MONTENEGRO

ADMINISTRATION FOR CAPITAL PROJECT

BIDDING DOCUMENTS

**for**

PROCUREMENT OF WORKS RELATED TO

**CONSTRUCTION OF THE ELEMENTARY SCHOOL: “VLADIMIR NAZOR”, PODGORICA**

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**Acronyms**

EU European Union

EIB European Investment Bank

ACP Administration for capital projects

EURO European Monetary Unit

ES Environmental and Social

BDS Bid Data Sheet

BD Bidding Documents

EQC Evaluation and Qualification Criteria

GCC General Conditions of Contract

ICB International Competitive Bidding

IFB Invitation for Bids

ITB Instructions to Bidders

JV Joint Venture

SCC Special Conditions of Contract

SBD Standard Bidding Documents

TS Technical Specifications

BOQ Bill of Quantities

GtP Guide to Procurement

OJEU Official Journal of European Union

NC National Currency

PART 1 – Bidding Procedures

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| Section I. Instructions to Bidders |

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| **Section I. Instructions to Bidders** | |
|  | A. General |
| Scope of Bid | * 1. In connection with the Invitation for Bids specified in theBid Data Sheet (BDS), the Contracting authority, as **specified in the BDS**, issues these Bidding Documents for the procurement of Works as specified in Section VII, Works Requirements. The name, identification, and number of lots (contracts) of thisInternational Competitive Bidding (ICB) process are **specified in the BDS.** |
|  | * 1. Throughout these Bidding Documents:   the term “in writing” means communicated in written form and delivered against receipt;  except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular;  “day” means calendar day;  “ES” means environmental and social (including Sexual Exploitation and Abuse (SEA), and Sexual Harassment (SH));  “Sexual Exploitation and Abuse” “(SEA)” stands for the following:  Sexual Exploitation is defined as any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another;  Sexual Abuse is defined as the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions;  **“**Sexual Harassment” “(SH)” is defined as unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature by the Contractor’s Personnel with other Contractor’s or Contracting authority’s Personnel;  “Contractor’s Personnel” is as defined in Sub-Clause 15 of the General Conditions; and  “Contracting authority’s Personnel” (not applicable) |
| Source of Funds | * 1. The Borrower or Recipient (hereinafter called “Borrower”) **specified in the BDS** has received or has applied for financing (hereinafter called “funds”) from the European Investment Bank (hereinafter called “the Bank”) and the Bilateral Donors Group of the WBIF, in an amount specified in the BDS, toward the project named in the BDS. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which these Bidding Documents are issued. |
|  | Payment by the Bank will be made only at the request of the Borrower and upon approval by the Bank, and will be subject, in all respects, to the terms and conditions of the Loan (or other financing) Agreement.  The Bank shall not provide or otherwise make funds available, directly or indirectly, to or for the benefit of an individual or entity that is subject to financial sanctions imposed by the EU[[1]](#footnote-2), either autonomously or pursuant to the financial sanctions decided by the United Nations Security Council on the basis of Article 41 of the UN Charter  No party other than the Borrower shall derive any rights from the Loan (or other financing) Agreement or have any claim to the proceeds of the Loan (or other financing). |
| Corrupt and Fraudulent Practices | * 1. The Bank requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Section VI.   2. In further pursuance of this policy, Bidders shall grant the right and shall cause its agents (where declared or not), sub-contractors, sub-consultants, service providers, suppliers, and personnel, to grant the promoter the Bank and auditors appointed by either of them, as well as any authority or European Union institution or body having competence under European Union law, the right to inspect and copy the books and records of the tenderer, contractor, supplier or consultant in connection with any Bank-financed contract.   The Bank reserves the right not to finance any contract in which tenderers/contractors have not issued to the promoter the Covenant of Integrity signed by a duly authorised person.  It should be noted that, in the Covenant of Integrity, the tenderer is requested to self-declare all sanctions and/or exclusions (including any similar decisions having the effect of imposing conditions on the tenderer or its subsidiaries or to exclude the said tenderer or its subsidiaries, such as temporary suspension, conditional non-exclusion, etc.) imposed by the European institutions or any multilateral development banks (including the World Bank Group, the African Development Bank, the Asian Development Bank, European Bank for Reconstruction and Development, European Investment Bank or Inter-American Development Bank), regardless of the date of issue and the expiration or not of such decisions and of the current status of any sanction and/or exclusion. In this regard, any omission or misrepresentation, made knowingly or recklessly, may be considered as fraud under the EIB Anti-Fraud Policy. Therefore, the Employer reserves the right to reject any offer presenting an inaccurate or incomplete Covenant of Integrity, and may cause the rejection of the offer for prohibited conduct.”  The Bank requires that tenderers and (sub-)contractors participating in a tender procedure or a contract under a Bank-financed project shall not violate or have violated any intellectual property rights. |
| Eligible Bidders | * 1. A Bidder may be a firm that is a private entity, a government-owned entity—subject to ITB 4.5—or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution. Unless specified in the BDS, there is no limit on the number of members in a JV. |
|  | * 1. A Bidder shall not have a conflict of interest.   Conflict of interest occurs when the impartial and objective exercise of the functions of the promoter, or the respect of the principles of competition, non-discrimination or equality of treatment with regard to the procurement procedure or contract, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest. The concept of conflict of interest covers any situation where staff members (or consultants acting on behalf) of the promoter who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure or contract execution.  Promoters must take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures or contracts so as to avoid any distortion of competition and to ensure the impartial and objective exercise of the functions of the promoter and equal treatment of all tenderers or contractors.  The assessment of whether or not there is a conflict of interest has to be carried out on a case by case basis, considering the actual risk of conflict based on the specific circumstances of the case at stake. The individual or entity in question should declare whether they have any conflict  of interest and, if so, present supporting evidence which might remove or remedy a conflict of interest.  In cases where a conflict of interest cannot be effectively remedied by other less intrusive measures, the Bank requires promoters to exclude from participation in an EIB-financed procurement procedure or contract any tenderer or contractor affected by such a conflict of interest.  A Bidder may be considered to have a conflict of interest for the purpose of this bidding process, if the Bidder:   * + 1. directly or indirectly controls, is controlled by or is under common control with another Bidder; or     2. receives or has received any direct or indirect subsidy from another Bidder; or     3. has the same legal representative as another Bidder; or     4. has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the bid of another Bidder, or influence the decisions of the Contracting authority regarding this bidding process; or     5. participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which such Bidder is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or     6. any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the bid; or     7. any of its affiliates has been hired (or is proposed to be hired) by the Contracting authority or Borrower as Engineer for the Contract implementation; or     8. would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the BDS ITB 2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or     9. has a close business or family relationship with a professional staff of the Borrower (or of the project implementing agency, or of a recipient of a part of the loan) who: (i) are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Bank throughout the procurement process and execution of the contract. |
|  | * 1. In the usual case of projects (both inside and outside the Union) financed by the Bank’s “own resources” (funds raised mainly through the Bank’s borrowings on capital markets), firms originating from all countries of the world are eligible to tender for works, goods and services contracts subject to the restrictions pursuant to ITB 4.7. A Bidder shall be deemed to have the nationality of a country if the Bidder is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed sub-contractors or sub-consultants for any part of the Contract including related Services. |
|  | * 1. The Bank shall not provide or otherwise make funds available, directly or indirectly, to or for the benefit of an individual or entity that is subject to financial sanctions imposed by the EU[[2]](#footnote-3), either autonomously or pursuant to the financial sanctions decided by the United Nations Security Council on the basis of Article 41 of the UN Charter.   In addition, individuals or firms may not be eligible to tender in application of the Ethical Conduct given below:  It is the Bank’s policy to require that promoters, as well as tenderers, contractors, suppliers and consultants under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. The Bank reserves the right to take all appropriate action in order to enforce this policy.  Moreover, the Bank is committed to ensuring that its loans are used for the purposes intended and its operations are free from **Prohibited Conduct** (including but not limited to, fraud, corruption, collusion, coercion, obstruction, money laundering and terrorist financing[[3]](#footnote-4)).  In pursuance of this policy as set out in EIB’s Anti-Fraud Policy, if it is established to the required standards[[4]](#footnote-5) that a project-related party[[5]](#footnote-6) has engaged in **Prohibited Conduct** in the course of a procurement process or implementation of a contract (to be) financed, the Bank:  a) May seek appropriate remediation of the Prohibited Conduct to its satisfaction;  b) May declare ineligible such project-related party to be awarded the contract; and/or  c) May withhold the Bank’s no objection to contract award[[6]](#footnote-7) and may apply appropriate contractual remedies, which may include suspension and cancellation, unless the Prohibited Conduct has been dealt with to the satisfaction of the Bank.  Furthermore, within the framework of its Exclusion Policy, the Bank may declare such project related party ineligible to be awarded a contract under any EIB project or to enter into any relationship with the Bank. |
|  | * 1. Bidders that are Government-owned enterprises or institutions in the Contracting authority’s Country may participate only if they can establish that they (i) are legally and financially autonomous (ii) operate under commercial law, and (iii) are not dependent agencies of the Contracting authority. To be eligible, a government-owned enterprise or institution shall establish to the Bank’s satisfaction, through all relevant documents, including its Charter and other information the Bank may request, that it: (i) is a legal entity separate from the government (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to the government, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt; and (iv) is not bidding for a contract to be awarded by the department or agency of the government which under their applicable laws or regulations is the reporting or supervisory authority of the enterprise or has the ability to exercise influence or control over the enterprise or institution.   2. A Bidder shall not be under suspension from bidding by the Contracting authority as the result of the operation of a Bid–Securing Declaration.   3. Firms and individuals may be ineligible if so indicated in Section V and (a) as a matter of law or official regulations, the Borrower’s country prohibits commercial relations with that country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of goods or the contracting of works or services required; or (b) is subject to financial sanctions imposed by the EU[[7]](#footnote-8), either autonomously or pursuant to the financial sanctions decided by the United Nations Security Council on the basis of Article 41 of the UN Charter.   4. This bidding is open only to prequalified Bidders unless specified in the BDS.   5. A Bidder shall provide such evidence of eligibility satisfactory to the Contracting authority, as the Contracting authority shall reasonably request. |
| Eligible Materials, Equipment, and Services | * 1. The materials, equipment and services to be supplied under the Contract and financed by the Bank may have their origin in any country subject to the restrictions specified in Section V, Eligible Countries, and all expenditures under the Contract will not contravene such restrictions. At the Contracting authority’s request, Bidders may be required to provide evidence of the origin of materials, equipment and services. |
|  | B. Contents of Bidding Documents |
| Sections of Bidding Documents | * 1. The Bidding Documents consist of Parts 1, 2, and 3, which include all the Sections specified below, and which should be read in conjunction with any Addenda issued in accordance with ITB 8.   PART 1 Bidding Procedures   * Section I. Instructions to Bidders (ITB) * Section II. Bid Data Sheet (BDS) * Section III. Evaluation and Qualification Criteria * Section IV. Bidding Forms * Section V. Eligible Countries * Section VI. Bank Policy-Corrupt and Fraudulent Practices   PART 2 Works Requirements   * Section VII. Works Requirements   PART 3 Conditions of Contract and Contract Forms   * Section VIII. General Conditions (GC) * Section IX. Special Conditions (PC) * Section X. Contract Forms |
|  | * 1. The Invitation for Bids issued by the Contracting authority is not part of the Bidding Documents. |
|  | * 1. Unless obtained directly from the Contracting authority, the Contracting authority is not responsible for the completeness of the Bidding Documents, responses to requests for clarification, the minutes of the pre-Bid meeting (if any), or Addenda to the Bidding Documents in accordance with ITB 8. In case of any contradiction, documents obtained directly from the Contracting authority shall prevail. |
|  | * 1. The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents and to furnish with its bid all information and documentation as is required by the Bidding Documents. |
| Clarification of Bidding Documents, Site Visit, Pre-Bid Meeting | * 1. A Bidder requiring any clarification of the Bidding Documents shall contact the Contracting authority in writing at the Contracting authority’s address **specified in the BDS** or raise its enquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The Contracting authority will respond in writing to any request for clarification, provided that such request is received no later than fourteen (14) days prior to the deadline for submission of bids. The Contracting authority shall forward copies of its response to all Bidders who have acquired the Bidding Documents in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. If so specified in the BDS, the Contracting authority shall also promptly publish its response at the web page identified in the BDS. Should the clarification result in changes to the essential elements of the Bidding Documents, the Contracting authority shall amend the Bidding Documents following the procedure under ITB 8 and ITB 22.2. |
|  | * 1. The Bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder’s own expense. |
|  | * 1. The Bidder and any of its personnel or agents will be granted permission by the Contracting authority to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Contracting authority and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection. |
|  | * 1. If so specified in the BDS, the Bidder’s designated representative is invited to attend a pre-bid meeting. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage. |
|  | * 1. The Bidder is requested to submit any questions in writing, to reach the Contracting authority not later than one week before the meeting. |
|  | * 1. Minutes of the pre-bid meeting, if applicable, including the text of the questions asked by Bidders, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Documents in accordance with ITB 6.3. Any modification to the Bidding Documents that may become necessary as a result of the pre-bid meeting shall be made by the Contracting authority exclusively through the issue of an Addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting. Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder. |
| Amendment of Bidding Documents | * 1. At any time prior to the deadline for submission of bids, the Contracting authority may amend the Bidding Documents by issuing addenda. |
|  | * 1. Any addendum issued shall be part of the Bidding Documents and shall be communicated in writing to all who have obtained the Bidding Documents from the Contracting authorityin accordance with ITB 6.3. The Contracting authority shall also promptly publish the addendum on the Contracting authority’s web page in accordance with ITB 7.1. |
|  | * 1. To give Bidders reasonable time in which to take an addendum into account in preparing their bids, the Contracting authority should extend the deadline for the submission of bids, pursuant to ITB 22.2. |
|  | C. Preparation of Bids |
| Cost of Bidding | * 1. The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Contracting authority shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process. |
| Language of Bid | * 1. The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Contracting authority, shall be written in the language **specified in the BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language **specified in the BDS**, in which case, for purposes of interpretation of the Bid, such translation shall govern. |
| Documents Comprising the Bid | * 1. The Bid shall comprise the following:  1. Letter of Bid and Appendix to Bid, in accordance with ITB 12; 2. completed schedules as required, including priced Bill of Quantities, in accordance with ITB 12 and 14; 3. Bid Security or Bid-Securing Declaration, in accordance with ITB 19.1; 4. alternative bids, if permissible, in accordance with ITB 13; 5. written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2; 6. documentary evidence in accordance with ITB 17 establishing the Bidder’s continued qualified status or, if post-qualification applies, as specified in accordance with ITB 4.8, the Bidder’s qualifications to perform the contract if its Bid is accepted; 7. Technical Proposal in accordance with ITB 16; 8. Environmental and social covenant and Covenant of integrity, using the form included in Section VI and VII, Bidding Forms; and 9. any other document required in the BDS.    1. In addition to the requirements under ITB 11.1, bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all members and submitted with the bid, together with a copy of the proposed Agreement.    2. The Bidder shall furnish in the Letter of Bid information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid.    3. If so, specified in the BDS bidder shall furnish in the Letter of Bid the names of three potential DAAB members and attach their curriculum vitae. The list of potential DAAB members proposed by the Contracting authority and by the Bidder (Letter of Bid) shall be subject to Bank’s No-objection. |
| Letter of Bid and Schedules | * 1. The Letter of Bid and Schedules, including the Bill of Quantities*,* shall be prepared using the relevant form*s* furnished in Section IV, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 20.2. All blank spaces shall be filled in with the information requested. |
| Alternative Bids | * 1. Unless otherwise specified in the BDS, alternative bids shall not be considered. |
|  | * 1. When alternative times for completion are explicitly invited, a statement to that effect **will be included in the BDS**, as will the method of evaluating different times for completion. |
|  | * 1. Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the Bidding Documents must first price the Contracting authority’s design as described in the Bidding Documents and shall further provide all information necessary for a complete evaluation of the alternative by the Contracting authority, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Contracting authority. |
|  | * 1. **When specified in the BDS**, Bidders are permitted to submit alternative technical solutions for specified parts of the Works, and such parts **will be** **identified in the BDS**, as will the method for their evaluating, and described in Section VII, Works Requirements. |
| Bid Prices and Discounts | * 1. The prices and discounts (including any price reduction) quoted by the Bidder in the Letter of Bid and in the Bill of Quantities shall conform to the requirements specified below.   2. The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Bidder shall be deemed covered by the rates for other items in the Bill of Quantities and will not be paid for separately by the Contracting authority. An item not listed in the priced Bill of Quantities shall be assumed to be not included in the Bid, and provided that the Bid is determined substantially responsive notwithstanding this omission, the average price of the item quoted by substantially responsive bidders will be added to the bid price and the equivalent total cost of the bid so determined will be used for price comparison. |
|  | * 1. The price to be quoted in the Letter of Bid, in accordance with ITB 12.1, shall be the total price of the Bid, excluding any discounts offered. |
|  | * 1. The Bidder shall quote any discounts and the methodology for their application in the Letter of Bid, in accordance with ITB 12.1. |
|  | * 1. **Unless otherwise specified in the BDS** and the Contract, the rates and prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract. In such a case, the Bidder shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Contracting authority may require the Bidder to justify its proposed indices and weightings. |
|  | * 1. If so specified in ITB 1.1, bids are being invited for individual lots (contracts)or for any combination of lots (packages). Bidders wishing to offer discounts for the award of more than one Contract shall specify in their bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITB 14.4, provided the bids for all lots (contracts) are opened at the same time. |
|  | * 1. All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates and prices and the total Bid Price submitted by the Bidder. |
| Currencies of Bid and Payment | * 1. The currency(ies) of the bid and the currency(ies) of payments shall be **as specified in the BDS***.*   2. If so, specified in the BDS, Bidders may be required by the Contracting authority to justify, to the Contracting authority’s satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Schedule of Adjustment Data in the Appendix to Bid are reasonable, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders. |
| Documents Comprising the Technical Proposal | * 1. The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV – Bidding Forms, in sufficient detail to demonstrate the adequacy of the Bidder’s proposal to meet the work requirements and the completion time. |
| Documents Establishing the Qualifications of the Bidder | * 1. In accordance with Section III, Evaluation and Qualification Criteria, to establish that the Bidder continues to meet the criteria used at the time of prequalification, the Bidder shall provide in the corresponding information sheets included in Section IV, Bidding Forms, updated information on any assessed aspect that changed from that time or if post-qualification applies as specified in ITB 4.8, the Bidder shall provide the information requested in the corresponding information sheets included in Section IV, Bidding Forms. |
