The statements shall form an integral part of the work register but may, where appropriate, be recorded in separate documents. The technical rules for drawing up the statements shall be as set out in the particular conditions.

39.3. The contractor shall ensure that statements are drawn up, in good time and in accordance with the particular conditions, in respect of work, services and supplies which cannot be measured or verified subsequently; failing this, it shall accept the decisions of the supervisor, unless, at its own expense, it provides evidence to the contrary.

39.4. Entries made in the work register as work progresses shall be signed by the supervisor and countersigned by the contractor or its representative. If the contractor objects, it shall communicate its views to the supervisor within 15 days following the date on which the entry or the statements objected to are recorded. Should it fail to countersign or to submit its views within the period allowed, the contractor shall be deemed to agree with the notes shown in the register. The contractor may examine the work register at any time and may, without removing the document, make or receive a copy of entries which it considers necessary for its own information.

39.5. The contractor shall, on request, provide the supervisor with the information needed to keep the work register in good order.

**Article 40 - Origin and quality of works and materials**

40.1. Save where otherwise provided for in the particular conditions, all goods purchased under the contract shall have their origin in any eligible source country as defined in the invitation to tender. The contractor must certify that the goods tendered comply with this requirement, specifying their countries of origin. It may be required to provide more detailed information in this respect. Failure to comply with this condition may result in the termination of the contract and/or suspension of payment.

40.2. The works, components and materials shall conform to the specifications, drawings, surveys, models, samples, patterns and other requirements in the contract which shall be held at the disposal of the contracting authority or the supervisor for the purposes of identification throughout the period of performance.

40.3. Any preliminary technical acceptance stipulated in the particular conditions shall be the subject of a request sent by the contractor to the supervisor. The request shall indicate the reference to the contract, the lot number and the place where such acceptance is to take place, as appropriate. The components and materials specified in the request must be certified by the supervisor as meeting the requirements for such acceptance prior to their incorporation in the works.

40.4. Even if materials or items to be incorporated in the works or in the manufacture of components have been technically accepted in this way, they may still be rejected if a further examination reveals defects or faults, in which case they must immediately be replaced by the contractor. The contractor may be given the opportunity to repair and make good materials and items which have been rejected, but such materials and items will be accepted for incorporation in the works only if they have been repaired and made good to the satisfaction of the supervisor.

**Article 41 – Inspection and testing**

41.1. The contractor shall ensure that the components and materials are delivered to the site in time to allow the supervisor to proceed with acceptance of the components and materials. The contractor is deemed to have fully appreciated the difficulties which it might encounter in this respect, and it shall not be permitted to advance any grounds for delay in fulfilling its obligations.

41.2. The supervisor shall be entitled to inspect, examine, measure and test the components, materials and workmanship, and check the progress of preparation, fabrication or manufacture of anything being prepared, fabricated or manufactured for delivery under the contract in order to establish whether the components, materials and workmanship are of the requisite quality and quantity. This shall take place at the place of manufacture, fabrication, preparation or on the site or at such other places as may be specified in the particular conditions.

41.3. For the purposes of such tests and inspections, the contractor shall:

1. provide to the supervisor, temporarily and free of charge, such assistance, test samples or parts, machines, equipment, tools, labour, materials, drawings and production data as are normally required for inspection and testing;
2. agree, with the supervisor, on the time and place for tests;
3. provide access for the supervisor at all reasonable times to the place where the tests are to be carried out.

41.4. If the supervisor is not present on the date agreed for tests, the contractor may, unless otherwise instructed by the supervisor, proceed with the tests, which shall be deemed to have been made in the supervisor's presence. The contractor shall immediately send duly certified copies of the test results to the supervisor, who shall, if he has not attended the test, be bound by the test results.

41.5. When components and materials have passed the above-mentioned tests, the supervisor shall notify the contractor or endorse the procedure's certificate to that effect.

41.6. If the supervisor and the contractor disagree on the test results, each shall give a statement of its views to the other within 15 days after such disagreement arises. The supervisor or the contractor may require such tests to be repeated on the same terms and conditions or, if either party so requests, by an expert to be selected by common consent. All test reports shall be submitted to the supervisor who shall communicate the results of these tests without delay to the contractor. The results of the re-testing shall be conclusive. The cost of re-testing shall be borne by the party whose views are proved wrong by the re-testing.

41.7. In the performance of its duties, the supervisor and any persons authorised by him shall not disclose to unauthorised persons information concerning the undertaking's methods of manufacture and operation obtained through inspection and testing.

**Article 42 – Rejection**

42.1. Components and materials which are not of the specified quality shall be rejected. A special mark may be applied to the rejected components or materials. This shall not be such as to alter them or affect their commercial value. Rejected components and materials shall be removed by the contractor from the site within a period which the supervisor shall specify, failing which they shall be removed by the supervisor as of right at the expense and risk of the contractor. Any work incorporating rejected components or materials shall be rejected.

42.2. The supervisor shall, during the progress of the works and before the works are taken over, have the power to order or decide:

1. the removal from the site, within such time limits as may be specified in the order, of any components or materials which, in the opinion of the supervisor, are not in accordance with the contract;
2. the substitution of proper and suitable components or materials; or
3. the demolition and proper re-execution, or satisfactory repair, notwithstanding any previous test thereof or interim payment therefore, of any work which, in respect of components, materials, workmanship or design by the contractor for which it is responsible, is not, in the opinion of the supervisor, in accordance with the contract.

42.3. The supervisor shall, as soon as reasonably practicable, give to the contractor notice of its decision specifying particulars of the alleged defects.

42.4. The contractor shall with all speed and at its expense make good the defects so specified. If the contractor does not comply with such order, the contracting authority shall be entitled to employ other persons to carry out the same and all expenses consequent thereon or incidental thereto may be deducted by the contracting authority from any monies due or which may become due to the contractor.

42.5. The provisions of Article 42 shall not affect the right of the contracting authority to claim under Articles 36 and 63.

**Article 43 – Ownership of plant and materials**

43.1. All equipment, temporary works, plant and materials provided by the contractor shall, when brought on the site, be deemed to be exclusively intended for the execution of the works and the contractor shall not remove the same or any part thereof, except for the purpose of moving it from one part of the site to another, without the consent of the supervisor. Such consent shall, however, not be required for vehicles engaged in transporting any personnel, labour, equipment, temporary works, plant or materials to or from the site.

43.2. The particular conditions may provide that all equipment, temporary works, plant and materials on site owned by the contractor or by any company in which the contractor has a controlling interest shall, for the duration of the execution of the works, be:

1. vested in the contracting authority; or
2. b) made subject to a lien in favour of the contracting authority; or
3. made subject to any other arrangement regarding priority interest or security.

43.3. In the event of termination of the contract in accordance with Article 63 due to the contractor's breach of contract, the contracting authority shall be entitled to use the equipment, temporary works, plant and materials on site in order to complete the works.

43.4. Any agreement for the hire by the contractor of equipment, temporary works, plant and materials brought onto the site, shall contain a provision that on request in writing made by the contracting authority within 7 days after the date on which the termination under Article 64 becomes effective, and on the contracting authority undertaking to pay all hire charges in respect thereof from such date, the owner thereof will hire such equipment, temporary works, plant or materials to the contracting authority on the same terms as they were hired by the contractor, save that the contracting authority shall be entitled to permit the use thereof by any other contractor employed by it for completing the works under the provisions of Article 64.3.

43.5. Upon termination of the contract before completion of the works, the contractor shall deliver to the contracting authority any plant, temporary works, equipment or materials the property in which has vested in the contracting authority or been made subject to a lien by virtue of Article 43.2. If it fails to do so, the contracting authority may take such appropriate action as it deems fit in order to obtain possession of such plant, temporary works, equipment and materials and recover the cost of so doing from the contractor.

**PAYMENTS**

**Article 44 – General principles**

44.1. Payments shall be made in euro or national currency as specified in the particular conditions. The particular conditions shall lay down the administrative or technical conditions governing payments of pre-financing, interim and/or final payments made in accordance with the general conditions.

44.2. Payments due by the contracting authority shall be made to the bank account mentioned on the financial identification form completed by the contractor. The same form, annexed to the payment request must be used to report changes of bank account.

44.3. Payment to the contractor shall be done as follows:

1. Pre-financing payments shall be made within 90 days of receipt by the contracting authority of the contractor's invoice and the documents referred to in Article 46.3. The date of payment shall be the date on which the paying account is debited.
2. Payments to the contractor of the amounts due under each of the interim payment certificates and the final statement of account issued by the supervisor shall be made within 90 days of such certificate of statement accompanied by the contractor's invoice being delivered to the contracting authority. The date of payment shall be the date on which the paying account is debited.

44.4. The period referred to in 44.3 may be suspended by notifying the contractor that the invoice cannot be paid because the sum is not due, because appropriate substantiating documents have not been provided or because there is evidence that the expenditure might not be eligible. In the latter case, an inspection may be carried out on the spot for the purpose of further checks. The contractor shall provide clarifications, modifications or further information within 30 days of being asked to do so. Within 30 days of receipt of the clarification, the supervisor shall decide and issue if need be a revised payment certificate or a final statement of account and the payment period shall continue to run from this date.

44.5. The contractor undertakes to repay to the contracting authority any amounts paid in excess of the final amount due, before the deadline indicated in the debit note which is 45 days from the issuing of that note. Should the contractor fail to make repayment within the above deadline, the contracting authority may (unless the contractor is a public body of a Member State of the European Union) increase the amounts due by adding interest:

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

on the first day of the month in which the time-limit expired, plus three and a half percentage points. The default interest shall be incurred over the time which elapses between the date of the payment deadline and the date on which payment is actually made. Any partial payments shall first cover the interest thus established.

