

INFORMACIJA

o Ugovoru o pružanju konsultantskih usluga između Ministarstva saobraćaja i pomorstva i kompanije WYG International Limited u saradnji sa CeS COWI d.o.o. i Systema, za projekat Studija izvodljivosti izgradnje prioritetne obilaznice na crnogorskom primorju (SEETO pravac1)

Ministarstvo saobraćaja i pomorstva apliciralo je kroz 10 rundu Zapadnobalkanskog investicionog okvira (WBIF-Western Balkans Investment Framework), 2013. godine, i dobilo grant sredstva u iznosu od 500.000,00 eura za realizaciju tehničke pomoći za izradu Studije izvodljivosti izgradnje prioritetne obilaznice na crnogorskom primorju (SEETO pravac 1).

Za potrebe ovog projekta vodeća finansijska institucija u ovom procesu je Njemačka banka za razvoj (KfW), koja je shodno bankarskim procedurama i dedukciji svojih troškova opredijelila 435.000,00 eura za finansiranje izrade Studije izvodljivosti za prioritizaciju između obilaznica Herceg Novi, Budva ili Bar i doradu tehničke dokumentacije nakon izbora prioritetne obilaznice na SEETO pravcu 1. Obilaznice se nalaze na SEETO pravcu 1 i predstavljaju dio Brze saobraćajnice duž crnogorskog primorja koja ide od granice sa Republikom Hrvatskom (Debeli Brijeg) do granice sa Republikom Albanijom.

Ugovor o finansiranju za projekat „Izrade Studije izvodljivosti izgradnje prioritetne obilaznice na crnogorskom primorju (SEETO pravac 1)“ broj BMZ 2020 61 703, potpisan je 12. decembra 2014. godine od strane Njemačke banke za razvoj (KfW) i Vlade Crne Gore koju zastupa Ministarstvo saobraćaja i pomorstva.

Po objavljenom pozivu na međunarodnom tenderu za predkvalifikaciju, do krajnjeg roka 27. maja 2015. godine pristiglo je pet ponuda. Komisija imenovana od strane ministra saobraćaja i pomorstva, sačinila je Protokol o podnesenim ponudama za predkvalifikaciju 8.juna 2015. godine broj 01-2338/2, i isti je 8. jula 2015. godine poslat Njemačkoj banci za razvoj radi davanja potvrde da na isti nemaju prigovora i da se isti usvaja.

Po dobijenoj potvrdi NO OBJECTION dostavljene na postupak predkvalifikacije od strane Njemačke banke za razvoj, Ministarstvu saobraćaja i pomorstva 22. jula 2015. godine, zavedene pod brojem 06-3111/1, otpočelo se sa pripremom tenderske dokumentacije za dostavljanje ponuda. Nakon pripremljene tenderske dokumentacije, ista je 7. avgusta 2015. godine poslata Njemačkoj banci za razvoj radi davanja potvrde, odnosno NO OBJECTION, o čemu nas ista obavještava 10. avgusta 2015. godine da je saglasna sa pripremljenom tenderskom dokumentacijom.

Prilikom otvaranja tehničkih ponuda, 30. septembra 2015. godine otvorene su 4 ponude za kompanije AECOM INOCSA SLU, IV doo; HP Gauff JBG, Hidroprojekat, Makspro; Spiekermann, IRD, CEP; WYG International, Systema, CeS Cowi, o čemu je komisija sačinila Protokol, koji je takođe poslat Njemačkoj banci za razvoj radi davanja potvrde da na isti nemaju prigovora i da se isti usvaja.

Nakon toga, Njemačka razvojna banka je 22. oktobra 2015. godine, dostavila Ministarstvu saobraćaja i pomorstva potvrdu broj 06-4454/1 (NO OBJECTION) kojom nas obavještava da je saglasna sa Protokolom o otvaranju tehničkih ponuda i da se može krenuti u proceduru otvaranja finansijskih ponuda. Otvaranje finansijskih ponuda održano je 26-27. oktobra 2015. godine, nakon čega je sačinjen i Protokol o otvaranju i vrednovanju ponuda, broj 06-4532/1. Vrednovane su tri ponude i 1 je odbačena kao neosnovana. Sačinjen je i Protokol koji je sa pratećom dokumentacijom poslat Njemačkoj banci za razvoj 16. novembra 2015. godine radi davanja saglasnosti, odnosno potvrde NO OBJECTION za dostavljene finansijske ponude za tri kompanije.

Po dobijenoj saglasnosti na finansijske ponude broj 06-4994/1 od 20. novembra 2015. godine od strane Njemačke banke za razvoj, Ministarstvo saobraćaja i pomorstva otpočinje proceduru usaglašavanja Ugovora sa izabranim ponuđačem WYG International u saradnji sa Systema, CeS Cowi.

Nakon procedure usaglašavanja Nacrta Ugovora sa izabranim ponuđačem na tenderu za Izradu Studije izvodljivosti izgradnje prioritetne obilaznice na crnogorskom primorju (SEETO pravac 1), 23. marta 2016. godine, Ministarstvo saobraćaja i pomorstva, šalje dopis kojim od Njemačke banke za razvoj traži potvrdu da na isti nemaju prigovora i da se isti usvaja, o čemu nas obavještavaju 30. marta 2016. godine aktom broj 34-28/2016.

Izabrani ponuđač, odnosno WYG International u saradnji sa Systema, CeS Cowi, 5. maja 2016. godine dostavlja sa njihove strane tri primjerka potpisanog Ugovora o pružanju konsultantskih usluga između Ministarstva saobraćaja i pomorstva i kompanije WYG International Limited u saradnji sa CeS COWI d.o.o. i Systema, za projekat Studija izvodljivosti izgradnje prioritetne obilaznice na crnogorskom primorju (SEETO pravac 1), nakon čega se očekuje i potpisivanje sa crnogorske strane, odnosno od strane Ministarstva saobraćaja i pomorstva.

U skladu sa naprijed navedenim, a u cilju ostvarivanja dalje procedure, neophodno je potpisivanje Ugovora, koji bi imao za cilj izradu Studije izvodljivosti izgradnje prioritetne obilaznice na crnogorskom primorju (SEETO pravac 1), odnosno obilaznica gradova Herceg Novi, Budvu, odnosno Bar.

Prije potpisivanja Prijedloga ugovora sa pratećom dokumentacijom dostavlja se Vladi na razmatranje i usvajanje. Kako je jezik komunikacije u okviru projekta engleski, sva dokumentacija dostavljena je na engleskom jeziku. Za potrebe usvajanja Ugovora od strane Vlade Crne Gore isti je preveden na crnogorski jezik.

Ostala prateća dokumentacija, koja je sastavni dio Ugovora, kao što su: Zapisnici (Protokoli) sa sastanka prilikom otvaranja dostavljenih ponuda, pojašnjenja tenderske dokumentacije, tehnička ponuda i tehnička dokumentacija (crteži), dostavljena je takođe na engleskom jeziku.

Iz razloga svega gore navedenog, a u skladu sa dostavljenom dokumentacijom, neophodno je da Vlada Crne Gore usvoji predloženu Informaciju o Ugovoru o pružanju konsultantskih usluga između Ministarstva saobraćaja i pomorstva i kompanije WYG International Limited u saradnji sa CeS COWI d.o.o. i Systema, za projekat Studija izvodljivosti izgradnje prioritetne obilaznice na crnogorskom primorju (SEETO pravac 1), kao i prihvati Ugovor o pružanju konsultantskih usluga između Ministarstva saobraćaja i pomorstva i kompanije WYG International Limited u saradnji sa CeS COWI d.o.o. i Systema, za projekat Studija izvodljivosti izgradnje prioritetne obilaznice na crnogorskom primorju (SEETO pravac 1), kako bi Ivan Brajović, ministar saobraćaja i pomorstva, bio u prilici da nakon davanja ovlaštenja od strane Vlade Crne Gore, isti potpiše u njeno ime.



MINISTAR

Ivan Brajović

UGOVOR

o pružanju konsultantskih usluga

zaključen

[2016. godine]

između

Ministarstva saobraćaja i pomorstva
Direktorat za državne puteve
Rimski trg 46, 81000 Podgorica, Crna Gora

– u daljem tekstu "Naručilac" –

I

[kompanije WYG International Limited
Geneva Building, Lake View Drive, Sherwood Business Park, Annesley, Nottingham, NG15 OED, United
Kingdom]
u saradnji sa
kompanijama CeS COWI d.o.o. i Systema

– u daljem tekstu "Konsultant" –

Za projekat

Studija izvodljivosti izgradnje prioritetne obilaznice na crnogorskom primorju (SEETO pravac 1)

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Uvod

Naručilac traži od Konsultanta usluge za Projekat koji je naveden u Posebnim uslovima. Konsultant je dostavio tehničku i finansijsku ponudu za ove usluge. Ugovorne strane su se stoga sporazumjele o sljedećem:

Opšti uslovi

Stav 1 Opšte odredbe

1.1 DEFINICIJE

Riječi i izrazi korišteni u ovom Ugovoru imaju sljedeća značenja, osim ako kontekst ne nalaže drugačije.

"Dogovorena nadoknada" podrazumijeva nadoknadu na koju Konsultant ima pravo, kao što je opisano u Stavu 5 [Nadoknada] i koja se isplaćuje u skladu sa Ugovorom.

"Zadatak" podrazumijeva pružanje Usluga u skladu sa ovim Ugovorom.

"Period završetka" podrazumijeva period koji je Posebnim uslovima određen za završetak pružanja Usluga.

"Konsultant" je profesionalno preduzeće, ili pojedinac imenovan u ovom Ugovoru koga je Naručilac angažovao za pružanje Usluga. To uključuje pravne sljedbenike Konsultanta u skladu sa odobrenjem Naručioca i uz prethodnu pismenu saglasnost KfW banke.

"Ugovor", osim ako nije drugačije navedeno Posebnim uslovima, podrazumijeva uslove ovog Ugovora o pružanju konsultantskih usluga (Opšti uslovi i Posebni uslovi), zajedno sa sljedećim sastavnim djelovima Ugovora¹:

Prilog 1 [Zapisnik sa ugovornog pregovaranja u skladu sa Posebnim uslovima]²

Prilog 2 [Projektni zadatak i tenderska dokumentacija]

Prilog 3 [Smjernice KfW banke za angažovanje Konsultanata programima finansijske saradnje sa partnerskim zemljama]³ ukoliko ove Smjernice nijesu u suprotnosti sa Uslovima ovog Ugovora o pružanju konsultantskih usluga.

Prilog 4 [Raspored osoblja]

Prilog 5 [Oprema i namještaj koje treba da obezbijedi Naručilac i usluge treće strane koju je angažovao Naručilac]

Prilog 6 [Vremenska dinamika pružanja Usluga]

Prilog 7 [Izveštaj o troškovima]

Prilog 8 [Ponuda konsultanta – premda bez Konsultantovih uslova za dostavljanje, ugovor i isplatu]

(Napomena: Ako, u izuzetnim slučajevima, smjernice za nabavku ne budu sastavni dio ovog Ugovora, Tačku 1.1.19 treba dopuniti sa Izjavom o preuzimanju obaveze izvršenja posla, kao i modelima Avansne garancije i Retencione garancije.)

"Zemlja" je država ili region na koji se Projekat (ili najveći dio istog) odnosi.

"Datum početka sprovođenja Ugovora" je dan koji je naveden u Posebnim uslovima.

"Dan" je jedan kalendarski dan.

"Ugovor o finansiranju" je [ugovor o kreditu /ugovor o finansiranju] koji su zaključili KfW banka i [Naručilac] u cilju finansiranja [između ostalog] usluga koje su navedene u ovom Ugovoru.

"Viša sila" je svaki događaj u kojem je jedna ugovorna strana spriječena da pruža Usluge radi nekog neizbježnog događaja kao npr. elementarne nepogode, uzimanje taoca, rat, revolucija, terorizam ili sabotaža, koji se i uz najbolje ljudsko prosuđivanje i iskustvo i pažnju, nije mogao razumno predvidjeti u datim okolnostima, spriječiti ili onemogućiti ekonomski opravdanim sredstvima, osim ukoliko takav događaj mora prihvatiti relevantna strana radi redovne pojave istog, uključujući, osim gdje je to drugačije navedeno u Posebnim uslovima, okolnosti kao što je kriza, rat ili teroristički napad, zbog kojih je Ministarstvo vanjskih poslova Savezne Republike Njemačke pozvalo njemačke državljane da napuste zemlju, ili projektni region i zbog čega je Konsultant povukao svo svoje osoblje. Ukoliko se javi neka situacija kao rezultat aktivnosti ili rizika koje je preuzela ugovorna strana, to se ne smatra Višom silom.

"Strana valuta" je bilo koja valuta osim domaće valute.

"Strano osoblje" Konsultanta je svo osoblje koje nema državljanstvo zemlje u kojoj se Projekat realizuje.

"Domaća valuta" je valuta zemlje u kojoj se Projekat realizuje.

"Obavještenje" je obavještenje koje jedna strana dostavlja drugoj.

"Ugovorna/e strana/e" su Naručilac i Konsultant.

"Ugovorena vrijednost" ima značenje dato u tački A.d. 5.1.1 Posebnih uslova.

"Projekat" je projekat naveden u Posebnim uslovima za koji je potrebno pružiti Usluge.

"Usluge" su ugovorene usluge date u **Prilogu 1**

[*Zapisnik sa ugovornog pregovaranja*], **Prilogu 2** [*Projektni zadatak i tenderska dokumentacija*], **Prilogu 8** [*Ponuda konsultanta*] i Stavu 3.1 [*Obim usluga*], kao i standardne i posebne usluge definisane u Stavu 3.2 [*Standardne i Posebne usluge*].

"Treća strana" je svako drugo fizičko ili pravno lice, u skladu sa kontekstom.

"Pisani" ili "u pisanoj formi" podrazumijeva dokument pisan ručno ili mašinski i sačinjen u štampanoj ili elektronskoj formi, čiji je rezultat trajan zapis koji se ne može mijenjati.

"Godina" podrazumijeva 365 dana.

1.2 TUMAČENJE

1.2.1 Naslovi u ovom ugovoru nemaju nikakvog uticaja na tumačenje ovih Uslova.

1.2.2 Riječi u jednini, ukoliko kontekst dopušta, takođe uključuju i množinu i obrnuto.

1.2.3 Upućivanje na bilo koji pol uključuje oba pola.

1.2.4 Za odredbe koje sadrže riječi "dogovaraju", "dogovorene", ili "sporazum" (i sve izvedene gramatičke oblike istih) biće potreban pismeni sporazum i potpis obje strane⁴.

1.3 POREDAK I REDOSLIJED SASTAVNIH DJELOVA UGOVORA

1.3.1 Za realizaciju ovog Ugovora, djelovi Ugovora navedeni u nastavku imaju prioritet po važnosti u skladu sa prikazanim redoslijedom, a Prilozi imaju prioritet na osnovu redoslijeda kojim su numerisani.

(a) Sporazumi iz Ugovora (Opšti i posebni uslovi), bez Priloga.

(b) Prilozi Ugovora na osnovu redoslijeda kojim su numerisani.

Ovi Opšti uslovi i Prilozi se ne smiju mijenjati – osim gdje je to drugačije određeno u djelovima ovog Ugovora.

1.3.2 U slučaju nedosljednosti, ili nejasnoća među djelovima Ugovora koje se ne mogu razriješiti pomoću poretka koji je naveden u tački 1.3.1, Naručilac tumači djelove Ugovora u skladu sa namjerom ugovornih strana na osnovu svrhe i namjere Ugovora u cjelini, uključujući sve Priloge.

1.4 KOMUNIKACIJA

1.4.1 Osim kada je to drugačije određeno, ugovorne strane međusobno dostavljaju obavještenja, instrukcije i poruke u pisanoj formi i na jeziku koji je naveden u Posebnim uslovima, i svako takvo obavještenje, instrukcija i poruka se ne može neopravdano odbiti ili odgoditi.

1.5 OBAVJEŠTENJA

1.5.1 Osim kada je drugačije određeno u Posebnim uslovima, obavještenja koja se šalju na osnovu ovog Ugovora stupaju na snagu kada pristignu na adrese koje su navedene u Posebnim uslovima. Obavještenje se može dostaviti lično, preko kurirske službe, faksom (uz pismenu potvrdu o prijemu), preporučenom poštom, ili elektronskom poštom (samo ako je to poslato u šifriranom i ovjerenom obliku (npr. S/MIME potvrda)).

1.6 ZAKON I JEZIK

1.6.1 Posebni uslovi sadrže jezik ili jezike Ugovora, ugovorni jezik koji prevladava i zakon kojim se reguliše ovaj Ugovor.

1.7 STUPANJE UGOVORA NA SNAGU

1.7.1 Ovaj Ugovor stupa na snagu nakon što ga potpišu obje strane, uz obavještenje KfW banke Naručiocu da su ispunjeni svi uslovi koji predhode isplati u skladu sa Ugovorom o finansiranju u formi i sadržaju koji zadovoljavaju kriterijume KfW banke.

**1.8
MJERENJA I STANDARDI**

- 1.8.1 Crteži, planovi i proračuni moraju biti zasnovani na metričkom sistemu i njemačkim DIN ⁵ ili evropskim EN standardima, ili međunarodno priznatim standardima koji su bar ekvivalentni standardima koje je objavio ISO ili IEC i to su standardi koji se primjenjuju na Usluge koje se obavljaju u skladu sa ovim Ugovorom.

**1.9
USTUPANJE PRAVA I
PODUGOVARANJE**

- 1.9.1 Konsultant nema pravo da ustupi ili prenese sva ili bilo koje od svojih prava po osnovu ovog Ugovora, bez prethodne pismene saglasnosti Naručioca, koja ne može biti data bez prethodne saglasnosti KfW banke. Saglasnost Naručioca nije potrebna za naplatu bilo kakvih dospjelih potraživanja, ili potraživanja koja će dospjeti na naplatu po osnovu ovog Ugovora.
- 1.9.2 Konsultant može zaključiti, otkazati ili poništiti podugovore za vršenje jednog dijela Usluga koje su predmet ovog Ugovora samo uz prethodno pismeno odobrenje Naručioca, koje se ne može dostaviti bez prethodne saglasnosti KfW banke. U slučajevima gdje je za pružanje Usluga zaključen podugovor, obaveze Konsultanta da ispuni obaveze iz Ugovora se ne mijenjaju.

**1.10
PRAVA NA REZULTATE RADA,
AUTORSKA PRAVA**

- 1.10.1 Osim gdje je drugačije navedeno u Posebnim uslovima ovog Ugovora, Konsultant prenosi na Naručioca sva prenosiva prava na Usluge koje su pružene po osnovu ovog Ugovora na dan kada se bilo koje takvo pravo javi, a u svakom slučaju, najkasnije na dan kada su ista stečena. Ukoliko prenos takvih prava nije moguć ⁶, Konsultant neopozivo daje neograničena, prenosiva, licencirana i isključiva prava na upotrebu i korištenje usluga, koja su neograničena u pogledu vremena i mjesta upotrebe. Takav prenos uključuje prilagođavanja svih prenešenih prava. Konsultant je dužan da se pobrine da se bilo koji relevantan tvorac takvih prenosivih odrekne svakog takvog relevantnog prava.

Naručiocu

pravo
prava.

prava

1.10.2 Ako Konsultant zapošljava treće strane (npr. zaposlene) da pružaju Usluge, treba da se pobrine da mu te strane dopuste da u potpunosti prenesu i/ili da prava. Konsultant je dužan da osigura da se treće strane odreknu ostvarivanja svih relevantnih prava.

1.10.3 Konsultant je dužan da pruži sve potrebne informacije koje Naručilac i KfW banka traže u vezi sa ovim Ugovorom i da stavi na raspolaganje, bez nadoknade, sve tražene informacije. Ova obaveza važi i u periodu od 24 mjeseca nakon završetka Ugovora.

1.11 VLASNIŠTVO NAD DOKUMENTACIJOM I OPREMOM

1.11.1 Sve studije, izvještaji i relevantni podaci i dokumenta kao što su dijagrami, planovi, statistike i Prilozi koji su dostupni Konsultantu tokom obavljanja svog Zadatka, kao i softver (uključujući i odgovarajuće šifre) koji je kreiran ili adaptiran za potrebe obavljanja Zadatka, prelaze u vlasništvo Naručioaca. Konsultant nema pravo na zadržavanje tih materijala.

1.11.2 Oprema, uključujući i vozila kupljena za obavljanje Konsultantskih Usluga, koju je Naručilac u potpunosti isplatio, predaje se Naručiocu po završetku pružanja Usluga. Konsultant je dužan da takvom opremom upravlja pažljivo i da je održava.

1.12 POVJERLJIVOST I OBJAVLJIVANJE

1.12.1 Konsultant treba da se pobrine da on i njegovi zaposleni drže povjerljivim sve dokumente koje im Naručilac, ili KfW banka predaju, kao i sve razmijenjene informacije i stečena znanja u vezi sa ovim Ugovorom i realizacijom istog, čak i ako ti dokumenti nisu izričito označeni kao povjerljivi. Ova obaveza o povjerljivosti koju imaju Konsultant i njegovo osoblje važi i nakon završetka Ugovora. To se ne primjenjuje na odavanje informacija pred sudom, ili organima javne vlasti, ukoliko je do toga došlo na osnovu zakonske obaveze, ili po nalogu suda, ili organa javne vlasti. To se takođe ne primjenjuje na objavljivanje onih materijala, informacija i stečenih znanja za koja su i u onoj mjeri u kojoj su to Naručilac ili KfW banka pismeno odobrili.

1.12.2 Obaveza o povjerljivosti navedena u Klauzuli 1.12.1 ne primjenjuje se na informacije koje:

- (a) su dokazano već bile poznate primaocu prilikom zaključivanja Ugovora, ili ih je nakon toga otkrila treća strana, a da to ne predstavlja bilo kakvo kršenje dogovora o povjerljivosti, zakonskih propisa, ili službenih naloga, ili
- (b) su javno poznate nakon zaključivanja Ugovora, ili budu javno poznate nakon toga, u mjeri u kojoj to nije zasnovano na kršenju ovog Ugovora.

1.13

PONAŠANJE 1.13.1 U toku trajanja ovog Ugovora, Konsultant i njegovo Strano osoblje neće se miješati u politička ili vjerska pitanja zemlje Ugovora.

1.14

KORUPCIJA I PREVARE 1.14.1 Prilikom ispunjavanja svojih obveza iz ovog Ugovora, Konsultant, njegovi predstavnici i osoblje moraju poštovati sve važeće zakone, pravila, propise i odredbe odgovarajućih pravnih sistema uključujući OEBS-ovu Konvenciju o borbi protiv podmićivanja stranih javnih službenika u međunarodnim poslovnim transakcijama.

1.14.2 Konsultant neće ponuditi ili dati bilo direktno ili indirektno bilo kakve neprikladne prednosti javnim službenicima (kako je definisano u nastavku), ili drugim pojedincima u vezi sa svojom ponudom na tenderu. Osim toga, ne smije ponuditi ili dati bilo koje takve podsticaje ili uslove prilikom sprovođenja Ugovora. Konsultant je dužan da detaljno pismeno obavijesti Naručioca, ukoliko ga je javni službenik ili bilo koje drugo lice podstaklo da izvrši ilegalna plaćanja.

1.14.3 Konsultant će obavijestiti članove svog osoblja o njihovim pojedinačnim obavezama kao i o obavezi da se pridržavaju Izjave o preuzimanju obaveze izvršenja posla i poštuju zakone zemlje Ugovora.

1.14.4 Javni službenik je:

- (a) Bilo koji službenik ili zaposleni u organu javne vlasti, ili preduzeću u vlasništvu i pod kontrolom države;
- (b) Bilo koje lice koje vrši javnu funkciju
- (c) Bilo koji službenik ili član osoblja javne međunarodne organizacije, kao što je Svjetska banka;
- (d) Bilo koji kandidat za političku funkciju, ili
- (e) Bilo koja politička partija, ili službeno lice u političkoj partiji.

1.15

NAKNADE 1.15.1 Sve naknade, isplata osiguranja, plaćanje garancija, ili slična plaćanja, ako ih ima, vrše se za račun Naručioca u KfW banci, Frankfurt na Majni (BIC: KFWIDEFF, poziv na broj: 500204

00), račun br. 38 000 00 (IBAN: DE53 5002 0400 3800 0000 00), i KfW banka ih kreditira

Naručiocu. Ukoliko se takva plaćanja vrše u domaćoj valuti, vrše se na poseban račun Naručioca koji je naveden u Posebnim uslovima. Nadoknađeni iznosi za dio koji finansira KfW banka se, uz saglasnost KfW banke, mogu ponovo koristiti, prvenstveno za dalju realizaciju Projekta.

1.16

DJELIMIČNO NEVAŽENJE 1.16.1 Nevaženje ili nesprovodljivost jedne ili više odredaba ovog Ugovora neće uticati na sprovodljivost svih ostalih odredaba istog. Bilo koja nevažeća ili nesprovodljiva odredba će se zamijeniti onom koja je validna i sprovodljiva i koja približno odgovara, u što je moguće većoj mjeri, ekonomskoj svrsi nevažeće ili nesprovodljive odredbe. Isto se shodno primjenjuje i u slučaju propusta.

Stav 2 Naručilac

2.1

INFORMACIJE 2.1.1 Za vrijeme trajanja ovog Ugovora, Naručilac je dužan da, u razumnom vremenskom razdoblju, bez nadoknade, stavi na raspolaganje Konsultantu, sve dostupne podatke, dokumentaciju i informacije koje se odnose na Usluge obuhvaćene Zadatom. To će takođe uključiti sve uz Zadatak i Projekt vezane odredbe iz Posebnih sporazuma u vezi sa bilo kojim kreditom koji je dat na ime Projekta, Projektu dokumentaciju koju su sačinili Naručilac i KfW banka i saglasnosti KfW banke u skladu sa ovim Ugovorom.

2.2 ODLUKE/SARADNJA

- 2.2.1 Pod uslovom da je
Naručiocu sve potrebne podatke, uključujući, ali ne ograničavajući se na, crteže, studije i osoblje za zamjenu, Naručilac donosi odluke na osnovu ovog Ugovora, što je prije moguće, nakon što Konsultant pismeno obaveze, a u svakom slučaju najkasnije do kraja isteka roka navedenog u Posebnim uslovima.

2.3

PODRŠKA 2.3.1 Naručilac podržava Konsultanta, u razumnoj mjeri, u ispunjavanju njegovih obaveza u skladu sa ovim Ugovorom. Naručilac će staviti na raspolaganje Konsultantu na vrijeme i u cjelosti sve usluge neophodne za obavljanje njegovih zadataka kao što je navedeno u **Prilogu 2**

[Projektni zadatak i tenderska dokumentacija]

- 2.3.2 Pored toga, Naručilac podržava Konsultanta, Konsultantovo osoblje i gdje je to primjenjivo lica u srodstvu sa Konsultantom prilikom:

- (a) pravovremenog dobijanja bilo kog dokumenta neophodnog za ulazak u zemlju, boravak i rad u njoj i napuštanje zemlje (viza, radna dozvola, itd.);
- (b) davanja i/ili dobijanja neograničenog pristupa Projektu gdje je to neophodno za pružanje Usluga;
- (c) uvoza, izvoza i carinjenja ličnih stvari i dobara i robe potrebne za pružanje Usluga;
- (d) osiguranja povratnog transporta u hitnim slučajevima;
- (e) dobijanja dozvole za uvoz Strane valute koju traži Konsultant za pružanje Usluga i za ličnu upotrebu svog Stranog osoblja;
- (f) dobijanja dozvole za izvoz novca koji je

Naručilac isplatio Konsultantu u skladu sa ovim Ugovorom; i

- (g) omogućavanja pristupa drugim organizacijama u svrhu dobijanja informacija koje Konsultant treba da pribavi.

2.4

POREZI 2.4.1 U skladu sa sljedećim odredbama, Naručilac treba da osigura da Konsultant i njegovo Strano osoblje budu izuzeti od plaćanja svih taksi, poreza, doprinosa i drugih dažbina propisanih zakonom koji važi u zemlji Naručioaca u vezi sa:

- (a) plaćanjima prema Konsultantu ili njegovom Stranom osoblju u vezi sa pružanjem Usluga;
- (b) uslugama koje pruži Konsultant ili njegovo osoblje u vezi sa ispunjenjem svojih zadataka;
- (c) opremom, materijalima i potrošnim materijalom koji je neophodan za izvršenje Usluga, uključujući motorna vozila i ličnu svojinu Stranog osoblja unesenu u zemlju Naručioaca i transportovanu van zemlje nakon završetka pružanja Usluga ili uništenu tokom pružanja Usluga.