|  | * 1. If a margin of preference applies as specified in accordance with ITB 33.1, domestic Bidders, individually or in joint ventures, applying for eligibility for domestic preference shall supply all information required to satisfy the criteria for eligibility specified in accordance with ITB 33.1.   2. Any change in the structure or formation of a Bidder after being prequalified and invited to Bid (including, in the case of a JV, any change in the structure or formation of any member thereto) shall be subject to the written approval of the Contracting authority prior to the deadline for submission of Bids. Such approval shall be denied if (i) a Bidder proposes to associate with a disqualified Bidder or in case of a disqualified joint venture, any of its members; (ii) as a consequence of the change, the Bidder no longer substantially meets the qualification criteria set forth in Section III, Qualification Criteria and Requirements; or (iii) in the opinion of the Contracting authority, the change may result in a substantial reduction in competition. Any such change should be submitted to the Contracting authority not later than fourteen (14) days after the date of the Invitation for Bids. |
| Period of Validity of Bids | * 1. Bids shall remain valid until the date specified in the BDS or any extended date if amended by the Contracting authority in accordance with ITB 8. A bid that is not valid until the date specified in the BDS, or any extended date if amended by the Contracting authority in accordance with ITB 8, shall be rejected by the Contracting authority as nonresponsive. |
|  | * 1. In exceptional circumstances, prior to the date of expiration of the bid validity, the Contracting authority may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a bid Security is requested in accordance with ITB 19, it shall also be extended for twenty-eight (28) days beyond the extended date for bid validity. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid, except as provided in ITB 18.3. |
|  | * 1. If the award is delayed by a period exceeding fifty-six (56) days beyond the date of expiry of the bid validity specified in accordance with ITB 18.1, the Contract price shall be determined as follows:      1. In the case of fixed price contracts, the Contract price shall be the bid price adjusted by the factor specified in the BDS.      2. In the case of adjustable price contracts, no adjustment shall be made.      3. In any case, bid evaluation shall be based on the bid price without taking into consideration the applicable correction from those indicated above. |
| Bid Security | * 1. The Bidder shall furnish as part of its bid, either a Bid-Securing Declaration or a bid security as specified in the BDS, in original form and, in the case of a bid security, in the amount and currency **specified in the BDS**. |
|  | * 1. A Bid-Securing Declaration shall use the form included in Section IV, Bidding Forms. |
|  | * 1. If a bid security is specified pursuant to ITB 19.1, the bid security shall be a demand guarantee in any of the following forms at the Bidder’s option:   (a) an unconditional guarantee issued by a bank or financial institution (such as an insurance, bonding or surety company);  (b) an irrevocable letter of credit;  (c) a cashier’s or certified check; or  (d) another security specified in the BDS,  from a reputable source from an eligible country. If the unconditional guarantee is issued by a financial institution located outside the Contracting authority’s Country, the issuing financial institution shall have a correspondent financial institution located in the Contracting authority’s Country to make it enforceable. In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms, or in another substantially similar format approved by the Contracting authority prior to bid submission. The bid security shall be valid for twenty-eight (28) days beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 18.2. |
|  | * 1. If a bid security or Bid Securing Declaration is specified pursuant to ITB 19.1, any bid not accompanied by a substantially responsive bid security or Bid-Securing Declaration shall be rejected by the Contracting authority as non-responsive. |
|  | * 1. If a bid security is specified pursuant to ITB 19.1, the bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder’s signing the Contract and furnishing the performance security and if required in the BDS, the Environmental and Social (ES) Performance Security pursuant to ITB 42. |
|  | * 1. The bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required performance security, and if required in the BDS, the Environmental and Social, (ES) Performance Security. |
|  | * 1. The bid security may be forfeited:      1. if a Bidder withdraws its bid prior to the expiry date of the bid validity specified by the Bidder on the Letter of Bid, or any extended date provided by the Bidder; or      2. if the successful Bidder fails to:  (i) sign the Contract in accordance with ITB 41; or(ii) furnish a performance security and if required in the BDS, the Environmental and Social (ES) Performance Security in accordance with ITB 42. |
|  | * 1. The bid security or the Bid-Securing Declaration of a JV shall be in the name of the JV that submits the bid. If the JV has not been legally constituted into a legally enforceable JV at the time of bidding, the bid security or the Bid-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITB 4.1 and ITB 11.2.   2. If a bid security is not required in the BDS pursuant to ITB 19.1, and   3. if a Bidder withdraws its bid prior to the expiry date of the bid validity specified by the Bidder on the Letter of Bid or any extended date provided by the Bidder, or   4. if the successful Bidder fails to sign the Contract in accordance with ITB 41; or furnish a performance security and if required in the BDS, the Environmental and Social (ES) Performance Security in accordance with ITB 42;   the Borrower may, if provided for in the BDS, declare the Bidder ineligible to be awarded a contract by the Contracting authority for a period of time as stated in the BDS. |
| Format and Signing of Bid | * 1. The Bidder shall prepare one original of the documents comprising the bid as described in ITB 11 and clearly mark it “Original.” Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked “Alternative.” In addition, the Bidder shall submit copies of the bid, in the number **specified in the BDS** and clearly mark them “Copy.” In the event of any discrepancy between the original and the copies, the original shall prevail. |
|  | * 1. The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation **as specified in the BDS** and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid where entries or amendments have been made shall be signed or initialled by the person signing the bid. |
|  | * 1. In case the Bidder is a JV, the Bid shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives. |
|  | * 1. Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialled by the person signing the bid. |
|  | D. Submission and Opening of Bids |
| Sealing and Marking of Bids | * 1. The Bidder shall enclose the original and all copies of the bid, including alternative bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as “Original”, “Alternative” and “Copy.” These envelopes containing the original and the copies shall then be enclosed in one single envelope. |
|  | * 1. The inner and outer envelopes shall:  1. bear the name and address of the Bidder; 2. be addressed to the Contracting authority in accordance with ITB 22.1; 3. bear the specific identification of this bidding process specified in the BDS 1.1; and 4. bear a warning not to open before the time and date for bid opening. |
|  | * 1. If all envelopes are not sealed and marked as required, the Contracting authority will assume no responsibility for the misplacement or premature opening of the bid. |
| Deadline for Submission of Bids | * 1. Bids must be received by the Contracting authority at the address and no later than the date and time **specified in the BDS**. **When so specified in the BDS**, bidders shall have the option of submitting their bids electronically. Bidders submitting bids electronically shall follow the electronic bid submission procedures **specified in the BDS**. |
|  | * 1. The Contracting authority may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Documents in accordance with ITB 8, in which case all rights and obligations of the Contracting authority and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended. |
| Late Bids | * 1. The Employer shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 22. Any bid received by the Employer after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder. |
| Withdrawal, Substitution, and Modification of Bids | * 1. A Bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 20.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:  1. prepared and submitted in accordance with ITB 20 and ITB 21 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked “Withdrawal,” “Substitution,” “Modification;” and 2. sent by bidders prior to the deadline prescribed for submission of bids, in accordance with ITB 22. |
|  | * 1. Bids requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the Bidders. |
|  | * 1. No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereof. |
| Bid Opening | * 1. Except in the cases specified in ITB 23 and 24, the Contracting authority shall publicly open and read out in accordance with ITB 25.3 all bids received by the deadline, at the date, time and place specified in the BDS, in the presence of Bidders` designated representatives and anyone who choose to attend. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 22.1, shall be **as** **specified in the BDS.** |
|  | * 1. First, envelopes marked “Withdrawal” shall be opened and read out and the envelope with the corresponding bid shall not be opened but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked “Substitution” shall be opened and read out and exchanged with the corresponding bid being substituted, and the substituted bid shall not be opened, but returned to the Bidder. No bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked “Modification” shall be opened and read out with the corresponding bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at bid opening. Only bids that are opened and read out at bid opening shall be considered further. |
|  | * 1. All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the total Bid Price, per lot (contract) if applicable, including any discounts and alternative bids; the presence or absence of a bid security, if required; and any other details as the Contracting authority may consider appropriate. Only discounts and alternative bids read out at bid opening shall be considered for evaluation. The Letter of Bid andtheBill of Quantitiesare to be initialled by representatives of the Contracting authority attending bid opening in the manner specified in the BDS. The Contracting authority shall neither discuss the merits of any bid nor reject any bid (except for late bids, in accordance with ITB 23.1). |
|  | * 1. The Contracting authority shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot (contract) if applicable, including any discounts and alternative bids; and the presence or absence of a bid security, if one was required. The Bidders’ representatives who are present shall be requested to sign the record. The omission of a Bidder’s signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders. |
|  | E. Evaluation and Comparison of Bids |
| Confidentiality | * 1. Information relating to the evaluation of bids and recommendation of contract award shall not be disclosed to Bidders or any other persons not officially concerned with the bidding process until information on Contract award is communicated to all Bidders in accordance with ITB 40. |
|  | * 1. Any attempt by a Bidder to influence the Contracting authority in the evaluation of the bids or Contract award decisions may result in the rejection of its bid. |
|  | * 1. Notwithstanding ITB 26.2, from the time of bid opening to the time of Contract award, if a Bidder wishes to contact the Contracting authority on any matter related to the bidding process, it shall do so in writing. |
| Clarification of Bids | * 1. To assist in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, the Contracting authority may, at its discretion, ask any Bidder for a clarification of its bid, given a reasonable time for a response. Any clarification submitted by a Bidder that is not in response to a request by the Contracting authority shall not be considered. The Contracting authority’s request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Contracting authority in the evaluation of the bids, in accordance with ITB 31. |
|  | * 1. If a Bidder does not provide clarifications of its bid by the date and time set in the Contracting authority’s request for clarification, its bid may be rejected. |
| Deviations, Reservations, and Omissions | * 1. During the evaluation of bids, the following definitions apply:  1. “Deviation” is a departure from the requirements specified in the Bidding Documents; 2. “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Documents; and 3. “Omission” is the failure to submit part or all of the information or documentation required in the Bidding Documents. |
| Determination of Responsiveness | * 1. The Contracting authority’s determination of a bid’s responsiveness is to be based on the contents of the bid itself, as defined in ITB11. |
|  | * 1. A substantially responsive bid is one that meets the requirements of the Bidding Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,   (a) if accepted, would: (i) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or(ii) limit in any substantial way, inconsistent with the Bidding Documents, the Contracting authority’s rights or the Bidder’s obligations under the proposed Contract; or (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids. |
|  | * 1. The Contracting authority shall examine the technical aspects of the bid submitted in accordance with ITB 16, Technical Proposal, in special, to confirm that all requirements of Section VI, Works Requirements have been met without any material deviation, reservation or omission. |
|  | * 1. If a bid is not substantially responsive to the requirements of the Bidding Documents, it shall be rejected by the Contracting authority and may not subsequently be made responsive by correction of the material deviation, reservation, or omission. |
| Nonmaterial Nonconformities | * 1. Provided that a bid is substantially responsive, the Contracting authority may waive any nonconformities in the Bid*.* |
|  | * 1. Provided that a bid is substantially responsive, the Contracting authority may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid. |
|  | * 1. Provided that a bid is substantially responsive, the Contracting authority shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component, by adding the average price of the item or component quoted by substantially responsive Bidders. If the price of the item or component cannot be derived from the price of other substantially responsive Bids, the Contracting authority shall use its best estimate. |
| Correction of Arithmetical Errors | * 1. Provided that the bid is substantially responsive, the Contracting authority shall correct arithmetical errors on the following basis:   (a) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of theContracting authority there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;  (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and  (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above. |
|  | * 1. Bidders shall be requested to accept correction of arithmetical errors. Failure to accept the correction in accordance with ITB 31.1, shall result in the rejection of the Bid. |
| Conversion to Single Currency | * 1. For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency **as specified in the BDS**. |
| Margin of Preference | * 1. Unless otherwise specified in the BDS, a margin of preference for domestic bidders[[8]](#footnote-9) shall not apply. |
| Subcontractors | * 1. Unless otherwise stated in the BDS, the Contracting authority does not intend to execute any specific elements of the Works by sub-contractors selected in advance by the Contracting authority.   2. In case of Prequalification, the Bidder’s Bid shall name the same specialized subcontractor as submitted in the prequalification application and approved by the Contracting authority.   3. In case of Postqualification, the Contracting authority may permit subcontracting for certain specialized works as indicated in Section III 4.2. When subcontracting is permitted by the Contracting authority, the specialized sub-contractor’s experience shall be considered for evaluation. Section III describes the qualification criteria for sub-contractors.   4. Bidders may propose subcontracting up to the percentage of total value of contracts or the volume of works as specified in the BDS. |
| Evaluation of Bids | * 1. The Contracting authority shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.   2. To evaluate a bid, the Contracting authority shall consider the following:   (a) the bid price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities, but including Daywork items, where priced competitively;  (b) price adjustment for correction of arithmetic errors in accordance with ITB 31.1;  (c) price adjustment due to discounts offered in accordance with ITB 14.4;  (d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 32;  (e) price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 30.3;  (f) the additional evaluation factors are specified in Section III, Evaluation and Qualification Criteria; |
|  | * 1. The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation. |
|  | * 1. If these Bidding Documents allows Bidders to quote separate prices for different lots (contracts), the methodology to determine the lowest evaluated price of the lot (contract) combinations, including any discounts offered in the Letter of Bid Form, is specified in Section III, Evaluation and Qualification Criteria. |
|  | * 1. If the bid, which results in the lowest Evaluated Bid Price, is seriously unbalanced or front loaded in the opinion of the Contracting authority, the Contracting authority may require the Bidder to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, theContracting authoritymay require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect theContracting authorityagainstfinancial loss in the event of default of the successful Bidder under the Contract.   2. An Abnormally Low Bid is one where the Bid price, in combination with other constituent elements of the Bid, appears unreasonably low to the extent that the Bid price raises material concerns with the Purchaser as to the capability of the Bidder to perform the Contract for the offered Bid price.   In the event of identification of a potentially Abnormally Low Bid, the Purchaser shall seek written clarification from the Bidder, including a detailed price analyses of its Bid price in relation to the subject matter of the contract, scope, delivery schedule, allocation of risks and responsibilities and any other requirements of the bidding document.  After evaluation of the price analyses, in the event that the Purchaser determines that the Bidder has failed to demonstrate its capability to perform the contract for the offered Bid price, the Purchaser may reject the Bid. |
| Comparison of Bids | * 1. The Contracting authority shall compare the evaluated prices of all substantially responsive bids established in accordance with ITB 35.2 to determine the lowest evaluated bid*.* |
| Qualification of the Bidder | * 1. The Contracting authority shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid either continues to meet (if prequalification applies) or meets (if postqualification applies) the qualifying criteria specified in Section III, Evaluation and Qualification Criteria. |
|  | * 1. The determination shall be based upon an examination of the documentary evidence of the Bidder’s qualifications submitted by the Bidder, pursuant to ITB 17.1.   2. Prior to Contract award, the Contracting authority will verify that the successful Bidder (including each member of a JV) is not subject to an exclusion decision by the European Investment Bank. The Contracting authority will conduct the same verification for each subcontractor proposed by the successful Bidder. If any proposed subcontractor does not meet the requirement, the Contracting authority will require the Bidder to propose a replacement subcontractor.   3. An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Contracting authority shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder’s qualifications to perform satisfactorily. |
| Contracting authority’s Right to Accept Any Bid, and to Reject Any or All Bids | * 1. The Contracting authority reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders. |
|  | F. Award of Contract |
| Award Criteria | * 1. Subject to ITB 38.1, the Contracting authority shall award the Contract to the Bidder who has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily. |
| Notification of Award | * 1. The Purchaser shall send to each Bidder the Notification of Intention to Award the Contract to the successful Bidder.   The Contract shall not be awarded earlier than the expiry of the Standstill Period. The Standstill Period shall be ten (10) Calendar Days. The Standstill Period commences the day after the date the Contracting authority has transmitted to each Bidder the Notification of Intention to Award the Contract to the successful Bidder.  The detailed description of how to make a Procurement-related Appeal is specified in the BDS.  Prior to the date of expiry of the Bid validity and upon expiry of the Standstill Period and upon satisfactorily addressing any complaint that has been filed within the Standstill Period, the Contracting authority shall notify the successful Bidder, in writing, that its Bid has been accepted.  The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the “Letter of Acceptance”) shall specify the sum that the Contracting authority will pay the Contractor in consideration of the execution and completion of the Works (hereinafter and in the Conditions of Contract and Contract Forms called “the Contract Price”). At the same time, the Contracting authority shall also notify all other Bidders of the results of the bidding.  Immediately after the signature of the contract, the Contracting authority must publish an Award Notice in the OJEU including the results identifying the bid and lot (contract) numbers and other information given in the EIB’s template of Contract Award Notice. |
|  | * 1. Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract. |
|  | * 1. The Contracting authority shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 40.1, requests in writing the grounds on which its bid was not selected. |
| Signing of Contract | * 1. Promptly upon notification, the Contracting authority shall send the successful Bidder the Contract Agreement. |
|  | * 1. Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Contracting authority. |
| Performance Security | * 1. Within twenty-eight (28) days of the receipt of notification of award from the Contracting authority, the successful Bidder shall furnish the performance security and, if required in the BDS, the Environmental and Social (ES) Performance Security in accordance with the General Conditions of Contract, subject to ITB 35.5, using for that purpose the Performance Security and ES Performance Security Forms included in Section X, Contract Forms, or another form acceptable to the Contracting authority. If the performance security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Contracting authority. A foreign institution providing a bond shall have a correspondent financial institution located in the Contracting authority’s Country. |
|  | * 1. Failure of the successful Bidder to submit the above-mentioned Performance Security and, if required in the BDS, the Environmental and Social (ES) Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security. In that event the Contracting authority may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Contracting authority to be qualified to perform the Contract satisfactorily. |