Amounts to be repaid to the contracting authority may be offset against amounts of any kind due to the contractor. This shall not affect the parties' right to agree on payment in instalments. Bank charges arising from the repayment of amounts due to the contracting authority shall be borne entirely by the contractor.

Without prejudice to the prerogative of the contracting authority, if necessary, the KfW may as donor proceed itself to the recovery by any means.

44.6. Prior to, or instead of, terminating the contract as provided for in Article 64, the contracting authority may suspend payments as a precautionary measure without prior notice.

44.7. Where the award procedure or the performance of the contract proves to have been subject to breach of obligations, irregularities or fraud attributable to the contractor, the contracting authority may in addition to the possibility to suspend the performance of the contract in accordance with Article 38.3 and terminate the contract as provided for in Article 64, suspend payments and/or recover amounts already paid, in proportion to the seriousness of the breach of obligations irregularities or fraud. In addition to measures referred above, the contracting authority may reduce the contract value in proportion to the seriousness of the irregularities, fraud or of the breach of obligations, including where the activities concerned were not implemented or were implemented poorly, partially or late.

**Article 45 – Provisional price contracts**

45.1. In exceptional cases, where a provisional price contract has been awarded, the amount payable under the contract shall be calculated as follows:

1. as for cost-plus contracts in Article 49.1 (c); or
2. initially on the basis of provisional prices and, after the conditions for performing the contract are known, as for lump-sum contracts or unit price contracts in Article 49.1 (a) and (b) respectively, or as in a hybrid contract.

45.2. The contractor shall supply such information as the contracting authority or the supervisor may reasonably require in respect of any matter relating to the contract for the purpose of the calculation. Where agreement cannot be reached on the valuation of the works, the amounts payable shall be determined by the supervisor.

**Article 46 – Pre-financing (Advance Payment)**

46.1. If the particular conditions so provide, pre-financing may be granted to the contractor, at its request and before the first interim payment takes place, for operations connected with the implementation of the tasks, in the cases listed hereinafter:

1. as a lump-sum advance enabling it to meet expenditure resulting from the commencement of the contract;
2. as pre-financing for the purchase or order of: materials, plant, equipment, machines, tools and of any other substantial prior expenses such as the acquisition of patents or study costs, necessary for the execution of the contract. A proof of the conclusion of such purchase or order shall be provided by the contractor to obtain the pre-financing.

46.2. The particular conditions shall state the amount of the pre-financing which shall not exceed 10% of the original contract price for the lump-sum referred to in Article 46.1 (a) and 20 % of the original contract price for all other pre-financing referred to in Article 46.1 (b).

46.3. No pre-financing shall be granted until:

1. the signature of the contract;
2. provision of the performance guarantee in accordance with Article 15;
3. provision, for the full amount of the pre-financing, of a financial guarantee issued in accordance with Article 15.3 and 15.6 which shall remain effective until the pre-financing has been completely repaid by the contractor out of interim payments under the contract unless otherwise provided for in the particular conditions;
4. fulfilment of the contractor's obligation under Article 16;
5. approval of the programme of implementation of tasks by the supervisor.

46.4. The contractor shall use the pre-financing exclusively for operations connected with the implementation of the tasks. Should the contractor misuse any portion of the pre-financing, it shall become due and repayable immediately and no further pre-financing payments will be made.

46.5. Should the pre-financing guarantee cease to be valid and the contractor fail to re-validate it, either a deduction equal to the amount of the pre-financing may be made by the contracting authority from future payments due to the contractor under the contract, or the contracting authority may apply the provisions of Article 15.6.

46.6. If the contract is terminated for any reason whatsoever or the Contractor has not repaid the pre-financing on request, the guarantees securing the pre-financing may be invoked forthwith in order to repay the balance of the pre-financing still owed by the contractor, and the guarantor shall not delay payment or raise objection for any reason whatever.

46.7. The pre-financing guarantee provided for in Article 46 shall be released as and when pre-financing is repaid.

46.8. Further conditions and procedures for granting and repaying pre-financing shall be as laid down in the particular conditions.

**Article 47 – Retention monies**

47.1. The sum which shall be retained from interim payments by way of guarantee to meet the contractor's obligations during the defects liability period, and the detailed rules governing that guarantee, shall be stipulated in the particular conditions, provided that it shall, in no case, exceed 10% of the contract price.

47.2. Subject to the approval of the contracting authority, the contractor may, if it so wishes, substitute, not later than the date fixed for the commencement of the works, these retention sums by a retention guarantee, respecting the provisions of Articles 15.3 and 15.6.

47.3. The sum retained or the retention guarantee shall be released within 60 days of the issuing of the signed final statement of account referred to in Article 51, for its total amount except for amounts which are the subject of amicable settlement, conciliation, arbitration or litigation.

**Article 48 – Revision of prices**

48.1. Unless otherwise stipulated in the particular conditions, and except as provided in Article 48.4 the contract shall be at fixed prices which shall not be revised.

48.2. Where prices may be revised under the contract, such revision shall take into account variations in the prices of significant local or external elements which serve as a basis for the calculation of the tender price, such as manpower, services, materials and supplies, as well as charges laid down by law or regulation. The detailed rules for the revision shall be as laid down in the particular conditions.

48.3. Prices contained in the contractor's tender shall be deemed:

1. to have been arrived at on the basis of the conditions in force 30 days prior to the latest date fixed for submission of tenders; or in the case of direct agreement contracts, on the date of the contract;
2. to have taken account of the legislation and the relevant tax arrangements applicable at the reference date fixed in Article 48.3 (a).

48.4. In the event of changes to, or introduction of, any national or State statute, ordinance, decree or other law, or any regulation or by-law of any local or other public authority, after the date stated in Article 48.3 which causes a change in the contractual relationship between the parties to the contract, the contracting authority and the contractor shall consult on how best to proceed further under the contract, and may as a result of such consultation decide:

1. to amend the contract; or
2. on payment of compensation for the resulting imbalance by one party to the other; or
3. to terminate the contract by mutual agreement.

48.5. In the event of a delay in the implementation of the tasks for which the contractor is responsible, the indices to be considered for the revision of prices during the period of delay shall be the most advantageous to the contracting authority between those applied to the last interim certificate issued for tasks implemented during the period of implementation of tasks and those revised up to the provisional acceptance of the tasks.

**Article 49 – Measurement**

49.1. The following methods shall apply to the valuation of works contracts:

1. For lump-sum contracts, the amount due under the contract shall be determined on the basis of the breakdown of the overall contract price, or on the basis of a breakdown expressed as a percentage of the contract price corresponding to completed stages of the works. Where items are accompanied by quantities, these shall be firm quantities for which the contractor has submitted its all-in price and shall be paid for irrespective of the quantities of work actually carried out.
2. For unit price contracts:
3. the amount due under the contract shall be calculated by applying the unit rates to the quantities actually executed for the respective items, in accordance with the contract;
4. the quantities set out in the bill of quantities shall be the estimated quantities of the works, which shall not be taken as the actual and correct quantities of the works to be executed by the contractor in fulfilment of its obligations under the contract;
5. the supervisor shall determine by measurement the actual quantities of the works executed by the contractor, and these shall be paid for in accordance with Article 50. Unless otherwise provided in the particular conditions, no additions shall be made to the items in the bill of quantities except as a result of an amendment in accordance with Article 37 or another provision of the contract entitling the contractor to additional payment;
6. the supervisor shall, when he requires any parts of the works to be measured, give reasonable notice to the contractor to attend, or to send a qualified agent to represent him. The contractor or its agent shall assist the supervisor in making such measurements and shall furnish all particulars required by the supervisor. Should the contractor not attend, or omit to send such agent, the measurement made by the supervisor or approved by him shall be binding on the contractor;
7. the works shall be measured net, notwithstanding any general or local custom, except where otherwise provided for in the contract.
8. For cost-plus contracts, the amount due under the contract shall be determined on the basis of actual costs with an agreed addition for overheads and profit. The particular conditions shall stipulate the information which the contractor is required to submit to the supervisor for the purpose of Article 49.1 (c) and the manner in which it should be submitted.

49.2. Where an item in the contract is indicated as ‘provisional’ the provisional sum set aside for it shall not be taken into account in calculating the percentages referred to in Article 37.

**Article 50 – Interim payments**

50.1. The contractor shall submit an invoice for interim payment to the supervisor at the end of each period referred to in Article 50.7 in a form approved by the supervisor.

The invoice shall include the following items, as applicable:

1. the estimated contract value of the permanent works implemented up to the end of the period in question;
2. an amount reflecting any revision of prices pursuant to Article 48;
3. an amount to be withheld as retention sum under Article 47;
4. any credit and/or debit for the period in question in respect of plant and materials on site intended for, but not yet incorporated in, the permanent works in the amount and under the conditions set out in Article 50.2;
5. an amount to be deducted on account of the pre-financing repayment under the provisions of Article 46; and
6. any other sum to which the contractor may be entitled under the contract.

50.2. The contractor shall be entitled to such sums as the supervisor may consider proper in respect of plant and materials intended for, but not yet incorporated in, the permanent works provided that:

1. the plant and materials conform with the specifications for the permanent works and are set out in batches in a way that they may be recognized by the supervisor;
2. such plant and materials have been delivered to the site, and are properly stored and protected against loss or damage or deterioration to the satisfaction of the supervisor;
3. the contractor's record of requirements, orders, receipts and use of plant and materials under the contract are kept in a form approved by the supervisor and such records are available for inspection by the supervisor;
4. the contractor submits with its statement, the estimated value of the plant and materials on site together with such documents as may be required by the supervisor for the purpose of valuation of the plant and materials and providing evidence of ownership and payment therefor; and
5. where the particular conditions so provide, ownership of the plant and materials referred to in Article 43 shall be deemed to be vested in the contracting authority.

