**VOLUME 2 - 1**

SECTION 3

PARTICULAR CONDITIONS OF CONTRACT

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| Particular Conditions of Contract (PCC) |

The following Particular Conditions of Contract shall supplement the GCC. Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

|  |  |  |
| --- | --- | --- |
| **1.** | **General Provisions** | |
|  |  |  |
|  | **1.1** | **Definitions** |
|  |  |  |
|  |  | 1.1.1.1 ***Replace the Definition for “Contract” with:*** |
|  |  |  |
|  |  | “Contract” means the Contract Agreement and the documents listed in the Article 2 therein. |
|  |  |  |
|  |  | 1.1.1.3 ***Replace the Definition for “Letter of Acceptance” with:*** |
|  |  |  |
|  |  | A “Letter of Acceptance” will not be issued. All references to the “Letter of Acceptance” shall be deemed to mean the “Contract Agreement”. |
|  |  |  |
|  |  | 1.1.1.4 ***Replace the Definition for “Letter of Tender” with:*** |
|  |  |  |
|  |  | “Letter of Tender” should be read as “Tender Form” |
|  |  |  |
|  |  | 1.1.1.5 ***Replace the Definition for “Employer’s Requirements” with:*** |
|  |  |  |
|  |  | The "Employer's Requirements" comprise Volume 3-1 and Volume 5 / Lot 1 - WWTP of the Tender Dossier, as included in the Contract, and any additions and modifications made to them in accordance with the Contract. |
|  |  |  |
|  |  | 1.1.1.6 ***Replace the Definition for “Schedules” with:*** |
|  |  |  |
|  |  | The "Schedules" comprise Volume 4 of the Tender Dossier, completed by the Contractor and submitted with the Letter of Tender, as included in the Contract, and any additions and modifications made to them in accordance with the Contract.  1.1.1.7 ***Replace the Definition for “Contractor’s Proposal” with***  The “Contractor’s Proposal” means the document entitled proposal, which the Contractor submitted with the Letter of Tender as included in the Contract, excluding Schedules. |
|  |  |  |
|  |  | 1.1.1.8 ***Insert the following sentence at the end of the Definition for “Tender” with:*** |
|  |  |  |
|  |  | The word Tender is synonymous with Bid and the words Appendix to Tender with Appendix to Bid, and the words Tender Documents with Bidding Documents. |
|  |  |  |
|  |  | ***Add new Definition “PRAG”:*** |
|  |  |  |
|  |  | 1.1..1.11 “PRAG” means the latest version of “Practical Guide to contract procedures for EU external actions” available on the following web-page: http://ec.europa.eu/europeaid/prag/document. |
|  |  |  |
|  |  | ***Add new Definition “Addendum to Contract”:*** |
|  |  |  |
|  |  | 1.1.1.12 “Addendum to Contract” means a document prepared by the Employer which is to be signed by the Contractor in accordance with PRAG (Section 5.7) as and when required for refinancing purposes by the Employer. This requirement does not relieve the parties from their responsibilities under the Contract. |
|  |  |  |
|  |  | ***Add new Definition “Construction Diary”:*** |
|  |  |  |
|  |  | 1.1.1.13 “Construction Diary” („Građevinski dnevnik“ as defined in Montenegrin Construction Law), being a synonymous to " Building Log Book" (to be kept as per the Sub-Clause 4.25 Work Register) is a document which in the period of works performance, permanently and day to day is managed on the construction site and in which as a minimum are included the following data: date, working time, weather conditions, the number, the structure and qualification of the labour and the Contractor personnel, the assigned construction equipment, plants and Contractors equipment, description of the performed works with precise indication of the items according to Breakdown of prices contained in the Schedule of Prices, different types of information which the Contractor and the Engineer exchange, guidelines, orders of the Engineer and similar.  The Contractor manages the Construction Diary in original and copy, where upon the original is for the Engineer and the copy remains for the Contractor.  In each moment the Construction Diary should be on disposal to the Engineer in order to be able to make checks, comments, corrections, remarks and signature. |
|  |  |  |
|  |  | ***Add new Definition “Construction Book”:*** |
|  |  |  |
|  |  | 1.1.1.14 "Construction Book" (“Građevinska knjiga” as defined in Montenegrin Construction Law), being a synonymous to “Works Register” (to be kept as per the Sub-Clause 4.25 Work Register) is a document which, during the period of performance on Construction works is permanently managed on the construction site, and in which based on the measurements which are executed by both, the Contractor and the Engineer or are performed by the Contractor, are checked and approved by the Engineer, the quantities of the performed construction works are including by items within the Breakdown of prices contained in the Schedule of Prices.  The Contractor manages the Construction Book in original and copy, where upon the original is for the Engineer and the copy remains for the Contractor.  In each moment the Construction Book should be on disposal to the Engineer in order to be able to make checks, comments, corrections, remarks and signature. The Construction Book shall be basis for preparation of the Interim Payment Certificates. |
|  |  |  |
|  | **1.1.2** | **Parties and Persons** |
|  |  |  |
|  |  | 1.1.2.2 ***Add at the end of the Definition “ Employer”:*** |
|  |  |  |
|  |  | “Employer” also means “Contracting Authority” (as used under PRAG and in the tender documents) and vice versa. |
|  |  |  |
|  |  | 1.1.2.6 ***Add at the end of the Definition “Employer’s Personnel”:*** |
|  |  |  |
|  |  | Subject to notification, Employer’s Personnel may include persons acting for the Beneficiary. |
|  |  |  |
|  |  | ***Add the following Definition “Beneficiary”:*** |
|  |  |  |
|  |  | 1.1.2.11 “Beneficiary” means the final beneficiary of the contract works and is the entity named as such in the Appendix to Tender and the legal successors in title to this person. |
|  |  |  |
|  | **1.1.3** | **Dates, Tests, Periods and Completion** |
|  |  |  |
|  |  |  |
|  |  | 1.1.3.1 “***Replace the number “28” with “11”.*** |
|  |  | ***Add the following Definition “Signature Date”:*** |
|  |  |  |
|  |  | 1.1.3.10 “Signature Date” means the date of signature of the Contract by the last party. |
|  |  |  |
|  | **1.1.6** | **Other Definitions** |
|  |  |  |
|  |  | 1.1.6.1 ***In the Definition “Contractor’s Documents after ‘computer programs and other software’, add:*** |
|  |  |  |
|  |  | “(including the coding)” |
|  |  |  |
|  |  | ***In the 3rd line, after the word “nature” insert the following:*** |
|  |  |  |
|  |  | “,including documents created on disks, diskettes, tapes or other electronically readable media,” |
|  |  |  |
|  |  | 1.1.6.2 ***Replace the entire Definition “Country” with:*** |
|  |  |  |
|  |  | “Country” is Montenegro” |
|  |  |  |
|  |  |  |
|  |  | 1.1.6.6 ***Add at the end of the Definition “Performance Security”:*** |
|  |  |  |
|  |  | “Performance Security” is synonymous to “Performance Guarantee” as used under PRAG and in the tender documents. |
|  |  |  |
|  |  | 1.1.6.7 ***Add at the end of the Definition “Site”:*** |
|  |  |  |
|  |  | Additional working areas required by the Contractor for the sole purpose of this contract, and the areas required for any temporary traffic diversions, shall be arranged and provided by the Contractor, but shall be deemed to form part of the Site. |
|  |  |  |
|  |  | ***Add the following Definition “Eligible Country”:*** |
|  |  |  |
|  |  | 1.1.6.10 "Eligible Country" means the Member States of the European Union or a country or territory of the regions covered and/or authorised by the specific instruments applicable to the IPA programme, [*Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing the Instrument for Pre-Accession Assistance (IPA). (OJ L 210 of 31/07/2006)*], under which the contract is financed. |
|  |  |  |
|  |  | ***Add the following Definition “Notice of Dissatisfaction”:*** |
|  |  |  |
|  |  | 1.1.6.11 “Notice of Dissatisfaction” means the notice given by either Party to the other under Sub-Clause 20.4 [Obtaining Dispute Adjudication Board’s Decision] indicating its dissatisfaction and intention to commence arbitration. |
|  |  |  |
|  | **1.2** | **Interpretation** |
|  |  |  |
|  |  | ***In Sub-Clause 1.2, after sub-paragraph (d), insert the following sub-`paragraphs:*** |
|  |  |  |
|  |  | (e) Wherever throughout the Contract reference is made to the date of the Letter of Acceptance, the date considered shall be the Signature Date.  (f) In these Conditions, provisions including the expression "Cost plus profit" require this profit to be one-twentieth (5%) of this Cost. |
|  |  |  |
|  | **1.5** | **Priority of Documents** |
|  |  |  |
|  |  | ***Replace the entire Sub-Clause 1.5 with:*** |
|  |  |  |
|  |  | The documents forming the Contract are to be taken as mutually explanatory of one another. For the purpose of interpretation, the priority of the documents shall be as defined in the Contract Agreement. If an ambiguity or discrepancy is found in the documents, the Engineer shall issue any necessary clarification or instruction. |
|  |  |  |
|  | **1.6** | **Contract Agreement** |
|  |  |  |
|  |  | ***Delete the first sentence of the Sub-Clause 1.6 and replace with:*** |
|  |  |  |
|  |  | Contract preparation and signature procedure is described in the Item 2.9.2. Contract Preparation and Signature of the PRAG |
|  |  |  |
|  | **1.10** | **Employer's Use of Contractor's Documents** |
|  |  |  |
|  |  | *In the second sentence, after the word “Employer”, insert:* |
|  |  |  |
|  |  | and the Beneficiary, |
|  |  |  |
|  |  | *and, after "Contractor’s Documents", insert:* |
|  |  |  |
|  |  | and other design documents made by (or on behalf of) the Contractor. |
|  |  |  |
|  |  | *In the last sentence, after the word “Employer", insert:* |
|  |  |  |
|  |  | and the Beneficiary |
|  |  |  |
|  | **1.12** | **Confidential Details** |
|  |  |  |
|  |  | ***Replace the entire Sub-Clause 1.12 with:*** |
|  |  |  |
|  |  | The Contractor’s and the Employer’s Personnel shall disclose (to each other) all such confidential and other information as may be reasonably required in order to verify the Contractor’s compliance with the Contract and allow its proper implementation. |
|  |  |  |