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| Section II. Bid\_ Data Sheet | |
| **A. Introduction** | |
| **ITB 1.1** | The number of the Invitation for Bids is: **01-126/23-2455/1** |
| **ITB 1.1** | The Contracting authority is:  **Administration for capital projects**  Arsenija Boljevica 2A,  81 000 Podgorica  Montenegro |
| **ITB 1.1** | The name of the ICB is: Procurement of works related to construction of the elementary school: “Vladimir Nazor”, Podgorica.  The tender procedure will be carried out in line with EIB GtP available on on EIB's website:  <https://www.eib.org/en/publications/guide-to-procurement.htm>  The identification numberof the ICB is: **01-126/23-2455/1**  The number and identification of lots (contracts)comprising this ICB is: n/a |
| **ITB 2.1** | The Borrower is: Montenegro, represented by the Minister of Finance on behalf of the Government as the representative of Montenegro. The Borrower, through the Ministry of Education of Montenegro, is undertaking a project subject to the Finance Contract FI Nº 89406. The credit from the European Investment Bank (EIB) amounts to EUR 18.000.000.  In addition to the loan, the project is financed from the state budget and grant provided by the Bilateral Donors Group.  Based on the Cooperation agreement No. AA-010294-001 the Capital Projects Administration (formerly the Public Works Administration) will act as the contracting authority for all works contracts. |
| **ITB 2.1** | Loan or Financing Agreement amount: EUR 18 million. |
| **ITB 2.1** | The name of the Project is: Improvement of Montenegrin educational infrastructure. |
| ITB 4.1 | Maximum number of members in the JV shall be: n/a |
| ITB 4.8 | This Bidding Process is not subject to prequalification. |
| **B. Bidding Documents** | |
| **ITB 7.1** | For **clarification purposes** only, the Contracting authority’s address is:  Attention: *Ms. Milica Bakić*  **Administration for capital projects**  Street Address: Arsenija Boljevica 2A  City: Podgorica  ZIP Code: 81000  Country: Montenegro  Facsimile number: **+382 20230228**  Electronic mail address: **milica.bakic@ukp.gov.me**  **Procedures for answering to the Request for Clarifications from Bidders:**  Bidders are expected to submit their Request for Clarification in writing by hand, mail or e-mail, **in English language**.  The Purchaser will consolidate all the requests for clarification received from the Bidders and will publish them with answers **(in English**) if deemed necessary on weekly base (i.e the description of the inquiry but without identifying its source) on the following website: <https://ujn.gov.me/category/eu-tenderi/>  The Bidders shall have the obligation to check regularly the above website for clarification of the Bidding Documents. Any request for clarification of the Bidding Document shall be clarified and answered in writing by Purchaser within a week.  Any prospective bidders seeking to arrange individual meeting with Purchaser during the tender period may be excluded from the tender procedure |
| **ITB 7.4** | A Pre-Bid meeting will not be organised. |
| **C. Preparation of Bids** | |
| ITB 10.1 | Bidders shall submit bids in English.  All correspondence exchange shall be in English.  Language for translation of supporting documents and printed literature is English language provided they are accompanied by an accurate translation of the relevant passages in the Montenegrin language in order to facilitate the evaluation of the documents. |
| ITB 11.1 (i) | The Bidder shall submit the following additional documents in its Bid:   * Documents and Statements defined within Section III and IV. * Environmental and Social Management Strategies and Implementation Plans (ES-MSIP) |
| **ITB 13.1** | Alternative bids are notpermitted. |
| ITB 13.2 | Alternative time for completion is not permitted. |
| ITB 13.4 | Alternative technical solutions shall not be permitted. |
| **ITB 14.5** | The prices quoted by the bidder shall be fixed price. |
| **ITB 15.1** | The currency of the bid and the payment currency shall be currency of the European Economic and Monetary Union (EUR). |
| **ITB 18.1** | The bid validity period shall be 90 calendar days after the date set for the submission of bids. |
| **ITB 18.3 (a)** | The bid price shall not be adjusted. |
| **ITB 19.1** | A *Bid Security* is required. Bid security shall be unconditional bank guarantees, issued in original by a reputable bank, acceptable to the Contracting Authority. Bank guarantee for Bid security shall be submitted in the amount of EUR **100.000**.  A Bid-Securing Declaration shall not be required. |
| **ITB 19.3 (d)** | Other types of acceptable securities: Not applicable  Types of acceptable securities: an unconditional bank guarantee submitted using the Bid Security Form included in Section IV, Bidding Forms, or in another substantially similar format approved by the Contracting authority prior to bid submission. |
| **ITB 19.9** | Not applicable since Bid Security is required |
| **ITB 20.1** | In addition to the original paper version of the bid, the number of copies is: two (2) printed and one electronic copy of the complete bid. In case of discrepancy between the paper version of the bid and the digital version, the original paper version of the bid shall prevail.  All documents will be saved in PDF format apart from the BoQ which should be in Excel. The order of the documentation in the Bid will follow the form set in the Tender Dossier. |
| **ITB 20.2** | The written confirmation of authorization to sign on behalf of the Bidder shall consist of: Power of Attorney. |
| **ITB 21.2** | The envelopes containing the original and the copies shall then be enclosed in one single envelope which shall be marked as follows: “Not to be opened before the official public session for the opening of bids” and equivalent in local language “Ne otvarati prije zvaničnog sastanka za javno otvaranje ponuda”. |
| **D. Submission and Opening of Bids** | |
| **ITB 22.1** | For **bid submission purposes** only, the Contracting authority’s address is  Attention: Ms **Milica Bakić**  Street Address: Arsenija Boljevica 2A  City: Podgorica  ZIP Code: 81000  Country: Montenegro  **The deadline for bid submission is:**  Date: 14 June 2023  Time: 10:00 a.m Time zone in Montenegro (GMT+2)  Bidders will nothave the option of submitting their bids electronically. |
| **ITB 25.1** | The bid opening shall take place at: **Administration for capital projects**  Street Address: Arsenija Boljevica 2A  City: Podgorica  ZIP Code: 81000  Country: Montenegro  Date: 14 June 2023  Time: 10:30 a.m Time zone in Montenegro (GMT+2) |
| **ITB 25.3** | The Letter of Bid and Priced Bill of Quantities shallbe initialled by representatives of the Contracting authority conducting Bid opening. Although the tender opening session is a formal, public process, participation in the tender opening session is restricted to representatives of the companies that are tendering for the contract. |
| **E. Evaluation, and Comparison of Bids** | |
| **ITB 32.1** | The only currency that shall be used for bid preparation, evaluation and comparison purposes is: The currency of The European Economic and Monetary Union (EUR).  Wherever a Bidder is required to state a monetary amount (e.g Section IV), Bidders should indicate the Euro equivalent using the rate of exchange determined as follows:  For construction turnover or financial data required for each year: exchange rate prevailing on the last day of the respective calendar year for which the amounts were originally established.  The source of exchange rate shall be the middle rate published by the Central Bank of Montenegro. |
| **ITB 33.1** | A margin of preference shall not apply. |
| **ITB 34.4** | In line with the PPL of MN (article 128) during the performance of the public procurement contract, the bidder may, with the consent of the Employer engage one or more subcontractors whose total share cannot exceed 30% of the value of the public procurement contract without VAT.  b) Bidders planning to subcontract more than 10% of total volume of work shall specify, in the Letter of Bid, the activity (ies) or parts of the works to be subcontracted along with complete details of the sub-contractors and their qualification and experience. Subcontracting is allowed as specified above but the contractor will retain full liability towards the contracting authority for performance of the contract as a whole.  c) Sub-contractors’ qualification and experience will not be considered for evaluation of the Bidder. The Bidder on its own (without taking into account the qualification and experience of the sub-contractor) should meet the qualification criteria. |
| **ITB 40.1** | The procedures for making a Procurement-related Appeal are given under the Section VI Appeal procedure.  The appeal procedure in this project is a two-step process.  The Contracting Authority is the first level of review. An appeal shall be submitted to the Contracting Authority, in writing in three copies, within the defined deadlines (Annex 1), so that the appeal may be considered.  In the event that the appeals are correct, the Contracting Authority accepts the appeal and modifies or annul the tender documents, the decision on selection or the procedure in its entirety.  In the case that the initial decision changes due to the appeal, a new standstill period begins.  The Contracting Authority notifies the Appellate Body by formal letter that the appeal has been filed, that it has been accepted and that it is necessary to reimburse the appellant.  If the Contracting Authority assesses the appeal as unfounded, it shall submit its supporting documentation to the Appellate Body, formed for this project, for review and decision. It is the responsibility of the contracting authority to initiate proceedings with the Appellate Body and, where applicable, to request refund of the fee paid in the event that the Appellate Body accepts the appeal.  An integral part of the appeal is the proof of payment of the fee for conducting the procedure, which amounts to up to 2% of the estimated value of the procurement, the percentage of which is contained in the tender documentation. The maximum fee is EUR 20,000 in case of confirmation of the appeal.  If a Bidder wishes to make a Procurement-related Appeal, the Bidder should submit its Appeal following these procedures, in writing (by the quickest means available, that is either by email or fax), to:  **Ministry of Education**  **For the attention**: **Mr. Spasoje Ostojić**  **Title/position**: **Procurement officer**  **Purchaser**: **Ministry of Education**  **Email address***:* [**spasoje.ostojic@**](mailto:spasoje.ostojic@mps.gov.me)**mp.gov.me**  Bidders should alert the promoter in writing, with a copy to the European Investment Bank in case they should consider that certain clauses or technical specifications of the TDs might limit international competition or introduce an unfair advantage to some bidders.  The Purchaser shall review, take the necessary actions and respond in a timely manner to Appeals addressed to them related to the procurement process and originating from any person or entity having or having had an interest in obtaining the contract.  Review procedures for remedies are available to any person or entity having or having had an interest in obtaining the contract and (at risk of) being harmed by an alleged infringement from applicable procurement rules. |
| **ITB 42.1 and 42.2** | The successful Bidder shall not be required to submit an Environmental and Social (ES) Performance Security. |

|  |
| --- |
| Section III. *Evaluation and Qualification Criteria* |

This Section contains all the criteria that the Contracting authority shall use to evaluate bids and qualify Bidders. In accordance with ITB 35 and ITB 37, no other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.

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

-**For construction turnover or financial data required for each year** - Exchange rate prevailing on the last day of the respective calendar year (in which the amount for that year is to be converted) was originally established. The source of exchange rate shall be the middle rate published by the Central Bank of Montenegro.

-**Value of single contract** - Exchange rate prevailing on the date of the contract completion. Exchange rates shall be taken from the publicly available source identified in the ITB 32.1. Any error in determining the exchange rates in the Bid may be corrected by the Contracting authority.

Value of the contract is to be the one stipulated for certified payments received for works contracts in progress and/or for the completed ones Final/interim payment certificates certified by the supervising engineer.