2.4.2 Ukoliko je nemoguće ispuniti obaveze iz Stava

2.4.1 [Porezi] zbog suprotnih zakonskih odredaba, Naručilac je dužan da, pod uslovom da je to zakonski dozvoljeno i osim gdje nije navedeno drugačije u Posebnim uslovima ovog

Ugovora, po dostavljanju dokaza o izvršenom plaćanju, izvrši nadoknadu Konsultantu bez odlaganja za sav plaćeni iznos.

2.5

OPREMA I KANCELARIJE 2.5.1 U svrhu pružanja Usluga, Naručilac treba da stavi na raspolaganje Konsultantu bez nadoknade, tehničku i ostalu opremu i kancelarije u mjeri navedenoj u **Prilogu 5**

[Oprema i namještaj koje treba da obezbijedi Naručilac i usluge treće strane koje je naručio Naručilac].

2.6

KONTAKT OSOBE NARUČIOCA

2.6.1 Naručilac imenuje dva fizička lica koja će imati

ulogu kontakt osobe Naručioca i njegovog zamjenika u komunikaciji sa Konsultantom u skladu sa ovim Ugovorom, a Naručilac je nadalje obavezan da uvijek imenuje drugo lice kao kontakt osobu, bez odlaganja, ukoliko bilo koje od ta dva imenovana lica više nije dostupno.

2.7

USLUGE TREĆE STRANE 2.7.1 Naručilac je obavezan da o svom trošku izvrši potrebna rezervisanja za pružanje onih usluga trećih strana koje on naruči, u skladu sa opisom u **Prilogu 5** [*Oprema i namještaj koje treba da obezbijedi Naručilac i usluge treće strane koje je naručio Naručilac*].

2.8

PLAĆANJE USLUGA 2.8.1 Konsultant dobija nadoknadu od Naručioca za Usluge izvršene u skladu sa ovim Ugovorom u skladu sa Članom 5 [*Nadoknada*].

Stav 3 Konsultant

3.1

OBIM USLUGA

3.1.1 Konsultant je dužan da izvršava Usluge u cjelosti i na vrijeme.

3.1.2 Usluge koje Konsultant treba da izvrši obuhvataju sve usluge opisane i objašnjene u ovom Ugovoru i Prilozima istog, naročito u Prilogu 1 [Zapisnik sa ugovornog pregovaranja] Prilogu 2 [Projektni zadatak dokumentacija] i Prilogu 8 [Konsultantova ponuda]. Nadalje, Konsultant mora pružiti sve standardne i posebne usluge kako je definisano u Stavu 3.2.1. [Standardne i posebne usluge].

i tenderska

3.1.3 Konsultant je dužan da sarađuje sa trećim stranama koje je angažovao Naručilac u skladu sa Stavom 2.7 [*Usluge treće strane*]. Naručilac ne odgovara za ove treće strane ili njihov rad. Pored toga, Konsultant treba da koordinira pružanje svih usluga treće strane sa svojim uslugama, koliko god je to moguće.

3.2

STANDARDNE I POSEBNE USLUGE

3.2.1 Pored Usluga koje su eksplicitno navedene u ovom Ugovoru, Konsultant treba takođe da izvršava sve ostale usluge, po

potrebi, koje

nijesu navedene u ugovornim uslugama, ali su obično potrebne za ispravno izvršavanje ugovornih obaveza ("standardne usluge"). Pružanje standardnih usluga se u cjelosti nadoknađuje kroz Dogovorenu nadoknadu.

- 3.2.2 "Posebne usluge" su usluge koje nisu uključene u ugovorene ili standardne usluge, ali je nužno da ih Konsultant izvrši da bi ispravno obavljao svoje dužnosti na osnovu Ugovora, jer su se spoljne okolnosti pružanja usluga neočekivano promijenile, ili zato što je Naručilac obustavio pružanje Usluga na osnovu Stava 4.5 [Viša sila], ili zato što Naručilac, uz prethodnu saglasnost KfW banke, traži usluge koje nisu bile uključene u poziv na tender, ali su neophodne.

3.3

DUE DILIGENCE 3.3.1 Osim kada je drugačije propisano ovim Ugovorom, ili na neki drugi način zakonski propisano u zemlji ili u drugom pravnom sistemu

(uključujući i pravni sistem u nadležnosti

Konsultanta) u skladu sa odredbama koje nameću veće zahtjeve od ovog Ugovora, pri obavljanju svojih obaveza iz ovog Ugovora Konsultant mora vršiti sopstvenu daljnu provjeru (due diligence) i pružiti Usluge u skladu sa stručnom praksom i priznatim standardima kvaliteta, u skladu sa aktuelnim naučnim i opšteprihvaćenim inženjerskim standardima. Konsultant mora dokumentovati svoj rad, napredak u realizaciji Projekta i odluke koje donosi u odgovarajućoj formi koja je prihvatljiva za Naručioca, imajući u vidu zahtjeve koji proizlaze iz Stava 5.7 [Revizija].

3.4

IZVJEŠTAVANJE 3.4.1 Konsultant podnosi izvještaje Naručiocu i KfW banci o napretku u pružanju Usluga u skladu sa Posebnim uslovima. Osim kada je drugačije određeno u Posebnim uslovima, ukoliko se radi o dužim poslovima kao što je upravljanje građevinskim radovima, obuka ili operativna podrška, Konsultant priprema kvartalne izvještaje, a nakon završetka Usluga sačinjava konačan izvještaj kojim je obuhvaćen cjelokupan period završetka. U izvještaju treba uključiti poređenje ciljanih i aktuelnih vrijednosti za planirane aktivnosti; napredak u izgradnji; dešavanja tokom vremenskog okvira za realizaciju; finansijska kretanja; i informacije o bilo kakvim problemima i iznalaženje mogućih rješenja.

3.4.2 Konsultant je dužan da odmah obavijesti Naručioca o svim vanrednim okolnostima koje nastanu tokom pružanja usluga i o svim pitanjima za koja je potrebna saglasnost KfW banke.

3.4.3 Nadalje, Konsultant je dužan da, na zahtjev, dostavi Naručiocu informacije u vezi sa pružanjem Usluga.

3.5

OSOBLJE 3.5.1 Konsultant angažuje osoblje navedeno u Prilogu 4 [Raspored osoblja] za vršenje Usluga. Potrebno je da na spisak imenovanog ključnog osoblja i bilo koje izmjene istog Naručilac i KfW banka najprije daju svoju pismenu saglasnost.

3.5.2 Naručilac može tražiti od Konsultanta za otkaže ugovor, ili zamijeni bilo kog člana osoblja koji ne ispunjava zahtjeve ili krši Stav 1.13 [Ponašanje]. Svaki takav zahtjev mora biti pismeno dostavljen Konsultantu uz navođenje razloga.

3.5.3 Ukoliko je potrebno izvršiti zamjenu člana osoblja Konsultanta, Konsultant je dužan da se pobrine da dotičnog člana osoblja odmah zamijeni osoba koja ima bar jednake kvalifikacije.

3.5.4 Ukoliko bilo koji član osoblja Konsultanta bude bolestan više od mjesec dana i ako to ugrožava realizaciju ovog Ugovora, Konsultant je dužan da zamijeni tog člana osoblja drugim članom koji ima bar jednake kvalifikacije.

3.5.5 Zamjena osoblja se vrši samo nakon prethodnog odobrenja Naručioca i takvo odobrenje se ne smije neopravdano uskratiti. Za vršenje promjene, zamjene ili planiranog izuzeća od zamjene (kao izuzetak od postojećih pravila) ključnog osoblja preciziranog imenom potrebno je prethodno odobrenje KfW banke.

3.5.6 Ako Konsultant mora raskinuti ugovor, ili zamijeniti, bilo kog člana osoblja za vrijeme trajanja Ugovora, troškove koji proisteknu u vezi sa tim snosi Konsultant, osim u slučajevima kada se vrši otpuštanje ili zamjena osoblja na zahtjev Naručioca. U tom slučaju, Naručilac snosi troškove zamjene člana osoblja, osim ako član osoblja u pitanju nije ispunio zahtjeve ili je prekršio Stav 1.13 [Ponašanje].

3.6 KONTAKT OSOBA

3.6.1 U cilju ostvarivanja svih prava i obaveza koje **KONSULTANTA** proizlaze iz ovog Ugovora Konsultant imenuje fizičko lice kao svoju kontakt osobu za saradnju sa Naručiocem u skladu sa ovim Ugovorom.

3.6.2 Konsultant mora navesti i dati odgovarajuće kontakt podatke Naručiocu i KfW banci o osobi u kancelariji Konsultanta koju je moguće pozvati u bilo kojem trenutku u slučaju nužde, ili krizne situacije, kao i o zamjeniku Konsultanta. Konsultant obavještava Naručioca i KfW banku bez odlaganja o bilo kojoj promjeni izabраних osoba ili njihovih kontakt podataka.

3.7 NEZAVISNOST KONSULTANTA

3.7.1 Konsultant se obavezuje da ni on niti bilo koje preduzeće udruženo sa Konsultantom neće učestvovati na tenderu kao proizvođač, dobavljač, ili izvođač građevinskih radova. Ova zabrana se odnosi i na bilo koji tender za sve daljnje konsultantske usluge, u mjeri u kojoj takve konsultantske usluge mogu dovesti do ograničenja tržišnog nadmetanja ili konflikta interesa. Ukoliko dođe do bilo kakve zloupotrebe ove odredbe, to može prouzrokovati momentalno otkazivanje Ugovora i zahtijevaće se nadoknada bilo kog i svih troškova Naručioca do vremena te zloupotrebe i nadoknada bilo kakvih i svih gubitaka i štete koju je Naručilac počinio kao posljedicu takvog otkazivanja.

Stav 4 Početak, kraj, izmjene i prestanak vršenja Usluga

4.1 POČETAK I KRAJ PRUŽANJA USLUGA

4.1.1 Konsultant svoje Usluge počinje da pruža na propisani datum potpisivanja Ugovora, ali ne prije i bez neopravdanog kašnjenja nakon stupanja na snagu Ugovora. Konsultant pruža Usluge u skladu sa vremenskim rasporedom u Prilogu 6 [Vremenska Dinamika za pružanje Usluga], i završava Usluge u okviru Perioda završetka, u zavisnosti od bilo kakvih dodatnih produženja ovog Ugovora.

4.1.2 U vezi sa opcionim uslugama (ukoliko ih ima), Konsultant počinje pružanje opcionih usluga najranije nakon prijema obavještenja Naručioca, pod uslovom da je Naručilac prethodno dobio saglasnost KfW banke za to.

- 4.1.3 Bilo kakve izmjene vremenske dinamike u **Prilogu 6** [*Vremenska dinamika za pružanje Usluga*] zbog osnovanog zahtjeva bilo koje strane međusobno se ugovaraju u pisanoj formi.

4.2 PENALI ZA KAŠNJENJE

- 4.2.1 Ukoliko Konsultant ne izvrši na vrijeme bilo koju od Usluga propisanih ovim Ugovorom, iz razloga koje mora opravdati, Naručilac će biti ovlašten, osim ukoliko u Posebnim uslovima nije uključeno izuzeće, da naplati penale u visini od 0,5% od Ugovorene sume za svaku nedjelju zakašnjenja koji međutim ne smiju prelaziti 8% od Ugovorene sume. Van tih penala, Naručilac ne smije podnositi bilo kakve druge odštetne zahtjeve zbog kašnjenja u pružanju Usluga. Pravo na raskid Ugovora se ne mijenja.

4.3 IZMJENE I DOPUNE USLUGA

- 4.3.1 Uz prethodnu saglasnost KfW banke, Naručilac ima pravo da traži izmjene i dopune Ugovora (izmjenu ili dodatne usluge ili izmjenu rokova/perioda izvršenja - "**Izmjene i dopune Usluga**").
- 4.3.2 U ovom slučaju, Dogovorena nadoknada i Period završetka će se shodno tome prilagoditi na osnovu međusobnog sporazuma ugovornih strana. Konsultant dostavlja predloge za vršenje izmijenjenih usluga i dobijanje naknade za iste.
- 4.3.3 Konsultant potpisuje izmjene i dopune Usluga ukoliko je Naručilac saglasan sa tim, u pisanoj formi, u predlogu za nadoknadu. Ako se strane ne dogovore u vezi predloga za nadoknadu u roku od tri mjeseca od početka pružanja konsultantskih Usluga, pravo na naknadu će se tretirati kao spor u skladu sa Članom 8 [*Sporovi i arbitražne procedure*].

4.4

PREPREKE 4.4.1 Ukoliko Naručilac ili ugovorni partneri Naručioca ometaju ili uzrokuju kašnjenje u izvršenju Usluga ("prepreka"), tako da to ometanje dovodi do povećanja troškova, obima, ili trajanja Usluga, Konsultant će odmah obavijestiti Naručioca o okolnostima i mogućim posljedicama.

- 4.4.2 Ukoliko prepreka spada u domen rizika po Naručioca, ili ukoliko je Naručilac uzrokovao prepreku bilo namjerno ili grubom nepažnjom, Konsultant ima pravo na nadoknadu troškova kojima se izložio kao rezultat ove smetnje, pod uslovom da postoji evidencija o tim troškovima.

4.5

VIŠA SILA 4.5.1 U slučaju više sile, ugovorne obaveze se, u mjeri u kojoj taj događaj utiče na njih, obustavljaju dokle god nije moguće vršiti usluge radi više sile, pod uslovom da jedna ugovorna strana dobije obavještenje o događaju više sile od druge strane u roku od dvije nedjelje nakon što se desi nepredviđeni događaj. Bilo kakva odgovornost Konsultanta za štetu koja proistekne radi njegovog odsustva uzrokovanog višom silom se isključuje.

4.5.2 U slučaju više sile, Konsultant ima pravo na produžetak Ugovora koji će trajati koliko i kašnjenje prouzrokovano višom silom. Ukoliko je pružanje Usluga radi više sile trajno onemogućeno, ili ukoliko događaj koji ima obilježje više sile traje više od 180 dana, obje strane ugovora imaju pravo da otkazu Ugovor.

4.5.3 Ukoliko dođe do suspenzije primjene ili prekida Ugovora radi više sile, Usluge koje su pružene do vremena pojave više sile i svi neophodni troškovi (za koje postoji evidencija) Konsultanta koji proisteknu radi prekidanja Usluga se fakturišu na osnovu ugovornih cijena. Nijedna strana ne treba da podnosi bilo kakav dodatni odštetni zahtjev.

4.6

OBUSTAVLJANJE USLUGA ILI RASKID UGOVORA

4.6.1 Naručilac može, uz prethodnu saglasnost KfW banke, u cjelosti ili djelimično obustaviti pružanje Usluga ili raskinuti ovaj Ugovor dostavljanja pismenog obavještenja o tome najmanje 30 dana ranije. U tom slučaju, Konsultant mora odmah preduzeti sve potrebne mjere kako bi se osiguralo da su Usluge prekinute i troškovi svedeni na minimum. Konsultant predaje Naručiocu sve izvještaje, nacрте i dokumente koji su trebali da budu sačinjeni do datuma u pitanju. Ako suspenzija potraje duže od 180 dana Konsultant može raskinuti Ugovor. U slučaju raskida Stav 4.5.3 [Viša sila] se shodno primjenjuje uz neophodne izmjene (mutatis mutandis).

nakon

4.6.2 Ukoliko Konsultant ne ispunji svoje ugovorne obaveze bez dovoljnog razloga; u skladu sa Ugovorom; ili na vrijeme, Naručilac može dostaviti opomenu Konsultantu tražeći uredno izvršava Usluge. Ukoliko Konsultant ne nadoknadi propuste u vršenju Usluga u roku od 21 dana od dobijanja opomene Naručioca, Naručilac ima pravo da nakon isteka ovog roka otkaze Ugovor dostavljanjem pismenog obavještenja o otkazu.

mu da

- 4.6.3 Konsultant može raskinuti Ugovor ako bilo koja suma koja je po ovom Ugovoru trebala da bude isplaćena Konsultantu nije isplaćena u roku od 60 dana nakon prijema odgovarajućeg računa, ukoliko je Konsultant Naručioca podsjetio u pisanoj formi u periodu od 30 dana nakon isteka prvobitnog roka od 60 dana i Naručilac nije platio dospjele iznose u narednih 30 dana nakon ovog obavještenja.
- 4.6.4 Ukoliko do raskida Ugovora nije došlo radi neispunjenja obaveza Konsultanta, Konsultant ima pravo da traži Dogovorenu nadoknadu. Međutim, Konsultant mora umanjiti svoj gubitak i odbiti bilo kakav prihod od takvog umanjenja koji uključuje (i) bilo koju nadoknadu isplaćenu Konsultantu koji je radio na drugim projektima za vrijeme za koje je bilo predviđeno da radi na Projektu (ii) bilo koju nadoknadu koju bi Konsultant zaradio radeći na drugim projektima za vrijeme koje je predviđeno da radi na Projektu, ali koju Konsultant nije primio kao rezultat Konsultantovih namjernih radnji ili propusta.
- 4.6.5 Ukoliko je do raskida Ugovora došlo radi neispunjavanja obaveza Konsultanta, Konsultant ima pravo da traži Dogovorenu nadoknadu za Usluge koje su pružene do dana raskida, ali za koje još nije isplaćena nadoknada. Naručilac ima pravo da traži nadoknadu za direktnu štetu koja je nastala kao rezultat neispunjenja obaveza.

4.7

KORUPCIJA I PREVARE

- 4.7.1 Ukoliko se dokaže da je Konsultant prekršio Stav 1.14 [*Korupcija i prevare*], Naručilac može otkazati Ugovor u pisanoj formi, bez obzira na različite kazne ili druge sankcije kojima Konsultant podliježe u skladu sa zakonom zemlje Ugovora, ili bilo kojim drugim pravnim sistemom. Naručilac može takođe raskinuti ovaj Ugovor u pisanoj formi ukoliko je neistinita Izjava o preuzimanju obaveze izvršenja posla koju je Konsultant dostavio u vezi sa svojom ponudom.

4.8
PRAVA I OBAVEZE STRANA U
SLUČAJU RASKIDA UGOVORA

4.8.1 Raskid ugovora ne dovodi u pitanje niti utiče na prava, zahtjeve ili obaveze strana do dana kada raskid stupa na snagu.

Stav 5 Nadoknada

5.1
NADOKNADA ZA
KONSULTANTA

5.1.1 Konsultant dobija nadoknadu koja je dogovoren u Posebnim uslovima za vršenje Usluga u skladu sa ovim Ugovorom, na osnovu uslova navedeni u istom i uslovima u nastavku. **Prilog 7 [Izveštaj o troškovima]** sadrži detaljnu listu uslova.

5.2
USLOVI PLAĆANJA

5.2.1 Izuzev gdje je to drugačije dogovoreno Posebnim uslovima, Naručilac isplaćuje nadoknadu Konsultantu na sljedeći način:

- (a) **Avans**, u roku od 30 dana po stupanju na snagu ovog Ugovora, uz podnošenje fakture.
- (b) **Rate** se plaćaju uz dostavljanje odgovarajućih faktura sa maksimalno jednom isplatom u periodu od tri mjeseca. Prva faktura za prvu ratu se dostavlja najranije 3 mjeseca nakon ugovorenog početka pružanja Usluga. Naručilac ima pravo da suspenduje isplatu rata u bilo kojoj fazi isplate u slučaju da dođe do značajnih odstupanja od vremenskog rasporeda i/ili u slučaju nezadovoljavajućeg rada Konsultanta. Ovo pravo se takođe primjenjuje na isplate koje nijesu zasnovane na mjerenu produktivnosti prema količini obavljenog posla. Ukoliko se isplata rata obustavi, Naručilac mora postupiti u skladu s Stavom 5.6 *[Primjedbe na fakture]*.
- (c) **Završna isplata** se vrši nakon što se pružanje Usluga u cjelosti završi i Konsultant dobije potvrdu od Naručioca KfW banke.

5.2.2 Samo u slučajevima ugovora za agencije Konsultantove fakture se upućuju na Naručioca "c/o KfW". KfW banci se dostavlja originalna faktura. Jedan primjerak fakture šalje se direktno Naručiocu. Original završne fakture upućuje se direktno Naručiocu, a KfW banka prima kopiju.

- 5.2.3 Bilo kakve garancije se izdaju u formi koja je navedena u Prilozima 10 i 11 i uvijek se obezbjeđuju kao bankarske garancije koje glase na Naručioca kao korisnika. Moraju biti prihvatljive za Naručioca i KfW banku. Originalan primjerak garancije dostavlja se Naručiocu, uz kopiju, zajedno sa potvrdom o prijemu originala koja se šalje KfW banci.

5.3

NAČIN ISPLATE 5.3.1 Isplata se vrši u skladu sa uslovima koji su navedeni u Posebnim uslovima.

5.4

PRILAGODAVANJE CIJENA 5.4.1 Osim gdje to nije drugačije dogovoreno u Posebnim uslovima, sljedeći uslovi se primjenjuju u pogledu cijena. Cijene navedene u **Prilogu 7 [Izveštaj o troškovima]** primjenjuju se na Period završetka naveden u Posebnim uslovima i 3 mjeseca nakon toga. Nakon ovog datuma, može doći do prilagođavanja cijena u slučaju da je službena visina cijena i plata u zemlji porijekla Konsultanta (troškovi Strane valute), ili u zemlji Naručioca (troškovi Domaće valute) porasla, mjereno pomoću osnovnih indeksa koji su navedeni u Posebnim uslovima i uz potvrdu Konsultanta. Obračun se vrši pomoću sljedeće formule:

$$P_n = P_o \cdot (0,15 + 0,85 \cdot L_n/L_o)$$

P_n = revidovana cijena, P_o = osnovna cijena,

L_n = revidovani indeks, L_o = osnovni indeks.

Cijena se neće obračunati do objave indeksa konačne cijene.

- 5.4.2 Osim gdje to nije drugačije dogovoreno u pisanoj formi, Konsultant ima pravo samo na nadoknadu za posebne usluge ukoliko dođe do izmjene usluga u skladu sa Stavom 4.3 [Izmjene i dopune usluga].

5.5

ROK PLAĆANJA 5.5.1 Osim u odnosu na avansno plaćanje i gdje je drugačije navedeno u Posebnim uslovima, isplata se vrši u roku od 60 dana od dana kada Konsultant dostavi Naručiocu dokazive fakture.

5.5.2 Ukoliko Naručilac ne izvrši isplatu u periodu određenom u Stavu 5.5 [*Rok plaćanja*], osim gdje Naručilac ima primjedbe u skladu sa Stavom 5.6 [*Primjedbe na fakture*], Konsultantu treba isplatiti nadoknadu po cijeni koja je dogovorena u Posebnim uslovima. Obračun se vrši svakodnevno od dana dospjeća fakture na naplatu u dogovorenoj valuti. Dogovorena nadoknada treba da zadovolji sve odštetne zahtjeve Konsultanta koji proisteknu zbog kašnjenja Naručioca.

5.6

PRIMJEDBE NA FAKTURE 5.6.1 Ukoliko Naručilac ima primjedbe na cjelokupnu ili dio fakture Konsultanta, Naručilac obavještava Konsultanta o svojoj namjeri da ne izvrši isplatu i navodi razloge za to. Ukoliko Naručilac ima primjedbe samo na dio fakture platiće onaj dio fakture na koji nema primjedbe u periodu koji je naveden u Stavu 5.5 [*Rok plaćanja*].

5.7

REVIZIJA 5.7.1 Za usluge ili dio usluga za koje se ne vrši nadoknada u paušalnom iznosu, Konsultant je obavezan da ažurno vodi evidenciju koja zadovoljava profesionalne standarde i gdje se jasno i sistematski navode pružene usluge i uključeno vrijeme i troškovi. Konsultant dozvoljava Naručiocu i KfV banci da izvrše reviziju tih evidencija u bilo koje vrijeme i naprave kopije istih za vrijeme trajanja Ugovora.

5.8

VALUTA 5.8.1 U Posebnim uslovima se navodi valuta koja se primjenjuje na Ugovor.

Stav 6 Obaveze

6.1

**ODGOVORNOST
KONSULTANTA U SLUČAJU
KRŠENJA UGOVORNIH
OBAVEZA**

6.1.1 Konsultant odgovara Naručiocu za kažnjiva kršenja svojih ugovornih obaveza koja se mogu dokazati, a naročito za kršenje Člana 3 [*Konsultant*]. Obaveza Konsultanta se ograničava na odgovarajući iznos osiguranja, ukoliko je taj iznos veći od vrijednosti Ugovorene

sume. Inače obaveza Konsultanta se ograničava na Ugovorenu cijenu. To ne utiče na odgovornost za krivična djela počinjena sa namjerom i grubu nepažnju.

6.2 OBAVEZE KONSULTANTA PREMA PODIZVOĐAČIMA

- 6.2.1 Konsultant takođe odgovara za Usluge koje pruža podizvođač u skladu sa Stavom 1.9 [Angažovanje podizvođača].

6.3 TRAJANJE OBAVEZA

- 6.3.1 Odgovornost Konsultanta prestaje na dan prihvatanja Usluga i u slučaju da u Ugovoru nije predviđeno prihvatanje Usluga, na dan izvršenja ugovorenih Usluga u cjelosti, osim ukoliko u Posebnim uslovima nije određeno drugačije vrijeme.

6.4 OBAVEZE ZA NEMATERIJALNU ŠTETU

- 6.4.1 Odgovornost za nematerijalnu štetu je isključena.

6.5 OBAVEZE NARUČIOCA

- 6.5.1 Naručilac odgovara za kažnjiva kršenja svojih ugovornih obaveza koja se mogu naročito kršenje Stava 2 [Naručilac]. dokazati,

Stav 7 Osiguranje

7.1 OSIGURANJE OD ODGOVORNOSTI I NADOKNADA ŠTETE

- 7.1.1 Konsultant uzima osiguranje za period Ugovora, pod uslovima koji su navedeni u Posebnim uslovima, uključujući, ali ne ograničavajući se na sljedeće:

- (a) osiguranje od profesionalne odgovornosti;
- (b) osiguranje od lične odgovornosti;
- (c) osiguranje opreme koje pokriva gubitak ili fizičko oštećenje kompletne opreme koju je Naručilac stekao, koju koristi, nabavi ili plati u vezi sa ovim Ugovorom; i
- (d) za vozila stečena u vezi sa Ugovorom

treba obezbijediti osiguranje motornog vozila od građansko-pravne odgovornosti i kasko osiguranje za motorna vozila.

- 7.1.2 Troškovi nastali u vezi sa osiguranjem navedenim u Stavu 7.1.1 [Osiguranje od odgovornosti i nadoknada štete] u potpunosti se nadoknađuju iz Dogovorene nadoknade.

Stav 8 Sporovi i arbitražna procedura

8.1

SPORAZUMNO RJEŠAVANJE

- 8.1.1 Ukoliko iz ovog Ugovora ili u vezi sa njim proistekne spor, predstavnici ugovornih strana koji su ovlašteni za rješavanje sporova će pokušati da, u roku od 21 dana od dana kada jedna strana uputi pismeni zahtjev drugoj, uz iskrene namjere riješe spor sporazumno.

8.2

POSREDOVANJE 8.2.1 Ukoliko sporazumno rješavanje spora nije moguće postići u periodu od 3 mjeseca nakon dobijanja pismenog zahtjeva u skladu sa Stavom 8.1 [Sporazumno rješavanje], strane mogu, ukoliko se obje strane slože, pokušati da riješe spor u skladu sa Posebnim uslovima putem posredovanja prije pokretanja arbitražnog postupka. Bez obzira na to, strane se mogu dogovoriti da odmah započnu proces posredovanja. Osim ukoliko se strane ne dogovore drugačije u roku od 14 dana, svaka strana može tražiti da posrednika imenuje institucija navedena u Posebnim uslovima.

Posredovanje počinje najkasnije 21 dan nakon imenovanja posrednika. Proces posredovanja se realizuje u skladu sa procedurom koju odabere imenovani posrednik.

Svi pregovori i razgovori koji se održe u toku posredovanja se moraju smatrati povjerljivim, osim ukoliko nisu sklopljeni pismeno u zakonski obavezujućem ugovoru.

Ukoliko strane prihvate preporuke posrednika, ili se dogovore da riješe spor na drugi način, postignuti sporazum se evidentira u pisanoj formi i potpisuju ga predstavnici obje strane.