50.3. Approval by the supervisor of any interim invoice certified by him in respect of plant and materials pursuant to Article 50 shall be without prejudice to the exercise of any power of the supervisor under the contract to reject any plant or materials which are not in accordance with the provisions of the contract.

50.4. The contractor shall be responsible for any loss or damage to, and for the cost of storing and handling of, such plant and materials on site and shall effect such additional insurance as may be necessary to cover the risk of such loss or damage from any cause.

50.5. Within 30 days of receipt of the said invoice for interim payment, the supervisor shall:

1. verify that, in the supervisor's opinion, the invoice for interim payment reflects the amount due to the contractor in accordance with the contract. In cases where there is a difference of opinion as to the value of an item, the supervisor's view shall prevail.
2. on determination of the amount due to the contractor, issue and transmit to the contracting authority for payment and to the contractor for information, an interim payment certificate for the amount due to the contractor and shall inform the contractor of the works for which payment is being made.

50.6. The supervisor may, by an interim payment certificate, make any corrections or modifications to any previous certificate issued by him, and has power to modify the valuation in or withhold the issue of, any interim payment certificate if the works or any part thereof is not being carried out to its satisfaction.

50.7. Unless the particular conditions provide otherwise, the frequency shall be one interim payment per month.

**Article 51 – Final statement of account**

51.1. Unless otherwise agreed in the particular conditions, the contractor shall submit to the supervisor a draft final statement of account no later than 90 days after the issue of the final acceptance certificate referred to in Article 62. In order to enable the supervisor to prepare the final statement of account, the draft final statement of account is submitted with supporting documents showing in detail the value of the work done in accordance with the contract and all further sums which the contractor considers to be due to it under the contract.

51.2. Within 90 days after receipt of the draft final statement of account and of all information reasonably required for its verification, the supervisor shall prepare and sign the final statement of account, which determines:

1. the amount which in its opinion is finally due under the contract; and
2. after establishing the amounts previously paid by the contracting authority and all sums to which the contracting authority is entitled under the contract, the balance, if any, due from the contracting authority to the contractor, or from the contractor to the contracting authority, as the case may be.

51.3. The supervisor shall issue to the contracting authority or to its duly authorized representative, and to the contractor, the final statement of account showing the final amount to which the contractor is entitled under the contract. The contracting authority or its duly authorized representative and the contractor shall sign the final statement of account as an acknowledgement of the full and final value of the work implemented under the contract and shall promptly submit a signed copy to the supervisor together with the invoice for the payment of the agreed balance, if any, due to the contractor. However, the final statement of account and the invoice for the payment of the balance shall not include amounts in dispute which are the subject of negotiations, conciliation, arbitration or litigation.

51.4. The final statement of account signed by the contractor constitutes a written discharge of the contracting authority confirming that the total in the final statement of account represents full and final settlement of all monies due to the contractor under the contract, other than those amounts which are the subject of amicable settlement, arbitration or litigation. However, such discharge becomes effective only after any payment due in accordance with the final statement of account has been made and the performance guarantee referred to in Article 15 has been returned to the contractor.

51.5. The contracting authority is not liable to the contractor for any matter or thing whatsoever arising out of, or in accordance with, the contract or execution of the works, unless the contractor has included a claim in respect thereof in its draft final statement of account.

**Article 52 - Direct payments to sub-contractors**

52.1. When the supervisor receives a claim from a sub-contractor duly approved under Article 7 to the effect that the contractor has not met its financial obligations so far as the sub-contractor is concerned, the supervisor gives notice to the contractor either to pay the sub-contractor or to inform it of the reasons why payment should not be made. Should such payment not be made, or reasons not be given within the period of notice, the supervisor may, after satisfying itself that the work has been carried out, certify, and the contracting authority pays the debt claimed by the sub-contractor out of the sums remaining due to the contractor. The contractor remains entirely responsible for the work in respect of which direct payment has been made.

52.2. If the contractor gives adequate reasons for refusing to settle all or part of the debt claimed by the sub-contractor, the contracting authority only pays to the sub-contractor only the amounts not in dispute. Sums claimed by the sub-contractor in respect of which the contractor has given adequate reasons for its refusal to pay shall be paid by the contracting authority only after the parties have come to an amicable settlement, or after the decision of an arbitrating authority or after a judgment of a court has been duly notified to the supervisor.

52.3. Direct payments to sub-contractors shall not exceed the value at contract prices of the services performed by the sub-contractors for which they request payment; the value at contract prices is calculated or assessed on the basis of the bill of quantities, the price schedule or the breakdown of the lump sum price.

52.4. Direct payments to sub-contractors are made entirely in the national currency of the country in which the works are executed, or partly in such national currency and partly in foreign currency, in accordance with the contract.

52.5. Where direct payments to sub-contractors are made in foreign currency, they are calculated in accordance with Article 56. They shall not result in any increase in the total amount payable in foreign currency, as stipulated in the contract.

52.6. The provisions of Article 52 apply subject to the requirements of the law applicable by virtue of Article 54 concerning the right to payment of creditors who are beneficiaries of an assignment of credit or of a collateral security.

**Article 53 – Delayed payments**

53.1. Once the time-limit referred to in Article 44.3 of the general conditions has expired, the contractor will, upon demand, submitted within two months of receiving late payment, be entitled to late-payment interest:

* at the rediscount rate applied by the central bank by the law of the country in which the works are executed if payments are in the currency of that country;
* at the rate applied by the European Central Bank to its main refinancing transactions in euro, as published in the Official Journal of the European Union, C series, if payments are in euro,

on the first day of the month in which the time-limit expired, plus three and a half percentage points. The interest shall be payable for the time elapsed between the expiry of the payment deadline and the date on which the contracting authority’s account is debited.

53.2. Any default in payment of more than 30 days after the expiry of the time-limit stated in Article 44.3(b) shall entitle the contractor to suspend the work in accordance with the procedure laid down in Article 38.2.

53.3. Any default in payment of more than 120 days after the expiry of the time-limit stated in Article 44.3(b) shall entitle the contractor to terminate the contract in accordance with the procedure laid down in Article 65.

**Article 54 – Payment to third parties**

54.1. Orders for payments to third parties may be carried out only after an assignment made in accordance with Article 6. The assignment is notified to the contracting authority.

54.2. Notification of beneficiaries of the assignment is the sole responsibility of the contractor.

54.3. In the event of a legally binding attachment of the property of the contractor affecting payments due to it under the contract, and without prejudice to the time limit laid down in Article 53, the contracting authority has 30 days, starting from the day when it receives notification of the definitive lifting of the obstacle to payment, to resume payments to the contractor.

**Article 55 - Claims for additional payment**

55.1. If the contractor considers itself being entitled to additional payment under the contract, the contractor shall:

1. if it intends to make any claim for additional payment, give to the supervisor notice of its intention or make such claim no later than 15 days after the contractor became aware, or should have become aware of the event or circumstances giving rise of such claim, stating the reason for its claim; If the contractor fails to give notice of a claim for additional payment within such period of 15 days, the contractor shall not be entitled to additional payment, and the contracting authority shall be discharged from all liability in connection with the request; and
2. submit full and detailed particulars of its claim as soon as it is reasonably practicable, but no later than 60 days after the date of such notice, unless otherwise agreed by the supervisor. In case the supervisor agrees to another deadline than the said 60 days, the agreed upon deadline will, in any event, require that such particulars shall be submitted no later than the date of submission of the draft final statement of account. The contractor shall thereafter promptly submit such further particulars as the supervisor may reasonably require assessing the validity of the claim.

55.2. When the supervisor has received the full and detailed particulars of the contractor's claim that it requires, he shall, without prejudice to Article 21.4, after due consultation with the contracting authority and, where appropriate, the contractor, determine whether the contractor is entitled to additional payment and notify the parties accordingly.

55.3. The supervisor may reject any claim for additional payment which does not comply with the requirements of Article 55.

**Article 56 – End date**

56.1. The payment obligations of the KfW under this contract shall cease at most 18 months after the end of the period of implementation of tasks, unless the contract is terminated in accordance with these general conditions. In the event of co-financing, this date shall be laid down in the particular conditions.

**ACCEPTANCE AND DEFECTS LIABILITY**

**Article 57 – General principles**

57.1. Verification of the works by the supervisor with a view to provisional or final acceptance shall take place in the presence of the contractor. The absence of the contractor shall not be a bar to verification on condition that the contractor has been summoned in due form at least 30 days prior to the date of verification.

57.2. Should exceptional circumstances make it impossible to ascertain the state of the works or otherwise proceed with their acceptance during the period fixed for provisional or final acceptance, a statement certifying such impossibility shall be drawn up by the supervisor after consultation, where possible, with the contractor. The verification shall take place and a statement of acceptance or rejection shall be drawn up by the supervisor within 30 days following the date on which such impossibility ceases to exist. The contractor shall not invoke these circumstances in order to avoid its obligation of presenting the works in a state suitable for acceptance.

**Article 58 – Tests on completion**

58.1. The works shall not be accepted until the prescribed verifications and tests have been carried out at the expense of the contractor. The contractor shall notify the supervisor of the date on which such verification and tests may commence.

58.2. Works which do not satisfy the terms and conditions of the contract, or in the absence of such terms and conditions, which are not carried out in accordance with trade practices in the country in which the works are executed, shall, if required, be demolished and rebuilt by the contractor or repaired to the satisfaction of the supervisor, otherwise this shall be done as of right after due notice at the expense of the contractor, by order of the supervisor. The supervisor may also require the demolition and reconstruction by the contractor, or repair to the satisfaction of the supervisor, under the same conditions, of any work in which unacceptable materials have been used, or carried out in the periods of suspension provided for in Article 38.