***Legal and Professional capacity of bidder:***

1. The Bidder has duly performed all obligations on the basis of taxes and contributions in accordance with the law, i.e. the regulations of the country in which it has been registered;

Documentary evidence issued by the body responsible for tax administration (state and local administration) that all obligations based on taxes and contributions have been duly reported, calculated and performed up to 60 days before the day of public opening of bids, in accordance with Montenegrin law, or country regulations in which the Bidder has been registered;

1. At the moment of tender submission, the tenderer shall have a professional licence(s), certificate(s) (or right), in accordance with the laws of the country in which he is established (or equivalent) for the execution of the construction works.

For the purpose of tender evaluation, legal requirements must be respected from every member of a consortium while for professional licence only one member is sufficient to have it.

**Accreditation and registration in Montenegro**

Regarding the accreditation and registration in Montenegro prior to signing of the Contract, the Contractor will have to be accredited and registered in accordance with the relevant legislation of Montenegro.

**The accreditation and registration of licences in Montenegro will be sought only from the successful Bidder and the successful Bidder will be given a sufficient time from the day award decision becomes final to provide those licenses and will not be penalized for any delay in issuance of licences not caused by the successful Bidder.**

The procedure for **accreditation and registration of licences in Montenegro** issuing is described on the Chamber of Engineers of Montenegro web site:

<http://www.ingkomora.me/ikcg_mne/public/index.php/index/artikli?id=4087> and

https://www.gov.me/cyr/clanak/pravilnik-o-obrascima-zahtjeva-za-obavljanje-djelatnosti-u-oblasti-izgradnje-objekata-2

Bidders are strongly advised to take all necessary steps even prior to the award decision in order to get familiar with the procedure related to issuance of licenses.

Bidders shall, in the performance of their works, in accordance with the type and nature of the works to be performed under this contract, comply with all applicable laws and by-laws of Montenegro, as long as it is aligned with the EIB Guide to Procurement.

This includes the following but not limited to:

* + Law on spatial development and construction of structure (Official Gazette of Montenegro, no. 64/2017, 44/2018, 63/2018, 11/2019 and 82/2020)
  + Law on health and safety at work (Official Gazette of Montenegro no. 79/04 and Official Gazette of Montenegro no. br. 34/2014 and 44/2018).
  + Law on construction products (Official Gazette of Montenegro, no. 018/14, 051/17)

c)The bidder (the company) has to possess the following certificates:

- ISO 9001:2015,

- ISO 14001:2015,

- ISO OHSAS 45001:2018

or equivalent ones, and which have been issued by relevant Authorized Institution for the period of 2022/2025.

All abovementioned evidences may be submitted as uncertified copies. Purchaser keeps right to ask for original evidences if deemed necessary. In case that- Bidder is Joint Venture, above requirements shall be fulfilled by each Joint Venture member except for professional licences.

* + - 1. **Domestic Preference**

A margin of preference is not applicable.

**2. Evaluation**

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

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

Based on the bidding forms filled in by the tenderer and documentary evidence provided, the Contracting authority will assess technical proposal in order to determine the lowest evaluated bid substantially responsive to the bidding document.

2.2 Multiple Contracts: Not applicable.

**2.3 Alternative Completion Times**: Not applicable.

**2.4 Technical alternatives:** Not applicable.

**2.5 Specialized Subcontractors**

The general experience and financial resources of the specialized sub-contractors **shall not be added** to those of the Bidder for purposes of qualification of the Bidder.

Subcontracting is allowed but the contractor will retain full liability towards the contracting authority for performance of the contract as a whole.

The specialized sub-contractors proposed shall be fully qualified for their work proposed.

**3. Qualification**

| **Eligibility and Qualification Criteria** | | | **Compliance Requirements** | | | | **Documentation** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **No.** | **Subject** | **Requirement** | **Single Entity** | **Joint Venture (existing or intended)** | | | **Submission Requirements** | |
| **All Parties Combined** | **Each Member** | **One Member** |  | | |
| 1. Eligibility | | | | | | | | | |
| 1.1 | **Nationality** | Nationality in accordance with ITB 4.3 | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Forms ELI – 1.1 and 1.2, with attachments | | |
| 1.2 | **Conflict of Interest** | No conflicts of interest in accordance with ITB 4.2 | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Letter of Bid | | |
| 1.3 | **Bank Eligibility**  **including**  **Prohibited Conduct requirements** | Not having been declared ineligible by the Bank, as described in ITB 3,4.4, 4.5, 4.6 4.7 and Section V and VI | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Letter of Bid  Covenant of integrity and The EIB Environmental and Social Covenant **to be signed by each member of JV.** | | |
| 1.4 | **Government Owned Entity of the Borrower country** | Meets conditions of ITB 4.5 | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Forms ELI – 1.1 and 1.2, with attachments | | |
| 1.5 | **United Nations resolution or Borrower’s country law** | Not having been excluded as a result of being subject to financial sanctions imposed by the EU[[9]](#footnote-10) either autonomously or pursuant to the financial sanctions decided by the United Nations Security Council on the basis of Article 41 of the UN Charter both in accordance with ITB 4.7 and Section V. | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Forms ELI – 1.1 and 1.2, with attachments | | |
| 2. Historical Contract Non-Performance | | | | | | | | | |
| 2.1 | **History of Non-Performing Contracts** | Non-performance of a contract[[10]](#footnote-11) did not occur as a result of contractor default within the last five (5) years prior to the deadline for submission of bids. | Must meet requirement12 | Must meet requirements | Must meet requirement[[11]](#footnote-12) | N/A | Form CON-2 | | |
| 2.2 | **Omitted** |  |  |  |  |  |  | | |
| 2.3 | **Pending Litigation** | Bidder’s financial position and prospective long term profitability sound according to criteria established in 3.1 below and assuming that all pending litigation will be resolved against the Bidder | Must meet requirement | N/A | Must meet requirement | N/A | Form CON – 2 | | |
| 2.4 | **Litigation History** | No consistent history of court/arbitral award decisions against the Bidder[[12]](#footnote-13) within the last five (5) years prior to the deadline for submission of bids. | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Form CON – 2 | | |
| 2.5 | **Environmental and Social (ES) past performance** | The civil work contracts were not suspended or terminated and/or called the performance security for reasons related to Environmental and Social (ES) performance in the past five (5) years prior to the deadline for submission of bids. | Must make the declaration. Where there are Specialized Sub-contractor/s, the Specialized Sub-contractor/s must also make the declaration. | N/A | Each must make the declaration. Where there are Specialized Sub-contractor/s, the Specialized Sub-contractor/s must also make the declaration. | N/A | Form CON-3 ES ES Performance Declaration | | |
| 3. Financial Situation and Performance | | | | | | | | | |
| 3.1 | **Financial Capabilities** | (i)The bidder must prove by submitting an original commercial bank certificate which confirms that at the time of issuance of the certificate (time of issuance not later than two weeks prior to the deadline for submission of the offer), the bidder is liquid and is not currently blocked.  (ii) The Bidders shall also demonstrate, to the satisfaction of the Contracting authority, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.  (iii) The audited balance sheets or, if not required by the laws of the Bidder’s country, other financial statements acceptable to the Contracting authority, for the last three (3) financially closed years shall be submitted and must demonstrate the current soundness of the Bidder’s financial position and indicate its prospective long-term profitability. | Must meet requirement  Must meet requirement  Must meet requirement | Must meet requirement  Must meet requirement  N/A | N/A  N/A  Must meet requirement | N/A  N/A  N/A | Form FIN – 3.1, with attachments  Form FIN – 3.1, with attachments | | |
| 3.2 | **Average Annual Construction Turnover** | Minimum average annual construction turnover[[13]](#footnote-14) of EUR 10.000.000, calculated as total certified payments received for works contracts in progress and/or completed within the last five (5) years, divided by five (5). | Must meet requirement | Must meet requirement | Must meet 15% of the requirement | Lead partner must meet not less than fifty (50%) percent of the requirement | Form FIN – 3.2 | | |
| 4. Experience | | | | | | | | | |
| 4.1 (a) | **General Construction Experience** | Experience under construction contracts in the role of prime contractor, JV member, sub-contractor, or management contractor for at least the last seven (7) years, starting 1st January 2012. | Must meet requirement | N/A | Must meet requirement | N/A | Form EXP – 4.1 | | |
| 4.2 (a) | **Specific Construction & Contract Management Experience** | (i) A minimum number of similar[[14]](#footnote-15) contracts specified below that have been satisfactorily and substantially[[15]](#footnote-16) completed as a prime contractor, joint venture member[[16]](#footnote-17), management contractor or sub-contractor between 1st January 2015 and application submission deadline: (i) three (3) contracts, each of minimum value defined by its own tender amount, excluding VAT;  (a) Participation as prime contractor, in at least three (3) contracts of the similar nature and/or complexity to the proposed Contract;  construction, reconstruction, adaptation up to the total functionality of commercial, commercial-residential and residential or public building or complex of the buildings of at least 15.000 (fifteen thousand) m² of the new construction or reconstructed space within the last five (5) years, out of which at least one building is of aprox.6.000,00 м2. | Must meet requirement | Must meet requirement[[17]](#footnote-18) | N/A | N/A | Form EXP 4.2(a) | | |

**3.5 Contractor and Contractor’s Representative and Key Personnel**

The Bidder must demonstrate that it will have a suitably qualified Contractor’s Representative and suitably qualified (and in adequate numbers) Key Personnel, as described below.

The Bidder shall provide details of the Contractor’s Representative and Key Personnel and such other Key Personnel that the Bidder considers appropriate to perform the Contract, together with their academic qualifications and work experience. The Bidder shall complete the relevant Forms in Section IV, Bidding Forms.

The Bidder must demonstrate that it has full time job personnel for the key positions (engaged in the Project) that meet the following requirements:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No.** | **Position** | **Number of Experts** | **Total work experience in re/construction** | **Experience In Similar Works (Fidic or similar, based)**  **(number of projects)** |
| 1 | Project Manager – Graduated  Engineer \* | 1 | 15 (out of which being Project Manager for 7 years) | 1 |
| 2 | Deputy Project Manager – Graduated Engineer \* | 1 | 10 (out of which being Deputy Project Manager for 3 years) | 1 |
| 3 | Graduate Civil Engineer – | 1 | 5 | / |
| 4 | Graduate Architectural Engineer | 1 | 5 | / |
| 5 | Graduate Electrical Engineer | 2 | 10 | / |
| 6 | Graduate Thermo-Technical Engineer | 1 | 5 | / |
| 7 | HSE Engineer | 1 | 3 | / |
| 8 | Graduated geodetic Engineer | 1 | 5 | / |
| 9 | Graduated health and safety Engineer | 1 | 5 | / |

**\*** Note: Any of the experts requested in the table above can perform the function of project manager or his deputy, provided that he fulfils the conditions given for those two positions.

**3.5.1.** All the staff locally engaged for the key positions including key personnel given in the table above must possess the licences required by the law applicable in the beneficiary country.

In the event that licenses are not required according to the law of the country where the documents (e.g diplomas, degree, credentials) were issued, the bidder will state all the details in his explanation and, in the event of winning the tender, the bidder will act in accordance with the law related to accreditation and registration of licences in Montenegro.

In case of a foreign bidder or a bidder engaging foreign staff, this bidder is obliged to provide staff that possess equivalent licences for work execution in line with Montenegrin regulations.

**Accreditation and registration in Montenegro**

The requirement related to the possessing of the Montenegrin licences should be fulfilled only from the winning tenderer and prior to the signing of the contract.

**The accreditation and registration of licences in Montenegro will be sought only from the successful Bidder and the successful Bidder will be given a sufficient time from the day award decision becomes final to provide those licenses and will not be penalized for any delay in issuance of licenses not caused by the successful Bidder.**

The procedure for licenses issuing is described on the Chamber of Engineers of Montenegro web site:

<http://www.ingkomora.me/ikcg_mne/public/index.php/index/artikli?id=4087> and

<https://www.gov.me/cyr/clanak/pravilnik-o-obrascima-zahtjeva-za-obavljanje-djelatnosti-u-oblasti-izgradnje-objekata-2>

Bidders are strongly advised to take all necessary steps even prior to the award decision in order to get familiar with procedure related to issuance of licences.

Bidders shall, in the performance of their works, in accordance with the type and nature of the works to be performed under this contract, comply with all applicable laws and by-laws of Montenegro, as long as it is aligned with the EIB Guide to Procurement.

In the case of JV/ Consortium Lead Partner must meet not less than 50% of personnel requirements. The Bidder shall provide details of the proposed personnel and their experience records using Forms PER-1 and PER-2 included in Section IV, Bidding Forms.

In addition the bidder will provide: certified copies of their diplomas, certificates/licences proving the qualifications of the proposed staff and documentary proof in line with the law of the country confirming fulltime employment.

**3.5.2**. In addition to this, the bidder should have at least 50 (fifty) permanent employees, at the time of Tender announcement, including the key employees listed in **3.5.1.**

Investor reserves the right to perform the security check of the staff who will be engaged in the Project.

The leading partner of the JV has to fulfil at least 50 % (fifty per cent) of this condition.

The bidder shall provide documented evidence for these employees in line with the regulations of the country which confirms their permanent status in the required period.

**3.6 Equipment**

The Bidder must demonstrate that it has access to the key equipment listed hereafter:

|  |  |  |
| --- | --- | --- |
| **No.** | **Equipment Type and Characteristics** | **Minimum Number required** |
| 1 | Construction crane | 1 |
| 2 | Mobile crane | 1 |
| 3 | Telescopic crane | 1 |
| 4 | Dredge | 1 |
| 5 | Loader | 1 |
| 6 | Robotic excavator | 1 |
| 7 | Truck (over 15 t capacity) | 4 |
| 8 | Truck (over 2,5 t capacity) | 3 |
| 9 | Vibrating roller | 1 |
| 10 | Vibrating plate | 2 |
| 11 | Combined machines | 3 |
| 12 | Fork-lift truck | 2 |
| 13 | Aggregate | 3 |
| 14 | Struts | 3.000 pcs |
| 15 | Façade scaffolding | 10.000 m2 |

The Bidder shall provide further details of proposed items of equipment using Form EQU in Section IV, Bidding Forms. The bidder must indicate whether this equipment is owned, hired or used by a subcontractor.

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| Section IV. Bidding Forms |

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

Date:

ICB No.:

Invitation for Bid No.:

Alternative No.: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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

We, the undersigned, declare that:

1. We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB 8) *(insert number of issued addenda*(\_\_\_\_\_\_\_);
2. We meet the eligibility requirements and have no conflict of interest in accordance with ITB 4;
3. Sexual Exploitation and Abuse (SEA) and/or Sexual Harassment (SH): *Not applicable*.
4. We have not been suspended nor declared ineligible by the Contracting authority based on execution of a Bid Securing Declaration in the Contracting authority’s country in accordance with ITB 4.6.
5. We offer to execute in conformity with the Bidding Documents the following Works: **CONSTRUCTION OF ELEMENTARY SCHOOL “VLADIMIR NAZOR”, PODGORICA;**
6. The total price of our Bid, excluding any discounts offered in item (f) below is:

|  |  |
| --- | --- |
| **Description** | **Amount in EUR** |
| Total BoQ excluding VAT and contingency |  |
| Contingency (10% of Total BoQ) |  |
| VAT (calculated as 21% on national contribution equal to 19% of Total BoQ including contingency) [[18]](#footnote-19) |  |
| Total contract value (including VAT) |  |

1. The discounts offered and the methodology for their application are:
2. The discounts offered are: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. The exact method of calculations to determine the net price after application of discounts is shown below:

;

1. Our Bid shall be valid for a period of 90 (ninety) days from the date fixed for the bid submission deadline in accordance with the Bidding Documents*,* and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
2. If our bid is accepted, we commit to obtain a performance security in accordance with the Bidding Documents and General Contract Conditions.
3. Weare not participating, as a Bidder or as a subcontractor, in more than one bid in this bidding process in accordance with ITB 4.2(e), other than alternative bids submitted in accordance with ITB 13;
4. We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, financial sanctions imposed by the EU[[19]](#footnote-20), autonomously or pursuant to the financial sanctions decided by the United Nations Security Council on the basis of Article 41 of the UN Charter.