8.2.2 Ukoliko se spor ne riješi u roku od 3 mjeseca nakon imenovanja posrednika, spor se rješava arbitražnom procedurom u skladu sa Stavom 8.3 [*Arbitražna procedura*].

8.3

ARBITRAŽNA PROCEDURA 8.3.1 Ukoliko strane ne riješe spor sporazumno u skladu sa Stavom 8.1 [*Sporazumno rješavanje*] ili putem posredovanja u skladu sa Stavom 8.2 [*Posredovanje*], spor se konačno i isključivo rješava – osim gdje je drugačije propisano u Posebnim uslovima – u skladu sa Pravilnikom o mirenju i arbitraži Međunarodne trgovinske komore u Parizu od strane jednog ili više arbitara imenovanih u skladu sa Pravilnikom. Mjesto arbitraže i jezik arbitražnog postupka propisuju se u Posebnim uslovima.

Posebni uslovi

Ad Član 1: Opšte odredbe

Ad 1.1: Definicije

"Period završetka": Period završetka je [10 mjeseci].

"Viša sila": Pogledati „Definicije“, strana 2 ovog Ugovora

"Projekat": Konsultantske usluge se vrše za [Studiju izvodljivosti izgradnje zaobilaznice na crnogorskom primorju (Trasa SEETO 1)] („Projekat“)

"Datum početka pružanja usluga": Datum početka pružanja usluga je [4] sedmice nakon dana stupanja Ugovora na snagu.

Ad 1.4: Komunikacija

Obavještenja, instrukcije, izvještaji i ostale poruke biće sačinjeni na engleskom jeziku.

Ad 1.5: Obavještenja

Adresa Naručioca

Poštanska adresa [Rimski trg 46, 81000 Podgorica, Crn Gora]

E-mail: [irena.jankovic@mzp.gov.me;
angelina.zivkovic@mzp.gov.me]

Tel: [+382.20.482.189]

Fax: [+382.20.234.342]

Adresa Konsultanta

Poštanska adresa WYG International Limited, Geneva Building, Lake View Drive, Sherwood Business Park, Annesley, Nottingham, NG15 0ED

E-mail: keith.cook@wyginternational.com

Tel: +44 7887 988720

Fax:

Adresa KfW banke

Poštanska adresa KfW Bankengruppe
LEA4
Ms. Lotte Westermann
Palmengartenstrasse 5 – 9
60325 Frankfurt
Njemačka
E-mail: Lotte.Westermann@kfw.de
Tel: +49 (69) 7431-4798
Fax: +49 (69) 7431-2738

Ad 1.6: Zakon i jezik

Jezik Ugovora je **engleski**.

[U slučaju nepodudarnosti prevladava **engleska verzija**].

Zakoni kojima se reguliše ovaj Ugovor su **zakoni Njemačke**.

Ad 1.10: Prava na rezultate rada, autorska prava

Autorska prava za sve studije, izvještaje, projekte i prateća dokumenta koja su nastala pružanjem usluga pripadaju Naručiocu. Naručilac ima pravo da slobodno raspolaže ovim materijalom za sve svrhe koje su u vezi sa projektom.

Posebni izvještaji o realizaciji Projekta pripremljeni od strane konsultanta moraju sadržati sljedeću odredbu: "Ovaj dokument je nastao uz finansijsku podršku Evropskog Zajedničkog fonda za Zapadni Balkan u okviru Zapadnobalkanskog investicionog okvira. Stavovi izneseni ovdje su (naziv konsultantske kompanije) i stoga se ni na koji način ne odražava na zvanično mišljenje i davalaca kontribucija Evropskog zajedničkog fonda za Zapadni Balkan ili EBRD-a kao komenadžera Zajedničkog fonda za Zapadni Balkan."

Ad 1.15: Nadoknade

Podaci o posebnom računu Naručioca za svrhe isplate nadoknada u lokalnoj valuti: **nije primjenjivo**.

Ad Član 2: Naručilac

Ad 2.2: Odluke/saradnja

Primjenjuju se Opšti uslovi ugovora, tačka 2.2.1 (na strani 10 ovog Ugovora) bez posebnog roka isteka važnosti.

Ad 2.4: Porezi

Ugovorne strane su saglasne u vezi sljedećih odredaba u vezi taksi i poreza:

Angažovanje lokalnih podkonsultanata od strane Konsultanta nije izuzeto iz obaveze plaćanja PDV-a. Isto se odnosi i na Konsul dnevne i operativne troškove (gorivo, rentiranje, podkonsultantske usluge, itd.).

Ad 2.5: Konsultantu neće biti stavljeni na raspolaganje oprema i kancelarije za potrebe pružanja usluga.

Ad 2.6: Kontakt osoba Naručioca

Kontakt osoba Naručioca je g-đica **Angelina Živković**.

Zamjenik kontakt osobe Naručioca je g-đa **Irena Janković**.

Ad Article 3: Konsultant

Ad 3.3: Due diligence

Primjenjuju se Opšti uslovi ugovora, tačka 3.3.1 (strana 14 ovog Ugovora).

Ad 3.4: Izvještavanje

Obaveze u pogledu izvještavanja precizirane su u odjeljku 3.7. Projektnog zadatka.

Ad 3.6.1: Konsultantova kontakt osoba za vođenje Ugovora

Konsultantova kontakt osoba za vođenje Ugovora je **g-din Ralph Henderson**.

Kontakt detalji **ralph.henderson@wyginternational.com**

Zamjenik je **g-din Danko Gavrilovic**

Kontakt detalji: **danko.gavrilovic@wyg-see.eu**

Ad 3.6.2: Konsultantova kontakt osoba za hitne slučajeve ili krizni period

Konsultantova kontakt osoba za hitne slučajeve ili krizni period je **[g-din Keith Cook]**.

Kontakt detalji: **keith.cook@wyginternational.com**

Zamjenik je **g-din Ralph Henderson**

Kontakt detalji: **ralph.henderson@wyginternational.com**

Ad Član 3.7.1: Nezavisnost Konsultanta

Konsultant ima pravo da učestvuje na bilo kojem tenderu za sve daljnje konsultantske usluge za potrebe ovog Projekta.

Ad Član 4.6: Raskid Ugovora

PEA i/ili KfW banka zadržavaju pravo da raskinu Ugovor nakon I faze. U tom slučaju, Konsultantu se ne isplaćuje nikakva nadoknada.

Ad Član 5: Nadoknada

Ad 5.1.1: Nadoknada

Naručilac isplaćuje za usluge koje treba da izvrši Konsultant u skladu sa ovim Ugovorom iznos od

[417.600] eura

("Ugovorena cijena").

Ugovorena cijena se sastoji od:

Fiksnog iznosa za I fazu: **[175.250] eura**

Pratećih troškova u paušalnom iznosu za I fazu: **[21.050] eura**

Fiksnog iznosa za II fazu: **[139.250] eura**

Pratećih troškova u paušalnom iznosu za I fazu: **[82.050] eura**

[Ugovorena cijena ne uključuje sljedeće opcije koje nijesu naručene:

Opcija **nije primjenjivo**

Prilog 7 [Izveštaj o troškovima] sadrži detaljan izvještaj o troškovima.

Ad 5.2: Uslovi plaćanja

Naknada Konsultantu se plaća na sljedeći način:

[49.075,0] eura Avansno plaćanje vrši se uz podnošenje fakture i avansne garancije (pogledati u Prilogu 10 Model avansne garancije) u visini od 25% od ukupnog iznosa Faze I **[196.300] eura**.

[202.550,0] eura Plaćanje privremenih situacija 1: 75% od ukupnog iznosa Faze I **[196.300] eura** i avansno plaćanje u visini od 25% od ukupnog iznosa Faze II **[221.300] eura** nakon završetka Faze I i dostavljanja i prihvatanja svih izvještaja iz Faze I, od strane Naručioca i KfW banke.

[110.650,0] eura Plaćanje privremenih situacija 2: 50% od Faze II **[221.300] eura** po završetku ispitivanja i podnošenju izvještaja o ispitivanju.

[55.325,0] eura Konačna isplata sastoji se od preostalih 25% od ukupnog iznosa za Fazu II, a plaća se po dostavljanju i odobrenju izvještaja za ovu Fazu II.

Dodatni troškovi su isključeni (plaćaju se po dostavljanju dokaza).
Dodatni troškovi se plaćaju u paušalnom iznosu.

Avansna plaćanja su u potpunosti izmirena sa konačnom isplatom.

Ad 5.3: Način isplate

Nadoknadu za Konsultanta plaća na osnovu Ugovora o finansiranju Projekta za ovaj Projekat KfW banka Konsultantu primjenom postupka direktne isplate po dostavljanju odgovarajućih faktura od strane Konsultanta.

Sva plaćanja Konsultantu vrše se u eurima po dostavljanju odgovarajućih faktura zajedno sa Zahtjevom za isplatu upućenim KfW banci (postupak direktne isplate) na sljedeći račun:

Broj računa: 00010545
Sort Code: 09-07-15
SWIFT: ABBYGB2L
IBAN: GB90 ABBY 0907 1500 0105 45
Naziv banke: Santander, Liverpool
Adresa banke: Santander Corporate & Commercial, Bridle Road, Bootle, Liverpool L30 4GB,
United Kingdom
WYG International Ltd EUR

Fakture Konsultanta adresiraju se na Naručioca.

Ad 5.4.1: Prilagođavanje cijena

Prilagođavanje cijena se neće primjenjivati za usluge po osnovu ovog ugovora.

Ad 5.5: Rok isplate

Sve isplate koje dospiju za plaćanje Konsultantu vrše se u eurima u roku od **30 dana** nakon potpisivanja ovog Ugovora, odnosno dostavljanja faktura.

Ugovorena nadoknada za dospjela neizmirena dugovanja u skladu sa Stavom 5.5 [Rok isplate]: **6%** godišnje, u odnosu na neizmireni iznos.

Ad 5.8: Valuta

Valuta koja se primjenjuje na Ugovor je **euro**.

Ad Article 6: Obaveze

Ad 6.3: Period trajanja obaveza

Obaveze Konsultanta prestaju **nakon prihvatanja konačnog izvještaja i troškova studije**.

Obaveze Konsultanta ograničene su Ugovornom cijenom.

Ad Član 7: Osiguranje

U toku perioda realizacije Ugovora Konsultant o svom trošku uzima bar osiguranja navedena u nastavku:

- a) osiguranje od profesionalne odgovornosti sa pokrićem od 500.000 EUR i maksimalno jednim odštetnim zahtjevom godišnje;
- b) osiguranje od lične odgovornosti sa pokrićem od 200.000 EUR i maksimalno jednim odštetnim zahtjevom;
- c) osiguranje opreme koje pokriva gubitak ili fizičko oštećenje kompletne opreme koja je stečena ili se koristi za projekat sa pokrićem od 200.000 EUR godišnje i maksimalno jednim odštetnim zahtjevom godišnje;
- d) za vozila stečena/koja se koriste u vezi sa projektom treba obezbijediti osiguranje motornog vozila od građavnsko-pravne odgovornosti i kasko osiguranje za motorna vozila.

Ad Član 8: Sporovi i arbitražna procedura

Ad 8.2: Posredovanje

Posrednika imenuje **Međunarodna privredna komora (ICC)** i imenovanje je obavezujuće za ugovorne strane.

Troškove postupka posredovanja i usluga posrednika ugovorne strane ravnopravno dijele.

Ad 8.3: Arbitražna procedura

Spor će konačno biti riješen u skladu sa Pravilnikom o mirenju i arbitraži
Međunarodne privredne komore u Parizu.

Mjesto arbitražnog postupka je **Frankfurt.**

Jezik arbitražnog postupka je **engleski.**

Ovaj Ugovor se potpisuje u 3 (tri) primjerka, od kojih svaki predstavlja original.

(Mjesto, datum)

(Mjesto, datum)

(za Naručioca)

(za Konsultanta)

Spisak Priloga

Prilog br.	Naziv
1	Zapisnik sa ugovornog pregovaranja
2	Projektni zadatak i tenderska dokumentacija
3	Smjernice za angažovanje Konsultanata u programima finansijske

	saradnje sa Zemljama u razvoju (verzija koja je bila važeća na datum podnošenja ponude)
4	Raspored osoblja
5	Oprema i namještaj koje treba da obezbijedi Naručilac i usluge treće strane koje je naručio Naručilac
6	Vremenska dinamika za pružanje Usluga
7	Izveštaj o troškovima
8	Konsultantova ponuda
9	Izjava o preuzimanju obaveze izvršenja posla
10	Avansna garancija
11	Retenciona garancija

Ukoliko jedan ili više Priloga nije potreban u stvarnom Ugovoru, da bismo zadržali integritet reference, molimo da zadržite numerisanje Priloga i unesete riječi "nije primjenjivo" u odgovarajućim Prilozima.

Prilog 1

Zapisnik sa ugovornog pregovaranja⁷

Tokom pregovora i pripreme ugovora, stranke su se dogovorile o sljedećem :
Svi pomoćni troškovi biće predstavljeni kao paušalni iznos plaćanja, uključujući i istraživanja koja su ostala u maksimalnom iznosu za Konsultanta na sljedeći način:

- brpjanje saobraćaja za Fazu I 1 : 9000,0 EUR
- Geotehnički i topografske Istraživanja za Fazu II 2 : 70.000,0 evra

Porezi na angažovanju lokalnih podkonsultanata ne mogu biti nadoknađeni i neće ih nadoknaditi MoTMA

Prilog 2

Projektni zadatak i tenderska dokumentacija

Biće dodati u finalne dokumente prije samog potpisivanja

Prilog 3

Smjernice za angažovanje konsultanata u programima finansijske saradnje sa partnerskim zemljama

(važeća verzija na datum podnošenja ponude)

Predstavnici WTG-a će ih dodati u finalne dokumente prije samog potpisivanja

Raspored osoblja

(u skladu sa Konsultantovom ponudom; gdje je primjenjivo u verziji koja je naknadno dogovorena)

U skladu sa Programom rada uključenim u Tehničku ponudu Konsultanta

[illegible]

Prilog 5

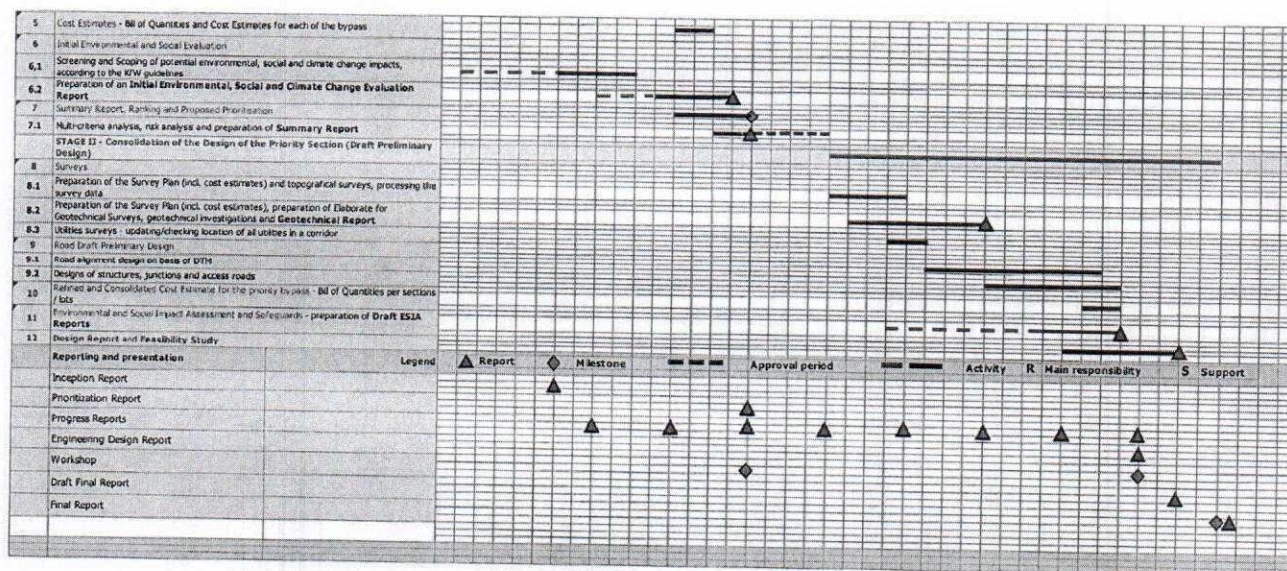
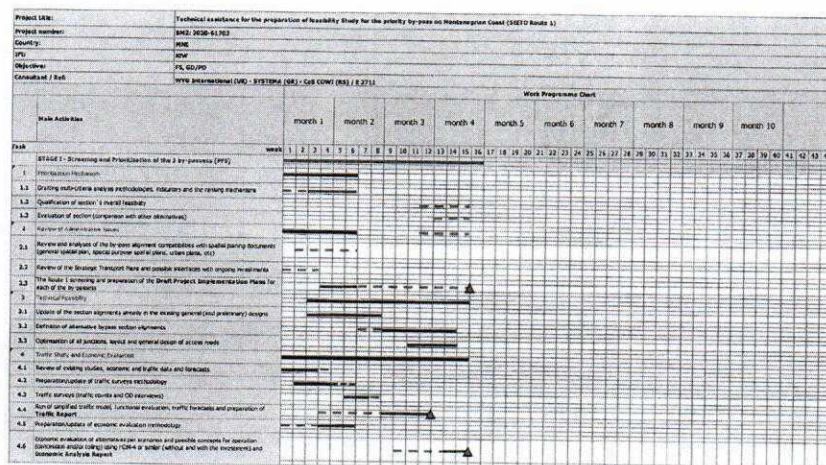
Oprema i namještaj koje treba da obezbijedi Naručilac i usluge treće strane koje je naručio Naručilac

Nije primjenjivo

Naručilac neće obezbijediti opremu i kancelarije za potrebe pružanja Usluga po osnovu ovog ugovora

Vremenski raspored za pružanje usluga

(u skladu sa Konsultantovom ponudom; gdje je primjenjivo u verziji koja je naknadno dogovorena)



Prilog 7

Izvještaj o troškovima

(u skladu sa Konsultantovom ponudom; gdje je primjenjivo u verziji koja je naknadno dogovorena)

U skladu sa detaljnom finansijskom ponudom

Kompanije WYG International, Systema, CeS Cowi

FAZA 1

1. Strano osoblje	Jedinica mjere	Količina	Jedinična cijena (EUR)	Iznos(EUR)
1.1 Ralph Henderson – Vođa tima	mjesec	4.5	10000.00	45000.00
1.2 Zoran Luković – Inženjer za mostove	mjesec	1.5	6000.00	9000.00
1.3 Vladimir Jovanović – Inženjer za tunele	mjesec	1.5	6000.00	9000.00
1.4 Milan Popović – Diplomirani inženjer geotehnike	mjesec	0.5	6000.00	3000.00
1.5 Aliko Tasrouchi – Transportni ekonomista	mjesec	1.5	6000.00	9000.00
1.6 Ivan Andrić- Inženjer za materijale	mjesec	1	3500.00	3500.00
1.7 Predrag Srna - Inženjer za drenažu	mjesec	1.5	3000.00	4500.00
1.8 Dragan Milić – Ekspert za zaštitu životne sredine	mjesec	1	5500.00	5500.00
1.9 Andrijana Mladenović – Ekspert za društvena pitanja	mjesec	1	5000.00	5000.00
1.10 Danko Gavrilović – Prostorni planer	mjesec	1	3500.00	3500.00
1.11. Maja Popović – Saobraćajni planer	mjesec	3	6000.00	18000.00
1.12. Mladen Vidaković – Inženjer za autoput DTL	mjesec	2	6000.00	12000.00
1.13. Miloslav Rajković – Viši projektant za puteve	mjesec	2	3500.00	7000.00
1.14. Ivana Stevanović – Niži inženjer za autoputeve	mjesec	2	2500.00	5000.00
Podzbir za strano osoblje				139000.00
2. Dnevnice, smještaj, dodatni putni troškovi za strano osoblje				
2.1 Dnevnice i smještaj – dugoročno osoblje	mjesec	18	500.00	9000.00
2.2 Dnevnice i smještaj – kratkoročno osoblje	mjesec	0	800.00	0.00
Podzbir za dnevnice i smještaj				9000.00
3. Domaće osoblje (uključujući dnevnice i smještaj)				
3.1 Biljana Ivanović – Vodeći inženjer za autoputeve	mjesec	3	5000.00	15000.00
Podzbir za domaće osoblje				15000.00
4. Lokalni transport				
4.1 Zakup/najam vozila ili korišćenje sopstvenih vozila	mjesec	5	400.00	2000.00
4.2 Vozila O&M uključujući vozača, osiguranje i popravke	mjesec	5	150.00	750.00
4.3 Ostali vidovi lokalnog transporta (kratkoročno, u vrijeme najvećeg saobraćajnog opterećenja)	dan	...	...
Podzbir za lokalni transport				2750.00

5. Kancelarija za potrebe realizacije Projekta				
5.1 Iznajmljivanje kancelarija	mjesec	5	750.00	3750.00
5.2 Rad kancelarije	mjesec	5	150.00	750.00
Podzbir za kancelariju za potrebe realizacije Projekta				4500.00
6. Izvještaji i dokumenti				
6.1 Izvještaji	dokumenti	100	25.00	2500.00
6.2 Planovi	dokumenti	250	10.00	2500.00
6.3 ...	...	...
6. ...	...	...
Podzbir za izvještaje i dokumenta				5000.00
7. Međunarodna putovanja (koja se refundiraju)				
7.1 Međunarodni povratni letovi	let	25	200.00	5000.00
7.2 Dodatni putni troškovi	let	25	50.00	1250.00
7.3 Drugi međunarodni letovi	let	...		
Podzbir za međunarodne letove (koji se refundiraju)				6250.00
8. Oprema (koja se refundira)				
8.1 Brojači saobraćaja (Faza 1)	Paušalan iznos	1	9000.00	9000.00
8... ostala oprema koja će biti predata/korištena				
Podzbir za ukupnu opremu				9000.00
9. Opcione stavke/usluge i ostalo				
9.1 . Usluge prevođenja	Paušalan iznos	1	2900.00	2900.00
9.2. Prikupljanje podataka	Paušalan iznos	1	2900.00	2900.00
9... budžet za nepredviđene situacije/ostalo	...	...
Podzbir za ostale stavke/usluge				5800.00

FAZA 2

1. Strano osoblje	Jedinica mjere	Količina	Jedinična cijena (EUR)	Iznos(EUR)
1.1 Ralph Henderson - Vođa tima	mjesec	4	10000.00	40000.00
1.2 Zoran Luković - Inženjer za mostove	mjesec	1	6000.00	6000.00
1.3 Vladimir Jovanović - Inženjer za tunele	mjesec	1	6000.00	6000.00
1.4 Milan Popović - Diplomirani inženjer geotehnike	mjesec	1	6000.00	6000.00
1.6 Ivan Andrić - Inženjer za materijale	mjesec	1	3500.00	3500.00
1.7 Predrag Srna - Inženjer za drenažu	mjesec	1.5	3000.00	4500.00
1.8 Dragan Milić - Ekspert za zaštitu životne sredine	mjesec	2	5000.00	10000.00
1.9 Andrijana Mladenović – Ekspert za društvena pitanja	mjesec	1	5000.00	5000.00
1.10 Danko Gavrilović - Prostorni planer	mjesec	0.5	3500.00	1750.00
1.12. Mladen Vidaković - Inženjer za autoputeve DTL	mjesec	1.5	5000.00	7500.00
1.13. Miloslav Rajković- Viši projektant za puteve	mjesec	2.5	3000.00	7500.00
1.14. Ivana Stevanović – Niži inženjer za autoputeve	mjesec	2.5	2500.00	6250.00
Podzbir za strano osoblje				104000.00
2. Dnevnice, smještaj, dodatni putni troškovi za strano osoblje				
2.1 Dnevnice i smještaj – dugoročno osoblje	mjesec	16	500.00	8000.00
2.2 Dnevnice i smještaj – kratkoročno osoblje	mjesec	0	0.00	0.00
Podzbir za dnevnice i smještaj				8000.00
3. Domaće osoblje (uključujući dnevnice i smještaj)				
3.1 Biljana Ivanović – Vodeći inženjer za autoputeve	mjesec	3	5000.00	15000.00
Podzbir za domaće osoblje				15000.00
4. Lokalni transport				
4.1 Zakup/najam vozila ili korišćenje sopstvenih vozila	mjesec	5	400.00	2000.00
4.2 Vozila O&M uključujući vozača, osiguranje i popravke	mjesec	5	150.00	750.00
4.3 Ostali vidovi lokalnog transporta (kratkoročno, u vrijeme najvećeg saobraćajnog opterećenja)	dan			
Podzbir za lokalni transport				2750.00
5. Kancelarija za potrebe realizacije Projekta				
5.1 Iznajmljivanje kancelarija	mjesec	5	750.00	3750.00
5.2 Rad kancelarije	mjesec	5	150.00	750.00
Podzbir za kancelariju za potrebe realizacije Projekta				4500.00
6. Izveštaji i dokumenti				
6.1 Izveštaji	dokumenti	100	25.00	2500.00
6.2 Planovi	dokumenti	250	10.00	2500.00
Podzbir za izveštaje i dokumenta				5000.00
7. Međunarodna putovanja (koja se refundiraju)				
7.1 Međunarodni povratni letovi	let	25	200.00	5000.00
7.2 Dodatni putni troškovi	let	25	50.00	1250.00
Podzbir za međunarodne letove (koji se refundiraju)				6250.00
8. Oprema (koja se refundira)				
8.1 Topografska i geotehnička istraživanja (Faza 2)	Paušalan	1	70000.00	70000.00

	iznos			
8... ostala oprema koja će biti predana/korištena	...	...
Podzbir za ukupnu opremu				70000.00
9. Opcione stavke/usluge i ostalo				
9.1 . Usluge prevođenja	Paušalan iznos	1	2900.00	2900.00
9.2. Prikupljanje podataka	Paušalan iznos	1	2900.00	2900.00
Podzbir za ostale stavke/usluge				5800.00

Prilog 8

Konsultantova ponuda

Pomenuta ponuda biće dodata finalnim dokumentima prije samog potpisivanja

Prilog 9

Izjava o preuzimanju obaveze izvršenja posla

Podvlačimo važnost slobodnog, fer i konkurentskog procesa dodjele ugovora koji zabranjuje protivzakonita djelovanja. U ovom smislu nijesmo ni ponudili ni dali, direktno ili indirektno, bilo kakve nezakonite prednosti nijednom službenom licu u javnom sektoru ili nekom drugom licu u vezi sa našom ponudom, niti ćemo nuditi, davati ili prihvatiti bilo kakve slične stimulacije ili uslove u tekućem procesu nadmetanja ili, u slučaju da nam se dodijeli ugovor, u toku sprovođenja ugovora. Takođe izjavljujemo da ne postoji konflikt interesa u smislu navedenom u odgovarajućim Smjernicama⁸.

Takođe podvlačimo da je važno da se pridržavamo minimuma socijalnih standarda ("Osnovni standardi rada") prilikom sprovođenja projekta. Preuzimamo odgovornost da uskladimo naš rad sa Osnovnim standardima rada koje odobrava država Crna Gora.

Informisaćemo naše osoblje o njihovim relevantnim obavezama kao i o njihovim obavezama da ispune ovu izjavu o preuzimanju obaveza i da poštuju zakone države Crne Gore.

Takođe izjavljujemo da naša kompanija/svi članovi konzorcijuma nijesu uključeni u popis sankcija Ujedinjenih nacija, niti EU, niti njemačke Vlade, niti na bilo koji drugi popis sankcija i potvrđujemo da će naša kompanija/svi članovi konzorcijuma odmah obavijestiti klijenta i KfW banku ukoliko se u kasnijem periodu desi ovakva situacija.

Prihvatamo da, u slučaju da naša kompanija (ili član konzorcijuma) bude dodata na popis sankcija koji je pravno obavezujući za klijenta i/ili KfW banku, klijent ima pravo da nas/konzorcijum isključi ili, ako našoj kompaniji/konzorcijumu bude dodijeljen ugovor, da se takav ugovor odmah otkaže, ukoliko su izjave navedene u Izjavi o preuzimanju obaveze izvršenja posla bile objektivno lažne, ili se razlog za isključenje iz tenderskog postupka javi nakon izdavanja Izjave o preuzimanju obaveze izvršenja posla

.....
(Mjesto)

(Datum)

.....
(Naziv kompanije)

.....
(Potpis(i))

Prilog 10

Model avansne garancije

Adresa banke garanta: ...

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

Adresa korisnika (klijenta):

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

Dana..... vi ste zaključili sa (naziv i puna adresa)

.....
..... ("Izvođač") Ugovor o

..... (Projekat, predmet Ugovora) po cijeni od

.....