**Article 59 – Partial acceptance**

59.1. The contracting authority may make use of the various structures, parts of structures or sections of the works forming part of the contract as and when they are completed. Any taking over of the structures, parts of structures or sections of the works by the contracting authority shall be preceded by their partial provisional acceptance. However, works may in cases of urgency be taken over prior to acceptance provided an inventory of outstanding work is drawn up by the supervisor and agreed to by the contractor and the supervisor beforehand. Once the contracting authority has taken possession of a structure, a part thereof or section of the works, the contractor shall no longer be required to make good any damage resulting otherwise than from faulty construction or workmanship.

59.2. The supervisor may, at the request of the contractor and if the nature of the works so permits, proceed with partial provisional acceptance, provided that the structures, parts of structures or sections of the works are completed and suited to the use as described in the contract.

59.3. In the cases of partial provisional acceptance referred to in Article 59.1 and 59.2 the defects liability period provided for in Article 62 shall, unless the particular conditions provide otherwise, run as from the date of such partial provisional acceptance.

**Article 60 – Provisional acceptance**

60.1. The works shall be taken over by the contracting authority when they have satisfactorily passed the tests on completion and a certificate of provisional acceptance has been issued or is deemed to have been issued.

60.2. The contractor may apply, by notice to the supervisor, for a certificate of provisional acceptance not earlier than 15 days before the works, in the contractor's opinion, are complete and ready for provisional acceptance. The supervisor shall within 30 days after the receipt of the contractor's application either:

1. issue the certificate of provisional acceptance to the contractor with a copy to the contracting authority stating, where appropriate, its reservations, and, inter alia, the date on which, in its opinion, the works were completed in accordance with the contract and ready for provisional acceptance; or
2. reject the application giving its reasons and specifying the action which, in its opinion, is required of the contractor for the certificate to be issued.

60.3. If the supervisor fails either to issue the certificate of provisional acceptance or to reject the contractor's application within the period of 30 days, he shall be deemed to have issued the certificate on the last day of that period. The certificate of provisional acceptance shall not be deemed to be an admission that the works have been completed in every respect. If the works are divided by the contract into sections, the contractor shall be entitled to apply for separate certificates for each of the sections.

60.4. Upon provisional acceptance of the works, the contractor shall dismantle and remove temporary structures as well as materials no longer required for use in connection with the implementation of the contract. It shall also remove any litter or obstruction and redress any change in the condition of the site as required by the contract.

60.5. Immediately after provisional acceptance, the contracting authority may make use of all the works as completed.

**Article 61 – Defects liability**

61.1. The contractor shall be responsible for making good any defect in, or damage to, any part of the works which may appear or occur during the defects liability period and which:

1. results from the use of defective plant or materials or faulty workmanship or design of the contractor; and/or
2. results from any act or omission of the contractor during the defects liability period; and/or;
3. appears in the course of an inspection made by, or on behalf of the contracting authority.

61.2. The contractor shall at its own cost make good the defect or damage as soon as practicable. The defects liability period for all items replaced or renewed shall recommence from the date when the replacement or renewal was made to the satisfaction of the supervisor. If the contract provides for partial acceptance, the defects liability period shall be extended only for the part of the works affected by the replacement or renewal.

61.3. If any such defect appears or such damage occurs, during the defects' liability period, the contracting authority or the supervisor shall notify the contractor. If the contractor fails to remedy a defect or damage within the time limit stipulated in the notification, the contracting authority may:

1. carry out the works itself, or employ someone else to carry out the works at the contractor's risk and cost, in which case the costs incurred by the contracting authority shall be deducted from monies due to or from guarantees held against the contractor or from both; or
2. terminate the contract.

61.4. If the defect or damage is such that the contracting authority has been deprived substantially of the whole or a part of the benefit of the works, the contracting authority shall, without prejudice to any other remedy, be entitled to recover all sums paid in respect of the parts of the works concerned together with the cost of dismantling such parts and clearing the site.

61.5. In case of emergency, where the contractor is not immediately available or, having been reached, is unable to take the measures required, the contracting authority or the supervisor may have the work carried out at the expense of the contractor. The contracting authority or the supervisor shall as soon as practicable inform the contractor of the action taken.

61.6. Where the particular conditions stipulate that the maintenance work, necessitated by normal wear and tear, shall be carried out by the contractor, such work shall be paid for from a provisional sum. Deterioration resulting from the circumstances provided for in Article 21 or from abnormal use shall be excluded from this obligation unless it reveals a fault or defect justifying the request for repair or replacement under Article 61.

61.7. The defects liability period shall be stipulated in the particular conditions and technical specifications. If the duration of the defects’ liability period is not specified, it shall be 365 days. The defects liability period shall commence on the date of provisional acceptance and may recommence in accordance with Article 61.2.

61.8. After provisional acceptance and without prejudice to the defects liability referred to in Article 61, the contractor shall no longer be responsible for risks which may affect the works, and which result from causes not attributable to it. However, the contractor shall be responsible as from the date of provisional acceptance for the soundness of the construction, as laid down in the law of the country in which the works are executed.

**Article 62 – Final acceptance**

62.1. Upon the expiry of the defects’ liability period, or where there is more than one such period, upon the expiry of the latest period, and when all defects or damage have been rectified, the supervisor shall issue to the contractor a final acceptance certificate and a copy thereof to the contracting authority stating the date on which the contractor completed its obligations under the contract to the supervisor's satisfaction. The final acceptance certificate shall be given by the supervisor within 30 days after the expiration of the defects’ liability period, or as soon as any works ordered under Article 61 have been completed to the satisfaction of the supervisor.

62.2. The works shall not be considered as completed until the final acceptance certificate has been signed by the supervisor and delivered to the contracting authority, with a copy to the contractor.

62.3. Notwithstanding the issuance of the final acceptance certificate, the contractor and the contracting authority shall remain liable for the fulfilment of any obligation incurred under the contract prior to the issue of the final acceptance certificate, which remains unperformed at the time such final acceptance certificate is issued. The nature and extent of any such obligation shall be determined by reference to the provisions of the contract.

**BREACH OF CONTRACT AND TERMINATION**

**Article 63 – Breach of contract**

63.1. Either party commits a breach of contract where it fails to perform its obligations in accordance with the provisions of the contract.

63.2. Where a breach of contract occurs, the party injured by the breach is entitled to the following remedies:

1. damages; and/or
2. termination of the contract.

63.3. Damages may be either:

1. general damages; or
2. liquidated damages.

63.4. Should the contractor fail to perform any of its obligations in accordance with the provisions of the contract, the contracting authority is without prejudice to its right under Article 63.2, also entitled to the following remedies:

1. suspension of payments; and/or
2. reduction or recovery of payments in proportion to the failure's extent.

63.5. Where the contracting authority is entitled to damages, it may deduct such damages from any sums due to the contractor or call on the appropriate guarantee.

**Article 64 - Termination by the contracting authority**

64.1. The contracting authority may, at any time and with immediate effect, subject to Article 64.9, terminate the contract, except as provided for under Article 64.2.

64.2. Subject to any other provision of these general conditions the contracting authority may, by giving seven days' notice to the contractor, terminate the contract and expel the contractor from the site in any of the following cases where:

1. the contractor is in serious breach of contract for failure to perform its contractual obligations;
2. the contractor fails to comply within a reasonable time with the notice given by the supervisor requiring it to make good the neglect or failure to perform its obligations under the contract which seriously affects the proper and timely performance of the works;
3. the contractor refuses or neglects to carry out any administrative orders given by the supervisor;
4. the contractor assigns the contract or sub-contracts without the authorisation of the contracting authority;
5. the contractor is bankrupt, subject to insolvency or winding up procedures, is having its assets administered by a liquidator or by the courts, has entered into an arrangement with creditors, has suspended business activities, or is in any analogous situation arising from a similar procedure provided for under any national law or regulation relevant to that contractor;
6. any organisational modification occurs involving a change in the legal personality, nature or control of the contractor, unless such modification is recorded in an addendum to the contract;
7. any other legal disability hindering performance of the contract occurs;
8. the contractor fails to provide the required guarantees or insurance, or the person providing the earlier guarantee or insurance is not able to abide by its commitments;
9. the contractor has been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
10. it has been established by a final judgment or a final administrative decision or by proof in possession of the contracting authority that the contractor has been guilty of fraud, corruption, involvement in a criminal organisation, money laundering or terrorist financing, terrorist related offences, child labour or other forms of trafficking in human beings or circumventing fiscal, social or any other applicable legal obligations, including through the creation of an entity for this purpose;
11. the contractor, in the performance of another contract financed by the KfW funds, has been declared to be in serious breach of contract, which has led to its early termination or the application of liquidated damages or other contractual penalties or which has been discovered following checks, audits or investigations by the the contracting authority or KfW;
12. after the award of the contract, the award procedure or the performance of the contract proves to have been subject to breach of obligations, irregularities or fraud;
13. the award procedure or the performance of another contract financed by the KfW funds proves to have been subject to breach of obligations, irregularities or fraud which are likely to affect the performance of the present contract;
14. the contractor fails to perform its obligation in accordance with Article 12.8, Article 12a or Article 12b;
15. the contracting authority has become entitled to the maximum claim under Article 36.1;
16. the contractor fails to perform its obligation in accordance with Article 61.3;

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

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

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

64.3. Termination shall be without prejudice to any other rights or powers under the contract of the contracting authority and the contractor. The contracting authority may, thereafter, complete the works itself or conclude any other contract with a third party, at the contractor's own expense. The contractor's liability for delay in completion shall immediately cease when the contracting authority terminates the contract without prejudice to any liability thereunder that may already have arisen.

64.4. Upon termination of the contract or when it has received notice thereof, the contractor shall take immediate steps to bring the works to a close in a prompt and orderly manner and to reduce expenditure to a minimum.

64.5. The supervisor shall, as soon as possible after termination, certify the value of the works and all sums due to the contractor as at the date of termination.