(k) We are not a government owned entity/ We are a government owned entity but meet the requirements of ITB 4.5;[[20]](#footnote-21)

1. We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:

|  |  |  |  |
| --- | --- | --- | --- |
| Name of Recipient | Address | Reason | Amount |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

(If none has been paid or is to be paid, indicate “none.”)

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

(n) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

(o) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any type of fraud and corruption.[[21]](#footnote-22)

Name of the Bidder**\***

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

Title of the person signing the Bid

Signature of the person named above

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

**\*** In the case of the Bid submitted by joint venture specify the name of the Joint Venture as Bidder.

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

**EXISTING NORMATIVE SOLUTIONS THAT REGULATE THE PROCEDURE FOR EXEMPTION FROM PAYMENT OF VAT DEPENDING ON THE SOURCE OF FINANCING**

The project will be financed as follows:

1/ EIB loan equal to 51 % of the Bid price (VAT at the rate 0%)

2/ National Contribution equal to 19% of the Bid price (VAT at the rate 21%)

3/ Grant provided by the Bilateral Donors Group equal to 30% of the Bid price (VAT at the rate 0%)

Below is given an overview of the legal and sub-legal regulations that regulate the VAT exemption procedure, the basis for the VAT exemption, as well as the power of the authorities that carry out the VAT exemption procedure depending on the source of financing (loans, donations/grant, National contribution).

**1/ Exemption from payment of VAT for projects financed from the funds of the European Union and on the basis of an international agreement concluded between Montenegro and an international financial organization (i.e. Finance Contract 89406).**

By the provision of Article 25 paragraph 1 point 12a of the Value Added Tax Act ("Official Gazette of the Republic of Montenegro", No. 65/01...04/06 and "Official Gazette of Montenegro", No. 16/07... 46/19, "Official Gazette of Montenegro", No. 65/22, 140/22, 3/23) stipulates that VAT is paid at a rate of 0% on the delivery of products, i.e. services performed in accordance with the loan agreement i.e. a loan, concluded between Montenegro and an international financial organization, i.e. another country, as well as between a third party and an international financial organization, i.e. another country in which Montenegro appears as a guarantor, in the part financed with the obtained funds, if that contract stipulates that tax costs will not be paid from the received funds. Also, the Rulebook on the procedure for exempting investors from paying value added tax and the delivery of certain products and services ("Official Gazette of Montenegro", no. 17/15, 68/15, 80/22) prescribes the conditions, method and procedure for exercising the right on exemption from paying VAT, on the delivery of products and services performed in accordance with the loan agreement. Article 10 of the Rulebook stipulates that the decision on exemption from payment of VAT for the delivery of products and services made in accordance with the credit agreement, that is, the loan, is made by the Revenue and Customs Administration, based on the request of the user of funds. **Therefore, in accordance with the existing legal regulations, the Revenue and Customs Administration issues a decision determining the payment of VAT at the rate of 0% exclusively on funds secured by a loan from an international financial organization, that is, another state.**

**2/ Exemption from payment of VAT for projects financed from the funds of the European Union and on the basis of an international agreement, i.e. a donation agreement**

Exemption from payment of VAT for projects financed from the funds of the European Union and on the basis of an international agreement, i.e. a donation agreement, is carried out on the basis of a certificate of exemption from payment of VAT, issued by the state administration authority responsible for the implementation of the project. Article 25 paragraph 1 point 12 of the Law on Value Added Tax prescribes that VAT is paid at a rate of 0% on the delivery of products or services when an international agreement or a donation agreement stipulates that tax costs will not be paid from the received funds. Also, the provision of Article 13e of the Rulebook on the procedure for exempting investors from paying value added tax and the delivery of certain products and services stipulates that the importer, supplier of products, service provider, i.e. beneficiary of donations (international organization or legal/physical person, i.e. other form of economic activity activities) in order to exercise the right to exemption from paying VAT, when this is provided for in an international agreement, encloses a certificate from the state administration body responsible for the area for which the project is being implemented.

**3/ Payment of VAT for projects financed from the national funds**

Funds used from other sources of financing according to the existing legislation are not exempted from paying VAT.

**PROCEDURE FOR VAT EXEMPTION**

When submitting a request for exemption from paying VAT to TAX authority, it is needed to submit the documentation prescribed by Article 10 paragraph 3 of the Rulebook on the procedure for exempting investors from paying value added tax and the delivery of certain products and services, namely:

1. Credit or loan agreement concluded with the European Investment Bank (in the original or a copy certified by a notary, as well as a translation in the Montenegrin language by a permanent court interpreter - certified by a notary);

2. Confirmation by the state administration authority responsible for foreign affairs and European integration that the loan or credit agreement is being applied (in the original or a copy certified by a notary);

3. Contract on the delivery of products and services (in the original or a copy certified by a notary), as well as a translation in the Montenegrin language by a permanent court interpreter certified by a notary.

In addition to the above-mentioned documentation, it is necessary to submit the invoice of the product supplier or service provider, which serves as proof of the value of the delivered products or services, and for which amount VAT payment at the rate of 0% should be determined. This is due to the fact that the Revenue and Customs Administration issues a decision determining the payment of VAT at a rate of 0% only on the delivered products, i.e. the provided services resulting from the contractual relationship, and not on the total contracted amount, all in accordance with the provisions of Article 12 and 13 of the Rulebook on the procedure for exempting investors from paying value added tax and the delivery of certain products and services, and in connection with the provision of article 25 paragraph 1 point 12a of the Law on value added tax.

Since it is a complex way of financing (the sources of financing are: loans, grants and funds from the current and capital budgets), the Ministry of Education, as the beneficiary of funds, must state exactly which sources of financing are used for delivered products/provided services. If different sources of financing (loan, grant and funds from the current and capital budget) are used for the payment according to the submitted pro-invoice of the product supplier or service provider, it is also necessary to indicate how much of the total amount provided for payment is determined from the loan funds, how much from the grant, and how much from the budget. In this regard, for the amount of funds used from the loan, it is necessary to submit a request for exemption from paying VAT to the Revenue and Customs Administration as the competent authority, for the amount of funds used from donations/grants, it is necessary to submit a request for the issuance of a certificate for exemption from the payment of VAT to the state administration body responsible for the implementation of the mentioned project (i.e. Ministry of Education), while the payment of VAT at the rate of 21% should be determined for the funds used from the budget.

Bill of Quantities

To fill in the BoQ form, see the separate folder under the heading: Section IV Bill of Quantities

**INTRODUCTION**

1. General

* 1. The bill of quantities (Section IV-Bidding Forms) is the document containing an itemised breakdown of the works to be carried out in a unit price contract, indicating a quantity for each item and the corresponding unit price. The quantities set out in the bill of quantities are estimated quantities. Detailed descriptions of the positions are given within the technical specification and are an integral part of the Bill of quantities.

The amounts due will be calculated by measuring the actual quantities of the works executed and by applying the unit rates to the quantities actually executed for each item.

2. Specific to BoQ

2.1 The prices inserted in the bill of quantities and price schedule are to be the full inclusive values of the works described under the items, including all costs and expenses that may be required in and for the construction of the works described, together with any temporary works and installations which may be necessary and all general risks, liabilities and obligations specified or implied in the documents on which the tender is based. It will be assumed that establishment charges, profit and allowances for all obligations are spread evenly over all unit rates.

2.2 Save where the technical specifications or the bill of quantities and the price schedule specifically and expressly state otherwise, only permanent works are to be measured.

2.3 No allowance will be made for loss of materials or volume thereof during transport or compaction.

2.4 The prices of the bill of quantities and price schedule are all-inclusive and include any non-exonerated tax or fiscal duty. VAT determined for Montenegro will be added to the total price of the bid as requested in the Letter of Bid.

2.5 The units of measurement used in the annexed technical documentation are those of the International System of Units (SI). Nᵒ other units may be used for measurements, pricing, detail drawings etc. (Any units not mentioned in the technical documentation must also be expressed in terms of the SI.) Abbreviations used in the bill of quantities are to be interpreted as follows:

mm means millimetre

m means metre

mm² means square millimetre

m² means square metre

m³ means cubic metre

kg means kilogram

to means tonne (1000 kg)

pcs means pieces

h means hour

L.s. means Lump sum

km means kilometre

l means litre

% means per cent

N.d means nominal diameter

m/m means man-month

m/d means man-day

|  |
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| Technical Proposal |

* Form 1: Site Organization
* Form 2: Method Statement
* Form 3: Mobilization Schedule
* Form 4: Construction Schedule
* Form 5: Environmental and Social Management Strategies and Implementation Plans
* Form 5: Quality Assurance Plan
* Form 6: Environmental Management Plan (EMP)
* Form 7: List of Materials
* Form 8 EQU: Equipment
* Form 9 PER-1: Proposed Personnel
* Form 10 PER-2: Resume of Proposed Personnel
* Form 11 PER 3: Overview of the Bidder’s staff
* Form 12 SUB: Sub-contracting

Form 1: Site Organization

Bidder will provide a Site organisation plan that insures a safe and healthy construction site taking into consideration: traffic management plan, protecting of public, materials storage and waste management, legal requirements for welfare facilities on the site, administration facilities etc.

During the supervision of civil works the Supervisor will have his office (equipped with six working stations, meeting facilities, toilets etc) provided by the bidder at bidder’s own expenses, on the work site covering all utility costs apart from phone expenses.

Please attach sketches and data detailing the accommodation and facilities intended to be provided by the bidder under the relevant items in the bill of quantities/breakdown of the overall price.

Signature .................................................... Date ............................................

(*person(s) authorised to sign on behalf of the tenderer*)

Form 2: Method Statement

The Bidder shall provide a comprehensive Work Method Statement in order to demonstrate a clear understanding of the Works by providing written descriptions, with drawings where applicable, of the methods proposed by the Bidder for carrying out the Works. For example the Bidder shall indicate the labour proposed to be involved in the major activities of work, spoil areas, materials suppliers and the proposed means of haulage; the sequence of work and numbers of concurrent work fronts proposed; the location of the Bidder’s site offices, and Engineer’s offices, agreement for the security of equipment on the site, site warehouses, deliveries and site access, dismantling, laboratory etc.; the activities of subcontractors and the Bidder’s proposals for management of them; the activities of joint-venture partners etc.

Failure to provide detailed and acceptable technical information in accordance with the above requirements may lead to the rejection of the bid.

Signature ....................................................

(*person(s) authorised to sign on behalf of the tenderer*) Date ............................................

Form 3: Mobilization Schedule

In accordance with the Special Conditions, Sub-Clause 12, the Contractor shall not carry out mobilization to Site unless the Supervisor gives consent that appropriate measures are in place to address environmental and social risks and impacts, which at a minimum shall include applying the Management Strategies and Implementation Plans (MSIPs) and Covenant of integrity submitted as part of the

Bid and agreed as part of the Contract.

Describe into detail all activities related to the transport of the equipment, personnel, operating supplies to the site, establishment of the office and other necessary facilities at the site, installation of the safety fence, removal and installation of the information signs and all other activities that should take place prior to the commencement of Works.

Signature ....................................................

(*person(s) authorised to sign on behalf of the tenderer*) Date ............................................

Form 4: Construction Schedule

Bidder shall provide a provisional Construction Schedule showing the order of procedure and timing in which the Bidder proposes to carry out the Works. The programme shall show, inter alia: all dates and times specified in the Contract; the order and timing of the Temporary and Permanent Work; the quantities of Temporary and Permanent Work expected to be re/constructed each month; the resources (equipment, labour etc.) required each month to produce these quantities of work; all utilities work, the intermediate milestones, the relationship between activities; the critical path; the date by which the Contractor requires any information or anything else the Contracting authority is required to provide to the Contractor including possession of Site. In preparing the Programme of Work the Bidder shall take note of prevailing climatic conditions.

The proposed location of your main office on the site, stations (steel/concrete/asphalt structures), warehouses, laboratories, accommodation, etc. (sketches to be attached as required) shall be provided.

Give a brief outline of your programme for completing the works in accordance with the required method of construction and stated time of completion.

Attach a critical milestone bar chart (schedule of execution) representing the construction programme and detailing relevant activities, dates, allocation of labour and plant resources, etc.

If the bidder plans to subcontract part of the works, he must provide the following details:

|  |  |  |  |
| --- | --- | --- | --- |
| Work intended to be subcontracted | Name and details of subcontractors | Value of subcontracting as percentage of the total cost of the project | Experience in similar work (details to be specified) |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

Failure to provide detailed and acceptable technical information in accordance with the above requirements may lead to the rejection of the bid.

Signature .......................................................

(person(s) authorised to sign on behalf of the tenderer)

Date .....................................

Form 5: Cash Flow Schedule

Under this section heading the Tenderer has to submit an overall cash flow schedule including all works sections.

The Tenderer shall submit a non-binding estimate of the cash flow based on his tender prices from the Schedule of Payments and his tender programme.

The forecast shall show separately the effects of

* retention
* advanced payment.

The selected Contractor in accordance with the provisions of the Contract shall then update the cash flow estimation with the commencement date.

Cash flow estimation:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | Months | | | | | | | |
| 1 | 2 | 3 | … | … | 12 | … | 17 |
| Net amounts due to the Contractor |  |  |  |  |  |  |  |  |
| Advanced payment |  |  |  |  |  |  |  |  |
| Retention |  |  |  |  |  |  |  |  |
| Total |  |  |  |  |  |  |  |  |

Signature .................................................

(a person or persons authorised to sign on behalf of the tenderer)

Date..................

Form 6: ES Management Strategies and Implementation Plans

#### The Bidder shall submit comprehensive and concise Environmental and Social Management Strategies and Implementation Plans (ES-MSIP) as required by ITB 11.1 (i) of the Bid Data Sheet. These strategies and plans shall describe in detail the actions, materials, equipment, management processes etc. that will be implemented by the Contractor, and its subcontractors.

#### In developing these strategies and plans, the Bidder shall have regard to the ES provisions of the contract including those as may be more fully described in theWorks Requirements described in Section VII.

In order to address potential environmental impacts associated with the construction of the Works as outlined in the Bidding Documents, the Bidder may include, but should not necessary be limited, to the following:

* Solid Waste Disposal of all construction material and disposal sites for excess and waste materials in an environmentally safe manner; the material should be recycled to the extent possible and where this is not possible, it should be disposed of away from the site in a suitable landfill;
* Liquid Waste Management related to potential spills of combustibles and chemicals used during the construction in an environmentally safe manner away from the site;
* Minimize Equipment Impacts related to the use of heavy machinery in relation to human health and the general environment. This includes minimizing potential damage on the vegetation, noise emissions, dust and accidental spills of combustibles which may lead to the contamination of potable water;
* Sanitary Waste Disposal from all human wastes at the construction camps in an in an environmentally safe manner (e.g., chemical latrines).
* Quarries and Borrow Pits, the Bidder shall describe from where he will extract the materials and which measures he will take in order to minimize the environmental impact, during and after the construction period.

Once the successful Bidder is selected, he shall as the Contractor meet the requirements of the relevant environmental authorities and obtain the required approvals.

All costs related to the above elements shall be included by the Bidder in the amounts for the relevant items as a part of the Bid.

Signature ....................................................

(*person(s) authorised to sign on behalf of the tenderer*) Date ............................................

Form 7: Quality Assurance Plan

Please provide hereunder details of the Quality Assurance Plan proposed to be used in order to ensure compliance with the Contract.

The details must include an outline of the Quality Assurance procedures for this Contract. ISO Certificates or other accreditations must be attached in line with the laws of Montenegro.

Failure to provide detailed and acceptable technical information in accordance with the above requirements may lead to the rejection of the bid.

Signature ....................................................

(*person(s) authorised to sign on behalf of the tenderer*) Date ............................................