|  |  | The Contractor shall treat the details of the Contract as private and confidential, save insofar as may be necessary for the purposes thereof, and shall not publish or disclose the same or any particulars thereof in any trade or technical paper or elsewhere without the previous consent in writing of the Employer. If any dispute arises as to the necessity of any publication or disclosure for the purpose of the Contract the same shall be referred to the Employer, whose decision shall be final. |
|  |  |  |
|  | **1.13** | **Compliance with Laws** |
|  |  |  |
|  |  | ***In Sub-Clause 1.13, paragraph (a), replace the first two occurrences of ‘Employer’ with ‘Beneficiary’.*** |
|  |  | ***In paragraph (b), 1st line, after “Contractor” insert:*** |
|  |  |  |
|  |  | “(in his or the Beneficiary’s name, as the authority in charge may request)” |
|  |  |  |
|  |  | ***In paragraph (b), last phrase, after “Employer” insert “and the Beneficiary”*** |
|  |  |  |
|  |  |  |
| **2** | **The Employer** | |
|  |  |  |
|  | **2.2** | **Permits, Licences or Approvals** |
|  |  |  |
|  |  | ***In Sub-Clause 2.2, at the beginning of first line, after “The Employer”, add:*** |
|  |  |  |
|  |  | “and/or the Beneficiary.” |
|  |  |  |
|  |  | ***Add at the end of Sub-Clause****:*  The Employer and the Beneficiary shall be responsible for applying for and receiving the Construction Permit based on the Design and all other belonging documents which shall be elaborated by the Contractor timely and within the scope of the Contract. |
|  |  |  |
|  |  | ***Add new Sub-Clause 2.6:*** |
|  |  |  |
|  | **2.6** | **The Beneficiary** |
|  |  |  |
|  |  | “The Employer may assign any of his rights or duties under the Contract to the Beneficiary. The Employer shall notify, in accordance with Sub-Clause 1.3 [Communications] of Conditions of Contract, the Contractor and the Engineer of the powers delegated.  The Beneficiary shall have no authority to amend the Contract, to issue instructions under it, or to assign any part of the Contract or any benefit or interest in or under it, except as may be agreed by the Employer and the Beneficiary.  If the Contractor takes any action pursuant to an Beneficiary’s communication without first obtaining confirmation of the communication from the Employer and/or the Engineer, the Contractor shall not be entitled to additional payment, or an extension of the Time for Completion, and the Employer shall be discharged from all liability in connection with any claim in respect of the Beneficiary’s communication. This Particular Condition 2.6 will remain in effect throughout the life of the Contact, including after taking over of the Works, and the possible transfer of title and ownership of the Works to the Beneficiary has occurred.  Whenever the Employer takes over the Works or a Section or other part of the Works under Clause 10 [Employer’s Taking Over], or whenever, the ownership of any materials, Plant or Works is transferred to the Employer, such Works, Section, Plant or Materials are simultaneously transferred to the Beneficiary that shall undertake all Employer’s responsibilities under the law, in that respect.” |
|  |  |  |
| **3** | **The Engineer** | |
|  |  |  |
|  | **3.1** | **Engineer’s Duties and Authority** |
|  |  |  |
|  |  | ***Add at the end of the Sub-clause 3.1:*** |
|  |  |  |
|  |  | “The Engineer shall obtain the specific approval of the Employer before taking action under the following Sub-clauses of these Conditions:   1. Sub-clause 3.2: delegation of authority; 2. Sub-clause 3.5: agreeing or determining any matter, which will increase the Contract Price; 3. Sub-Clause 4.4(b): giving consent to a subcontractor for a subcontract for which a different subcontractor is named in the Contract; 4. Sub-clause 5.2: approving the Contractors Main Design (for the WWTP); 5. Sub-Clause 8.4: instructing, agreeing or determining an extension of the Time for Completion; 6. Clause 13: instructing a Variation which is expected to increase the Contract Price or in any substantial way change the scope, character or quality of the Works and in particular any instruction concerning the use of the provisional sums. 7. approves additional costs under sub-clause 13.7; 8. Sub-clause 10.1: before issuing any Taking-Over Certificate; 9. Sub-clause 11.9: before issuing the Performance Certificate.   Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibilities under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. If such instruction constitutes a Variation, it shall be evaluated in accordance with Clause 13.  The Engineer is required to continuously monitor the Contractor’s compliance with the proposed and approved Safety Methodology, and shall ensure certification of compliance. |
|  |  |  |
|  | **3.5** | **Determinations** |
|  |  |  |
|  |  | ***Replace second sentence of the first paragraph with:*** |
|  |  |  |
|  |  | “If agreement is not achieved, the Engineer shall, within 28 days after failure to reach agreement, make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.” |
|  |  |  |
|  |  | ***Add new Sub-Clause 3.6:*** |
|  |  |  |
|  | **3.6** | **Management Meetings** |
|  |  |  |
|  |  | “The Engineer or the Contractor’s Representative may require the other to attend a management meeting in order to review the arrangements for future work. The Engineer shall record the business of management meetings and shall supply copies of the records to those attending the meeting and to the Employer for review and comments within 2 working days.  Progress meetings shall be held at regular intervals but not exceeding once a month. These meetings shall be attended by the Contractor’s Representative and other key personnel, site agents of Sub-Contractors and the Engineer. The Employer may but is not obliged to attend the progress meetings.  The agenda for such meetings shall cover a review of progress attained, a review of schedules and plans for future activities, the status of staffing, engineering, safety, equipment, material supply, payments, current and anticipated difficulties, interface with other Contractors, claims for extras, and other pertinent topics. The Progress Report produced by the Contractor under Sub-Clause 4.21 [Progress Reports] for the previous month shall be issued to the Engineer 5 days before the Progress Meeting and shall be approved (or otherwise) by the Engineer during such meetings.  The minutes of meetings signed by the Contractor, the Engineer and the Employer (if attending) shall constitute an official record of matters discussed, but shall not replace any requirement in the Contract for approvals, instructions, decisions or notices to be submitted in writing.  The Contractor’s Representative shall, when so requested with reasonable notice, attend any other meetings convened by the Engineer to review Works progress or other relevant matters together with representatives of the Employer and/or any other representatives of concerned authorities.”  The Contractor’s Representative shall attend Management Meetings and Progress Meetings at dates and times agreed with the Engineer throughout the continuance of the Contract.  The Contractor’s Site Manager shall attend weekly site meetings with the Engineer throughout the continuance of the Contract.” |
|  |  |  |
|  |  | ***Add new Sub-Clause 3.7:*** |
|  |  |  |
|  | **3.7** | **Accommodation for the Engineer** |
|  |  |  |
|  |  | If applicable, within 14 days from the commencement of the works the Contractor shall provide the offices and equipment required by the Engineer’s staff, according to the Breakdown of tender price and Employer’s Requirements. Until such offices and equipment are provided, the Contractor shall make available, free of charge, temporary offices necessary for normal implementation of the Engineer duties. |
|  |  |  |
| **4** | **The Contractor** | |
|  |  |  |
|  | **4.1** | **Contractor’s General Obligations** |
|  |  |  |
|  |  | ***Insert after the first paragraph the following text:*** |
|  |  |  |
|  |  | The Contractor shall carry out and be responsible for design of all temporary works.  Drawings submitted to the Engineer for approval shall be submitted in sufficient time to afford the Engineer adequate opportunity to examine, check and call for any necessary modification by the Contractor before approval is given while complying with deadline stipulated in the Sub-Clause 5.2.  No examination by the Engineer of any drawings submitted by the Contractor or the approval expressed by the Engineer thereto shall relieve the Contractor of any liability imposed by any provisions of the Contract, or of his responsibilities under the Contract. |
|  |  |  |
|  |  | ***Add to Sub-Clause 4.1 the following:*** |
|  |  |  |
|  |  |  |
|  |  | The Contractor shall promptly notify the Employer and the Engineer of any error, omission, fault or any other defect in the Design, Drawings, Technical Specifications and geodetic data (benchmarks, control points and structures) or other information provided for the Works, which the Contractor discovers during the process of execution of the Works. If the Contractor fails to do this and delays and other deviations from the Contract appear as a consequence of this, then the Contractor has no right to make claims for any costs and will be responsible for such consequences whenever the Employer suffers any of such damages.  The Contractor shall keep a Construction Diary in the form acceptable to the Engineer. The Construction Diary shall be kept daily, the pages shall have running numbering and the Construction Diary shall be signed daily by the Contractor and the Engineer. Distribution of copies of the pages shall be as instructed by the Engineer.  The Contractor manages the Construction Book in original and a copy, where the original is for the Engineer and the copy remains for the Contractor.  At each moment, the Construction Book should be at the disposal of the Engineer in order to be able to make checks, comments, corrections, remarks and signature.  Throughout the construction of the Works, the Contractor shall provide and maintain for the site staff appropriate offices, stores, dining rooms, sanitary and health and safety facilities in accordance with the health, safety security and environmental plan approved by the Engineer. All operating and maintenance expenses connected therewith (lighting, heating, water supply, cleaning etc.) shall be borne by the Contractor. “  The Contractor may require land outside the Site for his offices, stores, workshops, fabrication plants etc. Those expenses and other costs shall be borne by the Contractor.”  The Contractor shall be responsible for obtaining and observing all necessary permits (excluding Building permit, which shall be obtained and provided by the Employer), licences or approvals including their payment, and all related costs. |