64.6. In the event of termination:

1. a report of work performed by the contractor shall be drawn up by the supervisor as soon as possible after inspection of the works, and inventory taken of temporary structures, materials, plant and equipment. The contractor shall be summoned to be present during the inspection and the taking of the inventory. The supervisor shall also draw up statements of emoluments still owed by the contractor to workers employed by him in relation to the contract and of sums owed by the contractor to the contracting authority;
2. the contracting authority shall have the option of acquiring in whole or in part temporary structures which have been approved by the supervisor, equipment, plant and materials specifically supplied or manufactured in connection with the execution of work under the contract;
3. the purchase price of the temporary structures, equipment, plant and materials referred to above shall not exceed the unpaid portion of the expenditure incurred by the contractor, such expenditure being limited to that required for the performance of the contract under normal conditions;
4. the contracting authority may purchase, at market prices, the materials and items supplied or ordered by the contractor and not already paid for by the contracting authority on such conditions as the supervisor considers appropriate.

64.7. The contracting authority shall not be obliged to make any further payments to the contractor until the works are completed. After the works are completed, the contracting authority shall recover from the contractor the extra costs, if any, of completing the works, or shall pay any balance still due to the contractor.

64.8. If the contracting authority terminates the contract pursuant to Article 64.2, it shall, in addition to the extra costs for completion of the works and without prejudice to its other remedies under the contract, be entitled to recover from the contractor any loss it has suffered up to 10% of the contract price.

64.9. Where the termination is not due to an act or omission of the contractor, force majeure or other circumstances beyond the control of the contracting authority, the contractor shall be entitled to claim in addition to sums owed to it for work already performed, an indemnity for loss suffered.

64.10. This contract shall be automatically terminated if it has not given rise to any payment in the two years following its signing by both parties.

**Article 65 – Termination by the contractor**

65.1. The contractor may, by giving 14 days' notice to the contracting authority, terminate the contract if the contracting authority:

1. fails for more than 120 days to pay the contractor the amounts due under any certificate issued by the supervisor after the expiry of the time limit stated in Article 44.3; or
2. consistently fails to meet its obligations after repeated reminders; or
3. suspends the progress of the works or any part thereof for more than 180 days for reasons not specified in the contract, or not attributable to the contractor's breach or default.

65.2. Such termination shall be without prejudice to any other rights of the contracting authority, or the contractor acquired under the contract. Upon such termination, the contractor shall, subject to the law of the country in which the works are executed, be entitled to immediately remove its equipment from the site.

65.3. In the event of such termination, the contracting authority shall pay the contractor for any loss or damage the contractor may have suffered. The maximum amount shall be 10% of the contract price.

**Article 66 – Force majeure**

66.1. Neither party shall be considered to be in default or in breach of its obligations under the contract if the performance of such obligations is prevented by any circumstances of force majeure which arises after the date of notification of award or the date when the contract becomes effective.

66.2. The term force majeure, as used herein covers any unforeseeable events, not within the control of either party and which by the exercise of due diligence neither party is able to overcome such as acts of God, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars whether declared or not, blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosions. A decision of the German Government or the European Union to suspend the cooperation with the partner country is considered to be a case of force majeure when it implies suspension of funding this contract.

66.3. Notwithstanding the provisions of Articles 36 and 64, the contractor shall not be liable to forfeiture of its performance guarantee, liquidated damages or termination for default if, and to the extent that, its delay in performance or other failure to perform its obligations under the contract is the result of an event of force majeure. The contracting authority shall similarly not be liable, notwithstanding the provisions of Articles 53 and 65, for payment of interest on delayed payments, for non-performance or for termination by the contractor for default, if, and to the extent that, the contracting authority's delay or other failure to perform its obligations is the result of force majeure.

66.4. If either party considers that any circumstances of force majeure have occurred which may affect performance of its obligations, it shall promptly notify the other party and the supervisor, giving details of the nature, the probable duration and the likely effect of the circumstances. Unless otherwise directed by the supervisor in writing, the contractor shall continue to perform its obligations under the contract as far as is reasonably practicable and shall seek all reasonable alternative means for performance of its obligations which are not prevented by the force majeure event. The contractor shall not put into effect such alternative means unless directed so to do by the supervisor.

66.5. If the contractor incurs additional costs in complying with the supervisor's directions or using alternative means under Article 66.4, the amount thereof shall be certified by the supervisor.

66.6. If circumstances of force majeure have occurred and continue for a period of 180 days then, notwithstanding any extension of time for completion of the works that the contractor may by reason thereof have been granted, either party shall be entitled to serve upon the other 30 days' notice to terminate the contract. If, at the expiry of the period of 30 days, force majeure persists, the contract shall terminate and, in consequence thereof under the law governing the contract, the parties shall be released from further performance of the contract.

**Article 67 – Decease**

67.1. Where the contractor is a natural person, the contract shall be automatically terminated if that person dies. However, the contracting authority shall examine any proposal made by the heirs or beneficiaries if they have notified their wish to continue the contract.

67.2. Where the contractor consists of a number of persons and one or more of them die, a report shall be agreed between the parties on the progress of the works, and the contracting authority shall decide whether to terminate or continue the contract in accordance with the undertaking given by the survivors and by the heirs or beneficiaries, as the case may be. The decision of the contracting authority shall be notified to those concerned within 30 days of receipt of such proposal.

67.3. In the cases provided for in Article 67.1 and 67.2, persons offering to continue to perform the contract shall notify the contracting authority thereof within 15 days of the date of decease.

67.4. Such persons shall be jointly and severally liable for the proper performance of the contract to the same extent as the deceased contractor. Continuation of the contract shall be subject to the rules relating to establishment of any guarantee provided for in the contract.

**SETTLEMENT OF DISPUTES AND APPLICABLE LAW**

**Article 68 – Settlement of disputes**

68.1. The parties shall make every effort to settle amicably any dispute relating to the contract which may arise between them, or between the supervisor and the contractor.

68.2. Once a dispute has arisen, a party shall notify the other party of the dispute, stating its position on the dispute and requesting an amicable settlement. The other party shall respond to this request for amicable settlement within 30 days, stating its position on the dispute. Unless the parties agree otherwise, the maximum time period laid down for reaching an amicable settlement shall be 120 days from the date of the notification requesting such a procedure. Should a party not agree to the other party's request for amicable settlement, should a party not respond in time to that request or should no amicable settlement be reached within the maximum time period, the amicable settlement procedure is considered to have failed.

68.3. In the absence of an amicable settlement, a party may notify the other party requesting a settlement through conciliation by a third person. The other party shall respond to the request for conciliation within 30 days. Unless the parties agree otherwise, the maximum time period laid down for reaching a settlement through conciliation shall be 120 days from the notification requesting such a procedure. Should a party not agree to the other party's request for conciliation, should a party not respond in time to that request, or should no settlement be reached within the maximum time period, the conciliation procedure is considered to have failed.

68.4. If the amicable settlement procedure and, if so requested, the conciliation procedure fails, each party may refer the dispute to either the decision of a national jurisdiction or arbitration, as specified in the particular conditions.

**Article 69 – Applicable Law**

69.1. This contract shall be governed by the German law.

**FINAL PROVISIONS**

**Article 70 – Administrative sanctions**

70.1. Without prejudice to the application of other remedies laid down in the contract, a sanction of exclusion from all contracts and grants financed by the KfW, may be imposed, after an adversarial procedure in line with the applicable regulations, upon the contractor who, in particular:

1. is guilty of grave professional misconduct, has committed irregularities or has shown significant deficiencies in complying with the main obligations in the performance of the contract or has been circumventing fiscal, social or any other applicable legal obligations, including through the creation of an entity for this purpose. The duration of the exclusion shall not exceed the duration set by final judgement or final administrative decision or, in the absence thereof, three years;
2. is guilty of fraud, corruption, participation in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings. The duration of the exclusion shall not exceed the duration set by final judgement or final administrative decision or, in the absence thereof, five years.

70.2. In the situations mentioned in Article 70.1, in addition or in alternative to the sanction of exclusion, the contractor may also be subject to financial penalties representing 2-10% of the contract price.

70.3. Where the contracting authority is entitled to impose financial penalties, it may deduct such financial penalties from any sums due to the contractor or call on the appropriate guarantee.

70.4. The decision to impose administrative sanctions may be published on a dedicated internet-site, explicitly naming the contractor.

**Article 71 - Verifications, checks and audits by KfW or its appointed bodies**

71.1. The contractor will allow the KfW or its appointed bodies to verify, by examining the documents and to make copies thereof or by means of on-the-spot checks, including checks of documents (original or copies), the implementation of the contract. In order to carry out these verifications and audits, the KfW bodies mentioned above shall be allowed to conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document relevant to the financing of the project. The contractor shall ensure that on-the-spot accesses is available at all reasonable times, notably at the contractor's offices, to its computer data, to its accounting data and to all the information needed to carry out the audits, including information on individual salaries of persons involved in the project. The contractor shall ensure that the information is readily available at the moment of the audit and, if so requested, that data be handed over in an appropriate form. These inspections may take place up to 7 years after the final payment.

71.2. Furthermore, the contractor will allow the European Anti-Fraud Office to carry out checks and verification on the spot in accordance with the procedures set out in the European Union legislation for the protection of the financial interests of the European Union against fraud and other irregularities.

71.3. To this end, the contractor undertakes to give appropriate access to personnel or agents of the European Anti-Fraud Office, of the European Public Prosecutor’s Office and of the European Court of Auditors to the sites and locations at which the contract is carried out, including its information systems, as well as all documents and databases concerning the technical and financial management of the project and to take all steps to facilitate their work. Access given to agents of the European Anti-Fraud Office, the European Public Prosecutor’s Office and the European Court of Auditors shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject. Documents must be easily accessible and filed so as to facilitate their examination and the contractor must inform the contracting authority of their precise location.