Form 8: EQU:

**Equipment**

The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III, Evaluation and Qualification Criteria. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder.

|  |  |  |
| --- | --- | --- |
| Item of equipment | | |
| Equipment information | Name of manufacturer | Model and power rating |
|  | Capacity | Year of manufacture |
| Current status | Current location | |
|  | Details of current commitments | |
|  |  | |
| Source | Indicate source of the equipment  o Owned o Rented o Leased o Specially manufactured | |

Omit the following information for equipment owned by the Bidder.

|  |  |  |
| --- | --- | --- |
| Owner | Name of owner | |
|  | Address of owner | |
|  |  | |
|  | Telephone | Contact name and title |
|  | Fax | Telex |
| Agreements | Details of rental / lease / manufacture agreements specific to the project | |
|  |  | |
|  |  | |

The bidder must indicate whether this equipment is owned, hired or used by a subcontractor. Manufacturer’s documents fully describing the equipment, including latest proof of proper certificates of completed technical tests issued by the relevant authorities, must be submitted with the bid.

Signature ....................................................

(*person(s) authorised to sign on behalf of the tenderer*) Date ..........................................

Form 9: PER -1

**Contractor’s Representative and Key Personnel Schedule**

Bidders should provide the names and details of the suitably qualified Contractor’s Representative and Key Personnel to perform the Contract. The data on their experience should be supplied using the Form PER-2 below for each candidate.

**Contractor’ Representative and Key Personnel**

|  |  |  |
| --- | --- | --- |
| **1.** | **Title of position:** Contractor’s Representative | |
|  | **Name of candidate:** | |
|  | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
|  | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
|  | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |
| **2.** | **Title of position:** *[insert title]* | |
|  | **Name of candidate:** | |
|  | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
|  | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
|  | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |
| **3.** | **Title of position:** *[insert title]* | |
|  | **Name of candidate:** | |
|  | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
|  | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
|  | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |
| **4.** | **Title of position:** *[insert title]* | |
|  | **Name of candidate:** | |
|  | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
|  | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
|  | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |
| **5.** | **Title of position:** *[insert title]* | |
|  | **Name of candidate** | |
|  | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
|  | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
|  | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |
| **6.** | **Title of position:** *[insert title]* | |
|  | **Name of candidate** | |
|  | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
|  | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
|  | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |

Signature ....................................................

(*person(s) authorised to sign on behalf of the tenderer*) Date ..........................................

Form 10: PER-2:

**Resume and Declaration**

**Contractor’s Representative and Key Personnel**

|  |
| --- |
| **Name of Bidder** |

|  |  |  |
| --- | --- | --- |
| **Position [#*1*]: [*title of position from Form PER-1*]** | | |
| **Personnel information** | **Name:** | **Date of birth:** |
|  | **Address:** | **E-mail:** |
|  |  |  |
|  | **Professional qualifications:** | |
|  | **Academic qualifications:** | |
|  | **Language proficiency:***[language and levels of speaking, reading and writing skills]* | |
| **details** |  | |
|  | **Address of Contracting authority:** | |
|  | **Telephone:** | **Contact (manager / personnel officer):** |
|  | **Fax:** |  |
|  | **Job title:** | **Years with present Contracting authority:** |

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

|  |  |  |  |
| --- | --- | --- | --- |
| **Project** | **Role** | **Duration of involvement** | **Relevant experience** |
| *[main project details]* | *[role and responsibilities on the project]* | *[time in role]* | *[describe the experience relevant to this position]* |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**Declaration**

I, the undersigned *[ insert either “Contractor’s Representative” or “Key Personnel” as applicable]* , certify that to the best of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Bid:

|  |  |
| --- | --- |
| **Commitment** | **Details** |
| **Commitment to duration of contract:** | *[insert period (start and end dates) for which this Contractor’s Representative or Key Personnel is available to work on this contract]* |
| **Time commitment:** | *[insert period (start and end dates) for which this Contractor’s Representative or Key Personnel is available to work on this contract]* |

I understand that any misrepresentation or omission in this Form may:

1. be taken into consideration during Bid evaluation;
2. result in my disqualification from participating in the Bid;
3. result in my dismissal from the contract.

**Name of** Contractor’s Representative or **Key Personnel: [*insert name*]**

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: (day month year): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Countersignature of authorized representative of the Bidder:**

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: (day month year): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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| Form 11: PER 3:  **OVERVIEW OF THE BIDDER’S STAFF** |

i - Overview

a - Directors and management ........................

b - Administrative staff ........................

c - Technical staff

- Engineers ........................

- Surveyors

- Foremen ........................

- Mechanics

- Technicians ........................

- Machine operators

- Drivers ........................

- Other skilled staff

- Labourers and unskilled staff ........................

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Total ===========

ii - Site operatives to be employed on the contract (if relevant)

a - Site management ........................

b - Administrative staff ........................

c - Technical staff

- Engineers ........................

- Surveyors

- Foremen ........................

- Mechanics

- Technicians ........................

- Machine operators

- Drivers ........................

- Other skilled staff

- Labourers and unskilled staff ........................

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Total ===========

Signature ....................................................

(*person(s) authorised to sign on behalf of the tenderer*) Date ............................................

Form 12 SUB:

**Sub-contracting**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Item(s) of Bill of Quantities | Type of Work(s) | Approx. Value  (in Euro) | % of Bid Price | Name and Address of Sub-contractor | Similar Works Executed (Year, Location, Client) |
| (if you do not plan to sub-contract items of work, state ‘Not applicable’) | | | | | |
|  |  |  |  |  |  |
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Notes:

1. The Bidder should attach subcontractors’ certificates of completion signed by previous Contracting authority’s in order to prove the subcontractors’ experience in the area of the Work proposed to be subcontracted.

2. The bidder must submit the Letter of Intent issued and signed by the subcontractors.

Signature ....................................................

(*person(s) authorised to sign on behalf of the tenderer*) Date ..........................................

Bidders Qualification

To establish its qualifications to perform the contract in accordance with Section III (Evaluation and Qualification Criteria) the Bidder shall provide the information requested in the corresponding Information Sheets included hereunder.

List of Forms:

* Form 13: ELI -1.1: Bidder Information Form
* Form 14: ELI -1.2: Bidder's JV Information Form
* Form 15 CON – 2: Historical Contract Non-Performance, Pending Litigation and Litigation History
* Form 16 CON-3 Environmental and Social (ES) Performance Declaration
* Form 17: FIN – 3.1: Financial Situation and Performance
* Form 18: FIN – 3.2: Average Annual Construction Turnover
* Form 19: FIN – 3.3: Financial Resources
* Form 20: FIN – 3.4: Current Contract Commitments / Works in Progress
* Form 21: EXP - 4.1: General Construction Experience
* Form 22: EXP - 4.2 (a): Specific Construction and Contract Management Experience
* Form of Bid Security
* Power of Attorney
* Authority to seek information
* Covenant of Integrity and Environmental and Social Covenant

Form:13 ELI -1.1

Bidder Information Form

Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  
ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  
Page *\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

|  |
| --- |
| Bidder's name |
| In case of Joint Venture (JV), name of each member: |
| Bidder's actual or intended country of registration:  *[indicate country of Constitution]* |
| Bidder's actual or intended year of incorporation: |
| Bidder's legal address [in country of registration]: |
| Bidder's authorized representative information  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Address: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Telephone/Fax numbers: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  E-mail address: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |
| 1. Attached are copies of original documents of  🞎 Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITB 4.3.  🞎 In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1.  🞎 In case of Government-owned enterprise or institution, in accordance with ITB 4.5 documents establishing:   * Legal and financial autonomy * Operation under commercial law * Establishing that the Bidder is not dependent agency of the Contracting authority   2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. |

Form 14: ELI -1.2

Bidder's JV Information Form  
(to be completed for each member of Bidder’s JV)

Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* of *\_\_\_\_\_\_\_\_\_\_\_\_* pages

|  |
| --- |
| Bidder’s JV name: |
| JV member’s name: |
| JV member’s country of registration: |
| JV member’s year of constitution: |
| JV member’s legal address in country of constitution: |
| JV member’s authorized representative information  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Telephone/Fax numbers: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  E-mail address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| 1. Attached are copies of original documents of  🞎 Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITB 4.3.  🞎 In case of a Government-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and absence of dependent status, in accordance with ITB 4.5.  2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. |

Form 15: CON-2

Historical Contract Non-Performance, Pending Litigation and Litigation History

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*JV Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

|  |  |  |  |
| --- | --- | --- | --- |
| Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria | | | |
|  Contract non-performance did not occur since 1st January *[insert year]*   Contract(s) not performed since 1st January *[insert year]* | | | |
| **Year** | **Non- performed portion of contract** | **Contract Identification** | **Total Contract Amount (current value, currency, exchange rate and US$ equivalent)** |
| *[insert year]* | *[insert amount and percentage]* | Contract Identification: *[indicate complete contract name/ number, and any other identification]*  Name of Contracting authority: *[insert full name]*  Address of Contracting authority: *[insert street/city/country]*  Reason(s) for non-performance: *[indicate main reason(s)]* | *[insert amount]* |
| Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria | | | |
|  No pending litigation | | | |
|  Pending litigation | | | |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Year of dispute** | | **Amount in dispute (currency)** | | **Contract Identification** | **Total Contract Amount (currency), USD Equivalent (exchange rate)** |
|  | |  | | Contract Identification: \_\_\_\_\_\_\_\_\_  Name of Contracting authority: \_\_\_\_\_\_\_\_\_\_\_\_  Address of Contracting authority: \_\_\_\_\_\_\_\_\_\_  Matter in dispute: \_\_\_\_\_\_\_\_\_\_\_\_\_\_  Party who initiated the dispute: \_\_\_\_  Status of dispute: *\_\_\_\_\_\_\_\_\_\_\_* |  |
|  | |  | | Contract Identification:  Name of Contracting authority:  Address of Contracting authority:  Matter in dispute:  Party who initiated the dispute:  Status of dispute: |  |
| Litigation History in accordance with Section III, Evaluation and Qualification Criteria | | | | | |
|  No Litigation History   Litigation History | | | | | |
| **Year of award** | **Outcome as percentage of Net Worth** | | **Contract Identification** | | **Total Contract Amount (currency), USD Equivalent (exchange rate)** |
| *[insert year]* | *[insert percentage]* | | Contract Identification: [indicate complete contract name, number, and any other identification]  Name of Contracting authority: *[insert full name]*  Address of Contracting authority: *[insert street/city/country]*  Matter in dispute: *[indicate main issues in dispute]*  Party who initiated the dispute: *[indicate “Contracting authority” or “Contractor”]*  Reason(s) for Litigation and award decision *[indicate main reason(s)]* | | *[insert amount]* |

Form 16: CON-3

**Environmental and Social (ES) Performance Declaration**

*[The following table shall be filled in for the Bidder, each member of a Joint Venture and each Specialized Subcontractor]*

Bidder’s Name: *[insert full name]*Date: *[insert day, month, year]*Joint Venture Member’s or Specialized Subcontractor’s Name: *[insert* *full name]*ICB No. and title: *[insert ICB number and title]*Page *[insert page number]* of *[insert total number]* pages

|  |  |  |  |
| --- | --- | --- | --- |
| Environmental and Social (ES) Performance Declaration  in accordance with Section III, Qualification Criteria and Requirements | | | |
| 🞎 **No suspension or termination of contract**: An Contracting authority has not suspended or terminated a contract and/or called the performance security for a contract for reasons related to Environmental and Social (ES) performance since the date specified in Section III Evaluation and Qualification Criteria Sub-Factor 2.5.  🞎 **Declaration of suspension or termination of contract**: The following contract(s) has/have been suspended or terminated and/or Performance Security called by an Contracting authority(s) for reasons related to Environmental and Social (ES) performance since the date specified in Section III Evaluation and Qualification Criteria Sub-Factor 2.5. Details are described below: | | | |
| **Year** | **Suspended or terminated portion of contract** | **Contract Identification** | **Total Contract Amount (current value, currency, exchange rate and Euro equivalent)** |
| *[insert year]* | *[insert amount and percentage]* | Contract Identification: *[indicate complete contract name/ number, and any other identification]*  Name of Contracting authority: *[insert full name]*  Address of Contracting authority: *[insert street/city/country]*  Reason(s) for suspension or termination: *[indicate main reason(s)]* | *[insert amount]* |
| *[insert year]* | *[insert amount and percentage]* | Contract Identification: *[indicate complete contract name/ number, and any other identification]*  Name of Contracting authority: *[insert full name]*  Address of Contracting authority: *[insert street/city/country]*  Reason(s) for suspension or termination: *[indicate main reason(s)]* | *[insert amount]* |
| *…* | *…* | *[list all applicable contracts]* | *…* |
| **Performance Security called by an Contracting authority(s) for reasons related to ES performance** | | | |
| Year | Contract Identification | | Total Contract Amount (current value, currency, exchange rate and Euro equivalent) |
| *[insert year]* | Contract Identification: *[indicate complete contract name/ number, and any other identification]*  Name of Contracting authority: *[insert full name]*  Address of Contracting authority: *[insert street/city/country]*  Reason(s) for calling of performance security: *[indicate main reason(s)]* | | *[insert amount]* |
|  |  | |  |

Form 17: FIN – 3.1:

**Financial Situation and Performance**

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*JV Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

**1. Financial data**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Type of Financial information in**  **(currency)** | **Historic information for previous** *\_\_\_\_\_\_\_\_\_years,*  *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  **(amount in currency, currency, exchange rate\*, Euro equivalent)** | | | | |
|  | Year 1 | Year 2 | Year 3 | Year4 | Year 5 |
| Statement of Financial Position (Information from Balance Sheet) | | | | | |
| Total Assets (TA) |  |  |  |  |  |
| Total Liabilities (TL) |  |  |  |  |  |
| Total Equity/Net Worth (NW) |  |  |  |  |  |
| Current Assets (CA) |  |  |  |  |  |
| Current Liabilities (CL) |  |  |  |  |  |
| Working Capital (WC) |  |  |  |  |  |
| Information from Income Statement | | | | | |
| Total Revenue (TR) |  |  |  |  |  |
| Profits Before Taxes (PBT) |  |  |  |  |  |
| Cash Flow Information | | | | | |
| Cash Flow from Operating Activities |  |  |  |  |  |

\*Refer to ITB 15 for the exchange rate

**2. Sources of Finance**

Specify sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.

|  |  |  |
| --- | --- | --- |
| **No.** | **Source of finance** | **Amount (Euro equivalent)** |
| 1 |  |  |
| 2 |  |  |
| 3 |  |  |
|  |  |  |

Please enclose a reference/certificate about the company’s access to credit facilities (maximum

amount of credit facility to be stated in euro or NC equivalent)

**3. Financial documents**

The Bidder and its parties shall provide copies of financial statements for *\_\_\_\_\_\_\_\_\_\_\_*years pursuant Section III, Evaluation and Qualifications Criteria, Sub-factor 3.1. The financial statements shall:

(a) reflect the financial situation of the Bidder or in case of JV member, and not an affiliated entity (such as parent company or group member).

(b) be independently audited or certified in accordance with local legislation.

(c) be complete, including all notes to the financial statements.

(d) correspond to accounting periods already completed and audited.

🞎 Attached are copies of financial statements[[22]](#footnote-23) for the *\_\_\_\_\_\_\_\_\_\_\_\_*years required above; and complying with the requirements

Form 18:FIN – 3.2:

**Average Annual Construction Turnover**

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*JV Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | | **Annual turnover data (construction only)** | | |
| **Year** | **Amount**  **Currency** | | **Exchange rate** | **Euro equivalent** |
| *[indicate year]* | *[insert amount and indicate currency]* | |  |  |
|  |  | |  |  |
|  |  | |  |  |
|  |  | |  |  |
|  |  | |  |  |
| Average Annual Construction Turnover \* |  | |  |  |

\* See Section III, Evaluation and Qualification Criteria, Sub-Factor 3.2.