|  | **4.2** | **Performance Security** |
|  |  |  |
|  |  | ***After the first paragraph of Sub-clause 4.2 add:*** |
|  |  |  |
|  |  | “The Performance Security, submitted by the Contractor, shall be in the format given in Volume 2 of the Tender Dossier and shall be furnished by a bank registered in one of the Member States of the European Union or by a bank from a country approved by the Employer..” |
|  |  |  |
|  |  | ***Delete the 1st sentence of the 2nd paragraph and replace with:*** |
|  |  |  |
|  |  | “The Contractor shall, together with the return of the countersigned Contract, furnish the Employer with a Performance Security for the full and proper performance of the contract.” |
|  |  |  |
|  |  | ***Insert at the end of the third paragraph the following text:*** |
|  |  |  |
|  |  | Where more than one Taking-over Certificate is issued, the Performance Security shall remain in effect until the Works have been completed and any defects have been remedied with relation to the last section taken–over. |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  | ***Add at the end of the Sub-clause 4.2:*** |
|  |  |  |
|  |  | “Whenever, the Engineer determines an addition to the Contract Price amounting to more than ten (10%) percent of the Accepted Contract Amount, the Contractor, at the Engineer’s written request, shall promptly increase the value of the bank guarantee by an equal percentage.  The bank guarantee of a joint venture or consortium shall specify the name of the joint venture or consortium. The cost for complying with the requirements of this Clause shall be borne by the Contractor “ |
|  |  |  |
|  | **4.3** | **Contractor’s Representative** |
|  |  |  |
|  |  | ***Add the words:*** |
|  |  |  |
|  |  | If the Contractor’s Representative’s delegates are not fluent in the said language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Engineer. |
|  |  |  |
|  | **4.4** | **Subcontractors** |
|  |  |  |
|  |  | ***Insert at the beginning of the Sub-clause 4.4:*** |
|  |  |  |
|  |  | “The Contractor shall not subcontract any part of the works without the prior consent of the Engineer and afterwards the written authorization of the Employer. The elements of the Contract to be subcontracted and the identity of the subcontractors not named in the Contract Documents shall be notified to the Employer and the Engineer by the Contractor. After getting the approval of the Employer, the Engineer shall notify the Contractor of its decision within 14 days of receiving the Contractor’s request, stating its reasons if authorization is withheld.  The Contractor shall be responsible for the acts, defaults and negligence of his subcontractors and their agents or employees, as if they were the acts, defaults or negligence of the Contractor, his agents or employees. The approval by the Employer of the subcontracting of any part of the contract or of the subcontractor to perform any part of the works, after consent of the Engineer, shall not relieve the Contractor of any of his obligations under the contract.” |
|  |  |  |
|  |  | ***Replace the first sentence of the first paragraph with****:* |
|  |  |  |
|  |  | “The Contractor shall not subcontract above the percentage stated in the Appendix to Tender.” |
|  |  |  |
|  |  | ***Add at the end of the Sub-clause 4.4:*** |
|  |  |  |
|  |  | “(d) Where Subcontractors are named in the Contract Documents as carrying out certain activities, the Contractor may not change the scope or scale or limits of such activities without prior written approval of the Engineer.  The Contractor shall ensure that all its Subcontractors and suppliers are natural and/or legal person from one of the Eligible Source Countries as defined under Particular Condition, Sub-Clause 1.1.6.10 [Other Definitions]. Subcontractors must satisfy the eligibility criteria applicable for the award of the Contract and they cannot be in any of the situations excluding them from participating in contracts which are listed in the current Section 2.3.3 [Grounds for exclusion] of the Practical Guide to Contract Procedure for EU External Actions.  The Contractor shall ensure that the requirements imposed on the Contractor by Sub-Clause 1.12 [Confidential Details] apply equally to each Subcontractor.” |
|  |  |  |
|  | **4.6** | **Co-operation** |
|  |  |  |
|  |  | ***In Sub-Clause 4.6, sub-paragraph (a), after “Employer’s”, insert:*** |
|  |  |  |
|  |  | or the Beneficiary’s. |
|  |  |  |
|  |  | ***In sub-paragraph (b), after “Employer”, insert:*** |
|  |  |  |
|  |  | or the Beneficiary. |
|  |  |  |
|  |  | ***In last paragraph, first line, after “Employer” insert:*** |
|  |  |  |
|  |  | or the Beneficiary. |
|  |  |  |
|  | **4.8** | **Safety procedures** |
|  |  |  |
|  |  | ***Add the following sub-paragraphs (at the end of the Sub-clause 4.8):*** |
|  |  |  |
|  |  | (f) comply with all applicable safety legislation/regulation of Montenegro. Safety issues shall be on the agenda of all site meetings, and plans shall be jointly agreed between the Engineer and the Contractor’s Representative for minimising the risk of unsafe events and working practices in forthcoming work, The Site shall be a “hard hat” Site and safety vests/ jackets shall be worn at all times,  (g) submit to the Engineer and to the Employer a “Health and Safety Plan” for approval. The “Health and Safety Plan” shall follow the standards described in the relevant Montenegro legislation;  (h) shall report to the Engineer details of any accident as soon as possible after its occurrence. In the case of any fatality or serious accident the contractor shall, in addition, notify the Engineer immediately by the quickest available means. The Contractor shall also report such accident to the competent authority, whenever such report is required by law. |
|  |  |  |
|  | **4.9** | **Quality Assurance** |
|  |  |  |
|  |  | ***Add the words (after the last paragraph of the Sub-clause 4.9)*** |
|  |  |  |
|  |  | “The Quality Assurance System shall:   * + 1. ensure that all materials and Plant delivered to the Site are traceable as compliant with a recognised international standard for the material or Plant,     2. include procedures for checking compliance and filing of compliance certificates, and     3. include an electronic and paper filing system for storing all certificates and delivery dates.” |
|  |  |  |
|  | **4.10** | **Site Data** |
|  |  |  |
|  |  | ***In Sub-Clause 4.10, 1st line, after “Employer” insert:*** |
|  |  |  |
|  |  | and the Beneficiary, |
|  |  |  |
|  |  | ***In 2nd line, after “Employer’s” insert:*** |
|  |  |  |
|  |  | or the Beneficiary’s, |
|  |  |  |
|  |  | ***In 3rd/4th line after “Employer” insert:*** |
|  |  |  |
|  |  | and the Beneficiary, |
|  |  |  |
|  |  | ***In 5th line, after “Employer’s” insert:*** |
|  |  |  |
|  |  | or the Beneficiary’s.  *At the end of the Sub-Clause add:*  Certain information from the Employer and Beneficiary may be available in Montenegrin language only, and the Contractor shall provide the necessary translation for his interpretation and use of such information. |
|  |  |  |
|  | **4.13** | **Right or Way and Facilities** |
|  |  |  |
|  |  | ***Add at the end of the Sub-clause 4.13:*** |
|  |  |  |
|  |  | The Contractor shall be responsible to:   1. Manage and maintain traffic affected by the Works and to obtain all related permits, 2. Maintain access to properties affected by the Works and 3. Maintain liaison with owners of property and services affected. |
|  |  |  |
|  | **4.14** | **Avoidance of Interference** |
|  |  |  |
|  |  | ***At the end of point (b) of the first paragraph insert “or” and add the following point:*** |
|  |  |  |
|  |  | (c) the Employer’s or any other authority’s supplies and services on the Site including, without limitation the following: oil, electricity, water and gas, telephone, buried or aerial cables and sewerage. |
|  |  |  |
|  |  | ***In the first line of the last paragraph, after “Employer”, insert:*** |
|  |  |  |
|  |  | and the Beneficiary. |
|  |  |  |
|  | **4.17** | **Contractor’s Equipment** |
|  |  |  |
|  |  | ***At the beginning of Sub-Clause 4.17 add:*** |
|  |  |  |
|  |  | “The Contractor shall use for the execution of the Works equipment of not lower quality than the equipment proposed in the tender. The Contractor shall observe all Montenegrin laws and legislation regarding equipment brought on the Site  No equipment proposed in the tender shall be removed from the site without prior permission of the Engineer.” |
|  |  |  |
|  | **4.18** | **Protection of the Environment** |
|  |  |  |
|  |  | ***Add the words (after the last paragraph of the Sub-clause 4.18)*** |
|  |  |  |
|  |  | “The Contractor shall comply with all applicable current legislation, regulations and specifications of Montenegro, with respect to all measures, operations and administrative steps required for the full protection and safeguarding of the environment.  The Contractor will be responsible for the proper disposal of sewage from all places within the Site and shall comply strictly with the regulations of the relevant authorities.  The Contractor shall comply with the regulations of the Employer and the fire fighting authorities and take all necessary precautions throughout the execution and completion of the Works to prevent outbreak of fire.  During the execution and completion of the Works, the Contractor shall protect the environment on and off the Site from contamination. Accordingly, the Contractor shall collect all kinds of waste, including offal, production and communal wastes, and transport them to a waste landfill approved by the Engineer.  The Contractor shall not release, or permit to be released into the air, water and land area at or in the vicinity of the Site any toxic or harmful effluent or substance, and shall indemnify the Employer against any claims or liability arising from any breach of his obligation.  Where the Contractor’s activity is subject to regulation under applicable environmental Laws, the Engineer may require the Contractor to submit evidence of his compliance with such Laws, including but not limited to, the submission of any required permits, payment of fees, or compliance with any obligatory administrative procedures. |