Prema odredbama ugovora, Izvođač prima avansno plaćanje u iznosu od

.....

.....što je jednako..... %
vrijednosti ugovora, kao avans.

Mi, niže potpisani

..... (banka), odričući se svih prava na
prigovor i odbranu po osnovu gore pomenutog Ugovora, ovim neopozivo i nezavisno garantujemo da ćemo vam platiti
na vaš prvi pismeni zahtjev bilo koji iznos koji je avansiran Izvođaču do ukupnog iznosa od:

.....
(slovima) uz vašu pismenu izjavu da Izvođač nije izvršio gore

pomenuti Ugovor.

Ova garancija stupa na snagu čim avans bude uplaćen na račun Izvođača. Ova garancija se automatski proporcionalno
umanjuje u skladu sa izvršenim plaćanjima.

U slučaju bilo kojeg potraživanja po ovoj garanciji plaćanje se vrši na KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ
500 204 00), račun br. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00), za račun (klijenta/izvršioca
projekta/kupca).

Ova garancija ističe najkasnije

do kojeg datuma moramo dobiti bilo koji zahtjev putem pisma ili šifrirane telekomunikacije.

Podrazumijeva se da ćete nam vratiti ovu garanciju nakon što istekne ili po izmirenju ukupnog iznosa koji se po istoj
zahtijeva.

.....
Mjesto, datum

.....
Garant

Prilog 11

Model retencione garancije

Adresa banke garanta: ...

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

Adresa korisnika (klijenta):

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

Dana..... vi ste zaključili sa (naziv i puna adresa)

..... ("Izvođač") Ugovor o

..... (Projekat, predmet Ugovora) po cijeni od

Prema odredbama ugovora, Izvođač prima iznos od

.....

..... što je jednako..... % vrijednosti ugovora, kao završnu isplatu.

Mi, niže potpisani

..... (banka), odričući se svih prava na prigovor i odbranu po osnovu gore pomenutog Ugovora, ovim neopozivo i nezavisno garantujemo da ćemo vam platiti na vaš prvi pisani zahtjev u ukupnom iznosu od bilo:

..... (slovima) uz vašu pismenu izjavu da Izvođač nije izvršio gore pomenuti Ugovor.

U slučaju bilo kojeg potraživanja po ovoj garanciji plaćanje se vrši na KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), račun br. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00), za račun (klijenta/izvršioca projekta/kupca).

Ova garancija ističe najkasnije

do kojeg datuma moramo dobiti bilo koji zahtjev putem pisma ili šifrirane telekomunikacije.

Podrazumijeva se da ćete nam vratiti ovu garanciju nakon što istekne ili po izmirenju ukupnog iznosa koji se po istoj zahtijeva.

.....
Mjesto, datum

.....
Garant

CONTRACT

for Consulting Services

dated

[2016]

between

Ministry of Transport and Maritime Affairs
Directorate for State Roads
Rimski trg 46, 81000 Podgorica, Montenegro

– hereinafter referred to as the “Employer” –

and

[WYG International Limited
Geneva Building, Lake View Drive, Sherwood Business Park, Annesley,
Nottingham, NG15 0ED, United Kingdom]
in cooperation with
CeS COWI d.o.o. and Systema

– hereinafter referred to as the “Consultant” –

Project

**FEASIBILITY STUDY FOR A PRIORITY BYPASS ON THE MONTENEGRIN
COAST (SEETO ROUTE 1)**

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Preamble

The Employer desires consulting services to be rendered for the Project designated in the Special Conditions. The Consultant has submitted a technical and a financial bid for these services. The parties to this Contract therefore hereby agree on the following:

General Conditions

Paragraph 1 General Provisions

1.1

DEFINITIONS

The words and expressions used in this Contract shall have the following meanings assigned to them, unless the context requires otherwise.

The "**Agreed Remuneration**" means the fee to which the Consultant is entitled as described in Paragraph 5 [Remuneration], which shall be payable in accordance with this Contract.

The "**Commission**" means the performance of the Services pursuant to this Contract.

The "**Completion Period**" means the period designated for completion of the Services in the Special Conditions.

The "**Consultant**" shall be the professional undertaking or the professional individual named in the Contract who is appointed by the Employer to perform the Services. This shall include the Consultant's legal successors as approved by the Employer and subject to prior written consent from KfW.

The "**Contract**", except where otherwise stated in the Special Conditions, means the conditions of this Contract for consulting services (General Conditions and Special Conditions) together with the following constituent parts of the Contract¹:

Annex 1 [*Minutes of Negotiations pursuant to the Special Conditions*]²

Annex 2 [*Terms of Reference plus Tender Documents*]

Annex 3 [*KfW Guidelines for the Assignment of Consultants in*

Financial Co-operation with Partner Countries³], insofar as these Guidelines do not conflict with the Conditions of this Consulting Contract

Annex 4 [Staffing Schedule]

Annex 5 [Equipment and Furnishings to be provided by the Employer and Third-party Services Commissioned by the Employer]

Annex 6 [Time Schedule for the Performance of the Services]

Annex 7 [Statement of Costs]

Annex 8 [The Consultant's Bid – though without the Consultant's terms and conditions of delivery, contract and payment]

(N.B.: If by way of exception the procurement guidelines are not made an integral component of the Contract, Item 1.1.19 should be supplemented to include the Declaration of Undertaking, as well as the Model Advance Payment Guarantee and the Model Retention Guarantee.)

The “**country**” means the country or region to which the Project (or the majority thereof) relates.

The “**date on which execution shall be commenced**” means the day specified in the Special Conditions.

A “**day**” means one calendar day.

“**Financing Agreement**” means the [loan agreement / financing agreement] entered into between KfW and [the Employer] in order to finance [amongst other things] the services hereunder.

“**Force Majeure**” means any event whereby one party to the Contract has been prevented from performing the Services due to an unavoidable event such as a natural disaster, hostage-taking, war, revolution, terrorism or sabotage, which, with even the best human judgement and experience and utmost care, could not have been reasonably foreseen in the circumstances, prevented or rendered harmless by economically reasonable means unless such event must be accepted by the relevant party due to its regular occurrence, including, except where otherwise stated in the Special Conditions, circumstances such as crises, war or terror that lead to the Foreign Office of the Federal Republic of Germany calling upon German citizens to leave the country or the

Project region in response to which the Consultant withdraws all its staff. If an event occurs as a result of the actions of or risks assumed by a party to the Contract, that event shall not constitute Force Majeure.

"Foreign Currency" means any currency other than the Local Currency.

The Consultant's **"Foreign Staff"** means all those staff who do not possess the citizenship of the country.

The **"Local Currency"** means the currency of the country.

A **"notice"** means a notification communicated to one party by the other party.

A **"party"/the "parties"** means the Employer and the Consultant.

"Order Value" shall have the meaning given to it in A.d. 5.1.1 of the Special Conditions.

The **"Project"** means the project specified in the Special Conditions for which the Services are to be performed.

The **"Services"** means the contractual services described in **Annex 1** [*Minutes of Negotiations*], **Annex 2** [*Terms of Reference plus Tender Documents*], **Annex 8** [*The Consultant's Bid*] and Paragraph 3.1 [*Scope of Services*], as well as the standard and special services defined in Paragraph 3.2 [*Standard and Special Services*].

A **"third party"** means any other natural and legal person, according to the context.

"Written" or **"in writing"** means written by hand or typed by machine, and produced in a printed or electronic form, the result being a non-editable permanent record.

A **"year"** means 365 days.

1.2 INTERPRETATION

- 1.2.1 Headings in this Contract shall have no bearing on the interpretation of these Conditions.

- 1.2.2 Words in the singular, insofar as the context allows, shall also include the plural and vice versa.
- 1.2.3 Reference to either sex shall include both sexes.
- 1.2.4 Provisions containing the words "agree", "agreed" or "agreement" (and all derived grammatical forms thereof) shall require written agreement and signature by both parties⁴.

1.3

RANKING AND ORDER OF THE INTEGRAL PARTS OF THE CONTRACT

- 1.3.1 For the implementation of this Contract, the parts of the Contract listed below shall take precedence in the order shown below and the Annexes shall take precedence in the order in which they are numbered:
 - (a) The agreements of the Contract (General and Special Conditions), without the Annexes.
 - (b) The Annexes of the Contract in the order in which they are numbered.

These General Conditions and the Annexes shall remain – except where otherwise stipulated in the parts of the Contract in question – immutable.

- 1.3.2 In case of inconsistencies or ambiguities between parts of the Contract that cannot be resolved through the ranking set out in Clause 1.3.1, the Employer shall interpret the parts of the Contract in line with the intention of the parties based on the purpose and intention of the Contract as a whole, including all Annexes.

1.4

COMMUNICATION

- 1.4.1 Except where otherwise stipulated, notices, instructions and messages must be communicated between the parties in writing and in the language specified in the Special Conditions, and any such notice, instruction or message may not be unreasonably refused or delayed.

1.5

NOTICES

- 1.5.1 Except where otherwise stipulated in the Special

Conditions, the notices to be served pursuant to this Contract shall take effect upon receipt at the addresses specified in the Special Conditions. The notice may be served in person, by a courier service, by fax (with written confirmation of receipt), by registered letter or by email (only if this is sent in an encrypted and certified form (e.g. S/MIME certificate)).

**1.6
LAW AND LANGUAGE**

- 1.6.1 The Special Conditions shall contain the language or languages of the Contract, the prevailing contractual language and the law governing this Contract.

**1.7
ENTRY INTO FORCE OF THE
CONTRACT**

- 1.7.1 This Contract enters into force upon execution by both parties, subject to notification from KfW to the Employer that all conditions precedent to disbursement under the Financing Agreement have been satisfied in a form and substance satisfactory to KfW.

**1.8
MEASUREMENTS AND
STANDARDS**

- 1.8.1 Drawings, plans and calculations shall be based on the metric system and German DIN⁵ or European EN standards, or internationally recognised standards that are at least equivalent to those published by ISO or IEC are the standards to be applied to the Services performed under the Contract.

**1.9
ASSIGNMENT AND SUB-
CONTRACTING**

- 1.9.1 The Consultant shall not have the right to assign or transfer all or any of its rights under this Contract without the prior written consent of the Employer, which shall not be provided without the prior consent of KfW. The Employer's consent shall not be required for the assignment of any amounts due or which shall become due under this Contract.
- 1.9.2 The Consultant may conclude, terminate or cancel sub-contracts for the performance of a part of the Services that are the subject of this Contract only upon prior written approval by the Employer, which shall not be provided without the prior consent of KfW. In cases where the Services are sub-contracted, the Consultant's

obligations to fulfil the Contract shall remain unaffected.

1.10

RIGHTS TO THE RESULTS OF WORK, COPYRIGHT

1.10.1 Except where otherwise stated in the Special Conditions of this Contract, the Consultant shall transfer to the Employer all transferrable rights to the Services performed under this Contract on the date any such rights arise, and in any event at the latest, on the date they are acquired. Insofar as a transfer of such rights is not possible⁶, the Consultant shall irrevocably grant the Employer an unrestricted, transferrable, licensable and exclusive rights of use and exploitation that are unlimited with respect to time and place of use. Such transfer shall include the right to adapt any transferred rights. The Consultant shall ensure that any relevant creator of such transferrable rights waives its exercise of any such relevant rights.

1.10.2 If the Consultant employs third parties (e.g. employees) to perform the Services, it shall ensure that these parties allow him to transfer and/or grant the rights in full. The Consultant shall ensure that third parties waive the exercise of any relevant rights.

1.10.3 The Consultant shall issue all information requested by the Employer and KfW in connection with this Contract, and shall make available free of charge all requested records, documents and information. This obligation shall remain effective after termination of the Contract for a period of 24 months.

1.11

OWNERSHIP OF DOCUMENTS AND EQUIPMENT

1.11.1 All studies, reports and pertinent data and documents such as diagrams, plans, statistics and annexes that are made available to the Consultant in the performance of the Commission, as well as software (including the respective source codes) produced or adapted for consideration as part of the Commission, shall become the property of the Employer. The Consultant shall not be entitled to exercise a right of retention with respect to these materials.

- 1.11.2 Equipment, including vehicles purchased for the performance of the Consultant's Services and paid for fully by the Employer, shall be handed over to the Employer after completion of the Services. The Consultant shall handle with due care and maintain any such equipment.

1.12 CONFIDENTIALITY AND PUBLICATION

- 1.12.1 The Consultant shall, and shall ensure that its employees, keep confidential all documents passed on to it by the Employer and KfW, as well as all information exchanged and knowledge acquired concerning this Contract and its implementation, even if such documents have not been expressly designated as confidential. This obligation of confidentiality upon the Consultant and its employees shall remain effective after termination of the Contract. It shall not apply to disclosure to a court or to a public authority, insofar as this disclosure is made on the basis of legal obligations or by order of a court or a public authority. It shall also not apply to those materials, information and knowledge acquired for which and insofar as the Employer or KfW has given written consent for publication.

- 1.12.2 The obligation of confidentiality set out in Clause 1.12.1 shall not apply to information which:

- (a) was demonstrably already known to the recipient when the Contract was concluded, or thereafter was made known by a third party, without this having constituted any violation of a confidentiality agreement, legal regulations or official orders; or
- (b) is publicly known upon conclusion of the Contract or is made publicly known thereafter, insofar as this is not based on a violation of this Contract.

1.13 CONDUCT

- 1.13.1 During the term of this Contract, the Consultant and its Foreign Staff shall not interfere with the political or religious affairs of the country.

1.14 CORRUPTION AND FRAUD

- 1.14.1 When discharging their obligations under this

Contract, the Consultant, its representatives and its employees shall comply with all applicable laws, rules, regulations and provisions of the relevant legal systems, including the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

- 1.14.2 The Consultant shall not offer or grant either directly or indirectly any improper advantages to public officials (as defined below) or other individuals in connection with its bid in the tendering process. In addition, it shall not offer or grant any such incentives or conditions when implementing the Contract. The Consultant shall be obliged to notify the Employer in detail immediately in writing if the Consultant is prompted by a public official or any other persons to make illegal payments.
- 1.14.3 The Consultant will inform its members of staff of their respective obligations as well as their obligation to comply with the Declaration of Undertaking and to obey the laws of the country.
- 1.14.4 A public official shall be:
- (a) any official or employee of a public authority or an enterprise under the ownership and control of a government;
 - (b) any person who performs a public function;
 - (c) any official or staff member of a public international organisation, such as the World Bank;
 - (d) any candidate for a political office, or
 - (e) any political party or official of a political party.

1.15 REIMBURSEMENTS

- 1.15.1 All reimbursements, insurance payments, guarantee payments or similar payments, if any, shall be made for the account of the Employer to KfW, Frankfurt am Main (BIC: KFWIDEFF, sort code: 500204 00), account no. 38 000 00 (IBAN: DE53 5002 0400 3800 0000 00), which KfW shall credit to the Employer. If such payments are made in Local Currency, they shall be made to a special account of the Employer specified in the Special Conditions. The amounts reimbursed for the portion financed by KfW may, with KfW's consent, be used again, principally for further

implementation of the Project.

1.16

PARTIAL INVALIDITY

- 1.16.1 The invalidity or unenforceability of one or more provisions of this Contract will not affect the validity or enforceability of any other provisions of this Contract. Any invalid or unenforceable provision shall be replaced by a valid and enforceable provision which approximates as closely as possible the economic purpose of the invalid or unenforceable provision. The same shall apply accordingly in cases of omissions.

Paragraph 2 The Employer

2.1 INFORMATION

- 2.1.1 During the term of this Contract, the Employer, within a reasonable period of time, shall, free of charge, place at the disposal of the Consultant, all data, documentation and information concerning the Services covered by the Commission that are available to it. This shall also include all Commission and Project related provisions of the separate agreements relating to any loan made in respect of the Project, the Project documents entered into between the Employer and KfW and consents of KfW as required by this Contract.

2.2 DECISIONS/ COOPERATION

- 2.2.1 Subject to the Consultant having provided the Employer with all the necessary information including, but not limited to, drawings, studies and replacement staff, the Employer shall make its decisions pursuant to this Contract as soon as possible after the Consultant requests such duty to be performed in writing and, in any event, no later than the end of the expiry period specified in the Special Conditions.

2.3 SUPPORT

- 2.3.1 The Employer will support, as far as reasonably possible, the Consultant in discharging its obligations pursuant to this Contract. The Employer shall make available to the Consultant in good time and in full all the services necessary for the performance of its tasks as detailed in **Annex 2** [*Terms of Reference plus Tender Documents*].
- 2.3.2 In addition, the Employer shall support the Consultant, the Consultant's staff and where applicable relatives of the Consultant in:
 - (a) obtaining in good time any documents necessary for entering, residing in, working in and leaving the country (visa, work permit etc.);
 - (b) granting and/or obtaining unrestricted access to the Project where necessary for the performance of the Services;

- (c) the import, export and customs clearance of personal items and of goods and commodities required for performance of the Services;
- (d) securing return transport in cases of emergency;
- (e) obtaining permission to import Foreign Currency that is required by the Consultant for the performance of the Services and for personal use by its Foreign Staff;
- (f) obtaining permission to export the money paid by the Employer to the Consultant under this Contract; and
- (g) providing access to other organisations for the purpose of obtaining information to be procured by the Consultant.

2.4 TAXES

2.4.1 Subject to the following provisions, the Employer shall ensure that the Consultant and its Foreign Staff are exempted from all taxes, duties, levies and other charges that are legally prescribed in the Employer's country, in connection with:

- (a) payments to the Consultant or to its Foreign Staff in connection with the performance of the Services;
- (b) services performed by the Consultant or its staff in connection with the fulfilment of their tasks;
- (c) equipment, materials, and supplies necessary for the performance of the Services, including motor vehicles and personal belongings of the Foreign Staff that are brought into the country of the Employer and shipped out after completion of the Services or that have been destroyed in the course of the performance of the Services.

2.4.2 If it is impossible to meet the obligations arising from Paragraph 2.4.1 [Taxes] due to contrary legal provisions, the Employer shall, provided it is legally permissible and except where otherwise stipulated in the Special Conditions of

this Contract, upon submission of proof of the payments made, reimburse the Consultant all the amounts paid without delay.

2.5 EQUIPMENT AND OFFICES

- 2.5.1 For the purposes of performing the Services, the Employer shall make available to the Consultant, free of charge, technical and other equipment and offices to the extent described in **Annex 5** [*Equipment and Furnishings to be provided by the Employer and Third-party Services commissioned by the Employer*].

2.6 CONTACT PERSONS OF THE EMPLOYER

- 2.6.1 The Employer shall appoint two natural persons to act as the Employer's contact person and deputy to the Consultant under this Contract, and the Employer further undertakes always to appoint another contact person without delay should either of the two individuals appointed no longer be available.

2.7 THIRD-PARTY SERVICES

- 2.7.1 The Employer is obliged, at its own expense, to make the necessary provision for the performance of those services by third parties commissioned by it, as described in **Annex 5** [*Equipment and Furnishings to be provided by the Employer and Third-party Services commissioned by the Employer*].

2.8 PAYMENT FOR SERVICES

- 2.8.1 The Consultant shall receive from the Employer remuneration for the Services performed under this Contract in accordance with Article 5 [*Remuneration*].

Paragraph 3 The Consultant

3.1

SCOPE OF SERVICES

- 3.1.1 The Consultant shall deliver the Services in full and on time.
- 3.1.2 The Services to be performed by the Consultant encompass all the part services described and explained in this Contract and its Annexes, in particular in Annex 1 [Minutes of Negotiations] Annex 2 [Terms of Reference plus Tender Documents] and Annex 8 [The Consultant's bid]. Furthermore, the Consultant must deliver all the standard and special services as defined in Paragraph 3.2.1. [Standard and Special Services].
- 3.1.3 The Consultant shall work together with third parties commissioned by the Employer pursuant to Paragraph 2.7 [*Third-party services*]. The Employer is not responsible for these third parties or their performance. In addition, the Consultant must comprehensively coordinate their services with its own services, as far as possible.

3.2

STANDARD AND SPECIAL SERVICES

- 3.2.1 In addition to the Services specified explicitly in the Contract, the Consultant shall also perform all other services, if necessary, that are not listed under the contractual services, but are customarily required in order to properly discharge the contractual obligations ("**standard services**"). The standard services shall be fully compensated through the Agreed Remuneration.
- 3.2.2 "**Special Services**" are services that are not included under the contractual or standard services, but must necessarily be delivered by the Consultant in order to properly perform its duties under the Contract, because the external circumstances of service delivery have changed unexpectedly, or because the Employer has suspended the Services pursuant to Paragraph 4.5 [*Force majeure*], or because the Employer, with the prior consent of KfW, requires services that were not included in the invitation to tender but are necessary.

3.3 DUE DILIGENCE

- 3.3.1 Except where otherwise stipulated in this Contract, or otherwise legally stipulated within the country or within another legal system (including the legal system in the Consultant's jurisdiction) by provisions that impose higher demands than this Contract, when performing its obligations under this Contract the Consultant shall exercise due diligence and provide the Services in compliance with professional practice and to the recognised quality standards, in accordance with current scientific and generally accepted engineering standards. The Consultant must document its work, the progress of the Project and the decisions it takes in an appropriate form that is acceptable to the Employer, bearing in mind the requirements arising from Paragraph 5.7 [*Auditing*].

3.4 REPORTING

- 3.4.1 The Consultant shall report to the Employer and KfW on the progress of the Services in accordance with the Special Conditions. Except where otherwise stipulated in the Special Conditions, in case of longer assignments such as construction management, training or operational support, the Consultant shall draw up quarterly reports, and following the conclusion of the Services draw up a final report covering the entire Completion Period. The reports shall include a comparison of targeted and actual values for the planned activities; the progress of construction; developments in the time frame; financial developments; and information on any problems and identification of possible solutions.
- 3.4.2 The Consultant shall inform the Employer promptly of all extraordinary circumstances that arise during the performance of the services and of all matters requiring KfW's approval.
- 3.4.3 Furthermore, the Consultant shall, upon request, supply the Employer with information in connection with the Services.

3.5 STAFFING

- 3.5.1 The Consultant shall employ the staff specified in Annex 4 [Staffing Schedule] to implement performance of the Services. The list of designated key staff and any changes to it shall require the prior written approval of the Employer and KfW.
- 3.5.2 The Employer may require the Consultant to terminate the contract of, or replace, any staff member who fails to meet the requirements or violates Paragraph 1.13 [Conduct]. Any such demand must be submitted in writing to the Consultant stating the reasons for it.
- 3.5.3 If staff employed by the Consultant need to be replaced, the Consultant shall ensure that the staff member in question is replaced promptly by an individual who possesses at least equivalent qualifications.
- 3.5.4 If any one of the Consultant's staff falls ill for more than one month and this jeopardises the performance of this Contract by the Consultant, the Consultant shall replace this staff member with another staff member who possesses at least equivalent qualifications.
- 3.5.5 Staff shall only be replaced after prior approval by the Employer, such approval not to be unreasonably withheld. The exchange, replacement, or planned dispensation of replacement (as exception to existing rules) of key staff specified by name shall require the prior approval of KfW.
- 3.5.6 If the Consultant must terminate the contract of, or replace, any staff during the Contract period, the costs thus accrued shall be borne by the Consultant, except where staff are removed or replaced at the Employer's request. In this case, the Employer shall meet the costs of replacing the staff member, unless the staff member in question does not meet the requirements or has violated Paragraph 1.13 [Conduct].

3.6 CONTACT PERSON OF THE CONSULTANT

- 3.6.1 The Consultant shall appoint for the exercise of all rights and obligations arising from this Contract a natural person as its contact person for the Employer under this Contract.

3.7

INDEPENDENCE OF THE CONSULTANT

3.6.2 The Consultant shall specify and provide respective contact data to the Employer and KfW for an individual at the Consultant's place of business who can be reached at any time in cases of emergency or crisis as well as a deputy of the Consultant. The Consultant shall notify the Employer and KfW without delay of any change of elected person or their contact data.

3.7.1 The Consultant undertakes that neither the Consultant nor any enterprise associated with the Consultant shall bid for the Project as manufacturer, supplier, or building contractor. This prohibition also applies to any bidding for any further consulting services, insofar as such consulting services might lead to a restriction of competition or a conflict of interests. Any violation of this stipulation may lead to the immediate cancellation of this Contract and require the reimbursement of any and all costs incurred by the Employer up to the time of such violation as well as compensation for any and all losses and damages incurred by the Employer as a result of such cancellation.

Paragraph 4 Commencement, Completion, Amendment and Termination of the Services

4.1

COMMENCEMENT AND COMPLETION

- 4.1.1 The Consultant shall begin performing the Services on the prescribed date on which execution of the Contract shall take place, but not earlier than and without undue delay after the Contract has come into force. The Consultant shall deliver the Services in accordance with the time schedule in Annex 6 [Time Schedule for the Performance of the Services], and shall complete the Services within the Completion Period, subject to any further extensions to this Contract.
- 4.1.2 In relation to optional services (if any), the Consultant shall commence delivery of the optional services not earlier than upon receipt of notification from the Employer, subject to the Employer having received KfW's prior consent.
- 4.1.3 Any change to the time schedule in **Annex 6** [Time Schedule for the Performance of the Services] due to a reasonable request by either party shall be mutually agreed upon in writing.

4.2

PENALTIES FOR DELAY

- 4.2.1 If the Consultant fails to perform any of the Services under this Contract within the requisite time period, for reasons he must warrant, the Employer shall, unless the Special Conditions include a derogation, be authorised to inflict a penalty of 0.5% of the Order Value for every week of delay, subject to a cap of 8% of the Order Value. Beyond such penalty, the Employer may not bring any further claims arising from the delay in the performance of the Services. The right of termination shall remain unaffected.

4.3

AMENDED SERVICES

- 4.3.1 Subject to the prior consent of KfW, the Employer shall be entitled to require an amendment of the Contract (amended or additional services or amended deadlines/periods for execution – "**amended services**").

- 4.3.2 In this case, the Agreed Remuneration and the Completion Period shall be adjusted accordingly by mutual agreement of the parties. The Consultant shall submit proposals for performance of and remuneration for the amended services.
- 4.3.3 The Consultant shall execute the amended services if the Employer agrees, in writing, to the remuneration proposal. If the parties do not agree on the remuneration proposal within three months of the Consultant commencing delivery of the Services, the entitlement to remuneration shall be treated as a dispute under Article 8 [*Disputes and Arbitration Procedure*].

4.4 IMPEDIMENT

- 4.4.1 If the performance of the Services is impeded or delayed by the Employer or the Employer's contractual partners ("impediment") such that the impediment leads to an increase in the costs, the scope or the duration of the Services, the Consultant shall immediately notify the Employer of the circumstances and the possible consequences.
- 4.4.2 If an impediment falls within the sphere of risk of the Employer or if the impediment is caused by the Employer through intent or gross negligence, the Consultant shall be entitled to reimbursement of the costs incurred by it as a result of the impediment, subject to these costs being evidenced.

4.5 FORCE MAJEURE

- 4.5.1 In the event of Force Majeure, the contractual obligations, as far as affected by such event, shall be suspended for as long as performance remains impossible due to the Force Majeure, provided that one party to the Contract receives notification of the Force Majeure event from the other party within two weeks after its occurrence. Any and all liability of the Consultant for damages arising due to its absence caused by the Force Majeure is excluded.
- 4.5.2 In the event of Force Majeure, the Consultant shall be entitled to an extension of the Contract equal to the delay caused by such Force Majeure. If the performance of the Services is rendered permanently impossible by the Force Majeure, or if the Force Majeure event lasts for

longer than 180 days, both parties to this Contract shall be entitled to terminate the Contract.

- 4.5.3 In case of suspension or termination of the Contract due to Force Majeure, the Services performed up to the time of the Force Majeure and all necessary expenditure (which is evidenced) of the Consultant arising from the discontinuing of the Services shall be invoiced on the basis of contractual prices. Neither party shall make any further claims.