In a case of JV please insert exact percentage for the Leader and each member.

Please attach documentary evidence for certified payments received for works contracts in progress and/or completed within the last three (3) years (i.e Final/interim payment certificates certified by the supervising engineer).

Form 19:FIN – 3.3:

**Financial Resources**

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contract or contracts as specified in Section III (Evaluation and Qualification Criteria)

|  |  |  |
| --- | --- | --- |
| **Financial Resources** | | |
| **No.** | **Source of financing** | **Amount (Euro equivalent)** |
| 1 |  |  |
| 2 |  |  |
| 3 |  |  |
|  |  |  |

Form 20:FIN – 3.4:

**Current Contract Commitments / Works in Progress**

Bidders and each member to a JV should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

|  |
| --- |
| **Current Contract Commitments** |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| No. | Name of Contract | Contracting authority’s **Contact Address, Tel, Fax** | **Value of Outstanding Work**  **[Current Euro Equivalent]** | **Estimated Completion Date** | **Average Monthly Invoicing Over Last Six Months [ Current Euro Equivalent]** |
| 1 |  |  |  |  |  |
| 2 |  |  |  |  |  |
| 3 |  |  |  |  |  |
| 4 |  |  |  |  |  |
| 5 |  |  |  |  |  |
|  |  |  |  |  |  |

Form 21:EXP - 4.1

General Construction Experience

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*JV Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

|  |  |  |  |
| --- | --- | --- | --- |
| Starting  Year | Ending  Year | Contract Identification | Role of  Bidder |
|  |  | Contract name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Brief Description of the Works performed by the  Bidder: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Amount of contract: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Name of Contracting authority: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Address: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |  |
|  |  | Contract name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Brief Description of the Works performed by the  Bidder: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Amount of contract: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Name of Contracting authority: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Address: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |  |
|  |  | Contract name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Brief Description of the Works performed by the  Bidder: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Amount of contract: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Name of Contracting authority: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Address: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |  |

Form 22: EXP - 4.2(a)

**Specific Construction and Contract Management Experience**

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*JV Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ICB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Similar Contract No.** | **Information** | | | | |
| Contract Identification |  | | | | |
| Award date |  | | | | |
| Completion date |  | | | | |
| Role in Contract | Prime Contractor 🞎 | | Member in  JV  🞎 | Management Contractor  🞎 | Sub-contractor 🞎 |
| Total Contract Amount |  | | | Euro | |
| If member in a JV or sub-contractor, specify participation in total Contract amount |  |  | |  | |
| Contracting authority's Name: |  | | | | |
| Address:  Telephone/fax number  E-mail: |  | | | | |

**Form EXP - 4.2(a)** *(continuation)*

**Specific Construction and Contract Management Experience (cont.)**

|  |  |
| --- | --- |
| **Similar Contract No.** | **Information** |
| Description of the similarity in accordance with Sub-Factor 4.2(a) of Section III: |  |
| 1. Amount |  |
| 2. Physical size of required works items |  |
| 3. Complexity |  |
| 4. Methods/Technology |  |
| 5. Construction rate for key activities |  |
| 6. Other Characteristics |  |

**Note to Form EXP – 4.1 and 4.2:**

1. The contract is considered completed if at least taking over or equivalent certificate is issued by a competent authority (Employers, Contracting Authorities, Clients or Engineers) clearly indicating the date of successful completion.
2. Tenderers must submit such a certificate signed by the competent authority for the project concerned.
3. The project which is not completed (i.e. taking over / provisional acceptance / final acceptance / work completion certificate not issued) will not be taken into consideration.
4. The Contracting Authority reserves the right to ask for originals of the respective certificates signed by the Project Managers/Contracting Authority of the concerned projects.
5. If a tenderer has implemented the project in a joint venture/consortium, it should be clear from the documentary evidence (taking over / provisional acceptance / final acceptance / work completion certificates) the percentage the tenderer has successfully completed. Should the submitted documents not provide clear information on the percentage of the works, it will be clarified by further documents.

|  |
| --- |
| Form of Bid Security |

**(Demand Guarantee)**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Beneficiary:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Invitation for Bids No:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Date:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**BID GUARANTEE No.:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Guarantor:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

We have been informed that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its bid (hereinafter called "the Bid") for the execution of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ under Invitation for Bids No. \_\_\_\_\_\_\_\_\_\_\_ (“the IFB”).

Furthermore, we understand that, according to the Beneficiary’s conditions, bids must be supported by a bid guarantee.

At the request of the Applicant, we , as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_\_\_\_\_\_\_  (\_\_\_\_\_\_\_\_\_\_\_\_) upon receipt by us of the Beneficiary’s complying demand, supported by the Beneficiary’s statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:

(a) has withdrawn its Bid prior to the Bid validity expiry date set forth in the Applicant’s Letter of Bid, or any extended date provided by the Applicant; or

(b) having been notified of the acceptance of its Bid by the Beneficiary prior to the expiry date of the Bid Validity or any extension thereto provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the performance security and, if required, the Environmental and Social(ES) Performance Security, in accordance with the Instructions to Bidders (“ITB”) of the Beneficiary’s bidding document.

This guarantee will expire: (a) if the Applicant is the successful bidder, upon our receipt of copies of the contract agreement signed by the Applicant and the performance

security and, if required, the Environmental and Social(ES) Performance Security, issued to the Beneficiary in relation to such contract agreement; or (b) if the Applicant is not the successful bidder, upon the earlier of (i) our receipt of a copy of the Beneficiary’s notification to the Applicant of the results of the bidding process; or (ii)twenty-eight days after the expiry date of the Bid Validity.

Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*[signature(s)]*

Power of Attorney

Bidder must attach here a Power of Attorney authorizing their empowered representative to submit the Bid and to commit the Bidder to a contract. The Power of Attorney must give the name, address and capacity of the person so empowered and must be signed and dated by a person duly authorized by the Bidder. Minutes of board meetings or other documents authorizing the signatory of the Power of Attorney must be attached. The person who grants the Power of Attorney must be duly authorized to do so and the Bidder must provide written evidence of this.

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

Signature ....................................................

(*person(s) authorised to sign on behalf of the tenderer*) Date ..........................................

Authority to Seek Information

The Contracting authority and its authorized representatives are hereby to raise any questions or verify statements, documents and information submitted in connection with this bid and to seek clarification from our bankers and clients regarding any financial and technical aspects. This letter will also serve as authorization to any individual or authorized representative of any institution referred to in the supporting information to provide such information deemed necessary and requested by Contracting authority to verify statements and information provided in this application or with regard to the resources, experience and competence of the Bidder.

The tenderer grants the promoter, the Bank and auditors appointed by either of them, as well as any authority or European Union institution or body having competence under European Union law, the right to inspect and copy the books and records of the tenderer, contractor, supplier or consultant in connection with any Bank-financed contract.

Signature ....................................................

(*person(s) authorised to sign on behalf of the tenderer*) Date ..........................................

Covenant of integrity

Please refer to Form attached to the Section VII, EIB’s Anti-Fraud Policy

Environmental and social Covenant

Please refer to Form attached to the Section VII, Works Requirements- Environmental and social requirement.

Section V. Eligible Countries

**Eligibility for the Provision of Goods, Works and Non Consulting Services in   
Bank-Financed Procurement**

In reference to ITB 4.7 and 5.1:

In the usual case of projects (both inside and outside the Union) financed by the Bank’s “own resources” (funds raised mainly through the Bank’s borrowings on capital markets), firms originating from all countries of the world are eligible to tender for works, goods and services contracts.

The Bank shall not provide or otherwise make funds available, directly or indirectly, to or for the benefit of an individual or entity that is subject to financial sanctions imposed by the EU[[23]](#footnote-24), either autonomously or pursuant to the financial sanctions decided by the United Nations Security Council on the basis of Article 41 of the UN Charter.

In addition, individuals or firms may not be eligible to tender in application of section 1.4 on Ethical Conduct, Guide to Procurement for project financed by the EIB.

For more details refer to Section VI.

Section VI. EIB’s Anti-Fraud Policy

Sections given below are integral part of the Guide to Procurement for projects financed by the EIB, dated September 2018.

Link: <https://www.eib.org/en/publications/guide-to-procurement>

**1.4. Ethical Conduct**

It is the Bank’s policy to require that promoters, as well as tenderers, contractors, suppliers and consultants under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. The Bank reserves the right to take all appropriate action in order to enforce this policy.

Moreover, the Bank is committed to ensuring that its loans are used for the purposes intended and its operations are free from **Prohibited Conduct** (including but not limited to, fraud, corruption, collusion, coercion, obstruction, money laundering and terrorist financing[[24]](#footnote-25)).

In pursuance of this policy as set out in EIB’s Anti-Fraud Policy, if it is established to the required standards[[25]](#footnote-26) that a project-related party[[26]](#footnote-27) has engaged in **Prohibited Conduct** in the course of a procurement process or implementation of a contract (to be) financed, the Bank:

a) May seek appropriate remediation of the Prohibited Conduct to its satisfaction;

b) May declare ineligible such project-related party to be awarded the contract; and/or

c) May withhold the Bank’s no objection to contract award[[27]](#footnote-28) and may apply appropriate contractual remedies, which may include suspension and cancellation, unless the Prohibited Conduct has been dealt with to the satisfaction of the Bank.

Furthermore, within the framework of its Exclusion Policy, the Bank may declare such project related party ineligible to be awarded a contract under any EIB project or to enter into any relationship with the Bank.

**3.6. Prohibited Conduct - Covenant of Integrity**

As noted in section 1.4, the Bank is committed to ensuring that its loans are used for the purposes intended and its operations are free from prohibited conduct (including but not limited to, fraud, corruption, collusion, coercion, obstruction and money laundering and terrorist financing). In particular, in countries outside the EU, the Bank will, as a general rule:

• Require any tenderer for works, goods or services, as a condition of admission to eligibility, to execute and attach to its tender a **Covenant of Integrity** in the form indicated below and

; and

• Require tenderer to grants the promoter, the Bank and auditors appointed by either of them, as well as any authority or European Union institution or body having competence under European Union law, the right to inspect and copy the books and records of the tenderer, contractor, supplier or consultant in connection with any Bank-financed contract.

The Bank reserves the right not to finance any contract in which tenderers/contractors have not issued to the promoter the **Covenant of Integrity** signed by a duly authorised person

For contracts awarded prior to the Bank’s involvement in the project, the promoters are encouraged to include the Covenant of Integrity. The requirement for a Covenant of Integrity may be waived for those private sector promoters who can satisfy the EIB that they have implemented anti-fraud standards at least equivalent to the Bank’s policy.

The EIB Covenant of Integrity (CoI) shall be included in the list of documents to be submitted as part of the tender. The CoI must be signed by all tenderers (including all Joint Venture/consortium members). Modification of the CoI text is not allowed.

It should be noted that, in the Covenant of Integrity, the tenderer is requested to self-declare all sanctions and/or exclusions (including any similar decisions having the effect of imposing conditions on the tenderer or its subsidiaries or to exclude the said tenderer or its subsidiaries, such as temporary suspension, conditional non-exclusion, etc.) imposed by the European institutions or any multilateral development banks (including the World Bank Group, the African Development Bank, the Asian Development Bank, European Bank for Reconstruction and Development, European Investment Bank or Inter-American Development Bank), regardless of the date of issue and the expiration or not of such decisions and of the current status of any sanction and/or exclusion. In this regard, any omission or misrepresentation, made knowingly or recklessly, may be considered as fraud under the EIB Anti-Fraud Policy. Therefore, the Employer reserves the right to reject any offer presenting an inaccurate or incomplete Covenant of Integrity, and may cause the rejection of the offer for prohibited conduct.”

**Note:**

**The Covenant of Integrity must be signed by all tenderers (duly authorised person) including all Joint Venture/consortium members.**

**(Modification of the CoI text is not allowed)**

**COVENANT OF INTEGRITY**

“We declare and covenant that neither we nor anyone, including any of our directors, employees, agents, joint venture partners or sub-contractors, where these exist, acting on our behalf with due authority or with our knowledge or consent, or facilitated by us, has engaged, or will engage, in any Prohibited Conduct (as defined below) in connection with the tendering process or in the execution or supply of any works, goods or services for the **Construction for the elementary school Vladimir Nazor, Podgorica** (the “Contract”) and covenant to so inform you if any instance of any such Prohibited Conduct shall come to the attention of any person in our organisation having responsibility for ensuring compliance with this Covenant.

We shall, for the duration of the tender process and, if we are successful in our tender, for the duration of the Contract, appoint and maintain in office an officer, who shall be a person reasonably satisfactory to you and to whom you shall have full and immediate access, having the duty, and the necessary powers, to ensure compliance with this Covenant.

We declare and covenant that neither we nor anyone, including any of our directors, employees, agents, joint venture partners or sub-contractors, where these exist, acting on our behalf with due authority or with our knowledge or consent, or facilitated by us, (i) is listed or otherwise subject to EU/UN Sanctions and (ii) in connection with the execution or supply of any works, goods or services for the Contract, will act in contravention of EU/UN Sanctions. We covenant to so inform you if any instance shall come to the attention of any person in our organisation having responsibility for ensuring compliance with this Covenant.

If (i) we have been, or any such director, employee, agent or joint venture partner, where this exists, acting as aforesaid has been, convicted in any court or sanctioned by any authority of any offence involving a Prohibited Conduct in connection with any tendering process or provision of works, goods or services during the five years immediately preceding the date of this Covenant, or (ii) any such director, employee, agent or a representative of a joint venture partner, where this exists, has been dismissed or has resigned from any employment on the grounds of being implicated in any Prohibited Conduct, or (iii) we have been, or any of our directors, employees, agents or joint venture partners, where these exist, acting as aforesaid has been excluded or otherwise sanctioned by the EU Institutions or any major Multi-lateral Development Bank (including World Bank Group, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, European Investment Bank or Inter-American Development Bank) from participation in a tendering procedure on the grounds of Prohibited Conduct, we give details of that conviction, dismissal or resignation, or exclusion below, together with details of the measures that we have taken, or shall take, to ensure that neither this company nor any of our directors, employees or agents commits any Prohibited Conduct in connection with the Contract [give details if necessary].

We acknowledge that if we are subject to an exclusion decision by the European Investment Bank (EIB), we will not be eligible to be awarded a contract to be financed by the EIB.

We grant Ministry of education, Montenegro, the European Investment Bank and auditors appointed by either of them, as well as any authority or European Union institution or body having competence under European Union law, the right to inspect and copy our books and records and those of all our sub-contractors under the Contract. We accept to preserve these books and records generally in accordance with applicable law but in any case for at least six years from the date of tender submission and in the event we are awarded the Contract, at least six years from the date of substantial performance of the Contract.”

For the purpose of this Covenant, Prohibited Conduct has the meaning provided in the EIB’s Anti-Fraud Policy[[28]](#footnote-29).

|  |  |
| --- | --- |
| Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | In the capacity of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

|  |
| --- |
| Signed\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

Duly authorised to sign the contract for and on behalf of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date \_

**PROCUREMENT-RELATED APPEAL PROCEDURE**

**Appeal procedure**

The appeal procedure, or the rights protection process, in this project is a two-step process. The appeal process within this project is a set of activities undertaken to protect the rights of participants of all procurement procedures in this project that use financing from the EIB.

Review procedures for remedies are available to any person or entity having or having had an interest in obtaining the contract and (at risk of) being harmed by an alleged infringement from applicable procurement rules.

A Tenderer is any person who participated in the public procurement procedure by submitting a bid or an application in the first phase of a restricted procedure and who, with a bid, submitted a guarantee for the seriousness of the bid within the same.

Where an appeal may be initiated for a procurement procedure other than national rules, but not limited to International Open competition, the language shall be one of the EU languages. Therefore, decisions of the appellate body need to be officially translated into the EU language used in the tender, for instances into English if that’s the language of the tender.