|  |  |  |
|  | **4.19** | **Electricity, Water and Gas** |
|  |  |  |
|  |  | ***In the last sentence of Sub-Clause 4.19, delete full stop and after ‘Employer’ insert:*** |
|  |  |  |
|  |  | or the Beneficiary, according to the provider of the services. |
|  |  |  |
|  | **4.21** | **Progress Reports** |
|  |  |  |
|  |  | In the first sentence of the first paragraph, delete “six copies” and substitute with “four copies in the English and two in the Montenegrin language”. |
|  |  |  |
|  |  | ***Add the words (after the last paragraph of the Sub-clause 4.21)*** |
|  |  |  |
|  |  | 1. the necessary documents required under the Environmental Management Plan and the Environmental Monitoring Plan for the works. 2. Records of personnel and Contractor's equipment on site 3. Details of planned and actual payments to the Contractor concerning the contract price, together with projected future payments in quarterly periods. |
|  |  |  |
|  | **4.23** | **Contractor's Operations on Site** |
|  |  |  |
|  |  | ***At the end of the second paragraph, add the following paragraph:*** |
|  |  |  |
|  |  | “If the Contractor fails to remove equipment, plant, materials or temporary works from the Site within a period of 28 days after completion of the Works, the Employer may remove them at the expense of the Contractor.” |
|  |  |  |
|  |  | ***Add at the end of Sub-Clause:*** |
|  |  |  |
|  |  | No operation regarding cutting through or closing existing roads, water conduits or public utilities shall be carried out without the written consent of the Engineer. The Contractor shall apply to the Engineer in writing for such consent, at least 14 days prior to the proposed start of such operation. He shall include with the application full details of the operation, the programme, and the major items of plant to be employed and enclose copies of all necessary permits obtained in accordance with Sub-Clause 1.13. |
|  |  |  |
|  | **4.24** | **Fossils** |
|  |  |  |
|  |  | ***Replace 1st sentence of the 1st paragraph with:*** |
|  |  |  |
|  |  | “All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site are the property of the Beneficiary’s Country, as per Beneficiary Country’s legislation and the Contractor shall place any such item under the care and authority of the relevant Beneficiary Country’s Authorities as directed by the Engineer” |
|  |  |  |
|  |  | ***Add a new Sub-clause 4.25*** |
|  |  |  |
|  | **4.25** | **Work Register** |
|  |  |  |
|  |  | Works register and technical rules drawing up the statements shall be as set out in the “Regulation on the Contents and the Method of Keeping the Building Log Book, Works Register and Inspection Records” [Pravilnik o sadržini i načinu vođenja građevinskog dnevnika, građevinske knjige i knjige inspekcije ("Sl. list Crne Gore", br. 81/08 od 26.12.2008)], including amendments, if any. |
|  |  |  |
|  |  | ***Add new Sub-Clause 4.26:*** |
|  |  |  |
|  | **4.26** | **Existing Services** |
|  |  |  |
|  |  | “The Contractor shall acquaint himself with the position of all existing services such as drains, telephone, electricity lines and poles, water pipes, gas pipes and the like, before any excavation or other Work likely to affect the existing services are commenced. The Contractor will be liable for all damage to roads, drainage ditches, pipes, cables or services of any kind caused by him or his Subcontractors in the execution of the Works, and must make good any such damage at his own expense and to the complete satisfaction of the Engineer as soon as possible, and in any event within the Time for Completion.  The Contractor is required to make all necessary arrangements with the relevant local authorities and owners for the removal and reinstatement of all services as agreed with or instructed by the Engineer. The Contractor will pay the costs of these works.” |
|  |  |  |
|  |  | ***Add new Sub-Clause 4.27:*** |
|  |  |  |
|  | **4.27** | **Site Information Boards** |
|  |  |  |
|  |  | “The Contractor shall provide erect and maintain for the duration of the contract a water resistant signboard at the entrance to the Sites (at least 4 locations), or other location approved by the Engineer. The design of the signboard and information given is to be approved by the Engineer prior to manufacture and erection. Further requirements regarding the signboard can be found in the “Communication and Visibility Manual for EU External Actions” on the following address:  <http://ec.europa.eu/europeaid/work/visibility/index_en.htm>  The signboard and in particular its construction design and location should be approved also by the Employer.  After completion of all the works, the signboard shall be replaced by commemorative plaque. The commemorative plaque shall be installed as stationary on the approved location by the Beneficiary. The Contractor will be responsible for the maintenance of the commemorative plaque during the Defects Notification period. No other advertisements may be placed on the site unless the prior approval of the Employer is given. |
|  |  |  |
| **5** | **Design** |  |
|  |  |  |
|  | 5.1 | **General Design Obligations** |
|  |  |  |
|  |  | ***At the end of the first paragraph, insert:*** |
|  |  |  |
|  |  | If consent is withheld or subsequently revoked, or if the appointed person fails to act, the Contractor shall similarly submit the names and particulars of an alternative, having at least the same qualification, skills and expertise as the person initially appointed. |
|  |  |  |
|  |  | ***At the end of Sub -Clause 5.1 add the following paragraph*:** |
|  |  |  |
|  |  | The design should be in full compliance with the Contract. |
|  |  |  |
|  | **5.2** | **Contractor’s Documents** |
|  |  |  |
|  |  | ***Add after the first paragraph of Sub-Clause 5.2:*** |
|  |  |  |
|  |  | Contractor’s documents required with reference to building documentation, licenses and permits under Montenegrin legislation shall be made in the English and Montenegrin language. |
|  |  |  |
|  |  | ***Add at the end of the third paragraph of Sub-Clause 5.2:*** |
|  |  |  |
|  |  | In addition, an electronic version of these documents shall be provided to the Engineer. |
|  |  |  |
|  | **5.5** | **Training** |
|  |  |  |
|  |  | ***In the first line of the Sub-Clause 5.5, delete "*Employer's personnel*" and replace with:*** |
|  |  |  |
|  |  | *"*Beneficiary’s Personnel*"* |
|  |  |  |
|  | **5.6** | **As-Built Documents** |
|  |  |  |
|  |  | ***Add after the last paragraph of the Sub-clause:*** |
|  |  |  |
|  |  | Prior to the commencement of the Tests on Completion, and prior to issue of Taking-Over Certificate, as-built documentation shall be supplied in 2 copies in the English and 6 copies in the Montenegrin language.  In addition, an electronic version of the above documents shall be provided to the Engineer. |
|  |  |  |
|  | **5.7** | **Operation and Maintenance Manuals** |
|  |  |  |
|  |  | ***In Sub-Clause 5.7, after each occurrence of “operation and maintenance manuals” insert:*** |
|  |  |  |
|  |  | “in the English and Montenegrin language” |
|  |  |  |
|  |  | ***In the first sentence of Sub-Clause 5.7, delete "Employer" and replace with:*** |
|  |  |  |
|  |  | *“Beneficiary”* |
|  |  |  |
| **6** | **Staff and Labour** | |
|  |  |  |
|  | **6.3** | **Persons in the Service of Employer** |
|  |  |  |
|  |  | ***Delete Sub-clause 6.3 and substitute with:*** |
|  |  |  |
|  |  | The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer’s andr Beneficiary’s Personnel. |
|  |  |  |
|  | **6.6** | **Facilities for Staff and Labour** |
|  |  |  |
|  |  | **Delete the second paragraph of Sub-Clause 6.6 and substitute:** |
|  |  |  |
|  |  | The Contractor shall not permit any of the Contractor’s Personnel to maintain any temporary or permanent living quarters within the Site. |
|  |  |  |
|  |  | ***Add to Sub-clause 6.6*** |
|  |  |  |
|  |  | Where the Contractor provides living accommodation for workers, the accommodation shall be appropriate for its location and be clean, safe and, at a minimum, meet the basic needs of workers. |
|  |  |  |
|  | **6.7** | **Health and Safety** |
|  |  |  |
|  |  | ***At the beginning of the Sub-Clause 6.7 insert*:** |
|  |  |  |
|  |  | The Contractor shall submit documents entitled “Health and Safety Plan and Construction Environmental Management Plan” giving a detailed description of his proposed methods to ensure safety of the Works during all stages of construction and commissioning.  The Health, Safety and Environmental Plans shall be presented in sufficient detail to ensure that there can be no ambiguity in its interpretation at a later date. The Health, Safety and Environmental Plans shall be subject to the approval of the Engineer, who will not allow any work on Site to proceed until such time as it has been fully and formally approved.  Approval of the Health, Safety and Environmental Plans shall not relieve the Contractor of any of his responsibilities with regard to safety.  The Health, Safety and Environmental Plans shall be revised as necessary during the course of the works and resubmitted to the Engineer for his acceptance. |
|  |  |  |
|  |  | ***At the end of the paragraph 3 insert:*** |
|  |  |  |
|  |  | ‘The Contractor shall also report such accident to the relevant authority, as may be required under national rules and regulations.’ |
|  |  |  |
|  |  | ***At the end of Sub-Clause 6.7, insert:*** |
|  |  |  |
|  |  | ‘The Contractor shall provide his personnel with individual or team safety equipment and instruction in their use. The Contractor shall ensure the use of the safety equipment is made obligatory so that the entire Works can be carried out in a safe manner.  The Contractor shall provide safety instruction sessions in the form of short lectures or films with the purpose of developing a safety culture at the sites under the Contractor’s control. Attendance at the instruction shall be compulsory for all Contractors’, sub-Contractors and Employer’s staff at the site.  The Contractor shall fulfil requirements of the applicable Montenegro legislation rules and regulations concerning safety on the construction site’. This includes, but is not limited to: the Law on health and safety at work (Official Gazette of Montenegro no. 79/04 and Official Gazette of Montenegro no. 26/10, 40/11). |