4.6 SUSPENSION OR TERMINATION

- 4.6.1 The Employer may, with the prior consent of KfW, fully or partially suspend the Services or terminate this Contract after serving written notice of at least 30 days. In this event, the Consultant must immediately take all measures necessary to ensure that the Services are discontinued and the expenditure minimised. The Consultant shall hand over all reports, drafts and documents to be drawn up by the date in question to the Employer. If the suspension lasts longer than 180 days the Consultant may terminate the Contract. In case of termination Paragraph 4.5.3 [Force majeure] shall apply mutatis mutandis.
- 4.6.2 If the Consultant fails to meet its contractual obligations without sufficient reason; in accordance with the Contract; or on time, the Employer may serve a notice upon the Consultant and request it to duly perform its Services. If the Consultant fails to remedy the performance deficit within a period of 21 days of having been called upon to do so by the Employer, the Employer shall be entitled, after this period has elapsed, to terminate the Contract by written notice.
- 4.6.3 The Consultant may terminate this Contract if any amounts due and payable to it under this Contract have not been paid within 60 days after the receipt of the corresponding invoice, as long as the Consultant has given the Employer a written reminder within a period of 30 days after the initial 60 day deadline has passed and the Employer does not pay the due amounts within a further period of 30 days after this notice.
- 4.6.4 If the termination of the Contract is not due to a default on the part of the Consultant, the Consultant shall be entitled to demand the

Agreed Remuneration. The Consultant must, however, mitigate its loss and deduct any proceeds of such mitigation, which shall include (i) any remuneration paid to the Consultant working on other projects during the time the Consultant was scheduled to work on the Project (ii) any remuneration that the Consultant would have earned working on other projects during the time the Consultant was scheduled to work on the Project, but which the Consultant has not received as a result of the Consultant's wilful actions or omissions.

- 4.6.5 If the termination of the Contract is due to a default on the part of the Consultant, the Consultant shall be entitled to demand the Agreed Remuneration for the Services performed until the date of termination but not yet remunerated. The Employer shall be entitled to demand compensation for the direct damages caused by the default.

4.7 CORRUPTION AND FRAUD

- 4.7.1 If it is proven that the Consultant has breached Paragraph 1.14 [*Corruption and fraud*], the Employer may, notwithstanding the various punishments or other sanctions to which the Consultant is subject according to the law of the country or any other legal system, terminate this Contract in writing. The Employer may also terminate this Contract in writing if the Declaration of Undertaking submitted by the Consultant in conjunction with its bid is untrue.

4.8 RIGHTS AND OBLIGATIONS OF THE PARTIES IN CASE OF TERMINATION

- 4.8.1 Termination of the Contract shall not prejudice or affect the rights, claims or obligations of the parties until the date on which the cancellation takes effect.

Paragraph 5 Remuneration

5.1

REMUNERATION OF THE CONSULTANT

- 5.1.1 The Consultant shall receive the remuneration agreed in the Special Conditions for performing the Services owed under this Contract, subject to the conditions listed therein and the conditions below. **Annex 7** [*Statement of Costs*] contains a detailed list of conditions.

5.2

TERMS OF PAYMENT

- 5.2.1 Except where otherwise agreed in the Special Conditions, the Employer shall pay the Consultant's remuneration as follows:

- (a) **Advance payment**, due within 30 days of execution of this Contract upon presentation of an invoice.
- (b) The **instalments** shall be paid upon presentation of corresponding invoices with a maximum of one payment per quarter. The first invoice for the first instalment shall be presented, at the earliest, 3 months after the contractually agreed commencement of the Services. The Employer shall have the right to suspend payment of instalments at any stage in the event of substantial deviations from the time schedule and/or insufficient performance on the part of the Consultant. This right shall also apply to payments which are not based on output-related evidence of performance. If the payment of instalments is suspended, the Employer must proceed in accordance with Paragraph 5.6 [*Objections to Invoices*].
- (c) The **final payment** shall be made after the Services have been performed in full and confirmation had been provided by the Employer and KfW to that Consultant.

- 5.2.2 Only in cases of agency contracts: the Consultant's invoices shall be addressed to the Employer "c/o KfW". KfW shall receive the

original invoice. A copy of the invoice shall be sent to the Employer directly. The original final invoice is to be addressed to the Employer, and KfW will receive a copy.

- 5.2.3 Any guarantees shall be in the form set out in Annexes 10 and 11 and shall always be provided as bank guarantees made out to the Employer as beneficiary. They must be acceptable to the Employer and KfW. The original of the guarantee shall be sent to the Employer, with a copy, together with a confirmation of delivery of the original, to be sent to KfW.

5.3

METHOD OF PAYMENT

- 5.3.1 Payment shall be made according to the conditions set out in the Special Conditions.

5.4

PRICE ADJUSTMENT

- 5.4.1 Except where agreed otherwise in the Special Conditions, the following conditions shall apply with respect to prices. The prices specified in **Annex 7** [*Statement of Costs*] shall apply to the Completion Period specified in the Special Conditions and for a period of 3 months thereafter. After this date, prices may be adjusted if the official level of prices and wages in the Consultant's country of origin (Foreign Currency costs) or in the Employer's country (Local Currency costs) has increased, as measured using the base indices specified in the Special Conditions, and this is proven by the Consultant. The following formula shall be used to calculate this:

$$P_n = P_o \cdot (0.15 + 0.85 \cdot L_n/L_o)$$

P_n = revised price, P_o = base price,

L_n = revised index, L_o = base index.

The price will not be calculated until publication of the final price index.

- 5.4.2 Except where otherwise agreed in writing, the Consultant shall only be entitled to remuneration for special services if the services are amended pursuant to Paragraph 4.3 [*Amended Services*].

5.5

PAYMENT DEADLINE

- 5.5.1 Except in relation to advance payment and where otherwise stated in the Special conditions, payment shall be made within 60 days of presentation of a verifiable invoice by the Consultant to the Employer.
- 5.5.2 If the Employer does not make the payment within the period set out in Paragraph 5.5 [*Payment Deadline*], except where the Employer has raised an objection pursuant to Paragraph 5.6 [*Objection to Invoices*], the Consultant shall be paid compensation at the rate agreed in the Special Conditions. This shall be calculated on a daily basis from the date on which the invoice fell due in the currency agreed. The agreed compensation shall satisfy all the Consultant's claims arising from the Employer's delay.

5.6

OBJECTION TO INVOICES

- 5.6.1 Should the Employer object to the whole or part of an invoice of the Consultant, the Employer shall notify the Consultant of its intention to withhold payment and shall state the reasons why. If the Employer objects only to a part of the invoice, it shall pay that part of the invoice to which it has not objected within the period specified in Paragraph 5.5 [*Payment Deadline*].

5.7

AUDITING

- 5.7.1 For services or part services that are not remunerated on a lump-sum basis, the Consultant shall be obliged to maintain up-to-date records that meet professional standards and that clearly and systematically indicate the services provided and the time and expense involved. The Consultant shall permit the Employer and KfW to audit these records at any time and make copies of them during the term of the Contract.

5.8

CURRENCY

- 5.8.1 The Special Conditions shall indicate the currency applicable to the Contract.

Paragraph 6 Liability

6.1

LIABILITY OF THE CONSULTANT FOR BREACHES OF CONTRACT FOR WHICH HE IS RESPONSIBLE

- 6.1.1 The Consultant shall be liable to the Employer for verifiably culpable breaches of its contractual obligations, particularly breaches of Article 3 [*The Consultant*]. The liability of the Consultant shall be limited to the respective insurance sum, insofar as this is higher than the Order Value. Otherwise the liability of the Consultant shall be limited to the Order Value. This shall not affect the liability for premeditation and gross negligence.

6.2

LIABILITY OF THE CONSULTANT FOR SUB- CONTRACTORS

- 6.2.1 The Consultant shall also be liable for the Services provided by a sub-contractor pursuant to Paragraph 1.9 [*Assignment and Sub-contracting*].

6.3

PERIOD OF LIABILITY

- 6.3.1 The Consultant's liability shall terminate on the date of the acceptance of the Services and in the event the Contract does not provide for acceptance of the Services, on the date of performance of the contractually agreed Services in full, unless a different point of time is provided in the Special Conditions.

6.4

LIABILITY FOR CONSEQUENTIAL DAMAGE

- 6.4.1 Liability for consequential damage is excluded.

6.5

LIABILITY OF THE EMPLOYER

- 6.5.1 The Employer shall be liable for verifiably culpable breaches of its contractual obligations, particularly breaches of Paragraph 2 [*The Employer*].

Paragraph 7 Insurance

7.1

INSURANCE AGAINST LIABILITY AND DAMAGES

7.1.1 The Consultant shall take out insurance for the period of the Contract, on the terms specified in the Special Conditions, including, but not limited to, the following:

- (a) **professional liability insurance;**
- (b) **personal liability insurance;**
- (c) **equipment insurance covering loss of or physical damage to all equipment acquired, used, provided or paid for by the Employer within the context of this Contract; and**
- (d) **motor vehicle third party liability insurance and motor vehicle comprehensive insurance for the vehicles acquired in connection with this Contract.**

7.1.2 The costs incurred in connection with the insurance specified in Paragraph 7.1.1 [*Insurance Against Liability and Damages*] shall be fully compensated by the Agreed Remuneration.

Paragraph 8 Disputes and Arbitration Procedure

8.1

AMICABLE SETTLEMENT

- 8.1.1 Should a dispute arise from or in connection with this Contract, the representatives of the parties authorised to settle disputes shall, within 21 days of one party submitting a written request to the other party, endeavour in good faith to settle the dispute amicably.

8.2

MEDIATION

- 8.2.1 If an amicable settlement cannot be reached within a period of 3 months after the written request pursuant to Paragraph 8.1 [*Amicable Settlement*], the parties may, insofar as both sides agree, attempt to settle the dispute in accordance with the Special Conditions by way of mediation prior to initiating arbitral proceedings. Notwithstanding this, the parties may agree to begin mediation immediately. Unless the parties agree otherwise within a period of 14 days, either party may require that the mediator is appointed by the institution named in the Special Conditions.

Mediation shall begin no later than 21 days after the mediator has been appointed. The mediation process shall be implemented in accordance with the procedure selected by the appointed mediator.

All negotiations and talks held in the course of mediation shall be treated confidentially, unless they are concluded in a written, legally binding contract.

If the parties accept the recommendations of the mediator or agree to settle the dispute another way, the agreement reached shall be recorded in writing and signed by the representatives of the parties.

- 8.2.2 If the dispute is not settled within 3 months after the mediator has been appointed, the dispute shall be settled by way of the arbitration procedure pursuant to Paragraph 8.3 [*Arbitration Procedure*].

8.3

ARBITRATION PROCEDURE

- 8.3.1 If the parties do not reach amicable agreement pursuant to Paragraph 8.1 [*Amicable settlement*] or by way of mediation pursuant to Paragraph 8.2 [*Mediation*], the dispute shall finally and exclusively be settled – except where otherwise stipulated in the Special Conditions – in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris by one or several arbitrators appointed in accordance with the Rules. The place of arbitration and the language of the arbitration procedure shall be stipulated in the Special Conditions.

Special Conditions

Ad Article 1: General Provisions

Ad 1.1: Definitions

"Completion Period": The completion period shall be [10 month].

"Force majeure": see under Definitions, page 2 above

"Project": The consulting services shall be performed for [Feasibility study for a priority bypass on the Montenegrin coast (SEETO Route 1)], (the "Project").

"Date on which execution shall be commenced": The date on which execution shall be commenced lies [4] weeks after the day on which the contract comes into force.

Ad 1.4: Communication

The language for notices, instructions, reports and other messages shall be English language.

Ad 1.5: Notices

Address of the Employer

Postal address [Rimski trg 46, 81000 Podgorica, Montenegro]

Email: [irena.jankovic@msp.gov.me);
angelina.zivkovic@msp.gov.me]

Phone: [+382.20.482.189]

Fax: [+382.20.234.342]

Address of the Consultant

Postal address **WYG International Limited, Geneva Building, Lake View Drive, Sherwood Business Park, Annesley, Nottingham, NG15 0ED**

Email: keith.cook@wyginternational.com

Phone: +44 7887 988720

Fax:

Address of KfW

Postal address

KfW Bankengruppe

LEA4

Attn. Lotte Westermann
Palmengartenstrasse 5 – 9
60325 Frankfurt
Germany

Email: Lotte.Westermann@kfw.de

Phone: +49 (69) 7431-4798

Fax: **+49 (69) 7431-2738**

Ad 1.6: Law and language

The language(s) of the Contract shall be **English language**.

[The prevailing contractual language shall be **English language**.]

The law governing this Contract shall be **German Law**.

Ad 1.10: Rights to the results of work, copyright

Consultant shall be bound to transfer the copyright for all studies, reports, designs and related documents generated by the services to the Employer who shall be their sole owner. The Employer is entitled to dispose freely of this material for all project-related purposes.

Specific reports on the implementation of the Project prepared by the consultant must carry the following disclaimer: "This document has been produced with the financial assistance of the European Western Balkans Joint Fund within the framework of the Western Balkans Investment Framework. The views expressed herein are those of (name of the consulting company) and can therefore in no way be taken to reflect the official opinion of the Contributors to the European Western Balkans Joint Fund or EBRD, as a co-manager of the EWBJF."

Ad 1.15: Reimbursements

Account details of the Employer's special account for reimbursements in Local Currency: **not applicable**

Ad Article 2: The Employer

Ad 2.2: Decisions/cooperation

GCC, 2.2.1 applies (page 10 above) without specific expiry period.

Ad 2.4: Taxes

The contractual parties agree on the following provisions regarding taxes and levies:

Engagement of local sub consultants by the Consultant is not exempted from VAT. The same applies for the Consultant's daily and operating costs (fuel, rent, sub-consultant services etc).

Ad 2.5: No equipment and offices will be made available to the Consultant for the purpose of performing the services.

Ad 2.6: Contact person of the Employer

The Employer's contact person shall be **Mrs. Angelina Zivkovic**

The Employer's deputy shall be **Mrs. Irena Jankovic.**

Ad Article 3: The Consultant

Ad 3.3: Due diligence

GCC, 3.3.1 applies (page 14 above)

Ad 3.4: Reporting

Reporting obligations are specified in section 3.7. of the Terms of Reference.

Ad 3.6.1: The Consultant's contact person for handling of the Contract

The Consultant's contact person for handling of the Contract shall be **Mr Ralph Henderson.**

Contact details **ralph.henderson@wyginternational.com**

The deputy shall be **Mr Danko Gavrilovic**

Contact details **danko.gavrilovic@wyg-see.eu**

Ad 3.6.2: The Consultant's contact person for cases of emergency or crisis

The Consultant's contact person for cases of emergency or crisis shall be **[Mr Keith Cook]**.

Contact details **keith.cook@wyginternational.com**

The deputy shall be **Mr Ralph Henderson**

Contact details **ralph.henderson@wyginternational.com**

Ad 3.7.1: Independence of the Consultant

The Consultant will be eligible for to any bidding for further consulting services for the Project.

Ad 4.6: Termination

The PEA and/or KfW reserve their right to terminate the contract after Stage I. In this case, there will be no compensation paid to the Consultant.

Ad Article 5: Remuneration

Ad 5.1.1: Remuneration

For the services to be rendered by the Consultant under this Contract the Employer shall pay the sum of

[417.600] in EUR

("Order Value").

The Order Value is composed of:

Fixed fee Stage I:

[175.250] in EUR

Ancillary expenses lump sum Stage 1

[21.050] in EUR

Fixed fee Stage II:

[139.250] in EUR

Ancillary expenses lump sum Stage 2

[82.050] in EUR

[The Order Value is exclusive of the following options not commissioned:
Option

not applicable

Annex 7 [Statement of Costs] contains a detailed statement of costs.

Ad 5.2: Terms of payment

The Consultant's remuneration shall be paid as follows:

EUR [49.075,0] The advance payment will be paid upon presentation of an invoice and an advance payment guarantee (Model of Advance Payment Guarantee see Annex 10) in amount of 25% of the total amount of Stage I EUR [196.300].

EUR [202.550,0] Interim Payment 1: 75% of the total amount of Stage I EUR [196.300] and an advance payment of 25% of the total amount of Stage II EUR [221.300] after completion of Stage I and submission and acceptance of all reports related to Stage I by the Employer and KfW.

EUR [110.650,0] Interim Payment 2: 50% of Stage II EUR [221.300] after completion of the surveys and submittal of the survey report.

EUR [55.325,0] as the final payment, which will consist in the remaining 25 % of the total amount for Stage II and be paid after submission and approval of the reports due for this stage II.

The contract does not include reimbursable expenses (paid upon proof), all ancillary expenses are included in the Lump Sum.

The advance payments are fully set-off with the final payment.

Ad 5.3: Method of payment

The remuneration for the Consultant shall be made on the basis of the Project Financing Agreement for the Project from KfW to the Consultant by Direct Disbursement Procedure upon submission of the Consultant's relevant invoices.

All payments due to the Consultant will be effected in EUR after submission of the relevant invoices together with a Request for Disbursement for KfW (direct disbursement procedure) to:

Account Number: 00010545

Sort Code: 09-07-15

SWIFT: ABBYGB2L

IBAN: GB90 ABBY 0907 1500 0105 45

Bank Name: Santander, Liverpool

Bank address: Santander Corporate & Commercial, Bridle Road, Bootle, Liverpool L30 4GB, United Kingdom

WYG International Ltd EUR

Consultant's invoices shall be addressed to the Employer.

Ad 5.4.1: Price adjustment

No price adjustment will be applied for the services to be performed under this contract.

Ad 5.5: Payment deadline

All payments due to the Consultant will be effected in EUR within **60 days** after signing of this Contract Agreement, or submittal of invoices, respectively.

Agreed compensation for overdue payments pursuant to Paragraph 5.5 [*Payment Deadline*]: **6%** per cent per year, in relation to the outstanding amount.

Ad 5.8: Currency

The applicable currency for the Contract shall be **EUR**.

Ad Article 6: Liability

Ad 6.3: Period of liability

The Consultant's liability shall terminate **upon the final acceptance of all reports and deliverables of the study**.

The liability of the Consultant shall be limited to the Order Value.

Ad Article 7: Insurance

At the least the following insurance shall be taken out by the Consultant for the period of the Contract at his expense:

- a) Professional liability insurance with a coverage of EUR 500,000 and with a maximum of one claim per year;
- b) Personal liability insurance with a coverage of EUR 200,000 and with a maximum of one claim per year;
- c) Equipment insurance covering loss of or physical damage to all equipment acquired/used within the context of the project with a coverage of EUR 200,000 with a maximum of one claim per year;
- d) Motor vehicle third party liability insurance and motor vehicle comprehensive insurance for the vehicles acquired/used in connection with the project.

Ad Article 8: Disputes and Arbitration Procedure

Ad 8.2: Mediation

The mediator shall be appointed by **the International Chamber of Commerce (ICC)** and the appointment shall be binding for the parties.

The costs of the mediation and of the mediator's services shall be shared equally between the parties.

Ad 8.3: Arbitration Procedure

The dispute shall be finally settled in accordance with the rules for conciliation and arbitration of the **International Chamber of Commerce in Paris**.

The place of arbitration shall be **Frankfurt**.

The language of the arbitration procedure shall be **English language**.

This contract is executed in 3 (three) counterparts, each of which constitutes an original Contract.

(Place, date)

(for the Employer)

(for the Consultant)

List of Annexes

Annex no.	Title
1	Minutes of Negotiations
2	Terms of Reference plus Tender Documents
3	Guidelines for the Assignment of Consultants in Financial Co-operation with Developing Countries (in the version valid on the date the bid was submitted)
4	Staffing Schedule
5	Equipment and Furnishings provided by the Employer and Third-party Services Commissioned by the Employer
6	Time Schedule for the Performance of the Services
7	Statement of Costs
8	The Consultant's Bid
9	Declaration of Undertaking
10	Advance Payment Guarantee
11	Model Retention Guarantee

If one or several of the Annexes should not be necessary in the actual Contract, to preserve the integrity of the references please retain the numbering of the Annexes and insert the words "not applicable" in the relevant Annexes.

Minutes of Negotiations⁷

During negotiations and preparation of the contract, the parties agreed on the following:

All ancillary expenses shall be introduced as Lump Sum Payments, including the Surveys that remain at maximum costs for the Consultant as follows:

- Traffic Counts in Stage 1 : 9000,0 EUR**
- Geotechnical and Topographic Investigations in Stage 2 : 70.000,0 EUR**

Taxes on engagement of Local Subconsultants cannot be recovered and shall not be reimbursed by MoTMA.

Terms of Reference plus Tender Documents

**Guidelines for the Assignment of Consultants in Financial Co-operation with
Partner Countries**

(in the version valid on the date the bid was submitted)

Staffing Schedule

(pursuant to the Consultant's Bid; where applicable in the version subsequently negotiated)

According to the Work Programme included in the Consultant's Technical Proposal

[illegible]

**Equipment and Furnishings to be provided by the Employer and Third-party
Services Commissioned by the Employer**

Not applicable

No equipment and offices shall be provided by the Employer for the implementation of the project's services.

Time Schedule for Delivery of the Services

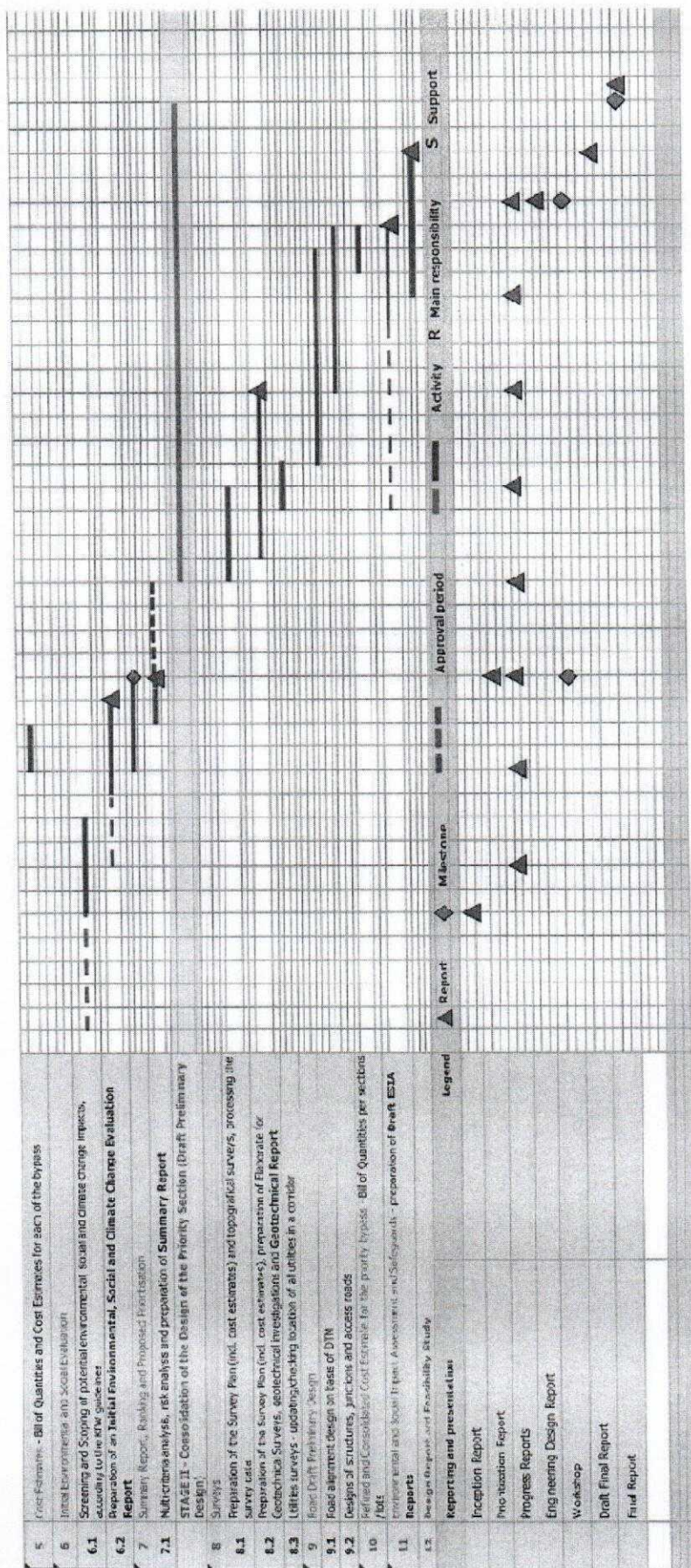
(pursuant to the Consultant's Bid; where applicable in the version subsequently negotiated)

According to the Work Programme included in the Consultant's Technical Proposal

Annex 6

Project title:		Technical assistance for the preparation of feasibility Study for the priority by-pass on Montenegrin Coast (SEETO Route 1)																																											
Project number:		BMZ: 2020-01/03																																											
Country:		MNE																																											
IFU:		NTW																																											
Objective:		FS, GO/PO																																											
Consultant / Ref:		WFP International (UR) - SYSTEMA (GR) - CoS COME (RS) / L2711																																											
		Work Programme Chart																																											
		</																																											

Annex 6



Statement of Costs

(pursuant to the Consultant's Bid; where applicable in the version subsequently negotiated)

In accordance with the detailed Financial Proposal

WYG International, Systema, CeS Cowi

STAGE 1

1. Foreign personnel	Unit	Quantity	Unit Rate (EUR)	Amount (EUR)
1.1 Ralph Henderson - Team Leader	month	4.5	10000.00	45000.00
1.2 Zoran Lukovic - Bridge Engineer	month	1.5	6000.00	9000.00
1.3 Vladimir Jovanovic - Tunnel Engineer	month	1.5	6000.00	9000.00
1.4 Milan Popovic - Geotechnical Engineer	month	0.5	6000.00	3000.00
1.5 Alik Tasrouchi - Transport Economist	month	1.5	6000.00	9000.00
1.6 Ivan Andric - Materials Engineer	month	1	3500.00	3500.00
1.7 Predrag Srna - Drainage Engineer	month	1.5	3000.00	4500.00
1.8 Dragan Milic - Environmental Specialist	month	1	5500.00	5500.00
1.9 Andrijana Mladenovic - Social Expert	month	1	5000.00	5000.00
1.10 Danko Gavrilovic - Spatial Planner	month	1	3500.00	3500.00
1.11. Maia Popovic - Traffic Planner	month	3	6000.00	18000.00
1.12. Mladen Vidakovic Highway Enigneer DTL	month	2	6000.00	12000.00
1.13. Miloslav Rajkovic - Senior Road Designer	month	2	3500.00	7000.00
1.14. Ivana Stevanovic Junior Highway Enigneer	month	2	2500.00	5000.00
Sub-total Foreign personnel				139000.00
2. Allowance, accommodation, complementary travel costs for foreign personnel				
2.1 Allowance & Accommodation - Long-term staff	month	18	500.00	9000.00
2.2 Allowance & Accommodation - Short-term staff	month	0	800.00	0.00
Sub-total Allowance and accommodation				9000.00
3. Local personnel (incl. allowances and accommodation)				
3.1 Biljana Ivanovic - Lead Highways Engineer	month	3	5000.00	15000.00
Sub-total Local personnel				15000.00
4. Local transport				
4.1 Vehicle lease/rent or use of own vehicles	month	5	400.00	2000.00
4.2 Vehicle O&M incl. driver, assurance, repairs	month	5	150.00	750.00
Sub-total Local transport				2750.00
5. Project office				
5.1 Office rent	month	5	750.00	3750.00
5.2 Office operation	month	5	150.00	750.00
Sub-total Project office				4500.00

Annex 7

6. Reports and documents				
6.1 Deliverables - Reports	doc	100	25.00	2500.00
6.2 Plans	doc	250	10.00	2500.00
Sub-total Reports and documents				5000.00
7. International travel (Reimbursable)				
7.1 International return flights	flight	25	200.00	5000.00
7.2 Complementary travel costs	flight	25	50.00	1250.00
7.3 other international flights	flight	...		
Sub-Total Int. flights - Reimbursable				6250.00
8. Equipment (Reimbursable)				
8.1 Traffic Counts (Stage 1)	LS	1	9000.00	9000.00
Sub-Total Total Equipment				9000.00
9. Miscellaneous and optional items/services				
9.1 . Translation services	LS	1	2900.00	2900.00
9.2. Data Acquisition	LS	1	2900.00	2900.00
Sub-Total Total Miscellaneous items/services				5800.00

STAGE 2

1. Foreign personnel	Unit	Quantity	Unit Rate (EUR)	Amount (EUR)
1.1 Ralph Henderson - Team Leader	month	4	10000.00	40000.00
1.2 Zoran Lukovic - Bridge Engineer	month	1	6000.00	6000.00
1.3 Vladimir Jovanovic - Tunnel Engineer	month	1	6000.00	6000.00
1.4 Milan Popovic - Geotechnical Engineer	month	1	6000.00	6000.00
1.6 Ivan Andric - Materials Engineer	month	1	3500.00	3500.00
1.7 Predrag Srna - Drainage Engineer	month	1.5	3000.00	4500.00
1.8 Dragan Milic - Environmental Specialist	month	2	5000.00	10000.00
1.9 Andrijana Mladenovic - Social Expert	month	1	5000.00	5000.00
1.10 Danko Gavrilovic - Spatial Planner	month	0.5	3500.00	1750.00
1.12. Mladen Vidakovic Highway Engineer DTL	month	1.5	5000.00	7500.00
1.13. Miloslav Rajkovic - Senior Road Designer	month	2.5	3000.00	7500.00
1.14. Ivana Stevanovic Junior Highway Engineer	month	2.5	2500.00	6250.00
Sub-total Foreign personnel				104000.00
2. Allowance, accommodation, complementary travel costs for foreign personnel				
2.1 Allowance & Accommodation - Long-term staff	month	16	500.00	8000.00
Sub-total Allowance and accommodation				8000.00
3. Local personnel (incl. allowances and accommodation)				
3.1 Biljana Ivanovic - Lead Highways Engineer	month	3	5000.00	15000.00
Sub-total Local personnel				15000.00
4. Local transport				
4.1 Vehicle lease/rent or use of own vehicles	month	5	400.00	2000.00
4.2 Vehicle O&M incl. driver, assurance, repairs	month	5	150.00	750.00
Sub-total Local transport				2750.00
5. Project office				
5.1 Office rent	month	5	750.00	3750.00
5.2 Office operation	month	5	150.00	750.00
Sub-total Project office				4500.00
6. Reports and documents				
6.1 Deliverables - Reports	doc	100	25.00	2500.00
6.2 Plans	doc	250	10.00	2500.00
Sub-total Reports and documents				5000.00
7. International travel (Reimbursable)				
7.1 International return flights	flight	25	200.00	5000.00
7.2 Complementary travel costs	flight	25	50.00	1250.00
Sub-Total Int. flights - Reimbursable				6250.00
8. Equipment (Reimbursable)				
8.1 Topographical and geotechnical surveys (Stage 2)	LS	1	70000.00	70000.00
Sub-Total Total Equipment				70000.00
9. Miscellaneous and optional items/services				
9.1 . Translation services	LS	1	2900.00	2900.00
9.2. Data Acquisition	LS	1	2900.00	2900.00
Sub-Total Total Miscellaneous items/services				5800.00

The Consultant's Bid

Declaration of Undertaking

We underscore the importance of a free, fair and competitive contracting procedure that precludes abusive practices. In this respect we have neither offered nor granted directly or indirectly any inadmissible incentives to any public servant or other person nor accepted such incentives in connection with our bid, nor will we offer or grant or accept any such incentives or conditions in the present tendering process or, in the event that we are awarded the contract, in the subsequent execution of the contract. We also declare that no conflict of interest exists in the meaning of the kind described in the corresponding Guidelines⁸.