71.4. The contractor guarantees that the rights of the KfW, of the European Anti-Fraud Office, of the European Public Prosecutor’s Office and of the European Court of Auditors to carry out audits, checks and verification will be equally applicable, under the same conditions and according to the same rules as those set out in this Article, to any sub-contractor or any other party benefiting from KfW funds.

71.5. Failure to comply with the obligations set forth in Article 71.1 to 71.4 constitutes a case of serious breach of contract.

\* \* \*

**Section lX. Particular Conditions**

**CONTENTS**

These conditions amplify and supplement the general conditions governing the contract. Unless the particular conditions provide otherwise, the general conditions remain fully applicable. The numbering of the articles of the particular conditions is not consecutive but follows the numbering of the general conditions. Other particular conditions should be indicated afterwards.

**Article 2 Language of the contract**

2.1 The language used shall be English.

**Article 4 Communication**

4.1 Any written communication relating to this Contract between the Contracting Authority and/or the Supervisor, on the one hand, and the Contractor on the other must state the Contract title and identification number, and must be sent by post, fax, e-mail or by hand.

**Article 5 Supervisor and supervisor’s representative**

5.1 *The supervisor shall carry out the duties specified in the contract and all other duties as defined in the relevant Montenegro legislation.*

*5.2 The Beneficiary /Supervisor will engage a Supervisor’s Representative which will consist of a team of independent suitably qualified engineers and technicians. Facilities to be provided through this works contract for the use of the Supervisor’s Representative are foreseen by this contract.*

*5.3 The Supervisor’s Representative shall carry out the necessary duties for the supervision and checking of the works and the testing and examination of the materials used and the quality of construction. The Supervisor’s Representative shall have no authority to relieve the Contractor of any of his obligations under the Contract. He shall have authority to issue Administrative Orders about the nature or amount of any works within the scope of the day-to-day management of the Works. He shall have no authority to agree any claim from the Contractor.*

*5.4 Instructions given by the Supervisor shall be in writing, provided that if, for any reason, the Supervisor considers it necessary to give any such instructions orally the Contractor shall comply with such instruction. Confirmation in writing of such oral instruction given by the Supervisor, whether before or after the carrying out of the instruction, shall be deemed an instruction within the meaning of this article. The provisions of this paragraph shall equally apply to instructions given by the Supervisor’s representative and any assistants of the Supervisor or the Supervisor’s representative.*

*However, The Supervisor’s representative shall obtain a written approval of the Contracting Authority/Supervisor prior taking any of the following actions specified in the General Conditions:*

*(a) Approve any extension of time determined under Article 35 of the General Conditions.*

*(b) Approve any modification of the Contract and/or issuing any administrative order under Article 37 of the General Conditions that implies additional costs in the contract and/or use of provisional sum.*

*Administrative orders issued by the Supervisor shall be dated, numbered and entered in a register. The Supervisor shall send them electronically (by email) to representatives of the Contractor, of the Beneficiary and of the Contracting Authority. Hard copies shall be delivered by hand to representatives of the Contractor and to the representative of the Contracting Authority.*

**Article 8 Documents to be provided**

8.1 Within 7 days of the establishment of the performance guarantee and in line for Article 15, the Supervisor shall provide to the Contractor, free of charge, the stamped and reviewed final design in electronic and analogue forms respectively and a notification of building work in line with the relevant country law.

*However, such documents will need to be updated following comments received during tender stage and last-minute developments of the site conditions.*

The Contractor shall be responsible for preparing his own construction drawings as per Article 19 of the General and Special Conditions of the present Contract.

**Article 12 General obligations**

12.9 The Contractor shall be required to indicate the provider of the funds for the Contract (the German Government) according to the requirements of the respective institution. This includes an indication on the provider of the funds on documents, reports as well as a logo on vehicles, major equipment and major supplies purchased with these funds and indications on the provider of the funds on temporary construction site display panels or an acknowledgment on permanent display panels.

*The signboard and in particular its construction design and location should be approved also by the contracting authority.* *No other advertisements may be placed on the site unless the prior approval of the contracting authority is given.*

The Contractor shall grant KfW the right to publish, on an annual basis on its internet site, the following information: title of the Contract/Project, nature and purpose of the Contract/Project, name and locality of the Contractor and amount of the Contract/Project in accordance with the applicable data protection laws.

**Article 15 Performance guarantee (Performance Security)**

15.1 The amount of the performance guarantee will be 10% of the amount of the contract and any addenda thereto.

**Article 16 Liabilities and insurance**

16.1 a) By derogation from Article 16.2(a) first paragraph of the general conditions, at the latest 7 days from the countersignature of the contract, the contractor shall ensure that itself, its staff, its subcontractors and any person for which the contractor is answerable, are adequately insured with insurance companies recognized on the international insurance market, unless the contracting authority has given its express written consent on a specific insurance company.

16.1 a) By derogation from Article 16.2(a) paragraph 2 of the general conditions at the latest 15 days before commencement of the works the contractor shall provide the contracting authority and the supervisor with all cover notes and/or insurance certificates showing that the contractor's obligations relating to insurance are fully respected.

***Article 17 Programme of implementation of tasks***

*17.1 Notwithstanding the work programme given as part of the tender, the Contractor shall within 7 days after the commencement date provide the project Supervisor with a programme of implementation of tasks broken down by activity and by month and including the following documents in addition to the provisions in the GC:*

* *The sequence, by month and by nature, in which the Contractor proposes to carry out the works, in particular showing the critical path and forecasts of manpower and deliveries of working drawings, equipment, materials, water, etc.*
* *A general description of the methods which the Contractor proposes to adopt for carrying out the works.*
* *A procurement schedule for all materials brought to site*
* *The rate of progress and resources planned for each operation on the critical path of the programme.*
* *The programme is to be supplemented by weekly programmes and progress returns and plant and labour returns.*

*The programme of implementation should be prepared in such manner to ensure the smooth daily activities of the beneficiaries employees, passengers and traffic.*

*The Contractor's work programme shall be submitted both in MS Project (or equivalent program) and in PDF formats.*

*17.5 In the revised programme the Contractor shall, provide information on additional resources to be deployed in order to complete the works within the time specified in the contract.*

***Article 19 Contractor’s drawings and execution studies***

*19.1 add to Article 19.1:*

*(d) The Contractor shall prepare and keep up-to-date a complete set of As-Built records showing the precise locations, sizes and details of all the work executed. These drawings shall be kept on site. They shall be available to the Supervisor’s Representative at any time.*

*The Contractor shall prepare two hard copies of as built-design documentation/ drawings and Operation and Maintenance Manuals. Two hard copies and digital format shall be supplied to the Supervisor’s Representative prior to the commencement of the Tests on Completion.*

*In addition, the Contractor shall supply to the Supervisor’s Representative as-built design of the works, showing all works as executed, and submit them to the Supervisor’s Representative for review. The contractor shall obtain the consent of the Supervisor’s Representative as to their size, the referencing system, and other relevant details.*

*Prior to the issue of any Provisional Acceptance, the contractor shall supply to the Supervisor’s Representative the specified numbers and types of copies of the relevant as-built design built-design documentation/ drawings and Operation and Maintenance Manuals as well as all warranties and/or guarantees and operation manuals for the installed plant and equipment, in accordance with the Technical Requirements. The works shall not be considered to be completed for the purposes of acceptance under Articles 57 to 62 of the General Conditions until the Supervisor’s Representative has received these documents.*

*19.7 All documents to be provided by the Contractor must be in English and language of the country.*

***Article 27 Demolished materials***

*27.2 No demolition materials will become the property of the Contracting Authority.*

***Article 29 Temporary works***

*29.2 The design of temporary works will be the responsibility of the Contractor subject to approval by the Supervisor’s Representative.*

**Article 34 Period of implementation of tasks**

34.1 The period of implementation of tasks is 90 days from the commencement date (submission of the Performance security).

*Site working hours shall be restricted according to the existing legislation in Montenegro, unless mentioned otherwise in the contract.*

*Public holidays will not be considered as reasons for extensions of time as per Article 35.*

*If a notified public holiday occurs on a Sunday, then the holiday shall be taken forward to the following Monday. The Contractor shall program his works to take account of these public holidays.*

**Article 36 Delays in the implementation of tasks**

36.1 The rate of liquidated damages for delays in the completion of works shall be 0.1% of the contract price for every day or part thereof which elapses between the end of the period of implementation of tasks and the actual date of completion, up to a maximum amount of 10 % of the contract price or, if the contract is subdivided into phases, 10 % of the price of the phase concerned.

36.3 *Add “Notice to Correct: If for any reason, which does not entitle the Contractor to an extension of time, the rate of progress of the Works or any Section is at any time, in the opinion of the Supervisor’s Representative, too slow to comply with the Time for Completion, the Supervisor’s Representative shall so notify the Contractor who shall thereupon take such steps as are necessary, subject to the consent of the Supervisor’s Representative, to expedite progress so as to comply with the Time for Completion. The Contractor shall not be entitled to any additional payment for taking such steps. If, as a result of any notice given by the Supervisor’s Representative under this Clause, the Contractor considers that it is necessary to do any work at night or on locally recognized days of rest, he shall be entitled to seek the consent of the Supervisor’s Representative so to do. Provided that if any steps, taken by the Contractor in meeting his obligations under this Clause, involve the Supervisor’s Representative in additional supervision costs, such costs shall, after due consultation with the Contractor, be determined by the Supervisor’s Representative and shall be recoverable from the Contractor by the Supervisor, and may be deducted by the Supervisor from any monies due or to become due to the Contractor and the Supervisor shall notify the Contractor accordingly.*

***Article 39 Work register***

*39.1 The Contractor shall maintain a Work Register. The Work Register shall be kept on the site by the Contractor, who shall enter in it at least the following information:*

*(a) Construction log book “Gradjevinski dnevnik” - the weather conditions, interruptions of work owing to inclement weather, hours of work, number and type of workmen employed on the site, materials supplied, equipment in use, equipment not in working order, tests carried out in situ, samples dispatched, unforeseen circumstances, safety, orders given to the Contractor;*

*(b) the Measurement book “Gradjevinska knjiga” - detailed statements of all the quantitative and qualitative elements of the work done and the supplies delivered and used, capable of being checked on the site and relevant in calculating payments to be made to the Contractor.*

*Work register shall be kept in English and local language in accordance with the local legislation.*

*39.2 The detailed statements of the quantitative elements of the work done shall be incorporated in the works register, but shall not be indicated as approved until the corresponding detailed statements of the qualitative elements are to the satisfaction of the Supervisor’s Representative.*

**Article 40 Origin and quality of works and materials**

40.1 All goods purchased under the contract may originate in any eligible source country, except where an international embargo or sanction by the United Nations, the European Union or the German Government applies.