|  |  |  |
|  | **6.8** | **Contractor’s Superintendence** |
|  |  |  |
|  |  | ***Add at the end of Sub-Clause 6.8:*** |
|  |  |  |
|  |  | A reasonable proportion of the Contractor's superintending staff shall also have a working knowledge of the Montenegrin language (both oral and written), or the Contractor shall have a sufficient number of competent interpreters available on Site during all working hours, to ensure the proper transmission of instructions and information. |
|  |  |  |
|  | **6.10** | **Records of Contractor’s Personnel and Equipment** |
|  |  |  |
|  |  | **Delete the last sentence of Sub-clause 6.10 and substitute with:** |
|  |  |  |
|  |  | “Details shall be submitted each week (no later than 12:00 hrs local time on the Monday of the following week), in a form agreed with the Engineer, within 28 days after Notice to Commence, but in any event, prior to any notice under the Sub-Clause 20.1 [Contractor’s Claims], until the Contractor has completed all work which is known to be outstanding at the completion date, stated in the Taking-Over Certificate for the Works.  The actual contemporary records, items/ format, shall be agreed in advance with the Engineer” |
|  |  |  |
|  | **6.11** | **Disorderly Conduct** |
|  |  |  |
|  |  | **Add as separate paragraph at the end of Sub-clause 6.11:** |
|  |  |  |
|  |  | With respect to the Contractor, Sub-contractors and all their respective employees:   1. The Contractor shall not allow the bringing, selling or consumption of alcoholic drinks or drugs on Site; 2. The Contractor shall not allow the bringing, selling or illegal carrying of weapons and ammunition on Site; 3. The Contractor shall bear any additional cost and expenses (taxes, duties, penalties, insurance, overtime etc.) arising as a consequence of contravention of this Clause by the Contractor’s personnel. |
|  |  |  |
|  |  | ***Add the following Sub-clauses 6.12 through to 6.17:*** |
|  |  |  |
|  | **6.12** | **Festivals and Religious Customs** |
|  |  |  |
|  |  | The Contractor shall respect the Country's recognized festivals, days of rest and religious or other customs (in line with the Montenegro legislation). |
|  |  |  |
|  | **6.13** | **Employment of Foreign Personnel and Labour** |
|  |  |  |
|  |  | The Contractor may bring in to the Country any foreign personnel who are necessary for the execution of the Works. The Contractor must ensure that these personnel are provided with the required residence visas and work permits.  The Contractor shall be responsible for the return to the places where they were recruited or to their domicile of imported Contractor's Personnel.  In the event of death of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial.” |
|  |  |  |
|  | **6.14** | **Measures against Insect and Pest Nuisance** |
|  |  |  |
|  |  | The Contractor shall at all times take necessary precautions to protect all staff and labour employed on the Site from insect nuisance, rats and other pests and reduce the dangers to health and the general nuisance by the same. The Contractor shall provide suitable prophylactics for the Contractor's Personnel and shall comply with all regulations and the local health authorities, including use of appropriate insecticide. |
|  |  |  |
|  | **6.15** | **Epidemics** |
|  |  |  |
|  |  | In the event of outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulating orders and requirements as may be made by the relevant local bodies or the local medical or sanitary bodies for the purpose of dealing with and overcoming the same. |
|  |  |  |
|  | **6.16** | **Funeral Arrangements** |
|  |  |  |
|  |  | The Contractor shall make the necessary arrangements for the transport, to any place as required for burial, of any of his expatriate employees or members of their families who may die in the Country.  The Contractor shall be responsible, to the extent required by local regulations, for making any funeral arrangements for any of his local employees who may die while engaged upon the Works. |
|  | **6.17** | **Supply of Water** |
|  |  | The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor’s Personnel. |
|  |  |  |
| **7** | **Plant, Materials and Workmanship** | |
|  |  |  |
|  | **7.4** | **Testing** |
|  |  |  |
|  |  | ***In the 2nd paragraph, revise the wording “The Contractor shall provide…” to:*** |
|  |  |  |
|  |  | *“*The Contractor shall provide at his own cost…*”* |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  | ***In 5th paragraph, 2nd line, after ‘Employer’ insert:*** |
|  |  |  |
|  |  | or the Beneficiary |
|  |  |  |
|  | **7.7** | **Ownership of Plant and Materials** |
|  |  |  |
|  |  | ***In the second line of the first paragraph, after “Employer”, insert:*** |
|  |  |  |
|  |  | or the Beneficiary |
|  |  |  |
|  |  | ***Add the following text at the end of the Sub-Clause 7.7:*** |
|  |  |  |
|  |  | “If applicable, all materials to be removed from the site as result of demolition; dislocations etc. are the property of the Beneficiary.  Irrespective of such items of Plant and Materials becoming the property of the Beneficiary the Contractor shall be responsible for their security and safe keeping until a Taking-Over Certificate is issued for the concerned part of Works.  Irrespective of the use to which the Beneficiary intends to put the materials or articles over which it retains ownership, all costs incurred in transporting and storing them at the place indicated by Beneficiary /Engineer shall be borne by the Contractor. They shall be stored in places designated by the Beneficiary and handed over to the Engineer, clean and in good order, based on a written handing-over document, signed by the Engineer and witnessed by the Beneficiary, which shall both, made themselves available for that.  It is the sole responsibility of the Contractor to displace the demolished materials upon written approval by the Engineer in case that Beneficiary will decide to not keep and store the demolished materials.” |
|  |  |  |
|  | **7.8** | **Royalties** |
|  |  |  |
|  |  | ***Add final paragraph:*** |
|  |  |  |
|  |  | “The Contractor shall also be liable for all payments or compensation, if any, levied in relation to the dumping of part or all of such materials, waste piles, debris and hazardous waste.” |
|  |  |  |
|  |  | ***Add new Sub-Clause 7.9:*** |
|  |  |  |
|  | **7.9** | **Origin of Plant, Materials and Services** |
|  |  |  |
|  |  | “Any Equipment and Materials which will be incorporated in the Works, or Services used for the execution of the Works, shall comply with the rules of origin published in the PRAG current at the Base Date and shall have their origin in an Eligible Country including the areas.   * The origin of Goods is distinct from nationality of the Supplier. * The origin is to be determined according to the Community Customs Code.   A product can not originate in a country in which no production process has taken place. On the other hand, the country of production is not necessarily the country of origin but only when the relevant provisions of Council Regulation (EEC) 2913/92 and its implementing regulation are fulfilled. Furthermore, the country of origin is not necessarily the country from which the goods have been shipped and supplied. Where there is only one country of production, the origin of the finished product is easily established. However, in cases where more than one country is involved in the production of Goods it is necessary to determine which of those countries confers origin on the finished goods. The country of origin is deemed to be the country in which the Goods have undergone their last, economically justified, substantial transformation and the provisions of Article 24 of the Community Customs Code must therefore be applied on a case by case basis to those goods.  The Contractor must certify that the Goods tendered comply with the origin requirement specifying the country or countries of origin. To this end, the Contractor shall provide “Certificate of Origin”, which must be made out by the competent authorities of the supplies’ or supplier’s country of origin and comply with the international agreements to which that country is a signatory.  The official Certificates of Origin must be submitted the latest before Taking-Over. Failing this, the Contracting Authority can not release any funds to the Contractor in payment for such goods.” |
|  |  |  |
| **8** | **Commencement, Delays and Suspension** | |
|  |  |  |
|  | **8.1** | **Commencement of Works** |
|  |  |  |
|  |  | ***In the second sentence of this Sub-clause delete „*** ***within 42 days after the Contractor receives the Letter of Acceptance “ and substitute with:*** |
|  |  |  |
|  |  | “...within 30 calendar days from signing of the Contract by both parties and after provision of the Performance Security to the Employer.” |
|  |  |  |
|  | **8.3** | **Programme** |
|  |  |  |
|  |  | ***After sub-paragraph (d) (ii) add:*** |
|  |  |  |
|  |  | (iii) an updated cash-flow estimate |
|  |  |  |
|  |  | ***Add final paragraphs:*** |
|  |  |  |
|  |  | “Such revised programme shall be submitted within 21 days from the date of the Engineer’s notice.  Should the Contractor fail in submitting a revised programme, within stipulated time, the Employer may withhold an amount, as stated in the Appendix to Tender, until such programme is submitted. Any withheld money shall be paid with the payment following the next Payment Certificate after receipt of requested updated programme.” |
|  |  |  |
|  | 8.4 | **Extension of Time for Completion** |
|  |  |  |
|  |  | ***Add at the end of Sub-Clause 8.4:*** |
|  |  |  |
|  |  | Extension of Time for Completion does not by itself entitle the Contractor to additional payment.  The Contractor shall not be entitled to a separate Extension of Time for Completion for each one of several causes of delay running concurrently but only for the actual period of delay determined by the Engineer irrespective of the causes contributing to produce such delay. If one of several causes of delay operating concurrently is due to the fault of the Contractor and would in itself, irrespective of the concurrent causes, have delayed the completion of the Works, or Section or part thereof, no Extension of Time for Completion shall be granted for the period of such delay.  An extension of Time for Completion made by the Engineer, or by the Dispute Adjudication Board shall be formalised as an Addendum to Contrac. |