We also underscore the importance of adhering to minimum social standards (core labour standards) in the implementation of the Project. We undertake to comply with the core labour standards ratified by the country of Montenegro.

We will inform our staff of their respective obligations and of their obligation to fulfil this Declaration of Undertaking and to obey the laws of the country of Montenegro.

We also declare that our company/all members of the consortium has/have not been included in the list of sanctions of the United Nations, nor of the EU, nor of the German Government, nor in any other list of sanctions and affirm that our company/all members of the consortium will immediately inform the client and KfW if this situation occurs at a later stage.

We acknowledge that, in the event that our company (or a member of the consortium) is added to a list of sanctions that is legally binding on the client and/or KfW, the client shall be entitled to exclude us/the consortium or, if the contract is awarded to our company/the consortium, to immediately cancel such contract if the statements made in the Declaration of Undertaking were objectively false or the reason for exclusion from the tender procedure occurs after the Declaration of Undertaking has been issued.

.....
(Place)

.....
(Date)

.....
(Name of company)

.....
(Signature(s))

Model Advance Payment Guarantee

Address of guarantor bank: ...

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

Address of beneficiary (client):

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

On you concluded with (name and full address)

.....
.....
..... ("Contractor") a Contract for

..... (Project, object of the
Contract) at a price of

.....
According to the provisions of the contract, the Contractor receives an advance
payment in the amount of

..... equalling %
of the contract value, as an advance payment.

We, the undersigned

..... (bank),
waiving all objections and defences under the aforementioned Contract, hereby irrevocably
and independently guarantee to pay on your first written demand any amount advanced to
the Contractor up to a total of

.....
(in words)

against your written declaration that the Contractor has failed to perform the aforementioned
Contract.

This guarantee shall come into force as soon as the advance payment has been credited
to the account of the Contractor. This guarantee shall be automatically reduced pro rata in
accordance with the payments performed.

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 account of (client/project executing agency/purchaser).

This guarantee shall expire not later than

by which date we must have received any claims by letter or coded telecommunication.

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

.....
Place, date

.....
Guarantor

Model Retention Guarantee

Address of guarantor bank: ...

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

Address of beneficiary (client):

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

On you concluded with (name and full address)
.....
..... ("Contractor") a Contract for
..... (Project, object of the
Contract) at a price of

.....

According to the provisions of the Contract, the Contractor receives the amount of
.....
..... equalling %
of the Contract value, as a final payment.

We, the undersigned (bank),
waiving all objections and defences under the aforementioned contract, hereby irrevocably
and independently guarantee to pay on your first written demand an amount up to a total of

.....
(in words)

against your written declaration that the Contractor has failed to perform the aforementioned
contract.

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 account of (client/project executing agency/purchaser).

This guarantee shall expire not later than

by which date we must have received any claims by letter or coded telecommunication.

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

.....
Place, date

.....
Guarantor

Financial Cooperation

»» Assignment of Consultants



September 2013

Guidelines for the Assignment of Consultants
in Financial Cooperation with Partner
Countries

Published by:

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Introduction

The nature and scope of the projects supported by KfW normally mean that the Project Executing Agency avails itself of support from local or international Consultants in order to prepare, execute and where appropriate operate the projects concerned (for details on the areas of work for Consultants see Annex 1). Consultants may also be assigned independently of ongoing measures, e.g. to identify or evaluate projects, or conduct training measures.

These Guidelines provide information on the minimum requirements when contracting Consultants¹ in projects or programmes supported by KfW Development Bank using funds of German Financial Cooperation (FC), other German budget funds, KfW's own funds or funds of other donors. These Guidelines are based on standard international procedures and norms.

KfW has a responsibility for all of society and regards sustainability in the projects and programmes it supports as an overarching objective of its mission. The design, implementation and subsequent operation of the projects and programmes supported by the regional departments of KfW should take reasonable account of economic efficiency as well as ecological and social aspects. Within the possibilities of the partner systems, these aspects can be considered in different ways in the selection of firms and/or in the evaluation of tenders.

The frameworks for the delivery of services to support projects or programmes and for the selection of Consultants are agreed in the loan financing agreement or other agreements between the Project Executing Agency and KfW. Details of the invitation to tender procedure are then laid down in the respective prequalification notice and request for tenders. This provides sufficient flexibility to take due account of the specific circumstances in each individual project. The rights and obligations of the Project Executing Agency and the Consultant are stated in the consulting contract to be concluded between the Project Executing Agency and the Consultant. To this end KfW will provide a model contract based on standard international model contracts.

Contracts for consulting services are usually awarded by the institution responsible for project implementation (**Client** or **Project Executing Agency**)².

¹ The term "Consultant" refers to an individual consultant or consultancy firms; in these Guidelines it is also synonymous with a consultant engineer.

² The Project Executing Agency is usually also the Client. The terms are used synonymously here.

What is Financial Cooperation?

Financial Cooperation (FC) is a component of German Development Cooperation. Its function is to finance investments in economic and social infrastructure, poverty alleviation, environmental protection and the conservation of natural resources in partner countries by providing loans on favourable terms and grants, using federal budget funds. These funds may be supplemented with market funds raised by KfW. It also seeks to enable the partners to independently and sustainably operate the facilities through complementary basic and advanced training measures (capacity development). FC is carried out by KfW on behalf of the German Government and its Ministries, especially the Federal Ministry for Economic Cooperation and Development (BMZ). FC funds help inter alia to increase supplies of water and electricity, to improve health care and education systems, to expand transport networks and to promote agricultural production. They also finance loan programmes for small and medium-sized enterprises support, economic reforms and promote programmes for climate change and energy efficiency.

1 Basic Principles

1.1 Validity of the Guidelines

1.01 These Guidelines apply to the procurement of all advisory and consulting services that are financed in full or in part by KfW Development Bank using funds of German Financial Cooperation (FC), other German budget funds or KfW's own funds. They are also used when assuming delegated cooperation, except where otherwise agreed with the mandator. The Guidelines also apply in cases where KfW awards contracts in its own name³, unless German law provides otherwise.

1.02 Unless otherwise stipulated in individual cases, consulting services under Financial Cooperation are contracted in accordance with these Guidelines. If the law of the Client's country prohibits the application of these Guidelines in full or in part, the Client and KfW may agree to exceptions. Financing is only possible if the procedures and law on which the contracting is based do not infringe the basic principles of fairness, transparency, economic efficiency and equality of opportunity described in these Guidelines. The Client must make such arrangements with KfW in due course.

1.03 KfW supports the harmonisation of the principles and procedures that apply in international development cooperation. Therefore, in the interests of standardisation, in some cases the procedures of other competent bilateral and multilateral development organisations are used, provided that the Client is familiar with the application of these procedures and KfW has given its prior approval.

1.2 Responsibility for the assignment of Consultants

1.04 Responsibility for the preparation, execution and operation of all projects financed by KfW rests with the respective Client in the partner country – except where KfW has awarded the contract in its own name. The Client normally conducts the entire contracting procedure,

³ This also includes contracting procedures in which KfW acts as part of a consortium.

concludes the contract and supervises the Consultant's contractual performance independently. Responsibility also rests with the Client in those cases where by way of exception KfW under agency principles conducts the selection procedure in the Client's name and on the Client's behalf (See Paragraph 1.10).

1.05 The Client may, with KfW's approval, when implementing the contracting procedure be supported by a tender agent, and may delegate parts of the procedure (preparation of the tender documents, publication, assessment of bids, contractual negotiations) or the entire process to this agent. The tender agent is obliged to maintain confidentiality. This shall not affect the responsibility of the Client pursuant to Paragraph 1.04 or KfW's obligations to give its approval pursuant to Paragraph 1.08.

1.3 The role of KfW

1.06 KfW plays an active part in the preparation and implementation of the projects it finances. Its obligation to exercise due diligence requires it to influence the project in a manner that is appropriate to the case in hand, in order to avoid adverse developments that may arise during the planning, implementation or operation phases. This influence shall be exerted in the form of cooperative dialogue with the Client.

1.07 KfW shall ensure that the funds provided are spent as economically as possible. It will ensure that the contracts are awarded on the basis of fair and transparent competition that offers equal opportunities to all participating bidders. This is designed to identify the most suitable bidder according to performance and price. In addition, KfW will examine the tender documents, Assessment Reports, proposals for the award of contracts and draft contracts, which must all be presented to it as part of the contracting procedure, to ensure that they conform with the agreements made with the Project Executing Agency and with international practices, especially in regard to the description of the services, payment conditions, liabilities and guarantees, and to ensure that the drafts are free of serious defects and contradictions. Finally, KfW will appraise the Client's supervision of the fulfilment of the contracts by the contractor during the implementation phase.

1.08 All documents to be published for the Declaration of Interest and the Invitation to Tender⁴, the selection of the Consultant and the draft consulting contract shall require the prior approval of KfW⁵. Similarly, any amendments to the contract and the acceptance of consulting services by the Client must be presented to KfW for prior approval. A list of the procedures to be followed and the documents to be presented to KfW is included in Annex 2.

1.09 KfW may refuse to finance consulting services and even the entire FC project if a Consultant has not been selected in accordance with the agreed procedures, if the qualifications of the Consultant do not meet the tender specifications, if the terms of the consulting contract do not meet KfW's minimum requirements, if the selection procedure has

⁴ If several invitations to tender of the same kind are planned using uniform documents previously agreed with KfW, separate examination of the documents can be replaced by one-time examination of the standard tender documents.

⁵ If a large number of highly detailed contracting procedures are envisaged prior approval may be waived, provided that the contracting rules, documentation obligations and where appropriate subsequent review by KfW or a representative have been agreed on with KfW in advance (e.g. in the case of disposition funds and local invitations to tender).

been influenced by illegal payments, the granting or promise of other advantages, or if circumstances suggest that such influence has been exercised.

1.10 At the request of the Client KfW may, in individual cases, carry out part or all of the selection procedure and commission the Consultant on behalf and in the name of the Client. For this purpose KfW will sign an agency contract with the Client stating the extent and details of the services to be performed by KfW. This work is free of charge. It generally ends when the consulting contract is signed by KfW on behalf of and in the name of the Client. In such cases these Guidelines shall also apply.

1.11 Furthermore, in appropriate cases KfW may also award contracts for consulting services in its own name. In these cases these Guidelines shall apply, except where German public procurement law provisions preclude this.

1.4 Public, fair and transparent invitation to tender

1.12 Usually the Client will publish an international invitation to tender for consulting services. In this case, unless warranted restrictions exist in specific cases or unless the reasons for exclusion specified in Sections 1.6 and 1.7 apply, there shall be no restriction with regard to the bidder's country of origin.

1.13 Restrictions on the principle of international public invitation to tender described in Section 2.1 are only possible after KfW's prior approval in warranted cases or in the forms of procurement dealt with in Sections 3 and 4.

1.14 All participants in an invitation to tender for services to be financed in full or in part by KfW are required to ensure fair and transparent competition, and to comply with, at a minimum those ILO core labour standards that have been ratified by the partner country. This is to be documented through a corresponding Declaration of Undertaking (see Annex 4) by all participants in the tender process. The Declaration of Undertaking must be signed with legal effect by sufficiently authorised representatives of the bidder, and in the case of joint bids by all partners. Failure to submit this Declaration of Undertaking or to comply with the requirements contained in it shall lead to exclusion from the tender process.

1.5 Confidentiality

1.15 The selection procedure is confidential. Therefore, while the procedure is ongoing neither the Client nor KfW will release any information on the assessment of the bids or the recommendations on the award of contracts to bidders or to any other persons who are not officially involved in the selection procedure. Should confidentiality be infringed KfW may demand that the invitation to tender be terminated.

1.16 Discussions with bidders on their bids are not permitted between publication of the invitation to tender and award of the contract. Exceptions are on-site visits to obtain information, participation in a meeting of pre-selected bidders or inspection of the available documents. These contacts are exclusively intended to familiarise bidders with the local conditions and the available working documents. Beyond this only written enquiries

requesting clarification are permitted. Such enquiries will be answered by the Client in writing, and a copy will be sent to all the bidders. Any other enquiries or interventions are prohibited and will lead to the exclusion of the bidder (see Section 2.8 concerning notification of the bidders after completion of the procedure).

1.6 Bidders entitled to take part in the procedure

1.17 Tenders from bidders will be admitted to the procedure provided that none of the following reasons for exclusion or conflicts of interest apply:

- a) Sanctions or embargoes of the Security Council of the United Nations, the EU⁶ or the German government preclude the participation of a bidder.
- b) The bidder is excluded from the tendering process with legal effect in the Client's country on the grounds of punishable offences, especially fraud, corruption or other economic crimes.
- c) The bidder or a subcontractor to be subcontracted for significant parts of the contract has economic links to the Client and/or is a state-controlled company in the partner country that is not legally or economically independent.
- d) The bidder or individual members of the bidder's staff or a subcontractor has economic links or family ties with personnel of the Client who are involved in preparing the tender documents, awarding the contract or supervising the execution of the contract, insofar as the conflict of interests could not be resolved to KfW's satisfaction in advance of the contract award and execution phase.
- e) The bidder or individual members of the bidder's staff were directly involved in drawing up the terms of reference and/or other information for the tendering procedure. This shall not apply to Consultants who have produced preparatory studies for the contract or who were involved in a preceding phase, insofar as the information they prepared in this connection, especially feasibility studies, was made available to all bidders and the preparation of the terms of reference for the invitation to tender was not part of the activity.
- f) The bidder is not or was not during the last 12 months prior to publication of the invitation to tender indirectly or directly linked to the project in question through employment as a staff member or advisor to the Client, and is not or was not able in this connection to influence the award of the contract for services, or the bidder is not or was not otherwise able to influence the award of the contract for services.

By signing the Declaration of Undertaking (see Annex 4), the bidder attests that none of these reasons for exclusion or conflicts of interest apply. In case of doubt, when tendering the bidder in question shall furnish proof to the satisfaction of the Client and KfW that the aforementioned reasons do not apply.

⁶ This does not automatically apply to exclusions in the Central Exclusion Database of the EU.

1.7 Independence of the Consultant

1.18 The Consultant must always be neutral and independent vis-à-vis potential suppliers for the project in question. Members of associated firms may participate in a project only as either Consultant or manufacturer/supplier/construction firm. When submitting proposals, Consultants must disclose any links with other firms and give a binding declaration that should they be awarded the contract, the firms with which they are associated do not intend to take part in the project in any other form. In a joint venture, this also applies to participating professionals and other consultancy firms. These regulations do not apply to Build-Operate-Transfer (BOT) projects or operator models.

1.19 Consultancy firms that belong to the same group, or are linked in another way financially, organisationally or through personnel, can participate in the competitive tendering procedure individually only if none of the other consultancy firms with which they are associated participate.

1.8 Cooperation between bidders

1.20 Consultants can participate in the competitive tendering procedure as companies in any legal form, and in conjunction with other Consultants. After the completion of the prequalification procedure, cooperation between the prequalified Consultants is permitted only with the approval of the Client and KfW, and only if sufficient competition continues to be guaranteed.

1.21 In projects financed by KfW, major importance is attached to cooperation with experts or companies with a background of local experience and those with international experience. Such cooperation can be made binding in the prequalification notification or in the request for tenders. The listing and selection of the experts and consultancy firms concerned is solely at the discretion of the bidder. The Client may not prescribe cooperation with specific local experts, firms or groups of firms.

1.22 Should such cooperation be proposed the documents submitted for the prequalification process must contain the necessary information on all the intended partners. In particular, they must include a binding description of their competences, fields of work, and the form the cooperation will take. The documents must include a declaration of intent signed by all the partners and naming the consultancy firm that will direct the work. If they are awarded the contract, the partners undertake to take all the steps necessary to perform the work described in the documents as stated and in the form of cooperation as stated. Groups of bidders⁷ are required to enter into an agreement with joint and several liability. In particular cases (e.g. large projects), the request for tenders may require presentation of a detailed and binding agreement between the partners in a group (e. g. in the form of a preliminary contract).

⁷ Consortia, joint ventures etc.

1.9 The contract

1.23 KfW will provide a model contract⁸ which standardises the contents and formal requirements for consulting contracts, and which should be used wherever possible. Insofar as the parties to the contract deviate from this, the contract for consulting services shall be prepared on the basis of internationally recognised practices and standards. It shall include at least the provisions described in Annex 8. If no draft contract is enclosed with the tender documents, the main contractual arrangements that govern or affect costs shall be listed separately in the text of the invitation to tender.

1.24 The Client may, in concert with KfW, agree with the Consultant on remuneration based either on actual work performed or on a lump-sum basis. Remuneration based on actual work performed is recommended if the work to be carried out by the Consultant has not been conclusively defined by the time of the contractual negotiations, for instance construction management tasks. Lump-sum remuneration should be agreed on if the services to be rendered and the time frame within which they are to be rendered are clearly defined. Preference should be given to lump-sum remuneration for studies, detailed plans and other services that can be defined with a similar degree of clarity. For lump sum contracts, it is sufficient to contractually agree only on the key personnel (for further details on lump sum contracts see Annex 9).

2 Procedure for International Public Invitation to Tender

2.1 Basic principle, publication and deadlines

2.01 The procedure for procuring consulting services usually comprises an international, public and unrestricted invitation to tender conducted in two stages, namely prequalification and competitive tendering pursuant to Sections 2.2 and 2.3. In the first stage of the procedure the general suitability of the bidders⁹ is examined; in the second stage a competition among the prequalified bidders is held to select the bidder who has submitted the best bid in terms of the quality of services offered and the price for those services.

2.02 Deviation from this two-stage procedure is possible only with KfW's approval, especially in those cases specified in Paragraph 2.13. International publication of the invitation to tender may be waived in those cases specified in Section 3.

2.03 The international, public and unrestricted invitation to tender shall be published through media with an international reach, and in the partner country. Publication will be initiated by the Client. International publication of the invitation to tender shall include at least the channels of Germany Trade and Invest¹⁰ (GTAI). This publication will be free of charge. The Client shall supply GTAI with the text of the notice, plus one complete set of the tender documents free of charge. Publication in the partner country shall take place in accordance with the local regulations applicable to the Client. The invitation to tender may not be

⁸ The model contract is available in the download center on KfW's website (www.kfw.de).

⁹ The term "bidder" is used synonymously with the term "applicant".

¹⁰ Full name: Germany Trade and Invest – Gesellschaft für Außenwirtschaft und Standortmarketing mbH; website: www.gtai.de, for full address details see Annex 3

published in the partner country or elsewhere earlier than it is published through GTAI. The Client will send KfW the text of the notice and the description of the services required (the terms of reference) for approval in due time before publication. The deadlines for preparation of the prequalification documents and for preparation of the bids must take due account of the particular circumstances of the project, its size and complexity, and ensure sufficient and transparent competition. Deadlines shall be at least 30 calendar days for prequalification procedures and 45 calendar days for bids.

2.04 The deadlines may only be extended under special circumstances. All bidders must be notified of such an extension in writing after KfW has received advance notification, in good time prior to expiry of the deadline originally specified.

2.05 All bidders shall be notified in writing, simultaneously and in good time, no later than 14 calendar days prior to expiry of the deadline for submission of bids, of the Client's responses to queries raised by individual bidders prior to expiry of the deadline for submission of bids.

2.06 Prequalification documents and bids are to be submitted on paper and in electronic form as PDF files on standard electronic media. The storage media have to be packed into the respective separated envelopes (see 2.12). The electronic files must not permit further manipulation of the content stored. The submission of written offers may be waived with the prior approval of KfW. In this case safeguarding of confidentiality via an e-tendering platform is required.

2.2 Prequalification

2.07 The prequalification procedure involves reviewing, on the basis of the prequalification documents submitted in an informative, clear and concise form, whether the bidders are able to duly perform the required consulting services. The following basic criteria will be examined:

- a) absence of criteria for exclusion pursuant to Sections 1.6 and 1.7;
- b) experience with implementing comparable projects in the sector concerned, usually over no less than the last five years;
- c) experience in the partner country or similar countries, usually over no less than the last five years;
- d) financial and economic resources and expertise (in relation to the size of contract in question);
- e) human resources and capacities, including backstopping capacities, if necessary supplemented with external resources for the envisaged activities;
- f) submission of a Declaration of Undertaking by the bidder signed with legal effect pursuant to Annex 4.

2.08 The minimum requirements for prequalification and the prequalification template (for further details and explanations see Annexes 3 and 5) will be specified in the prequalification notice.

2.09 Only those bidders will be selected who achieve at least 70% of the points to be allocated. If more than five bidders achieve that total the five with the highest number of points will be selected. The prequalification requires the approval of KfW. For this purpose, the Client will send KfW the Assessment Report on the prequalification and all the documents requested in connection with this in due time.

2.10 Once KfW has confirmed the prequalification result, the Client will inform the bidders of the results of the prequalification. Upon request by a bidder, the Client can briefly state the main reasons for the exclusion of the bid. However, no details on the evaluation procedure or information on competing offers will be disclosed. There is no right of appeal for the bidders beyond the rights provided for in the laws of the partner country. The selected bidders will also be informed of the other prequalified consulting firms.

2.3 The tendering phase

2.11 The Client will ask the prequalified Consultants to tender. The Client will send them a list of the services to be performed (terms of reference), further documentation on the project which the bidders will need to prepare their technical proposals and price quotations, including those elements affecting costs that are to be included in the contract (details on the invitation to tender are given in Annex 6). The terms of reference will state whether remuneration will be paid according to actual work performed or on a lump-sum basis. In the case of lump sum remuneration, the terms of reference will define which positions are considered key personnel and are to be described in detail in the technical proposal. The Client will present the documents necessary to prepare a tender to KfW for approval in due time before dispatching them.

2.12 The bid for services and the price quotation must be submitted in separate sealed envelopes. One original of each must be sent to the Client or to a representative designated by it, and one copy of each sent to KfW, to the addresses specified and by the deadline given in the request for tenders. After that date no amendments or additions may be made to the bids. Any attempt to do this will result in the bidder concerned being excluded from the remainder of the selection process. The bids for services will be opened immediately after expiry of the deadline for submission of bids. The envelopes containing the price quotations will remain sealed, and will only be opened with KfW's approval for those bidders who have achieved at least 75% of the points to be awarded in the assessment of the bids for services.

2.13 The two-stage procedure can be waived subject to approval by KfW, especially in the following cases:

- a) if the estimated net value of the contract does not exceed EUR 200,000, or
- b) if due to a slack market no more than five bids are to be expected, or
- c) due to time constraints, if application of the two-stage procedure is likely to adversely affect the project.

In this single-stage procedure (post-qualification) the qualification documents, the technical proposal and the price quotation are submitted simultaneously. The suitability of the bidders is assessed in accordance with the project-specific criteria specified in Section 2.2, while the technical proposal and price quotation are assessed in accordance with Section 2.4. Where the value of the contract is low and/or knowledge of the market is good, it is appropriate to confine the examination of the bidders' suitability to a few clearly defined exclusion criteria (e. g. minimum of project experience/references and minimum turnover) and to conduct this examination before assessing the technical proposal. The price quotation which is to be submitted in a separate envelope is opened and examined after KfW has given its consent to the assessment of the suitability and the technical proposal.

2.4 Evaluating the bids

2.14 Once opened the bids will be formally examined to establish whether they are complete, whether they meet the conditions of the invitation to tender, and whether the securities/guarantees and declarations provided by the bidder match the tender documents. The opening of the bids must take place in the presence of at least two people, and must be documented in writing to be signed by the individuals present.

2.15 Evaluation of the bids not rejected pursuant to Paragraph 2.14 and Section 2.5 is normally performed by the Client, possibly supported by a tender agent. For contracts advertised by KfW in its own name, the bids will be evaluated by KfW. The objective of the evaluation is to identify the most advantageous bid by assessing the relevant factors in each of the bids and comparing them with the other bids.

2.16 The bids for services will be assessed on the basis of a list of criteria established in advance (details and explanations are given in Annexes 6 and 7). To enable KfW to exercise its right of approval, the Client must send the Assessment Report on the bids for services to KfW in due time, together with all the documents requested by KfW.

2.17 In principle the price quotations will be assessed using the total price (not including customs and excise duties, taxes and levies in the Client's country), after correcting any arithmetical errors. Incidental costs and additional services that are paid for separately against proof in accordance with the terms of the invitation to tender can be adjusted for the purposes of the assessment or excluded from the assessment, if this is the only way to make price quotations comparable. Optional offers of services will only be included in the assessment of price quotations if all bidders were requested to submit such offers in accordance with the terms of the invitation to tender.

2.18 If in the course of the assessment discrepancies between the technical proposal and the price quotation become evident, this should be clarified together with the bidder, though this must not lead to any amendment or improvement of the original bid. Cost items that according to the wording of the invitation to tender are to be offered separately but are not shown separately in the bid will be assessed at the highest price of the corresponding cost item of the other bidders.

The steps taken to calculate the total adjusted price will be explained in detail by the Client in the Assessment Report.

2.19 The price quotation will generally account for 30% of the overall rating. A different weighting shall require the approval of KfW (e.g. a higher weighting in the case of construction supervision or a lower weighting in case of announcement of the available budget in the tender documents).

2.20 The price quotation with the lowest, possibly adjusted, total value will receive the maximum possible number of points (generally 30). The number of points awarded to the other price quotations opened is reached by dividing the total adjusted price in the lowest bid by the total adjusted price of each other bid and then multiplying by the maximum possible number of points.

2.21 The bid for services with the highest rating will receive the maximum possible number of points (generally 70). The number of points awarded to the other bids for services is reached by dividing the rating of each by the rating of the top bid for services, and then multiplying by the maximum possible number of points. The number of points given for the price quotation will be added to the number awarded for the services bid. The order of the bidders will be determined by the total number of points awarded. The bid with the highest total number of points will be the best received.