For these purposes, ‘origin’ means the place where the goods are mined, grown, produced or manufactured and/or from which services are provided. The origin of the goods must be determined according to the EU Customs Code or the applicable international agreement.

When importing goods, any change in the specified origin must be pointed out to the project supervisor and approved by him.

*40.2 The works and the objects, appliances, equipment or materials used in their construction must comply with the standards of the country and technical documentation attached to the Contract.*

*The standards, requirements and regulations referred to in the documents contained in the technical documentation shall be the minimum criteria to be applied for the acceptance of the completed work.*

*Not more than thirty (30) days after the award date the Contractor shall submit a detailed Quality Assurance Management System in accordance with EN ISO 9001 and Montenegro standards to be inserted for review and approval by the Supervisor’s Representative. The System shall cover the quality assurance of all aspects of the Works, and contain, as a minimum, the following items:*

* *Organisation chart for quality control*
* *List of Contractor`s staff to be engaged in quality control and materials testing together with details of their relevant experience*
* *List of materials and facilities which will be inspected and tested by the Contractor at stages during implementation of the Works as part of his quality control, together with inspection procedures and test types*
* *Certificates of materials*
* *Documentation of surface treatment (corrosion protection)*
* *Relevant certificates on supplied materials.*
* *Detailed checklist for all works. The checklist shall be for the Contractors own use, documenting the Contractors own quality control of all works.*

*The plan may be supplemented with additional items from time to time as requested by the Supervisor’s Representative.*

*The approved Quality Assurance Management System shall be followed throughout the performance of the Contract, unless the Supervisor’s Representative to the contrary issues specific approvals or instructions. Any approvals of the Supervisor’s Representative shall not relieve the Contractor of his obligation to ensure that the Works comply with the requirements of the Contract.*

*Quality assurance records, test certificates, reports and daily records of on-site testing and inspection shall be kept on site during the works, and the results shall be certified by the responsible member of the Contractor's staff.*

*40.3 The Contractor shall seek from the Supervisor’s Representative the preliminary technical approval for the type, design and incorporation of locksmiths, flooring, electrical, mechanical and related works. Such request shall be submitted at least 1 month before ordering such specific materials and equipment.*

***Article 41 Inspection and testing***

*41.1 The Contractor is responsible for his own testing and quality control as specified in the General and Special Technical Specifications. The Supervisor’s Representative will at regular interval inspect and test materials and completed work for compliance with the specified requirements, and, where applicable the various specified judgement plans, will be applied. The testing frequencies and sample and lot sizes for routine testing shall be at the Supervisor’s Representative discretion.*

*All sections of completed work shall be submitted to the Supervisor’s Representative for routine inspection and testing, and the Contractor shall not cover up or construct any work on top of sections of completed work before being advised by the Supervisor’s Representative of the outcome of his tests and inspection. The Contractor shall arrange the submission of work for testing in a manner as will afford the Supervisor’s Representative reasonable opportunity for inspecting and testing.*

**Article 43 Ownership of plant and materials**

43.2 The equipment, temporary structures, plant and materials on the site shall for the duration of the execution of the works, be vested in the contracting authority.

**Article 44: General principles for payments**

44.1 Payments shall be made in euro.

44.3 By derogation, pre-financing payment to the contractor for the lump-sum advance shall be made within 30 days. Other pre-financing payments to the contractor shall be made within 90 days. Interim payments to the contractor of the amounts due under each of the interim payment certificates approved by the supervisor shall be made within 90 days, and the final payment to the contractor of the amounts due after the final statement of account issued by the supervisor shall be made within 90 days.

**Article 46 Pre-financing (Advance Payment Security)**

46.1 *Pre-financing may be granted to the Contractor, at his request.*

46.2 *The lump-sum advance in respect of article 46.1(a) shall not exceed 20% of the original contract price.*

46.8 Repayment of the pre-financing shall take the form of deductions based on monthly claims.

1. The flat‑rate pre-financing (maximum of 10 %) shall be repaid by means of deductions from instalments and, if necessary, the balance due to the contractor. This repayment shall begin with the first instalment and be completed, at the very latest, by the time 80 % of the amount of the contract has been paid.

Repayment shall be made in the same currency as the pre-financing.

The amount to be deducted from each instalment shall be calculated using the following formula:



where:

R = the amount to be repaid

Va = the total amount of pre-financing

Vt = the initial contract amount

D = the amount of the instalment.

The result is rounded up to two decimal places.

1. The pre-financing for plant, machinery and tools — and the pre-financing for other major prior outlays (20 % maximum) — shall be repaid by means of deductions from instalments and, if necessary, the balance due to the contractor. Repayment shall begin with the first instalment and end, at the very latest, by the time 90 % of the amount of the contract has been paid.

The amount to be deducted from each instalment shall be calculated using the following formula:



where:

R = the amount to be repaid

Va = the total amount of pre-financing

Vt = the initial contract amount

D = the amount of the instalment.

**Article 47 Retention monies**

47.1 *The amount of retention money on interim payments by way of guarantee that the Contractor’s obligations will be met during the defects liability period is ten per cent (10%) of each interim payment.*

**Article 48 Price revision**

48.1 Prices are fixed and shall not be revised.

**Article 49 Measurement**

49.1 This is a unit-price contract.

Under the conditions imposed by the particular conditions and general conditions, the amounts due shall be calculated through the following tranches, expressed as percentage of the contract price:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Percentage** | **Nature** | **Timing** |
| 1. | 20% | Advance payment | After conclusion of the contract |
| 2. | 35% | Interim payment upon completion of 45% of construction works | After the supervisor approves Interim Payment Certificate |
| 3. | 35% | Interim payment upon completion of 90% of construction works | After the supervisor approves Interim Payment Certificate deducted on account of the pre-financing (advance) repayment andretention sum amounts to 10% of the contract price at the moment of the Certificate of Provisional Acceptance |
| 4. | 10% | Retention money of Article 47 | Within 45 days of the issuing of the signed Final Statement of Account |

**Article 50 Interim payments**

50.1 The Contractor shall in addition to the invoice for the interim payment mentioned under Article 44.3, also submit a soft copy version. Any spread sheets which the Contractor may wish to include in his invoice for interim payment shall be in a format where formulas are readable. Interim payment certificate shall be supported by approved Monthly progress report, copy of Measurement book and Certificates of origin.

50.2 Funds are not paid to the Contractor for facilities and materials intended for permanent works, but which have not yet been installed.

50.7 The interim payments will be paid as determined in Article 49.1 of these special conditions.

**Article 51 Final statement of account**

*51.1 The contractor shall, submit to the supervisor a draft final statement of account when it applies for the Final Acceptance Certificate. In order to enable the supervisor to prepare the final statement of account, the draft final statement of account is submitted with supporting documents showing in detail the value of the work done in accordance with the contract and all further sums which the contractor considers to be due to it under the contract.*

*51.2 Within 30 days from issuing the final acceptance certificate referred to in Article 62, the supervisor shall prepare and signed the final statement of account.*

**Article 59 Partial acceptance**

*59.3 The Defects Liability Period provided for in Article 61 shall run from the date of provisional acceptance was granted.*

**Article 61 Defects liability**

61.1 The defects liability period is defined as the period commencing on the date of provisional acceptance, during which the contractor is required to make good any defect in, or damage to, any part of the work which may appear or occur during this period as notify by the supervisor or the contracting authority. The rights and obligations of the parties with regard to this defects liability period are laid down in Article 61 of the general conditions.

61.7 The duration of the defects liability period is one year (365 days).

**Article 68 Dispute settlement**

68.4 Any dispute arising out of or relating to this contract which cannot be settled otherwise shall be referred to the exclusive jurisdiction of the courts of Germany, in accordance with the national legislation of the state.

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| Section X. Contract Forms |

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WB6 Regional Challenge Fund Text

Description automatically generated

Notification of Award

**Letter of Acceptance**

*[Date]*

To: *[name and address of the Contractor]*

This is to notify you that your Bid dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Contract Data]* for the Contract Price *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Bidders, is hereby accepted by our institution.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included in Section X, Contract Forms, of the Bidding Documents.

Authorized Signature:

Name and Title of Signatory:

Name of institution:

**Attachment: Contract Agreement**

|  |
| --- |
| Contract Agreement |

THIS AGREEMENT made the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_, between the **Western Balkans 6 Chamber Investment Forum** (hereinafter “the Employer”), of the one part, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter “the Contractor”), of the other part:

WHEREAS the Employer desires that the Works known as adaptation works on existing building facilities of schools in Budva and in Podgorica should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein, in the sum of [*insert Contract Price or Ceiling in words and figures, expressed in the Contract currency(ies)*] (hereafter called “the Contract Price”).

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.