|  |  |  |
|  | **8.8** | **Suspension of Work** |
|  |  |  |
|  |  | ***At the end of the first paragraph of Sub-Clause 8.8, insert:*** |
|  |  |  |
|  |  | The Contractor shall use all reasonable endeavours to minimise and mitigate all costs associated with any such suspension. Unless otherwise instructed by the Engineer, the Contractor shall, during any suspension affecting the progress of the Works, maintain the Contractor’s personnel near the Site and Contractor’s Equipment on or near the Site ready to proceed with the Works upon receipt of further instructions from the Engineer. |
|  |  |  |
|  | **8.10** | **Payment for Plant and Materials in Event of Suspension** |
|  |  |  |
|  |  | ***In Sub-Clause 8.10, in sub-paragraph (b), after “the Contractor”, insert:*** |
|  |  |  |
|  |  | “...has presented satisfactory evidence that the Plant and/or Materials are fully owned by the Contractor and are not subject to any retention of title and...” |
|  |  |  |
| **9** | **Tests on Completion** | |
|  |  |  |
|  | **9.1** | **Contractor’s Obligations** |
|  |  |  |
|  |  | ***Insert after the first paragraph of Sub-clause 9.1:*** |
|  |  |  |
|  |  | Prior to the commencement of the Test on Completion, and prior to issue of Taking Over Certificate, as-built documentation [which should, *inter alia*, be verified by a certified geodetic organisation, as required under Article 1. 11. of the Addendum to the Rules on content and manner of technical inspection (Official Gazette of MNE Nr. 57/2013 dated 16.12.2013)] and Operation and Maintenance Manuals shall be supplied in 3 (three) copies in each of the languages English and Montenegrin.  The Works shall not be considered to be completed for the purposes of Taking Over under Sub-Clause 10.1 (Taking Over of the Works and Sections) until the Engineer has received and accepted these documents. |
|  |  |  |
|  |  | ***Add to subparagraph (c) of Sub-clause 9.1:*** |
|  |  |  |
|  |  | Duration of the trial operation is set in the Appendix to Tender. |
|  |  |  |
|  | **9.2** | **Delayed Tests** |
|  |  |  |
|  |  | ***In the first sentence of the Sub-Clause 9.2, after ”Employer” insert:*** |
|  |  |  |
|  |  | ”or the Beneficiary,” |
|  |  |  |
| **10** | **Employer’s Taking Over** | |
|  |  |  |
|  | **10.1** | **Taking over of the Works and Sections** |
|  |  |  |
|  |  | ***Insert after 1st paragraph:*** |
|  |  |  |
|  |  | “The Taking Over shall take place in a first step in accordance with related legislation of Montenegro, including issuance of Use Permit, based on which, the Engineer shall issue the Taking Over Certificate, in a second step. The Contractor will take all the measures to coordinate the issuance of the Taking Over certificate with the "Use Permit" to be issued by the relevant Authorities according with the Beneficiary's Country legislation ("Official Gazette of Montenegro, No 51/08 dated 22.08.2008, 40/10 dated 22.07.2010 and 34/11 dated 12.07.2011; or any other relevant legislation).  If the "Taking Over Certificate" and "Use Permit" will be issued at different calendar dates, then, the last of the two dates will be considered in sub-clause 11 of Particular Conditions of Contract and will be considered the starting date for the Defects Notification Period.” |
|  |  |  |
|  |  | ***At the beginning of the third paragraph of Sub-Clause 10., delete phrase “The Engineer shall, within 28 days after receiving the Contractor’s application:” and substitute with:*** |
|  |  |  |
|  |  | “The Contractor shall fulfil the related procedure provided for in the Montenegrin legislation (which includes issuance of Use Permit by relevant authorities) and subsequently the Engineer shall, within 28 days after receiving the Contractor’s application:...” |
|  |  |  |
|  | **10.2** | **Taking Over of Parts of the Works** |
|  |  |  |
|  |  | ***In Sub-Clause 10.2, 2nd paragraph, line 1, delete “The Employer shall not” and replace with:*** |
|  |  |  |
|  |  | “Neither the Employer nor the Beneficiary shall” |
|  |  |  |
|  | **10.3** | **Interference with Tests on Completion** |
|  |  |  |
|  |  | ***In the first sentence of the Sub-Clause 10.3, after “for which the Employer” insert:*** |
|  |  |  |
|  |  | “or the Beneficiary”. |
|  |  |  |
|  |  | ***Add new Sub-Clause 10.5:*** |
|  |  |  |
|  | **10.5** | **Taking Over by the Beneficiary** |
|  |  |  |
|  |  | The Contractor acknowledges that whenever the Employer takes over the Works or a Section or other part of the Works under this clause (Clause 10), then the entire and all and any responsibility for the care of the Works, Section or part the Works so taken over immediately passes to the Beneficiary. |
|  |  |  |
| **11** | **Defects Liability** | |
|  |  |  |
|  | **11.1** | **Completion of Outstanding Works and Remedying Defects**  *Add the following at the end of the Sub-Clause:*  Failure to meet any of the requirements set in the Employer’s Requirements, including the guarantees undertaken within the schedules shall be considered a defect under these conditions of contract. |
|  |  |  |
|  | **11.7** | **Right of Access** |
|  |  |  |
|  |  | ***In the 3rd line of the Sub-Clause 11.7, after “Employer's”, insert:*** |
|  |  |  |
|  |  | and/or Beneficiary's. |
|  |  |  |
|  | **11.9** | **Performance Certificate** |
|  |  |  |
|  |  | ***Add at the beginning of the 2nd paragraph:*** |
|  |  |  |
|  |  | “Upon Contractor’s fulfilment of the requirements and related procedures of the Montenegro legislation, in relation to Final Acceptance, including obtaining related documents/ certificates, ...” |
|  |  |  |
|  | **11.10** | **Unfulfilled Obligations** |
|  |  |  |
|  |  | ***Add new final paragraph:*** |
|  |  |  |
|  |  | The Contractor shall be responsible for the quality of provided works according to law of Montenegro and/or Belgium.  The issuing of the Performance Guarantee shall maintain Contractor’s liability of his obligations imposed by law of Montenegro and shall be without prejudice to the Contractor’s liability for the latent defects of the Works during the periods of liability imposed by the Governing Law.  x |
|  |  |  |
| **12** | **Tests after Completion** | |
|  |  |  |
|  | **12.2** | **Delayed Tests** |
|  |  |  |
|  |  | ***In the first sentence, after “the Employer” insert:*** |
|  |  |  |
|  |  | “or the Beneficiary” |
|  |  |  |
|  | **12.3** | **Retesting** |
|  |  |  |
|  |  | ***In the third line of the second paragraph of Sub-Clause, after “the Employer” insert:*** |
|  |  |  |
|  |  | “or the Beneficiary” |
|  |  |  |
|  |  | ***In the last line of the second paragraph of Sub-Clause 12.3, delete full stop and after ‘Employer’ insert:*** |
|  |  |  |
|  |  | “or the Beneficiary” |
|  |  |  |
|  | **12.4** | **Failure to Pass Tests after Completion** |
|  |  |  |
|  |  | ***After each occurrence of “the Employer”, insert:*** |
|  |  |  |
|  |  | “or the Beneficiary” |
|  |  |  |
| **13** | **Variations and Adjustments** | |
|  |  |  |
|  | **13.1** | **Right to Vary** |
|  |  |  |
|  |  | ***Add at the end of the Sub-Clause 13.1 the following provisions:*** |
|  |  |  |
|  |  | Substantial changes can, however, only be made by means of a formal addendum to the contract. The following types of changes shall be regarded as substantial:   1. Changes with technical impact that:    * 1. modify the scope of works as defined in the Contract, or      2. alter the conditions on which the contract was evaluated and awarded (e.g. substantial changes in the Contractor’s Proposals in a design-build contract, technical specifications in a construction contract, minimum standards for materials; etc.).   (b). Changes with financial impact that lead to an increase in the total contract price such that it is no longer covered by the Accepted Contract Amount,  (c). Changes to the legal form or the contractual essence, such as changes to the conditions of contract, the contract agreement, the Appendix to Tender or other such parts of the contract. |
|  |  |  |
|  | **13.2** | **Value Engineering** |
|  |  |  |
|  |  | ***In the first paragraph, after each occurrence of “the Employer”, insert:*** |
|  |  |  |
|  |  | “and/or the Beneficiary” |
|  |  |  |
|  |  | ***Add final paragraph:*** |
|  |  |  |
|  |  | The Contractor shall be fully responsible for any proposal made under this Sub-Clause, including for the period required for its review and approval. The Contractor shall not be entitled to any extension of time, Cost or profit related to such period of review and approval. |
|  |  |  |
|  | **13.5** | **Provisional Sums** |
|  |  |  |
|  |  | ***Delete point (b) (ii) of this Sub-Clause 13.5 and substitute with:*** |
|  |  |  |
|  |  | “a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage specified in the Appendix to Tender.” |
|  |  |  |
|  | **13.8** | **Adjustment for Changes in Cost** |
|  |  |  |
|  |  | ***Delete this Sub-Clause*** |
|  |  |  |
|  | **13.9** | **Procedures for Addendum** |
|  |  |  |
|  |  | ***Add new Sub-Clauses 13.9 as follows:*** |
|  |  |  |
|  |  | “Should a necessity arise for major modification of the Contract during its implementation period, which is due to a change of the circumstances affecting the implementation of the project, then any such modification of the Contract shall be formalised through an Addendum to the Contract.  Such Addendum shall be prepared by the Employer pursuant to the terms set out in the PRAG.” |
|  |  |  |
| **14** | **Contract Price and Payment** | |
|  |  |  |
|  | **14.1** | **The Contract Price** |
|  |  |  |
|  |  | ***Add the following after sub-paragraph 14.1.(d):*** |
|  |  |  |
|  |  | “(e) The Contract Price shall exclude all taxes, including VAT, customs and import duties and any other charges that may be levied in accordance with the local rules and regulations in force in the areas on the Base Date, due account being taken of Clause 21 [Taxes and Customs issues] of these Particular Conditions.  (f) The Contract Price shall be deemed to include all taxes, duties and other charges required to be paid by the Contractor under the Contract outside the Beneficiary Country.” |