2.22 After completion of the assessment KfW will receive from the Client a detailed, transparent report on the assessment and comparison of the bids ("Assessment Report") together with a reasoned proposal for the award of the contract that may have been discussed and agreed on with the government agencies of the partner country involved. This Assessment Report shall list in detail the important points for possible contractual negotiations at least for the three top placed bidders. If the Client is being supported by a tender agent (Paragraph 1.05), the Assessment Report shall be co-signed by the agent, or the agent's separate comments on the report shall be attached to it. The proposal for award of the contract will be presented to KfW for approval.

2.23 If an extension of the period of validity for the bids was necessary, the underlying reasons should be explained in the Assessment Report. An extension of the period of validity may not lead to any change in the prices quoted in the bids. KfW reserves the right to decline funding in case of inappropriate delay of the contracting procedure.

2.5 Rejection of bids

2.24 Bids will be in principle rejected if:

- a) the Consultant has influenced or attempted to influence the selection procedure with illegal payments or by granting or promising other advantages, or if circumstances suggest that such influence has been exercised;
- b) the bid has been received at the location specified in the announcement after expiry of the deadline for submission of bids, unless the bidder can prove that it is not responsible for the delay, which is due to force majeure (delays in delivery by courier services do not constitute force majeure);

- c) the bid does not fulfil the criteria in the invitation to tender in essential points, such as the prescribed conditions of contract or key specifications;
- d) the bid contains significant provisos or restrictions;
- e) the statement by the bidder that it is associated with other companies does not clearly show that the former or the latter will not apply to participate in the same project as manufacturers, suppliers or construction firms;
- f) the bidder has not submitted a Declaration of Undertaking signed with legal effect pursuant to Annex 4, insofar as this was not already obtained as part of the prequalification process.

2.6 Cancellation of the invitation to tender

2.25 The invitation to tender may be cancelled if:

- a) there was no adequate competition;
- b) none of the bids for services achieved the required minimum number of points;
- c) fundamental technical or financial aspects on which the invitation to tender was based have changed significantly prior to award of the contract; or
- d) the price quotations are obviously and clearly excessive. In that case the alternative is either to hold a new tender procedure, with or without prequalification, or to commence negotiations on the price with the bidder who came first.

2.26 Competition will normally be deemed to have been insufficient if significantly fewer bids reach the evaluation phase than would have been expected given the breadth of the market, or the prices quoted appear clearly excessive, or price-fixing arrangements have obviously been made. Where price quotes are clearly excessive it is possible to enter into price negotiations with the bidder who came first after cancelling the invitation to tender.

2.27 If no bid for services has reached the required minimum number of points, a further pre-qualification procedure may be waived and a further tender procedure conducted among the bidders originally prequalified. This procedure is only appropriate if amending the conditions or the terms of reference is likely to enable the original bidders to submit suitable bids for services, and the original objectives of the invitation to tender are not called into question as a result of the amendment.

2.28 Cancellation of the invitation to tender and the further procedure shall require KfW's approval. The Client shall notify all bidders in writing that the invitation to tender has been cancelled, without explaining the reasons. If the invitation to tender is cancelled, where the options mentioned in 2.26 and 2.27 above are not available a further invitation to tender normally shall be published on different terms that guarantee greater competition, e.g. by amending the subject or the conditions of the invitation to tender.

2.7 Negotiating the contract

2.29 Once KfW has approved the proposal for award of the contract, the Client will promptly and efficiently negotiate the contract with the bidder who has topped the list. If these negotiations are not successful, the bidder who came second will be asked to negotiate, after KfW has given its approval. The resumption of negotiations with a bidder after negotiations have been broken off is not permissible.

2.30 The Client will carry out negotiations promptly and efficiently and generally limit them to the following points:

- a) clarifying the work and the methods to be used, where necessary adjusting the staffing schedule;
- b) any counterpart services to be provided by the Client and the level of customs and excise duties, taxes and levies in the Client's country, and the contractual obligation to pay these;
- c) contractual stipulations on other cost items that were not included in the assessment of the price quotation.

2.31 Fees and unit prices for incidental costs and services that were to be offered on a lump-sum basis pursuant to the invitation to tender, are in principle not subject to negotiation, as they were already taken into account in assessing the price quotation.

2.32 Insofar as lump sum remuneration was agreed, the payment schedule is to be fixed in accordance with the planned services to be rendered. As soon as 70% of the contract fee has been disbursed, the remaining instalments are to be disbursed against submission of documents linked to specific project milestones.

2.33 Once the bid has been submitted, the personnel or key personnel who form an integral part of the bid cannot be substituted without the approval of the Client and KfW. The substitution of personnel will lead to a reassessment of the entire bid, if the personnel subsequently offered are less qualified than the original personnel.

2.34 The result of the contract negotiations and the draft consulting contract require the approval of KfW.

2.8 Notification of the bidders and complaints

2.35 After conclusion of the contractual negotiations and after KfW has given its consent, the Client will notify all bidders of the award decision. On request by the bidders, the Client may inform them of the main weaknesses of their bids. No details on the award decision will be disclosed. The bidders who were not included in the assessment of the price quotations will have their price quotations returned unopened. There is no right of appeal for the bidders beyond the rights provided for in the laws of the partner country.

2.36 Complaints by individual bidders concerning the contracting procedure must always be submitted in writing to the Client/the responsible complaints authority in the partner country, and copies sent to KfW.

3 Other Forms of Procurement

3.1 Deviations from the principle of international public invitation to tender

3.01 With KfW's prior approval, the principle of international, public and unrestricted invitation to tender may be waived in the cases described below. The exceptions described in Section 3.2 (national invitations to tender) and Section 3.3 (solicitation of offers) are applicable up to a net contract value of EUR 200,000¹¹, provided that no other threshold values have been agreed with KfW. A division of contracts into several parts in order to fall below the threshold values is not permissible.

3.2 National invitations to tender

3.02 A publication of the invitation to tender that is confined to the partner country is possible below the aforementioned threshold, if the following conditions are met:

- a) for the envisaged tasks, sufficiently qualified bidders for a competitive bidding procedure are available on the local market, and
- b) given the nature and scope of the activity, international bidders are not likely to be interested.

In case of national publication of the invitation to tender, international bidders may not be prevented from participating in or be excluded from the procedure. The implementation of the invitation to tender as a single- or two-stage procedure will be determined by the circumstances of the project in question and the national regulations. The provisions governing international invitations to tender apply analogously.

3.3 Solicitation of offers¹²

3.03 If the conditions for a national publication of the invitation to tender pursuant to Paragraph 3.02 are not met, offers may instead be solicited from at least three qualified bidders.

3.04 Only qualified bidders may be requested to submit offers. To this end, the Client will present to KfW a list of the proposed bidders from whom offers will be solicited plus a cost estimate, and will explain their general suitability for the envisaged activity (background experience, human resources, financial resources and expertise in relation to the subject of the contract). When selecting the proposed bidders, importance must be attached to a balanced blend of local and international experience in the relevant area of activity.

¹¹ Contract value excluding VAT, but including all other integral parts of the contract, and where applicable options.
¹² If KfW is the client, the valid EU threshold shall apply, value as at 2012: EUR 200,000.

3.05 If the general suitability of all proposed bidders has been sufficiently demonstrated, no detailed examination of their suitability need be carried out in the course of obtaining the offers. Where insufficient information is available, this must be obtained from all bidders together with the offers solicited. Where appropriate the number of invited bidders should be increased, so that if bidders are excluded on the grounds of unsuitability a sufficient number of bids will remain for assessment.

3.06 Assessment of the documents submitted and the further contracting procedure will follow, insofar as applicable, the provisions laid down in Section 2 for tendering, subject to the following exceptions:

- a) the deadline for submission of offers may be reduced appropriately, but as a rule should be no less than 20 calendar days; and
- b) for offers that require only a minor amount of work to prepare, the submission of written offers may be waived with the prior approval of KfW. In this case the offers shall be submitted in electronic form as PDF that do not permit further manipulation of the content stored. The bidder risks exclusion should the files prove unreadable.

3.4 Direct award

3.07 With direct award only one offer is obtained, and the contract is awarded without a competitive procedure. Direct award is possible only in warranted exceptions, in particular

- a) when extending existing contracts, in cases where the nature and scope of the consulting services being contracted do not warrant a new invitation to tender;
- b) in follow-on phases in programme activities where the terms of reference are largely identical, provided that the first contract was awarded on a competitive basis, attention was drawn to this option in the invitation to tender, the Consultant's performance is satisfactory, and the technical proposal and price quotation are appropriate;
- c) following the cancellation of an invitation to tender pursuant to Section 2.6, insofar as a further competitive procedure is unlikely to produce appropriate results;
- d) where projects are especially urgent in cases of natural disaster, crisis or conflict;
- e) if only one bidder can be considered for implementing the activities for reasons of confidentiality, or the technical, systemic or context-sensitive knowledge required;
- f) for small contracts worth a maximum of EUR 20,000 (not including VAT but including all other contractual components and possibly options), provided that the particular or exclusive suitability of the Consultant to be contracted has been credibly demonstrated by the Client, and an invitation to tender would not bring any economic benefits.

3.08 In cases of direct award the Client will always verify the appropriateness of the technical proposal and price quotation, and any other components of the offer. The outcome of this verification procedure must be documented in writing, and shall require KfW's approval prior to the conclusion of the contract.

4 Projects Involving Financial Intermediaries and Private Sector Projects

4.1 Projects involving financial intermediaries

4.01 When funds are delivered through financial intermediaries, and these funds are used to finance several individual projects e.g. in the infrastructure sector, it is usually not possible to specify in advance the details of implementation of the projects in question. KfW will ensure that the financial intermediary requires the ultimate borrowers to apply procurement procedures that are in accordance with the principles of these Guidelines and that contracts are awarded on the basis of economic principles, are transparent and justifiable. Unless otherwise agreed, the financial intermediary will supervise the award of the contracts and subsequently report to KfW as part of its usual reporting procedures. The provisions under 4.02 and 4.03 below apply to private sector borrowers who implement major individual projects.

4.2 Private sector projects

4.02 Private sector projects are projects implemented by Clients that do not discharge a public mandate, are not under majority state control, and are normally not obliged to issue a public invitation to tender. These private sector Clients usually have their own procurement procedures. KfW will satisfy itself in advance that the procurement procedures applied by the respective Client ensures that the funds are used efficiently and that contract awards are transparent and justifiable.

4.03 For some projects such as public-private partnerships (PPP), a competition often takes place on a different level before the actual procurement, e.g. a minimum grant element (least-cost subsidy) determined in competition or maximum remunerations for the provision of infrastructure services (e.g. water price). Procurements made subsequently and to be financed by KfW may be made under the responsibility of and according to the regulations of the Client if the Client can demonstrate to KfW in advance that the decisions on contract awards are based on economic principles, are transparent and justifiable and if these procurements are part of the preceding competition.

4.04 KfW's involvement in the application of the relevant procurement procedures mentioned under 4.02 and 4.03 above will be agreed on a project-specific basis.

Annexes

Areas of Work for Consulting Services

In Financial Cooperation, the project executing agencies use the support and advisory services of Consultants primarily in the following areas. Which of these consulting services is used in a specific project will be determined by the Client and KfW on a case-by-case basis.

a) Preparation

- Sectoral and preliminary studies conducted before the decision is taken to proceed with the further preparations for a project. The purpose of such studies is to make an initial selection, at justifiable effort, from the existing options and work out the scope for proposals that are suitable in regard to technical, economic, institutional, socio-economic, socio-cultural and ecological considerations.
- Feasibility studies prepared as a basis for decision-making on a project to be properly prepared with regard to technical, economic, institutional, and socio-economic, socio-cultural and ecological aspects.

b) Execution

Support for the Project Executing Agency in the detailed design of the project as a basis for the tender (including the technical specifications and the draft contracts for supplies and services), carrying out the tender, assessing the bids and proposing a bidder to be awarded the contract, drafting the contract, drawing up the final design, including the architectural plans, supervising the execution of the project and monitoring its development. The Consultant's services also include examining and approving invoices and supporting the Project Executing Agency in foresighted cost and financial management of the project, in dealing with contractual issues, in accepting the project and in drawing up reports on the development of the project.

c) Operation

Support for the Project Executing Agency in developing operation and maintenance concepts, in advising and training skilled personnel to operate and maintain the facilities constructed under the project, and in carrying out flanking measures (e.g. hygiene advisory campaigns in connection with drinking water supply projects).

d) Other support and advisory measures

Support for the Project Executing Agency with advice on sector policy (e.g. tariff reform), on institutional reforms, on improving the organisational and management structures and/or in carrying out environmental audits.

KfW's Rights of Information and Approval

1. Planning the contracting procedure

The Client will present the following documents to KfW for approval in due time before starting the contracting procedure for the consulting services:

- description of any particular local features and statement of any local regulations that are applicable to contracting procedures
- draft list of services required (terms of reference)
- timetable for the contracting procedure
- cost estimate for the consulting services
- estimated timetable for the performance of consulting services
- draft consulting contract, covering *inter alia*
 - local specifics and binding law relating to the execution and performance of consulting contracts¹³
 - counterpart services offered free of charge by the Client (e.g. provision of office premises, vehicles, equipment and personnel)
 - possibility of and conditions for the exemption of consulting services from customs and excise duties, taxes and levies in the Client's country
 - type of contract (lump sum remuneration or based on work performed).

The Client will promptly inform KfW at all times of any delay and other changes in the course of the contracting procedure that could jeopardise the successful completion of the project in accordance with the timetable, and will agree steps to remedy this situation with KfW.

2. Implementing the contracting procedure

To enable KfW to exercise its right of approval, the Client will send KfW the following documents in due time for examination and comment. KfW's approval is required before each of the following activities commences:

- *before publication*: the draft of the prequalification notice (main components, see Annex 3) and any supplementary information for the Consultants interested;
- *before informing the bidders*: the Assessment Report on the prequalification and the draft list of prequalified bidders, with all the documents related to this as requested by KfW;
- *before dispatch to the prequalified bidders* previously approved by KfW: the draft documents for the tender (invitation to submit a bid, terms of reference, the tender conditions and the conditions of contract for the bidders; for details see Annex 6);
- *before opening the price quotations*: the Assessment Report on the services offered, which must state the reasons for any exclusions, and all the documents related to this as requested by KfW;
- *before a possible cancellation of the tender*: the proposal by the Client that the tender should be cancelled, with reasons. This must follow the criteria in these Guidelines for cancellation and must be sent with all the relevant documents requested by KfW;

¹³ Wherever possible KfW's model contract should be used.

- *before commencing negotiations on the contract with the bidder who came first:* the proposal for the award of the contract together with the Assessment Report on the price quotations and on the final choice, and all the relevant documents requested by KfW;
- *before commencing negotiations on the contract with the bidder who came second:* the proposal to commence negotiations with this bidder, which must state the reasons why the negotiations with the first bidder failed;
- *before deciding on a proposal by the selected Consultant to substitute personnel:* the personnel proposal by the Consultant including full CV, the resultant reassessment of his bid and the statement of the Client's position on this proposal, with reasons;
- *before signing the consulting contract:* the result of the negotiations on the contract and the draft contract, with reference to any and every substitution of personnel and any and every amendment to the services or the draft contract;
- *before the first disbursement:* a copy of the signed version of the consulting contract.

3. Supervision of consulting services and amendments to the consulting contract

The Client is responsible for supervising the fulfilment of the contract and acceptance of the consulting services. The Client shall procure that the Consultant shall:

- send KfW on time the agreed number of progress reports and the other reports on performed work;
- inform KfW without delay of any unusual circumstances that occur during the performance of the services, and on all matters that require approval by KfW;
- permit KfW and its representatives to inspect the books which must be kept by the Consultant, and the documents on the services it has performed, and to make copies of these.
- in case of supervision of construction work, permit KfW and its representatives to examine the guarantees and securities submitted by entrepreneurs, to monitor the period of validity thereof, and where appropriate to call for extension of the same in good time.

Any prolongation, major addition or amendment to the contract or the description of the services which it contains, any annulment of a clause in the contract and any substitution of key personnel require the prior approval of KfW. For this purpose, the Client will inform KfW in reasonable time of the intended amendments, stating the reasons and enclosing a copy of the amendment to the contract.

Essential Items in the Prequalification Notice

The prequalification notice is designed to inform interested consultancy firms of the envisaged FC project and the consulting services that will be required. The publication must be brief and informative. Further information is to be made available. These documents must also state the weightings that will be attached to the individual sub-criteria. The prequalification must be advertised in local and international media, but at a minimum through the foreign trade and inward investment agency of the Federal Republic of Germany, Germany Trade and Invest (GTAI).

Address: Germany Trade and Invest, Villemombler Strasse 76, 53123 Bonn, Germany
 Telephone +49 (228) 24933 - 374 or -377,
 Fax +49 (228) 24933 - 446
 Email kfw-tender@gtai.de

The prequalification notice must contain at least the following items:

- Reference to the prequalification
- Name of the Client and the country
- Sector(s) to be supported
- Brief description of the project
- Brief description of the consulting services required (with reference to phases of their performance if applicable)
- Type of bidder required (independent, qualified Consultants)
- Where appropriate, provisions concerning cooperation with international and local Consultants with local experience
- Finance for consulting services (source[s] and state of preparation)
- Reference to any further information available and where these documents can be obtained
- Application details (number of original/copies, language, address(es), stating communication links)
- Deadline for receipt (at least 30 calendar days after publication of notice)
- Documents to be submitted: corporate profile and status, evidence of financial resources and expertise in relation to the size of the contract (*inter alia* confirmation of guarantee line given by company's principal bank; legally binding signed Declaration of Undertaking from the bidder pursuant to Annex 4. Other evidence required will depend on the scope of services to be performed (e.g. balance sheets and profit and loss accounts for the last three years), relevant references to prove technical qualifications and experience abroad, in the region or country, details on the Consultant's own personnel who will provide monitoring and back-up services from the head office, details of personnel structure (number and qualifications), declaration of intent regarding cooperation (name of lead company), declaration on associated firms, if appropriate specification of further documents to be submitted.
- Declaration of Undertaking pursuant to Annex 4.

Declaration of Undertaking

We underscore the importance of a free, fair and competitive contracting procedure that precludes abusive practices. In this respect we have neither offered nor granted directly or indirectly any inadmissible advantages to any public servant or other person nor accepted such advantages in connection with our bid, nor will we offer or grant or accept any such incentives or conditions in the present tendering process or, in the event that we are awarded the contract, in the subsequent execution of the contract. We also declare that no conflict of interest exists in the meaning of the kind described in the corresponding Guidelines¹⁴.

We also underscore the importance of adhering to minimum social standards (core labour standards) in the implementation of the project. We undertake to comply with the core labour standards ratified by the country of [●] (name of country).

We will inform our staff of their respective obligations and of their obligation to fulfil this declaration of undertaking and to obey the laws of the country of [●] (name of country).

We also declare that our company/all members of the consortium has/have not been included in the list of sanctions of the United Nations, nor of the EU, nor of the German Government, nor in any other list of sanctions and affirm that our company/all members of the consortium will immediately inform the Client and KfW if this situation occurs at a later stage.

We acknowledge that, in the event that our company (or a member of the consortium) is added to a list of sanctions that is legally binding on the Client and/or KfW, the Client shall be entitled to exclude us/the consortium or, if the contract is awarded to our company/the consortium, to immediately cancel such contract if the statements made in the Declaration of Undertaking were objectively false or the reason for exclusion from the tender procedure occurs after the Declaration of Undertaking has been issued.

.....
(Place)

.....
(Date)

.....
(Name of company)

.....
(Signature(s))

¹⁴ See "Guidelines for the Assignment of Consultants in Financial Cooperation with Partner Countries" and "Guidelines for Procurement of Goods, Works and associated Services in Financial Cooperation with Partner Countries"

Information on the Prequalification Process

1. The following notes, explanations and criteria for prequalification serve as a basis for the prequalification of suitable applicants in the two-stage selection procedure. They are also used in the single-stage, or so-called post-qualification process, in which applicants submit their prequalification documents, technical proposals and price quotations simultaneously. Information and data on the qualifications of bidders who have already been assessed in the prequalification phase may not be assessed again during the tendering phase, unless a prequalified bidder has since been affected by economic, organisational, or staffing structure changes that require its qualifications to be reconsidered.
2. The requirements concerning the documents to be submitted and their scope should be adjusted to the specific project. As well as the volume of work to be performed, the nature of the services being requested should also be taken into account in the specific prequalification procedure (e.g. financial resources play a lesser role for studies of short duration and scope than for deployment of a team of long-term experts). The prequalification notice should indicate the weighting attached to project references. The minimum number of references required to qualify, if necessary also broken down into several areas of experience, should be stated in advance, as should the maximum number of references required to achieve full points.
3. When offers are solicited from a limited number of previously selected candidates, the review of these candidates' suitability may be waived entirely or partially only if sufficient information is available on the proposed candidates. If this is not the case, when soliciting offers the same procedure should be followed as with the post-qualification procedure, i.e. the suitability of the bidders should be assessed.
4. The application documents must give proof of the applicant's financial resources, experience and general ability to perform the services required, and of its sector and regional knowledge. They must also provide evidence of adequate personnel. The documents should be brief and comprehensible, covering the main areas of activity of the firm and the main services performed during the last five years that are relevant to the project, and summarising the availability of the required expertise.
5. If firms are bidding jointly, applicants must provide a binding declaration of which is the lead manager and what form the cooperation will take (joint venture, sub-contracting, other forms), including the envisaged division of labour. At this stage, unless any other provisions have been made (e.g. a preliminary contract), at least a declaration of intent shall be enclosed. Before the contract is awarded to a joint venture, such applicants will be required to enter into an agreement with joint and several liability.
6. If the bidder intends to use subcontractors, then where such are subcontracted it shall bear full responsibility for the services they perform. The assignment of all activities to one or several subcontractors is not permissible.
7. In the prequalified process only those applicants will be considered whose financial resources and expertise are judged by the Client and KfW to be appropriate for the volume of work to be performed. The assessment of these financial resources will be based on the applicant's liquidity and annual turnover in relation to the envisaged value of the contract. The applicant can prove its liquidity by presenting confirmation of a guarantee limit from

its bank, which must not be more than six months old, and which is appropriate to the project (in case of doubt, the Client reserves the right to verify this). Annual turnover is usually confirmed by presenting certified balance sheets or profit and loss accounts for the last three years; for applicants who are not obliged to produce balance sheets, by presenting net income statements. Unless the prequalification notice stipulates any other project-specific figure, the bidder is required to demonstrate an annual turnover (calculated as the mean value for the last three years) that is equivalent to at least three times the envisaged maximum annual turnover arising from this contract. For joint ventures, unless otherwise stipulated in the notice, the cumulative annual turnover of the partners will be taken into consideration; for turnover generated by joint ventures only those portions that the bidder itself has generated will be included. Applicants who submit no documentation or largely incomplete documentation, on this will not be included in the prequalification.

8. In the case of new consultancy firms or firms wishing to add new sectors of operation and/or regions to their range of services, the experience of the key personnel available without restriction for the FC project will be used for the assessment, as otherwise the firm would be disadvantaged in competition with other applicants owing to the lack of reference projects.

9. Applicants that are part of a group of firms, and as such submit project or personnel references from other sections of the firm or sister companies, can only be recognised if they can convincingly demonstrate that if awarded the contract they would have unrestricted access to these resources (e.g. joint venture, subcontractors, secondments). This also applies to the proof of financial resources. In this case the bidder must demonstrate that the parent company or holding company is liable for it with legal effect (e.g. guarantee or a "hard" letter of comfort).

Criteria (the weighting of the sub items provides only a rough indication and should be adjusted to suit the specific project)

Points

1. Proof of experience

40

- | | | |
|-----|---|-----------------|
| 1.1 | <i>Experience in handling similar projects:</i> | <i>about 25</i> |
| 1.2 | <i>Experience of the various working conditions in developing, transition or emerging countries</i> | <i>about 10</i> |
| 1.3 | <i>Experience in the region or country, preferably in the same sector</i> | <i>about 5</i> |

2. Suitability for this specific project

60

- | | | |
|-----|---|-----------------|
| 2.1 | <i>Assessment of available expertise specific to this project for implementation of the activities</i> | <i>about 25</i> |
| 2.2 | <i>Assessment of the bidder's own staffing levels with respect to the services required</i> | <i>about 20</i> |
| 2.3 | <i>Assessment of the key personnel permanently available to monitor and support the project team from the head office</i> | <i>about 10</i> |
| 2.4 | <i>Do the application documents meet the formal criteria, are they complete and are they specific to the project?</i> | <i>about 5</i> |

Total

100

Notes on the criteria

1.1 *Experience in handling similar projects*

The main concern is to obtain evidence of the Consultant's experience in handling similar projects, normally over the last 5 years at least. The applicant must produce relevant project references proving that it has acquired sufficient experience in similar projects during the period specified. The presentation of the project references should indicate the full scope of each project (financial, human resources), what role the bidder performed in the project, how it was contractually integrated into the project (main contractor, subcontractor, partner etc.), and if appropriate what share of the total it was responsible for producing. If so requested, the bidder should specify contact persons working for the relevant Clients who can deal with queries concerning the project references.

Any existing negative experiences with a bidder from previous projects can only be included in the assessment if the bidder has been notified of them in writing, if the experiences are conclusive and if they do not predate the period over which proof of suitability must be provided.

1.2 *Experience of the various working conditions in developing, transitional or emerging countries*

This criterion covers experience both under comparable and under different working conditions in similar countries (range of experience), with the main emphasis being on comparable working conditions. The statements must make broad references to appropriate evidence.

1.3 *Experience in the region or country, preferably in the same sector*

The term "region" refers primarily to the country in which the project is located, but experience in comparable neighbouring countries or a large geographical region will be considered in the assessment. Knowledge of the sector (if appropriate several sectors¹⁵) should be shown in the form of brief project descriptions¹⁶, including a description of the services the Consultant has performed in each case.

¹⁵ If the services cover several sectors the descriptions of the project must be grouped by sector; if a reference project is listed several times under different sectors only the services relevant to the sector in question and performed by the firm should be given. Not more than ten cases should be given as evidence per sector.

¹⁶ The project page should be brief. It should give the following information: the firm (personnel as well in the case of young firms), country, name of project, client, Project Executing Agency, finance, brief outline of the project, services performed by the firm, brief description of the service(s), extent of the services (number of expert months and fee).

2.1 *Assessment of available expertise specific to this project for implementation of the activities*

This criterion is designed to assess the bidder's professional expertise for performance of the planned tasks. The bidder must show that it can provide the requisite expertise in the specialist areas required for implementation of the activities, without restriction. The bidder is not required to name a team, but merely to present the existing expertise and experience in relation to the professional demands and thematic areas in the terms of reference that form part of the prequalification documents. If a firm does not have the necessary know-how and knowledge in all the fields required it can increase its potential by cooperating with other firms or skilled personnel, and provide proof or evidence of their technical knowledge. The Consultant should present its project-specific expertise and experience concisely and back this up with project descriptions, where appropriate supplemented with a brief description of the qualifications of its own staff members¹⁷ who were deployed for that purpose and remain available.

2.2 *Assessment of the bidder's own staffing levels with respect to the services required*

The assessment covers whether the bidder's in-house personnel is narrowly or broadly based in relation to the services required (total personnel, skilled areas, subject areas, special qualifications). Depending on the services to be performed, the ability to deal with topics that arise unexpectedly can be of particular importance. Here the assessment focuses on the scope of the available specialised human resources on the bidder's own staff.

2.3 *Assessment of the key personnel permanently available to monitor and support the project team from the head office*

This criterion is about assessing the bidder's capacity for project steering and quality assurance. The bidder is required at this stage not to present a team for the task, but to demonstrate that the firm has its own qualified staff who are able to guarantee leadership, coordination and steering of the works performed by a project team. If key monitoring and steering functions are not covered by the bidder's own staff, points will be deducted in the assessment; this may lead to the bidder being excluded if these resources are entirely lacking. Detailed CVs are not required for the prequalification. It is sufficient to submit a table showing an overview of the human resources available for these functions¹⁸.

2.4 *Do the application documents meet the formal criteria, are they complete and are they specific to the project?*

¹⁷ Freelance personnel who do not hold a permanent position of employment with the consultant but have worked with him for many years can be counted as permanent staff if this is clearly proven.

¹⁸ Brief information consisting of: name, professional qualification, years of professional experience, with firm since, position in firm, technical field and area of specialisation, languages, experience abroad.

Annex 5

Basically, the documents should be compiled and presented in a way that is specific to the project (not as a brochure), and that is clear and comprehensible. Very extensive and imprecise documentation may cost points.

Essential Components of the Request for Tenders

The request for tenders should give the prequalified consultancy firms detailed information on the envisaged project and the consulting services required. The documents should be informative and they must provide all the data needed for the efficient compilation of bids for services and price quotations. This includes fixing the details of the assessment of the bids.