1. The Letter of Acceptance;
2. The Letter of Bid (including the signed Declaration of Undertaking);
3. The addenda Nos \_\_\_\_\_\_\_\_(if any);
4. The Particular Conditions
5. The General Conditions;
6. The Specifications;
7. The Drawings;
8. The completed Schedules; and
9. The Contractor’s Bid and any other documents forming part of the contract.

3. In consideration of the payments to be made by the Employer to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.

4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on the day, month and year specified above.

Signed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (for the Employer)

Signed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (for the Contractor)

Bid Security

**Beneficiary: *Western Balkans 6 Chamber Investment Forum (WB6 CIF)***

**Date:** *[Insert date of issue]*

**BID GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[Insert name and address of the bidder, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called “the Applicant”) has submitted or will submit to the Beneficiary its bid (hereinafter called “the Bid”) for the execution of *[Insert project, object of the contract/brief description of the works]* under Invitation for Bids No. *[Insert National Competitive Bidding number]* (“the NCB”).

We, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary, waiving all objections and defences, any sum or sums not exceeding in total an amount of *[Insert guarantee amount and currency in words and figures]* upon receipt by usof the Beneficiary’s first demand, supported by the Beneficiary’s statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:

(a) Has withdrawn its Bid during the period of bid validity set forth in the Applicant’s Bid Submission Form (the Bid Validity Period”); or

(b) Having been notified of the acceptance of its Bid by the Beneficiary during the Bid Validity Period, (i) has failed to sign the contract agreement, or (ii) has failed to furnish the performance security, in accordance with the Instructions to Bidders (“ITB”) of the Beneficiary’s bidding document.

This guarantee shall expire not later than *[Insert expiry date][[6]](#footnote-6)*.

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

*[As preferred option regarding guarantee rules insert[[7]](#footnote-7):* This guarantee is subject to the Uniform Rule for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.*]*

|  |  |  |
| --- | --- | --- |
| Place, date |  | Guarantor’s authorized signature(s) |

Advance Payment Security

**Beneficiary: *Western Balkans 6 Chamber Investment Forum (WB6 CIF)***

**Date:** *[Insert date of issue]*

**ADVANCE PAYMENT GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[Insert name and address of contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called “the Applicant”) has entered into Contract No. *[Insert reference number of the contract]* dated *[Insert contract date]* with the Beneficiary, for the execution of *[Insert object of the contract and brief description of Works]* (hereinafter called “the Contract”). Furthermore we understand that, according to the conditions of the Contract, an advance payment in the sum of *[Insert amount and currency in words and figures][[8]](#footnote-8)*, representing *[Insert percentage in words and figures]* % of the contract price, is to be made against an advance payment guarantee.

Waiving all objections and defences, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary, any sum or sums not exceeding in total an amount of *[Insert guarantee amount and currency in words and figures]* upon receipt by usof the Beneficiary’s first demand, supported by the Beneficiary’s statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for the demand or the sum specified therein.

The advance payment guarantee shall come into force and effect as soon as the advance payment has been credited to the Applicant on its account. Minor deductions of the above mentioned amount notably due to bank fees shall have no effect on the entry into force.

*[For guarantees issued in foreign currency insert the following:*

In the event of any claim under this guarantee, payment shall be effected to KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00), for the account of *[Insert name of the Purchaser and the Purchaser’s country]*.

*[For guarantees issued in local currency insert the following:*

In the event of any claim under this guarantee, payment shall be effected to *[Insert the account on which payments are to be made]*, for the account of *[Insert name of the Purchaser and the Purchaser’s country]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) per cent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the *[Insert date]*, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date, by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

*[As preferred option regarding guarantee rules insert[[9]](#footnote-9):* This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.*]*

Performance Security

**Beneficiary: *Western Balkans 6 Chamber Investment Forum (WB6 CIF)***

**Date:** *[Insert date of issue]*

**PERFORMANCE GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[Insert name and address of contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called “the Applicant”) has entered into Contract No. *[Insert reference number of the contract]* dated *[Insert contract date]* with the Beneficiary, for the execution of *[Insert object of the contract and brief description of Works]* (hereinafter called “the Contract”). Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required for *[Insert percentage in words and figures]* % of the contract price.

Waiving all objections and defences, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary, any sum or sums not exceeding in total an amount of *[Insert guarantee amount and currency in words and figures][[10]](#footnote-10)* upon receipt by usof the Beneficiary’s first demand, supported by the Beneficiary’s statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for the demand or the sum specified therein.

*[For guarantees issued in foreign currency insert the following:*

In the event of any claim under this guarantee, payment shall be effected to KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00), for the account of *[Insert name of the Purchaser and the Purchaser’s country]*.

*[For guarantees issued in local currency insert the following:*

In the event of any claim under this guarantee, payment shall be effected to *[Insert the account on which payments are to be made]*, for the account of *[Insert name of the Purchaser and the Purchaser’s country]*.

This guarantee shall expire not later than *[Insert expiry date][[11]](#footnote-11)*.

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

*[As preferred option regarding guarantee rules insert[[12]](#footnote-12):* This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.*]*

|  |  |  |
| --- | --- | --- |
| Place, date |  | Guarantor’s authorized signature(s) |

Retention Money Security

**Beneficiary: *Western Balkans 6 Chamber Investment Forum (WB6 CIF)***

**Date:** *[Insert date of issue]*

**RETENTION MONEY GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[Insert name and address of contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called “the Applicant”) has entered into Contract No. *[Insert reference number of the contract]* dated *[Insert contract date]* with the Beneficiary, for the execution of *[Insert object of the contract and brief description of Works]* (hereinafter called “the Contract”).

Furthermore we understand that, according to the conditions of the Contract, the Beneficiary retains moneys up to the limit set forth in the Contract (“the Retention Money”), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, payment of *[insert the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security]* is to be made against a Retention Money guarantee.

Waiving all objections and defences, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert guarantee amount and currency in words and figures][[13]](#footnote-13)* upon receipt by us of the Beneficiary’s first demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or show grounds for the demand or the sum specified therein.

The retention money guarantee shall come into force and effect as soon as the second half of the Retention Money has been credited to the Applicant on its account. Minor deductions of the above mentioned amount notably due to bank fees shall have no effect on the entry into force.

*[For guarantees issued in foreign currency insert the following:*

In the event of any claim under this guarantee, payment shall be effected to KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00), for the account of *[Insert name of the Purchaser and the Purchaser’s country]*.

*[For guarantees issued in local currency insert the following:*

In the event of any claim under this guarantee, payment shall be effected to *[Insert the account on which payments are to be made]*, for the account of *[Insert name of the Purchaser and the Purchaser’s country]*.

This guarantee shall expire not later than *[Insert expiry date][[14]](#footnote-14)*.

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

*[As preferred option regarding guarantee rules insert[[15]](#footnote-15):* This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.*]*

|  |  |  |
| --- | --- | --- |
| Place, date |  | Guarantor’s authorized signature(s) |

1. Capitalised terms used, but not otherwise defined in this Declaration of Undertaking have the meaning given to such term in KfW’s “Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partner Coun- tries”. [↑](#footnote-ref-1)
2. The PEA means the purchaser, the employer, the client, as the case may be, for the procurement of Consulting Services, Works, Plant, Goods or Non-Consulting Services. [↑](#footnote-ref-2)
3. In case ILO conventions have not been fully ratified or implemented in the Employer’s country the Applicant/Bidder/Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker’s organisations and e) non- discrimination. [↑](#footnote-ref-3)
4. In the case of a JV, insert the name of the JV. The person who will sign the application, bid or proposal on behalf of the Applicant/Bidder shall attach a power of attorney from the Applicant/Bidder. [↑](#footnote-ref-4)
5. In case ILO conventions have not been fully ratified or implemented in the Employer’s country the Applicant/Bidder/Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker’s organisations and e) non-discrimination. [↑](#footnote-ref-5)
6. Pursuant to ITB Clause 19.3 the guarantee must be valid for at least 42 days beyond the bid validity. [↑](#footnote-ref-6)
7. In the case the issuing bank will not add the preferred option, the following must be added instead: This guarantee is governed by the laws of *[Insert country of jurisdiction]*. Note: the country of jurisdiction shall be the country where the bank’s branch issuing the guarantee is physically located. [↑](#footnote-ref-7)
8. This guarantee must be issued in the contract currency only. [↑](#footnote-ref-8)
9. In the case the issuing bank will not add the preferred option, the following must be added instead: This guarantee is governed by the laws of *[Insert country of jurisdiction]*. Note: the country of jurisdiction shall be the country where the bank’s branch issuing the guarantee is physically located. [↑](#footnote-ref-9)
10. This guarantee shall be issued in the contract currency only. [↑](#footnote-ref-10)
11. The guarantee shall be valid for at least 28 days from the date of contractual contract completion (including warranty obligations). [↑](#footnote-ref-11)
12. In the case the issuing bank will not add the preferred option, the following must be added instead: This guarantee is governed by the laws of *[Insert country of jurisdiction]*. Note: the country of jurisdiction shall be the country where the bank’s branch issuing the guarantee is physically located. [↑](#footnote-ref-12)
13. The Guarantor shall insert an amount representing the amount of the second half of the Retention money or if the amount guaranteed under Performance Guarantee when the Taking-Over Certificate is issued, is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and denominated in the contract currency(ies) only. [↑](#footnote-ref-13)
14. Insert the same expiry date as set forth in the performance security, representing the date twenty-eight days after the completion date described in the Appendix to Bid. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to an one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.” [↑](#footnote-ref-14)
15. In the case the issuing bank will not add the preferred option, the following must be added instead: This guarantee is governed by the laws of *[Insert country of jurisdiction]*. Note: the country of jurisdiction shall be the country where the bank’s branch issuing the guarantee is physically located. [↑](#footnote-ref-15)