|  |  |  |
|  | **14.3** | **Application for Interim Payment Certificate** |
|  |  |  |
|  |  | ***Replace in the first sentence “… in six copies …” with “… in 4 (four) copies …”*** |
|  |  |  |
|  | 14.6 | **Issue of Interim Payment Certificates** |
|  |  |  |
|  |  | ***Add in the 1st paragraph after “Interim Payment Certificates”:*** |
|  |  |  |
|  |  | “... in four copies,”. |
|  |  |  |
|  |  | ***Add new point c) to 3rd paragraph:*** |
|  |  |  |
|  |  | “c) if the Contractor was or is failing to issue Monthly Progress Reports as per Sub-Clause 4.21 [Progress Reports] of Conditions of Contract for the period included in the Payment Application” |
|  |  |  |
|  | **14.7** | **Payment** |
|  |  |  |
|  |  | ***Replace sub-paragraphs (a), (b) and (c) by:*** |
|  |  |  |
|  |  | 1. the first instalment of the advance payment within 42 days after the Employer receives the documents in accordance with Sub-Clause 4.2 *[Performance Security]* and Sub-Clause 14.2 *[Advance Payment]*, whichever is later, and in line with the provisions of this Sub-Clause, last paragraph below. 2. the amount certified in each Interim Payment Certificate (passed for payment), within no more than 56 calendar days from the date on which the Engineer’s Certificate is received by the Employer, and in line with the provisions of this Sub-Clause, last paragraph below. 3. the amount certified in the Final Payment Certificate within 56 days after the Employer receives this Payment Certificate. |
|  |  |  |
|  |  | ***Add the words, at the end of the Sub-clause 14.7:*** |
|  |  |  |
|  |  | “The bank account shall be the one 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.  The Employer shall not be held liable for reimbursement to the Contractor of any fees, charges or costs levied by the Contractor’s bank in connection with the transfer of any amount paid to the Contractor by the Employer under the Contract.“ |
|  |  |  |
|  | **14.8** | **Delayed Payment** |
|  |  |  |
|  |  | ***Replace Sub-Clause 14.8 in its entirety with:*** |
|  |  |  |
|  |  | If the period laid down for payment in Sub-Clause 14.7 has been exceeded, the Contractor shall qualify for interest calculated pro-rata on the basis of the number of days delay at the rate applied by the European Central Bank to its main refinancing transactions in euro on the first day of the month in which the deadline expired, plus 3,5 percentage points. The late-payment interest shall apply to the time which elapses between the date of the payment deadline, and the date on which the Employer’s account is debited. By way of exception, when the interest calculated in accordance with this provision is lower than or equal to EUR 200, it shall be paid to the Contractor only upon a demand submitted within two months of receiving late payment. The Contractor shall be entitled to such payment without prejudice to any other right or remedy under the Contract. In the case of the Final Payment Certificate, the interest for the delayed payment shall be calculated on a daily basis at the rate specified above. |
|  |  |  |
|  | **14.9** | **Payment of Retention Money** |
|  |  |  |
|  |  | ***Add at the end of Sub-clause 14.9:*** |
|  |  |  |
|  |  | Alternatively, the second half of Retention Money will be certified for payment after:  (a) the Engineer has issued a Taking-Over certificate for the whole of the Works, and  (b) the Employer has received a Retention Money Guarantee in the form provided in the Contract and from a Bank, approved by the Employer.  The Retention Money Guarantee shall provide a surety for the second half of the Retention Money for the whole of the Works held for the rectification of defects arising during the remainder of the Contract Period and the completion of any remaining work to be executed under Clause 11 [*Defects Liability*] or Clause 12 [*Tests after Completion*]. The terms and conditions for the Retention Money Guarantee shall be the same as those stated in Sub-Clause 4.2 for a Performance Security.  Within 45 days at the latest of receipt by the Employer of the Performance Certificate, the Employer shall return the Retention Money Guarantee to the Contractor. |
|  |  |  |
|  | **14.11** | **Application for Final Payment Certificate** |
|  |  |  |
|  |  | ***In the first sentence of the first paragraph, delete “six copies” and substitute with:*** |
|  |  |  |
|  |  | “four copies” |
|  |  |  |
|  | **14.13** | **Issue of Final Payment Certificate** |
|  |  |  |
|  |  | ***Add in 1st paragraph after “Final Payment Certificates”:*** |
|  |  |  |
|  |  | “in four copies” |
|  |  |  |
|  | **14.15** | **Currencies of Payment** |
|  |  |  |
|  |  | ***Replace the Sub-clause 14.15 with:*** |
|  |  |  |
|  |  | The Contract Price shall be paid in **euro** |
|  |  |  |
|  |  | ***Add new Sub-Clause 14.16:*** |
|  |  |  |
|  | **14.16** | **Repayment** |
|  |  |  |
|  |  | “The Contractor undertakes to repay any amounts paid in excess of the final amount due to the Employer before the deadline indicated in the debit note, which is 42 days from the issuing of that note. Should the Contractor fail to make repayment within the deadline set by the Employer, the Employer may increase the amounts due by adding interest at the rate applied by the European Central Bank to its main refinancing transactions 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 set by the Employer, 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 Employer 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 involved in the repayment of amounts due to the Employer shall be borne entirely by the Contractor.” |
|  |  |  |
| **15** | **Termination by Employer** | |
|  |  |  |
|  | **15.2** | **Termination by Employer**  In paragraph (d) replace “the whole” with “more than the limit stated in Sub-Clause 4.4 [Subcontractors]”;  In paragraph (f) before ‘gives or offers’, insert: ‘is shown to have been given or offered or’:  In paragraph (f), sub-paragraph (i) after ‘Contract’, insert: “including the award of this Contract”  Insert new paragraphs (g) and (h) as follows:  (g) Fails to comply with one or more of the ethics clauses listed under Point 28 of the Instructions to tenderers which form Section 1 of the Volume 1 of the Tender Dossier;  (h) Falls into any situation described under Point 2.3.3 of the PRAG.  Replace the 2nd sentence of the 2nd paragraph with the following:  However, in the case of sub-paragraph (e), (f), (g) or (h), the Employer may by notice terminate the Contract immediately." |
|  |  |  |
|  | **15.4** | **Payment after Termination** |
|  |  |  |
|  |  | ***In the sub-paragraph (b) of the Sub-Clause 15.4, after 'Employer,' insert:*** |
|  |  |  |
|  |  | ”or the Beneficiary” |
|  |  |  |
|  |  | ***In first line of the sub-paragraph (c), after 'Employer' insert:*** |
|  |  |  |
|  |  | ”or the Beneficiary” |
|  |  |  |
| **17** | **Risk and Responsibility** | |
|  |  |  |
|  | **17.1** | **Indemnities** |
|  |  |  |
|  |  | ***In the first line of the 1st paragraph, after “the Employer, the Employer’s Personnel” insert:*** |
|  |  |  |
|  |  | “or the Beneficiary and the Beneficiary’s Personnel,” |
|  |  |  |
|  | **17.3** | **Employer's Risks** |
|  |  |  |
|  |  | ***In sub-paragraph (f), after ‘Employer’ insert:*** |
|  |  |  |
|  |  | “or the Beneficiary” |
|  |  |  |
|  | **17.5** | **Intellectual and Industrial Property Rights** |
|  |  |  |
|  |  | ***In paragraph (b) after ‘Employer’ insert:*** |
|  |  |  |
|  |  | “or by the Beneficiary” |
|  |  |  |
|  |  | ***In 4th paragraph: after ‘Employer’ insert:*** |
|  |  |  |
|  |  | “and the Beneficiary”. |
|  |  |  |
| **18** | **Insurance** | |
|  |  |  |
|  | **18.1** | **General Requirements for Insurances** |
|  |  |  |
|  |  | ***In the 1stt paragraph replace “... the Party responsible …” with “... the Contractor, which is responsible …”*** |
|  |  |  |
|  |  | ***In the 2nd paragraph delete “Wherever the Contractor is the insuring Party,”*** |
|  |  |  |
|  |  | ***Delete 3rd paragraph.*** |
|  |  |  |
|  |  | ***Add at the end of the 7th paragraph:*** |
|  |  |  |
|  |  | “... , which shall dully check such insurances or evidences and notify with details the Contractor in respect of their endorsement or rejection” |
|  |  |  |
|  | **18.2** | **Insurance for Works and Contractor's Equipment** |
|  |  |  |
|  |  | ***In the 4th paragraph, sub-paragraph (d) after ‘Employer’ insert:*** |
|  |  |  |
|  |  | “or the Beneficiary” |
|  |  |  |
|  |  | ***Add the following paragraph at the end of the Sub-clause 18.2:*** |
|  |  |  |
|  |  | It shall be the responsibility of the Contractor to notify the insurance company of any change in the nature, extent or programme for the execution of the Works and to ensure adequacy of the insurance coverage at all times during the period of the Contract. |
|  |  |  |
|  | **18.3** | **Insurance against Injury to Persons and Damage to Property** |
|  |  |  |
|  |  | ***In 3rd paragraph, sub-paragraph (c), after “Employer’s” insert:*** |
|  |  |  |
|  |  | “and the Beneficiary’s” |
|  |  |  |
|  |  | ***In 3rd paragraph, sub-paragraph (d)(i), after “Employer’s” insert****:* |
|  |  |  |
|  |  | “and/or the Beneficiary’s” |
|  |  |  |
|  | **18.4** | **Insurance for Contractor’s Personnel** |
|  |  |  |
|  |  | ***In 2nd paragraph, first line, after “The Employer”, insert:*** |
|  |  |  |
|  |  | “the Beneficiary” |
|  |  |  |
|  |  | ***In 2nd paragraph, third line, after “Employer” insert:*** |
|  |  |  |
|  |  | “, or the Beneficiary” |
|  |  |  |
|  |  | ***In 2nd paragraph, third line, after “Employer’s” insert:*** |
|  |  |  |
|  |  | “, or the Beneficiary’s,” |
|  |  |  |
|  |  | ***Add the following paragraph at the end of the Sub-clause 18.4:*** |
|  |  |  |
|  |  | The Contractor shall check whether the compulsory insurance of the employees, provided according to the regulations in force in Montenegro or equivalent insurance in the country of origin of Contractor, meets the basic requirements for insurance of the Contractor’s personnel. If not, the Contractor shall do all necessary provisions to comply with the Montenegro regulations. However, the Contractor may have arrangements for additional insurance of his personnel. |
|  |  |  |
|  | **18.5** | **Professional Indemnity Insurance for Design** |