The request for tenders consists of the following documents in a language usual in international transactions¹⁹:

1. Letter of invitation to tender
2. Conditions of tender and conditions of contract (if no draft consulting contract is included, all information that is important for preparing the bid and that affects costs should be listed separately)
3. The terms of reference

Formats²⁰ may also be prescribed for the presentation of the bid for services and the price quotation. If no formats are prescribed, the presentation of the bid for services and the price quotation should follow the presentation in the terms of reference and the information for bidders.

The essential components of the conditions of tender and the conditions of contract are listed briefly below. This list is not comprehensive. The tender documents should be adapted, elaborated in more detail and where appropriate supplemented in line with the requirements of the project.

1. General items

- Name of Client, and of Project Executing Agency if different
- Two-envelope procedure: the bid for services and the price quotations are to be sent separately, in two sealed envelopes
- The language of the bid
- On-site information visit (at the bidder's own expense and risk)
- Enquiries only permitted in writing, answers will be sent to all bidders, simultaneously and in good time, but no later than fourteen calendar days prior to the deadline for submission
- Prequalified bidders may form joint ventures only with the approval of the Client and KfW, provided that this does not prevent competition
- Reasons must be given for any amendments to the composition of prequalified joint ventures or mergers and these must be approved, otherwise the bidders will be excluded from the contracting procedure

¹⁹ If national regulations require publication in a national language that is not customarily used internationally, the documents should be prepared in two languages (international language, national language), preferably formatted in two columns alongside each other. In national invitations to tender this can be waived, provided that the key documents are presented to KfW in a language used internationally. The costs of translation shall be met by the client.

²⁰ For example, formats for references, for comments by the bidder on the terms of reference and counterpart services provided by the client, for the personnel plan and the programme of work, for the CVs of the key personnel and to structure the price quotation.

- Names of preselected Consultants.

2. Submission of bids

- Bids to be submitted to the Client and KfW
- Submission date and time (in UTC/GMT); the bidders must be allowed at least 45 days to make their bids, and considerably longer if the work is complex
- Bids to be submitted to the Client and KfW
- Place where submission must be received by deadline is
- Address of the Client/body issuing the invitation to tender for receipt of bids, in one original and specified number of copies
- Address of KfW, specified number of copies
- Public submission meeting
- Binding deadline for bids for services and price quotations; no performance bond.

3. Contents of the bid for services

- Critical analysis of the terms of reference
- Concept and methods
- Organisation and logistics
- Timetable and staffing schedule
- Composition and CVs of project team including back-up personnel and for lump sum contracts only key personnel
- Explanation of the task of each member of the team
- Account of envisaged back-up services from head office
- Services to be performed by sub-contractors
- Declaration on associated firms
- Statement of other services or supplies provided by the Client (e.g. office premises, transport, equipment etc.).

Where the prequalification procedure has been held, neither the references nor the Declaration of Undertaking (see Annex 4) need be resubmitted.

4. Contents of the price quotation

- Structure of the price quotation (where appropriate, prescribed format)
- Currency to be used (foreign exchange costs in foreign currency, local costs in national currency)
- Fees (shown separately according to expert personnel monthly rates²¹, foreign allowance, subsistence and accommodation costs at place of service)
- Transport costs between the home country and the country of service
- Local transport costs
- Office costs in the country of service

²¹ For example, the rate for a skilled staff member in the head office: basic salary, social insurance, general costs, personnel administration, holidays and sick leave, office services, communications costs for commission, back-up services and monitoring, data processing, insurance taken out by the firm, profit and loss. This covers the general back-up and monitoring tasks performed by management staff in the head office. The services of management staff or other employees from the head office can be charged separately only if they are performing tasks that are distinguished by subject area and in time from the agreed list of individual services.

- Acquisitions
- Drawing up reports
- Other costs (generally these can only be costs for sub-contracting, leasing equipment, laboratory tests, drilling etc); reasons must be given for any other costs.

5. **Payment terms**

- Type of contract (lump sum remuneration or based on work performed).
- Currency
- Fixed prices/escalating prices; where appropriate, statement of formula for price escalation (price changes only on the basis of official statistics)
- Arrangements for the payment of customs and excise duties and taxes; it must be stated whether the Consultant is exempt from taxes, customs and excise duties, fees and levies in the Client's country (where appropriate, statement of any taxes and levies from which exemption cannot be given) or assurance that this expenditure will be reimbursed by the Client
- Method of payment; advance payment bond (see Appendix 1 to Annex 8); where appropriate, retention bond (see Appendix 2 to Annex 8), criteria for disbursement of intermediate/final payments
- If the Consultant requests a different method of payment he **must** give reasons for this.

6. **Organisation of performance of services**

- Expected total duration; expected date to start work; where appropriate, division into phases
- Designated contact person in Client's organisation
- If applicable, recommendation/requirement for cooperation with Consultant/experts with local experience
- Place where work is to be carried out; country of service/head office
- Request for presentation of Consultant's envisaged logistics for this work.

7. **Binding statement of services to be provided by the Client**

- The Client will provide the Consultant with all the information, maps, aerial photographs in its possession, free of charge, for the duration of the commission.
- The Client will ensure that the Consultant has all the necessary permits to obtain further documents, maps and aerial photographs.
- The Client will support the Consultant in obtaining all the necessary working permits, residence permits and import licences.
- The Client will provide some items free of charge, e.g. office premises and equipment (furniture, air-conditioning, electricity, water, telephone, cleaning, security etc.), skilled personnel (type, number, qualifications, subordinate or assigned, duration), assistants, other back-up services.
- The Client will bear the taxes, customs and excise duties and other charges incurred in connection with the implementation of the project in the country of service.

8. Assessing the bids for services and the price quotations

- Criteria for bids for services: statements in accordance with Annex 5 of these Guidelines (and any agreed sub-criteria) with a fixed rating system of points and weightings
- Statement as to whether customs and excise duties, taxes and levies in the Client's country are to be included in the price comparison (the assessment normally does not include taxes or levies)
- Minimum quality of bids for services that will be taken into account in evaluating the price quotations and the overall rating (minimum score of 75% of the points to be awarded)
- Weighting of the bid for services (generally 70%) and weighting of the price quotation (generally 30%) in the total rating
- Reminder that contract negotiations serve only to clarify unclear items

9. Reports

- Reports by the Consultant (type of report, content, frequency of reporting, recipient, number of copies), including final report covering the contractual period after completion of the commission
- Prescribed contents and breakdown (main section, annex(es), type and length of any summary required)
- Form prescribed for reports (double-sided, maximum number of pages required).

Remarks on the Assessment of the Bids

1. The bid for services should show that the terms of reference and their objective have been fully comprehended, and that the methods and resources proposed are suitable and will be employed appropriately to fulfil the tasks required. In drawing up the bid for services the bidders should observe the terms of reference, any particular requirements in the request for tenders and the following assessment criteria.
2. When assessing the bids for services value will be attached to the brevity and precision of the bidder's statements. As the assessment is performed by professionals, bidders should refrain from textbook-like explanations. The documents should be complete, clear and arranged in a comprehensible way. Particularly in the case of more complex terms of reference, the presentation should include diagrams, tables and graphics.
3. Only the bidders who receive not less than the minimum number of points laid down in the request for tenders will be considered in the assessment of the price quotations.
4. The weighting of the criteria will be fixed in the request for tenders in accordance with the requirements of the project. The weighting for "concept and methods" will generally be 55%-60% in the study phase, and 40%-45% for construction supervision. The weighting for "critical analysis of the project objective and the terms of reference" can be reduced by up to half for terms of reference that involve little or no critical analysis of the terms of reference (e.g. construction supervision). Where sub-criteria have been agreed between the Client and KfW, these and their weighting will be indicated in the request for tenders.
5. The assessment of the bids for services will be based on the following criteria:

Criteria	Points
1. Concept and methods	40 - 60
1.1 Clarity and completeness of the bid	about 10 points
1.2 Critical analysis of the project objective and the terms of reference	about 30 points
1.3 Proposed concept and method, including the programme of work, the staffing schedule and monitoring and coordination mechanisms	about 60 points
2. Qualifications of definitely assigned personnel	60 - 40
2.1 Qualifications of key personnel to be employed on the project, especially the project manager	about 90 points
2.2 Qualifications of the personnel in the head office who will control and monitor the team, and provide back-up services	about 10 points
Total	100

Notes on the criteria

1.1 *Clarity and completeness of the bid*

The bid for services **must** take full account, in content and form, of the terms of reference and the conditions of the bid for services in the request for tenders. All the components of the bid for services that are required must be presented. Clarity in the bid means a clear structure, text statements supported with appropriate tables, lists and other editorial aids in accordance with the complexity of the terms of reference, and a balanced use of annexes to keep the main text clear and precise. If there are minor omissions in relation to the terms of reference, points will be deducted. Omissions that considerably restrict comparison with other bids can cause the bidder to be excluded.

1.2 *Critical analysis of the project objective and the terms of reference*

The bid for services must show that the Consultant has considered the project objectively and the terms of reference derived from it critically and in depth. Any doubts about the suitability, consistency and feasibility of individual aspects and the concept as a whole must be expressed. The methodological section must take constructive account of these while avoiding inadmissible restrictions.

1.3 *Proposed concept and method, including the programme of work, the staffing schedule and monitoring and coordination mechanisms*

The bid for services must present the methodological approach and the programme of work in such a way that their suitability in regard to the terms of reference can be assessed and they can be compared with other qualified bids. This includes a statement of the work organisation planned and the logistics. If in the professional judgement of the assessors and of KfW there is an evident and considerable discrepancy between the terms of reference and the quantities given the bid will not be considered. The text should state clearly how the task is to be solved and the resources used, how the work is to be divided between the team members, how the coordination with those involved and those affected is to be organised and how the quality of the work is to be assured. It must be supplemented with diagrams, tables and, in the case of complex work, appropriate graphics²².

²² At least as follows:

- summary of planned programme (bar graph: interdependent work stages, persons handling each stage, deadlines for meetings, decisions and submission of reports, etc.)
- staffing schedule (bar chart: times and places of assignment for each professional, continuous/ intermittent assignment, activity; including a table stating the precise periods of duty for each expert, by places of assignment)
- summary of quantities for all remaining items that affect costs (services, procurements, subcontracts, rentals, e.g. ancillary personnel, vehicles, flights, offices, equipment, additional studies) and are reflected in the price quotation.

2.1 *Qualifications of key personnel to be employed on the project, especially the project manager*

The curricula vitae of the expert personnel - for lump sum contracts the key personnel - should have a cover sheet containing a summary²³ and include, here or in the text, a brief statement by the bidder on their suitability for the envisaged work and function under this particular project (in more detail for local experts). For lump sum contracts, the bidder must also state the composition of the entire project team – without listing any names – and the planned periods of assignment of the experts. These personal qualifications will not be assessed in absolute terms but in relation to the tasks to be performed, in accordance with the functions and technical fields required, and by comparison with the experience and requirements profile. The assessment of the formal criteria (training, professional experience, regional experience, language skills, management and training experience) will vary according to the terms of reference and the function.

The assessors will also consider whether all the necessary technical and functional areas are covered in accordance with project requirements. Particular weight will be attached to the project manager's qualifications, as he bears operational responsibility for the performance of the services. In his case management experience, language skills, knowledge of planning methods and experience in moderation will generally carry greater weight than for other skilled personnel.

2.2 *Qualifications of the personnel in the head office who will control and monitor the team, and provide back-up services*

The Consultant must show that it (alone or in conjunction with partner firms) can provide competent back-up services for the team working locally on all the technical questions that could arise, using experienced in-house personnel, and that it can control and monitor the work. Generally professional expertise and management experience carry greater weight here than a knowledge of languages or the region. In the case of long-term service and detailed studies, the support from the head office will carry greater weight than in the case of short studies, as here more responsibility has to be shifted to the project manager.

²³ The curricula vitae must be up to date and signed by the expert and an authorised representative of the bidder. The cover sheet (one page) should contain: name of the firm, name of the person, professional qualifications and year in which these were obtained, technical specialisation and experience, nature of the experience (e.g. studies, project implementation, industry, research, administration etc.), management experience (e.g. team leader, department manager, business manager etc.), regional experience (country, nature of the activity, duration), mother tongue, foreign languages, relationship to the bidder (since...), brief timeline of professional work and employers (time, employer, activity, country of service), remarks.

General Conditions of Contract / Essential Components of the Consulting Contract

1 The contract

Where possible, the model contract developed by KfW should be used. If not, the contract should be worded on the basis of internationally accepted practices. The following contractual stipulations should be included at a minimum.

2 Services to be provided by the Consultant

2.1 Description

In signing the consulting contract, the Consultant undertakes to fulfil the task assigned to it. The detailed services agreed for this purpose, and the working methods to be used, result from the terms of reference, supplemented by the bid for services submitted by the Consultant. This detailed bid for services, on which the decision to award the contract was based, is an essential part of the consulting contract, with any additions or amendments resulting from the contract negotiations.

Generally the description of the services will include

- a statement of the objective of the consulting assignment, and the resultant terms of reference for the Consultant
- a detailed list of the minimum individual services needed to achieve that objective
- a list of the documents (studies, reports, plans) to be presented by the Consultant to show the progress and results of its work. The scope, frequency and quality requirements for the reports must be laid down in detail and are binding. Penalties may be imposed, to a maximum amount, for delays or defects in the reports.

2.2 Timetable

The timetable should document the chronological order in which the services will be performed and their contents, and will be binding. It should also show the main events in the project ("milestones") connected with the consulting services. Penalties may be imposed, up to a maximum amount, for delays.

2.3 Staffing schedule

The staffing schedule fixes the number and project-specific qualifications of the personnel to be employed in the various areas of service and the duration of their service, and clearly assigns them to the plan of activities. It should also document the cooperation with the Client's staff assigned to the project.

3 Services to be provided by the Project Executing Agency (as Client)²⁴

3.1 Obligation to provide information

The Client will provide the Consultant, for the duration of the service and free of charge, with all the data, documents and information to which it has access and that are necessary for the performance of the consulting contract.

3.2 Counterpart services

The Client undertakes to provide the Consultant, in due time and in full, with all the services necessary for the fulfilment of its obligations and that are detailed in the tender documents.

3.3 General obligation to provide support

The Client undertakes to obtain in due time the official permits needed by the Consultant for its work (visas, work permits etc.).

4 Remuneration

The Consultant's remuneration (fees and other incidental expenses) will be agreed on the basis of its detailed price quotation, where appropriate modified during the contract negotiations. Payment will be made for local and foreign currency components separately. The fee is calculated for the input of personnel proposed in the bid and appropriate for the services agreed, at the expert-month rates for the qualifications required. Payment will also be made for necessary expenditure on materials and travel costs and other incidental expenses. These costs are to be paid in a lump sum. The contract states whether the payment for the services will be made as a lump sum, against services performed or in instalments upon achievement of agreed objectives. In the case of studies preference will be given to a lump sum. An agreement on fees as a percentage of the project costs is not generally accepted by KfW.

5 Payment terms

The Client is responsible for executing the project and thus for making the payments under the consulting contract. In particular, the Client is responsible for ensuring that all the payments are made without delay and in accordance with the contractual stipulations. If the payments are not received at the proper time, for reasons for which the Client is responsible, the Consultant may require reimbursement of the costs incurred by the delay.

The Consultant has no rights of recourse, and in particular, no claim to payment against KfW under the loan or financing agreement concluded for the project. KfW makes payment under a loan or financing agreement only upon request by a person authorised under this contract.

²⁴ If by way of exception the executing agency is not the client, the principles below shall apply analogously to the actual client.

5.1 Advance payment

The advance payment is a preliminary service by the Client to cover the Consultant's mobilisation costs. It is made when the contract is signed or immediately thereafter against submission of an invoice. As a rule it should not exceed 15% of the total value of the contract or EUR 150,000 or the equivalent in other currency. The provision of an advance payment guarantee [Model Advance Payment Guarantee] is required if the advance payment exceeds 15 % of the Order Value, and in any case if it exceeds EUR 150,000 (or the equivalent value in another currency).²⁵

5.2 Interim payments

Further payments (instalments) will be made in accordance with the expected progress of the services, with not more than one payment made in each quarter against submission of an invoice. After disbursement of 70% of the contract fee any further interim payments will be made only against documents linked to specific project milestones (e.g. progress reports).

If by agreement part of the fee depends on results or success, this part of the fee must be invoiced separately. The payments will be made only against the agreed evidence of the results or the success.

5.3 Final payment

The final payment will be made after conclusion of the services and their acceptance by the Client and KfW. This will be at least 5% of the contracted fee (e.g. for final design and construction supervision). In the case of studies it is usually 10% (for work contracts 20%) of the contracted fee. In the case of final design and construction supervision the payment due on final acceptance can be disbursed already upon provisional acceptance against a bank guarantee for the appropriate amount that is valid until the date of final acceptance. This guarantee must be made payable to KfW²⁶.

5.4 Price escalation clause

Contracts for more than one year may include a price escalation clause. It must generally be oriented to the official wage and price level in the Consultant's country (foreign exchange costs) or the Client's country (local currency costs). The contract must state the price escalation formula and the basis for calculation in the form of indices based on the official statistics.

6 Disbursement procedure

One of the two following procedures for disbursement can be agreed:

- The Client may have the amounts invoiced by the Consultant paid directly to the Consultant by KfW upon the due date (direct payment method).
- The Client may make the payments for the consulting services rendered and be reimbursed by KfW (reimbursement procedure).

²⁵ A model advance payment bond is given in Appendix 1.
²⁶ A model retention guarantee is given in Appendix 2.

7 Further provisions

7.1 Independence of the Consultant

The Consultant and the firms with which it is associated undertake not to apply as manufacturers, suppliers or construction firms to the same project for which they are acting as Consultants. Infringement of this provision can result in immediate termination of the consulting contract and reimbursement of all the expenditure incurred by the Client to that date, and all the losses and damage incurred by the Client through termination of the contract.

7.2 Liability

The Consultant undertakes to the Client to perform the services agreed, in full, in accordance with the agreed time schedule and in accordance with recognised professional standards. Within this scope it is liable for any infringement of the contract attributable to him.

In cases of minor negligence the Consultant's liability is limited to the value of the contract or the corresponding insured sum, whichever is greater. Liability for deliberate and gross negligence is not affected by this.

The liability ends when the services agreed in the contract are accepted by the Client or upon expiry of the warranty period. Normally liability for consequential damage is excluded.

7.3 Force majeure

Force majeure is extraordinary events beyond the control of the parties to the contract and which prevent either or both of them from fulfilling the contract. They include crises which cause the Consultant to withdraw its personnel at the demand of the Government of the Federal Republic of Germany. Liability for damage during the absence of the Consultant caused by this is excluded. As long as such a case continues the party affected shall be released from his obligations under the contract. In principle, the Consultant has a claim to appropriate continuation of the contract and - generally - reimbursement for the losses and damage he suffers. If the force majeure continues without interruption for a longer period (e.g. 180 calendar days) either party may terminate the contract.

7.4 Termination of the contract

The Client may normally terminate the consulting contract at any time, giving at least 30 calendar days notice – with KfW's prior consent. The Consultant may also terminate the contract if payments due to it are not received within 60 calendar days of the due date. Termination is permitted only if the Consultant has submitted a written reminder within 30 days after the above deadline has expired and if the amounts owed are not paid within a further 30 days.

If the contract is terminated through no fault of the Consultant, it shall be entitled to its fee up to the date of termination. The Consultant may demand reimbursement of all costs incurred up to that date and compensation for all losses and damage incurred through the termination. If the contract is terminated through the fault of the Consultant the Client shall be entitled to claim damages. After termination the consulting services must be concluded

speedily and with due care and diligence. The reports, drafts and other documents completed by that date must be handed over to the Client without delay.

7.5 Prevailing law and settlement of disputes

The consulting contract must state which law applies to the contract. It must also contain a clause on the settlement of disputes. If a dispute cannot be settled amicably the parties shall seek mediation before instituting arbitration proceedings. Such proceedings shall follow the rules of international arbitration courts.

7.6 Contract language

Consulting contracts may be drawn up in German, English, French, Spanish or Portuguese.

7.7 Insurance

The consulting contract must provide for the adequate insurance of the personnel and equipment used. The Consultant is normally required to take out adequate professional indemnity insurance, personal liability insurance and insurance against damage caused to equipment and machines procured under the project, and liability and comprehensive insurance for the vehicles acquired under the project.

7.8 Taxation of consulting services

The consulting contract must state whether the Consultant and the personnel employed by it are exempt from taxes, customs and other official charges in the Client's country. Generally the Consultant's fee is exempt from these taxes and charges, as are the salaries of the personnel employed by it. Equipment imported by the Consultant, and household goods and objects for personal use imported by his personnel (basic equipment) are usually exempt from customs duties. If exemption from taxes, customs duties and other official charges is not granted it must be agreed that the Client will reimburse the Consultant for all amounts paid out for these items.

7.9 Declaration of undertaking

The Declaration of Undertaking (see Annex 4) presented during the prequalification process or upon submission of the proposal by the successful bidder shall become an integral part of the consulting contract. In this Declaration the Consultant declares that it, its employees and any subcontractors have abstained and will abstain from any form of corruptive behaviour, that they will all comply with the minimum social standards ("core labour standards") adopted by the country and are not included in any sanctions list and that he will immediately report any such occurrence to the Client and KfW. If the declaration of undertaking is breached during execution of the agreement, KfW shall be authorised to initiate the consequences stated in Paragraph 1.09.

Model Advance Payment Bond

Address of guarantor bank: ...

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

Address of beneficiary (Client):

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

On you concluded with (name and full address)

.....
.....
("Contractor") a Contract for
(project, object of the Contract) at a price of

.....

According to the provisions of the contract, the Contractor receives an advance payment in the amount of

.....equalling %
of the contract value, as an advance payment.

We, the undersigned
(bank), waiving all objections and defences under the aforementioned Contract, hereby irrevocably and independently guarantee to pay on your first written demand any amount advanced to the Contractor up to a total of

.....
(in words)

against your written declaration that the Contractor has failed to perform the aforementioned Contract.

This guarantee shall come into force as soon as the advance payment has been credited to the account of the Contractor. This guarantee shall be automatically reduced pro rata in accordance with the payments performed.

In the event of any claim under this guarantee, payment shall be effected to KfW, Frankfurt am Main, BIC: KFWIDEFF, account IBAN: DE53 5002 0400 3800 0000 00, for account of (Client/Project Executing Agency/purchaser).

This guarantee shall expire not later than

by which date we must have received any claims by letter or coded telecommunication.

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

.....
Place, date

.....
Guarantor

Model Retention Guarantee

Address of guarantor bank: ...

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

Address of beneficiary (Client):

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

On you concluded with (name and full address)
.....
..... ("Contractor") a Contract for
..... (project, object of the
Contract) at a price of

.....

According to the provisions of the Contract, the Contractor receives the amount of

.....
equalling % of the Contract value, as a final payment.

We, the undersigned
(bank), waiving all objections and defences under the aforementioned contract, hereby
irrevocably and independently guarantee to pay on your first written demand an amount up to
a total of

.....
(in words)

against your written declaration that the Contractor has failed to perform the aforementioned
contract.

In the event of any claim under this guarantee, payment shall be effected to KfW, Frankfurt
am Main, BIC: KFWIDEFF, account IBAN: DE53 5002 0400 3800 0000 00, for account of
(Client/Project Executing Agency/purchaser).

This guarantee shall expire not later than

by which date we must have received any claims by letter or coded telecommunication.

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

.....
Place, date

.....
Guarantor

Information on Lump Sum Contracts

General items

1. The Client may, in concert with KfW, agree with the Consultant on remuneration based either on actual work performed or on a lump-sum basis. Remuneration based on actual work performed is recommended if the work to be carried out by the Consultant has not been conclusively defined by the time of the contractual negotiations, for instance construction management tasks. Lump sum remuneration should be agreed on if the services to be rendered and the time frame within which they are to be rendered are clearly defined.
2. The bidders should be notified in good time as to how the services will be remunerated, and no later than with the request for tenders.

Advantages of lump sum remuneration

3. Under a lump sum contract, remuneration and material expenses are settled in one lump sum. Separate vouchers verifying the term of assignment of the experts are no longer necessary. In addition to simplifying the settlement procedure, this stipulation is designed to offer the Consultants wider scope for carrying out the assignment, thereby encouraging their sense of responsibility and innovative creativity as well as underscoring the results-orientation of the contract.
4. The lump sum method should be applied if the service to be performed is clearly definable and the Consultant can decide largely on his own how to fulfil these tasks. The lump sum method is primarily suited for studies, detail planning and similar clearly definable tasks. The economic risk to the Consultant that is entailed by the lump sum method must not lead to inappropriately high risk premiums.

Particularities regarding the preparation of lump sum contracts

5. Under lump sum contracts it is no longer necessary to recommend personnel for every position and supply their curricula vitae; it is sufficient to require the curricula vitae of the key personnel in the technical proposal. Only these are assessed. Which key personnel are needed to carry out the assignment is to be specified in the terms of reference. Only the substitution of key personnel requires the approval of the Client and KfW. Changes in the assignment schedule do not require approval as long as they do not reduce the period of assignment of key personnel. The Consultant is responsible for keeping to the deadline and for performing the contractually agreed work.
6. Payments under the consulting contract should be made on the basis of the progress of the services; as soon as 70% of the contracted fee has been reached they should be made on the basis of documented services linked to specific project milestones.
7. The conclusion of a lump sum contract does not exclude payment of reimbursables for some ancillary work (such as geotechnical drilling), the scope of which is not known at the time of conclusion of the contract, against submission of a corresponding voucher.

List of Acronyms and Abbreviations, and Glossary

Assessment Report	See definitions in Paragraphs 2.12 and 2.32.
BOT	Build-Operate-Transfer; the term is used synonymously here with BOOT and BOO.
Client	See definition in Introduction.
Contracting	The procedures for awarding a contract and their outcome. The procedures encompass initial publication, qualification, preparation and assessment of bids, award of the contract and notification of the unsuccessful bidders.
Core labour standards	The core labour standards define internationally agreed minimum standards for workers' rights. They cover among other things forced labour and exploitative child labour, and seek to protect workers' freedom of association and freedom from discrimination. The lead agency is the International Labour Organization (ILO). For further details on core labour standards, and a list showing which countries have ratified which standards, go to http://www.ilo.org .
Deadline for submission of bids	Number of calendar days between the date of issue of the tender documents and the date by which bids must be submitted.
Development gateway	A list of current invitations to tender is available at http://www.dgmarket.com .
Direct award	Contracts are awarded directly, without competitive bidding.
FIDIC	Fédération Internationale des Ingénieurs-Conseils (http://www.fidic.org). The "red book" relates to building works, the "yellow book" covers electrical and mechanical plant and design-build projects, and the "green book" is used for small, e.g. locally advertised projects. The "silver book" for turnkey plants is of only minor significance for FC-financed projects due to the absence of an independent consultant.
Financial Cooperation (FC)	See definition in the Introduction (box)
GTAI	The Germany Government's agency to promote trade and investment. Address: Germany Trade and Invest ²⁷ Villemombler Strasse 76 53123 Bonn Germany Phone: +49 (228) 24993 - 374 or 377 Fax: +49 (228) 24993 - 446 Email: kfw-tender@gtai.de Internet: www.gtai.de

²⁷ Full name: Germany Trade and Invest – Gesellschaft für Außenwirtschaft und Standortmarketing mbH.

Guidelines for the Assignment of Consultants in Financial Cooperation with Partner Countries	Available in five languages at: http://www.kfw-entwicklungsbank.de/ebank/EN_Home/Download_Center/Overview_Publications/Guidelines/index.jsp
ICC	International Chamber of Commerce website: http://www.icc-deutschland.de
IFIs	International Financial Institutions, e.g. World Bank, Asian Development Bank, African Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, Caribbean Development Bank.
Leaflet for the Disbursement of Funds of Financial Cooperation with Developing Countries	Available in five languages at: http://www.kfw-entwicklungsbank.de/ebank/EN_Home/Download_Center/Overview_Publications/Guidelines/index.jsp
Partner country	State that is the recipient of the FC loan or grant, or state in which the non-governmental partner is domiciled.
Period of validity	Period during which bids remain binding; this covers the same period as the performance bond.
Project Executing Agency	Organisation in the partner country that is responsible for implementing the project; this organisation is usually also the Client.
Standard bidding documents	Standard bidding documents of the IFIs for publication of invitation to tender, contracting procedures and contracts. To download the documents go to http://www.worldbank.org/ or http://www.adb.org/