|  |  |  |
|  |  | ***Add new Sub-Clause 18.5:*** |
|  |  |  |
|  |  | The Contractor shall effect professional indemnity insurance, which shall cover the risk of professional negligence in the design of the Works. The minimum amount and time limits of Professional indemnity insurance for design shall be not less than as indicated in the Appendix to Tender. The Contractor undertakes to notify the Employer of any extending, renewing or reinstating this insurance. |
|  |  |  |
| **20** | **Claims, Disputes and Arbitration** | |
|  |  |  |
|  | **20.5** | **Amicable Settlement** |
|  |  |  |
|  |  | ***Replace the Sub-clause 20.5 with:*** |
|  |  |  |
|  |  | Where a Notice of Dissatisfaction has been given under Sub-Clause 20.4 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a Notice of Dissatisfaction in accordance with Sub-Clause 20.4 above should move to commence arbitration after the fifty-sixth day from the day on which a Notice of Dissatisfaction was given, even if no attempt at an amicable settlement has been made. |
|  |  |  |
|  | **20.7** | **Failure to Comply with Dispute Adjudication Board’s Decision** |
|  |  |  |
|  |  | ***Delete Sub-Clause 20.7 and substitute with:*** |
|  |  |  |
|  |  | “In the event that a Party fails to comply with any decision of the DAB, whether binding or final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Sub-Clause 20.6 [Arbitration] for summary or other expedited relief, as may be appropriate. Sub-Clause 20.4 [Obtaining Dispute Adjudication Board’s Decision] and Sub-Clause 20.5 [Amicable Settlement] shall not apply to this reference.” |
|  |  |  |
|  |  | ***Add new Clause 21,”Taxes and Custom Issues” as follows:*** |
|  |  |  |
| **21** | **Taxes and Customs Issues** | |
|  |  |  |
|  | **21.1** | **Taxes and Customs Issues** |
|  |  |  |
|  |  | The Employer understands that the prevailing situation in the areas is the following:  The Contractor will not be requested to pay custom duties, import taxes, fees and VAT or any other similar taxes on goods entering the areas for the contract financed by the EU ("the Contract") and will receive the necessary documents to that effect. All imported goods, which are not incorporated in or expended in connection with the Contract, should be exported on completion of the Contract. The Employer understands that the Contractor will not be requested to pay VAT for the contract value and will receive the necessary documents to that effect.  The Employer will not be involved in the preparation or presentation of any documentation that the Contractor may need in order to bring the goods to the place where they are supposed to be installed or used. The Contractor shall be deemed to have checked the locally applying technical and administrative conditions before submitting the Tender. |
|  |  |  |
|  | ***Add new Clause 21, “Ethics Clauses”, as follows:*** | |
|  |  |  |
| **22** | **Ethic Clauses** | |
|  |  |  |
|  | **22.1** | **General** |
|  |  |  |
|  |  | “The effect of the terms of this Clause 22 shall be included by the Contractor in all subcontracts he enters into under this Contract.” |
|  |  |  |
|  | **22.2** | **Conflict of Interest** |
|  |  |  |
|  |  | Without the Employer’s prior written authorisation, a Contractor and his staff or any other company with which the Contractor is associated or linked shall not, even on an ancillary or subcontracting basis, perform other services, carry out works or supply equipment for the project of which the Works form a part. This prohibition also applies to any other programmes or projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the Contractor.  When putting forward a tender, the tenderer shall declare that it is affected by no conflict of interest and has no particular link with other tenderers or parties involved in the project. Should such a situation arise during the execution of the Contract, the Contractor must immediately inform the Employer |
|  |  |  |
|  | **22.3** | **Code of Conduct** |
|  |  |  |
|  |  | The Contractor shall at all times act honourably and impartially and as a faithful adviser in accordance with the code of conduct of his profession. He shall refrain from making public statements about the Works without the Employer’s prior approval. He may not commit the Employer in any way without its prior written consent. |
|  |  |  |
|  | **22.4** | **Human Rights** |
|  |  |  |
|  |  | For the duration of the contract, the Contractor and his staff must respect human rights and undertake not to violate the political, cultural and religious mores prevailing in the areas. |
|  |  |  |
|  | **22.5** | **No Other Payments** |
|  |  |  |
|  |  | The Contractor shall not accept any payment connected with the Contract other than that provided for therein. The Contractor and his staff shall not exercise any activity or receive any advantage inconsistent with their obligations to the Employer. |
|  |  |  |
|  | **22.6** | **Professional Secrecy** |
|  |  |  |
|  |  | The Contractor and his staff shall be obliged to maintain professional secrecy for the entire duration of the Contract and after its completion. The Contract and all reports and documents drawn up or received by the Contractor in respect of the Contract shall be confidential. .  The Contract shall govern the Parties’ use of all reports and documents drawn up, received or presented by them during the execution of the Contract. |
|  |  |  |
|  | **22.7** | **Independence** |
|  |  |  |
|  |  | The Contractor shall refrain from any relationship likely to compromise his independence or that of his staff. If the Contractor ceases to be independent, the Employer may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation. |
|  |  |  |
|  | **22.8** | **Corrupt Practices** |
|  |  |  |
|  |  | The European Commission reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process or contract implementation and if the Employer fails to take all appropriate measures to remedy the situation. For the purposes of this provision, “corrupt practices” are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or implementation of a contract already concluded with the Employer. |
|  |  |  |
|  | **22.9** | **Unusual Commercial Expenses** |
|  |  |  |
|  |  | For the purposes of this Sub-Clause, ‘unusual commercial expenses’ are commissions not mentioned in the Contract or not stemming from a properly concluded contract relating 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 commissions paid to a company which has every appearance of being a front company. |
|  |  |  |
|  | **22.10** | **Supporting Evidence** |
|  |  |  |
|  |  | The Contractor undertakes to provide the European Commission on request with all supporting documents relating to the conditions of the contract’s execution. The European Commission may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected unusual commercial expenses. |
|  |  |  |
|  | ***Add new Clause 23, “Administrative and Financial penalties”, as follows:*** | |
|  |  |  |
| **23** | **Administrative and Financial Penalties** | |
|  |  |  |
|  | **23.1** | Without prejudice to the application of penalties laid down in the contract, a Contractor who has been guilty of making false declarations, has made substantial errors or committed irregularities and fraud, or has been found in serious breach of its contractual obligations, may be excluded from all contracts and grants financed by the European Community budget for a maximum of five years from the time when the infringement is established, as confirmed after an adversarial procedure with the Contractor. The Contractor may present his arguments against this penalty within 30 days of notification of the penalty by registered letter with acknowledgement of receipt or any equivalent means. In the absence of any reaction on the part of the Contractor, or of withdrawal of the penalty by the European Commission within 30 days of receipt of the Contractor's arguments against it, the decision imposing the penalty shall become enforceable. That period may be increased to ten years in the event of a repeat offence within five years of the first infringement. |
|  |  |  |
|  | **23.2** | If the Contractor is found to have seriously failed to meet its contractual obligations, it shall incur financial penalties representing 2-10% of the total value of the contract in question. That rate may be increased to 4-20% in the event of a repeat offence within five years of the first infringement. |
|  |  |  |
|  | **23.3** | Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud, and where this is attributable to the Contractor, the Employer may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with this Contractor, in proportion to the seriousness of the errors, irregularities of fraud. |
|  |  |  |
|  | ***Add new Clause 24, “Checks and Audits by Community Bodies”, as follows:*** | |
|  |  |  |
| **24** | **Checks and Audits by Community Bodies** | |
|  |  |  |
|  | **24.1** | The Contractor will allow the European Commission, the European Anti-Fraud Office, the European Court of Auditors and the authorities of the recipient countries to verify, by examining the documents or by means of on-the-spot checks, the implementation of the project and 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 (including documents by any Subcontractors). These inspections may take place up to 7 years after the final payment. |
|  |  |  |
|  | **24.2** | 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 Community legislation for the protection of the financial interests of the European Communities against fraud and other irregularities. |
|  |  |  |
|  | **24.3** | To this end, the Contractor undertakes to give appropriate access to staff or agents of the European Commission, of the European Anti-Fraud 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 Commission, European Anti-Fraud 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 Consultant must inform the Employer of their precise location. |
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|  | **24.4** | The Contractor guaranties that the rights of the European Commission, of the European Anti-Fraud 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 Clause, to any sub-contractor or any other party benefiting from EC funds. |
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