An appeal may be filed at all stages of the procurement procedure. For example and this list is not exhaustive, during the preparatory phase, which includes the bid preparation stage, the bid opening session, following contract award decision or following contract cancellation decision.

Procurement documentation and conditions of contract (evaluation criteria, evaluation process, rules for clarification and changes of tender documentation) used for the procurements will be internationally-recognized such as those prepared by Multilateral Development Banks or FIDIC (Fédération Internationale des Ingénieurs-Conseils) that are listed in the GtP.

In addition to these, complaints may also be filed against possible violations of the personal rights of the interested person/ tenderer, including:

* Application of the criteria for the selection of tenderers;
* Evaluation and analysis of the offer;
* Assessment of compliance of the offer with respect to market specifications;
* Application of other regulations of importance (tax regulation, construction regulations etc.)

**Appeal**

An appeal shall be submitted to the contracting authority in writing in three copies.

An appeal shall be submitted in the manner specified by the Tender Documentation, which can include a submission by hand, courier delivery or by electronic means to the archives of the contracting authority, or any other way providing delivery demonstrates the date of submission thereof.

An appeal shall include the allegation of irregularities in the procurement process, facts supporting the allegations and evidence of the offense committed, as well as a proposal for a resolution of the Appeal.

An integral part of the appeal is the proof of payment of the fee for conducting the procedure, which amounts to up to 2% of the estimated value of the procurement, the percentage of which is contained in the tender documentation. The maximum fee is EUR 20,000. In case of confirmation of the appeal.

When filing an appeal, the appellant must submit with the appeal proof of payment of funds to an account that will be opened by the Ministry of Finance specifically for this purpose, and which will be under the control of the Appellate Body.

In the event that the allegations are well-founded and the contracting authority accepts the appeal, the contracting authority notifies the Appellate Body by formal letter that the appeal has been filed, that it has been accepted and that it is necessary to reimburse the appellant. Also, if the contracting authority maintains that the appeal is unfounded and forwards it to the decision of the Appellate Body, and the Appellate Body accepts the appeal, the funds are refunded to the appellant. The Appellate Body is obliged to make a refund within 15 ordinary days from the date of publication of the decision on the appeal.

An appeal can be submitted during the next phases of the public procurement process:

* In the case of the restricted procurement procedures:
  + An appeal against the tender documents may be submitted after issuing of the tender documents on a second phase procedure or after publication of the Requests for an Expression of Interest (REOI), up to 5 business days before the deadline for submission of Expressions of Interest/proposals/bids.
  + An appeal against decisions and/or the decision-making process may be submitted after the announcement of the pre-qualification candidates and after the technical evaluation and/or the contract award notification (as applicable in case of the use of a two envelope tender evaluation) of the selected tenderer, during the standstill period, which may not exceed 10 ordinary days from the date of the receipt of the notification/decision on the contract award.
* In the case of an open public procurement procedure:
  + An appeal against the tender documents may be submitted from the date of publication of the tender dossier to no later than 5 business days before the deadline for the submission of tenders.
  + An appeal against the decisions and/or the decision-making process may be submitted after the technical evaluation and the contract award notification (as applicable in case of the use of a two envelope tender evaluation) of the selection of the tenderer, during the standstill period, which may not exceed 10 days from the date of the receipt of the notification/decision on the contract award.
* In the case of the national procurement procedures:
  + An appeal against the tender documents may be submitted after the issuing of the tender documents on a second phase procedure or after publication of the Requests for an Expression of Interest (REOI), up to 10 business days before the deadline for submission of Expressions of Interest/proposals/bids;
  + An appeal against decisions and/or the decision-making process may be submitted after the announcement of the pre-qualification candidates and after the contract award notification of the selected Tenderer and during the standstill period, which may not exceed 10 ordinary days from the date of the receipt of the notification/decision on the contract award.

An appeal shall be submitted to the Contracting Authority within the above deadlines, so that the appeal may be considered.

The contracting authority is also the first level of review. The contracting authority may only accept an appeal and, if the appeals are correct, modify the Tender Documents, modify the decision on selection/annulment of the procedure or annul the procedure in its entirety. In the case that the initial decision changes due to the appeal, a new standstill period begins. It is the responsibility of the contracting authority to initiate proceedings with the Appellate Body and, where applicable, to request refund of the fee paid in the event that the Appellate Body accepts the appeal. If the contracting authority assesses the appeal as unfounded, it shall submit its supporting documentation to the Appellate Body, formed for this project, for review and decision by the Appellate Body within no more than 8 business days from the date of receipt of the appeal.

*Conditional effect of the appeal: In the event that the appeal is forwarded to the Appellate Body, it will have ex-lege conditional effect until the final decision of the Appellate Body. Filing an appeal with the Appellate Body suspends any further activities in the present proceedings, pending the decision of the Appellate Body, no matter what stage the procurement procedure is at.*

**Decisions of the Appellate Body**

The Appellate Body shall decide on the appeal only within the content of the appeal. Respecting the limited content of the appeal, the Appellate Body also decides on possible violations of the procedure that may have a decisive impact on the outcome of the procedure and the award of the contract, as well as on the violation of the basic principles of public procurement. In its decision, the Appellate Body shall give reasons for its decision and give the contracting authority instructions for correcting any irregularities.

The Appellate Body may:

**Deny the appeal**, if it has been incomplete, if not submitted in time, if it is not submitted by an Interested Party, or tenderer, if it is not submitted by an authorized person, if it is not submitted with a proof of payment of the fee, and if it has not been founded on facts, i.e. if the allegations do not prove a violation of the rules of the procedure, a violation of the EIB’s GtP rules, a violation of the principles of public procurement, and/or non-compliance with other positive legislation.

**Adopt the appeal** in whole or in part and, through its decision, order the amendment of the qualification/ selection decision and/or modification of the Tender documentation. Within its decision, the Appellate Body will point out to the contracting authority the irregularities identified, eliminating them through the continuation of the procedure or through a new procedure.

The decisions of the Appellate Body are binding to all parties in the proceedings and the issues discussed by the Appeal cannot be part of a new appeal in the same proceedings.

Any contract signed contrary to the decision of the Appellate Body shall be null and void. A standstill period shall also be adopted after the Appellate Body has communicated it decision to the complainant.

The complainant has the ability to challenge the decision of the Appellate Body at an Administrative Court of Podgorica within 8 business days from the date of receipt of the Appellate Body’s decision. This complaint procedure does not postpone the continuation of the procurement procedure.

**Composition, organization and decision-making process of the Appellate body**

The Appellate Body is composed of a President and two members, appointed by the Government and accountable to the Government for its work. Representatives of the contracting authorities on the project, as well as persons who may be presumed to have a direct interest, as well as any other type of conflict of interest defined by the EIB’s GtP, during the project’s implementation, may not be appointed to the Appellate Body.

Members of the Appellate Body are appointed as individuals based on their prior experience in international and domestic procurement procedures.

The President represents the Appellate Body, schedules and conducts its sessions, and communicates with the contracting authorities and the appellant(s).

Members of the Appellate Body actively participate in the decision-making process and participate in the sessions of the Appellate body.

In addition to the President and Members of the Appellate Body, a secretary of the Appellate Body is appointed who is not entitled to vote and who cannot be from the representatives of the contracting authorities for the concerned project, nor be a person(s) who might have a direct interest in the implementation of the concerned project.

The official working language of this body is Montenegrin, while the decisions and content of this body shall also be provided in the language of the Tender, notably in case of International Open procurement competition, where the language shall be a language of the EU.

The Appellate Body works in such a way that all members are separately acquainted with the subject of the appeal and other relevant information regarding the proceedings, so that the decision is made at the session from which the transcript of minutes is made and by voting.

The Appellate Body may request additional statements from the appellant, contracting authorities as well as third parties in the proceedings and may organize individual or joint meetings with them to form an opinion on the appeal.

In the course of its work, if the subject matter of the appeal is of a specific technical content, the Appellate Body may seek professional technical support from individuals or organizations having specific knowledge in a given field, provided that they have no interest in the subject matter. The Appellate Body may also request additional expertise from national and/or international independent bodies in the area concerned.

Immediately upon receipt of the appeal, the secretary of the Appellate Body shall notify the President of its receipt. The President convenes the first session of the Appellate Body within 3 business days. In the absence of the President, the meeting shall be convened by a Member authorized by the President. At the first session, the Members are introduced to the appeal and taken up for consideration. The Appellate Body shall make its decision within 15 business days of the date of the first session at a special session, except in cases where further expert witnesses and meetings are required, when the time limit may be extended by another 10 business days. The President and the secretary make a decision, confirmed by the Members of the Appellate Body, who all transmit to the complainant and the contracting authority within 3 business days its confirmation, with required translation into the Tender language as necessary.

The minutes of all sessions of the Appellate Body shall be kept by the secretary of the Appellate Body for review at its request.

***(Sample of procurement-related appeal)***

*Appellants may use the following sample letter when making a procurement-related*

*appeal. However, complainants must modify the content to reflect the particular*

*circumstances of their appeal.*

*Text in red font is to assist the appellant in completing the letter. This should be*

*deleted prior to submitting the appeal.*

*Appellant’s letterhead which includes business name, business address (postal address) and street address (if different from the postal address)*

**Attention**: [insert full name of person, if applicable]

**Title/position**: [insert title/position]

**Promoter**: [insert name of Promoter]

**Email address**: [insert email address]

**Fax number**: [insert fax number] *delete if not used*

Dear [*name of Bidder representative*]

Procurement-related Appeal

Procurement project: [*insert the name of the procurement project*] Project reference: [*insert project reference number*]

Promoter: [*insert the name of the Borrower’s entity undertaking the procurement*]

On behalf of, [*insert the name of the appeal*] we are writing to complain about the above noted procurement process.

Current stage of procurement

The procurement process is currently [*describe the stage the procurement process has reached*].

Interest in making this appeal

The appelant is an interested party in the procurement process. The complainant is (CHOOSE THE APPROPRIATE OPTION: OPTION ONE) [a potential participant in this procurement opportunity and is interested in *[making an application to prequalify/be initially selected* or [*submitting a Bid.*]] OR OPTION TWO [an actual participant in this procurement opportunity and has submitted *[an application to prequalify/be initially selected*] or [*a Bid*] on [*insert date.*]]

Previous communication

(Describe any previous communication you have had with the Promoter in relation to the subject matter of this Appeal. Identify who you dealt with. Attach copies of any emails or letters or documents. If there has been no previous correspondence state) [*There has been no previous correspondence in relation to this Appeal.*]

Nature of appeal

This Appeal seeks to challenge the (Describe the nature of the Appeal. It must fall into one of the following categories.) [*Promoter’s Procurement Documents. / Promoter’s decision to exclude the complainant from a procurement process prior to contract award / Promoter’s decision to award the contract.*]

The relevant facts and circumstances leading to this Appeal are (Describe, in chronological order, the facts and circumstances leading to the Appeal.)

The adverse impact that has resulted is (Describe the nature of the adverse impact that has resulted.)

Grounds for challenge

The grounds for making this Appeal are (Identify the violation and inconsistency and the relevant section, paragraph or appendix of the Procurement Document, and/or Procurement Regulation that is allegedly been violated or there is inconsistency with )

Documents

In support of this Appeal we attach the following documents:

* 1. [*name the document, its date (if dated) and attach it to this letter*]
  2. [*name the document and attach it to this letter]*

(*If you have no documents that you wish to attach then state)* [*There are no documents in support of this Appeal.*]

Other information

Other relevant information about this complain is as follows: (*Describe any other information that is felt to be relevant to this Appeal*).

We look forward to receiving confirmation of receipt of this Appeal and your full response in due course.

Yours faithfully

[Bidder’s Authorized Representative details] Name: *[insert full name] Position: [insert]*

Address: *[insert Authorized Representative’s Address]*

Telephone/Fax numbers: *[insert Authorized Representative’s telephone/fax numbers]*

Email Address: *[insert Authorized Representative’s email address]*

PART 2 –Works Requirements

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| Section VII. Works Requirements |

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| Scope of Works  **INVESTOR: MINISTRY OF EDUCATION OF MONTENEGRO**  **URBAN PLANNING AND TECHNICAL CONDITIONS:** number 04-1662 dated 04/08/2022. issued by the Government of Montenegro  **FACILITY:** PRIMARY SCHOOL, floors PO+P+1  **LOCATION:** Cadastral plot no. 3079 and No. 3078/1, KO Podgorica 2, PUP of the Capital city of Podgorica.    The area of cadastral plots planned for construction is 15,750.00m2. The plots are on flat, irregularly shaped land. On cadastral plot 3078/1, there are three pavilions of the former Vladimir Nazor elementary school, an auxiliary building and a gymnasium. The auxiliary building and three elementary school pavilions are planned for removal, while the existing gymnasium will be retained.  The plots in question are located on the south side along Goca Delčeva Street and on the east side along Vuka Mićunovića Street. The traffic access to the elementary school facility should be solved in accordance with the concept of the school complex and the valid regulations from the PUP Podgorica. There is currently a parking space for the school complex along Goce Delčeva Street. On the west side of the site there are three balloon halls with sports fields that are retained.  **URBAN AND ARCHITECTURAL SOLUTION**  The school complex was designed according to urban planning and technical conditions numbered 04-1662 of 04/08/2022. year, valid laws, by-laws, regulations, norms and standards that are applied during the preparation of technical documentation for a facility of this type.  The school is located in the eastern part of the plot, oriented along its length in the north-south direction. The complex curriculum of the primary school is laid out within the framework of the three-track lamella. In front of the school - to the east, a school square was formed, which descends with an amphitheatre to the basement - a zone intended for changing rooms, extended stays and a library.  Vehicle access to the location is from Goca Delčeva street, and secondary - for the economic yard from Vuk Mićunovića street. Pedestrian access to the location is achieved via the school square from Vuka Mićunovića Street, and secondarily from Goce Delčeva Street - along a path that supports the memory of the former elementary school site on the route between the elementary school and the gymnasium, in a north-south direction.  In the opposite direction, east-west, a new identity of the place is realized through the school square that plunges from the east and creates a connection with the sports facilities in the west of the plot. In this way, flexibility is achieved in the use of extended stay and the library outside school hours.    **SPATIAL ORGANIZATION AND FUNCTIONAL CHARACTERISTICS OF THE SOLUTION**  The school was designed as a free-standing building with basement, ground floor and first floor (PO+P+1), for 1100 students in two shifts.  The entrance to the building is from the south-east side, across the school square. The position of the main entrance is emphasized by the portico, which is also a place where students can gather while being protected from the raining or exposure to intense sunlight.  The functional distribution of content was carried out within a three-tract system with “main and thematic classrooms” in the south-east tract, and specialized classrooms with cabinet and administration in the north-west tract, i.e. horizontal and vertical communications and sanitary blocks in the middle tract.  The three-tract organization in which the side tracts are determined by a strict function, and the center is undetermined, intended for chance encounters and extended learning, represents a valuable contribution to the topic of informal education and the transformation of the traditional monotonous school corridor into an interactive school street.  **The basement** is designed at an elevation of -3.50m. In the basement, there are service rooms, wardrobes, an extended stay and a library.  **The ground floor** is designed at an elevation of ±0.00, and it is also raised from the ground level by 40 cm. The projected unevenness is solved with a slight ramp in the parking area.  The arrangement of functions by tracts in relation to the entrance space is logical. The entrances with windshields for the first cycle, that is, the second and third cycles, are separated in accordance with the Rulebook on closer conditions for the establishment of institutions in the field of education and training (Official Gazette of Montenegro, No. 40 of June 22, 2006).  The entrance hall/multipurpose space through which vertical communications lead is designed as a gallery, at the height of two floors. Directly next to the entrance hall/multipurpose space in the south-eastern tract is a porter's office, a staff area and a classroom for music education with an accompanying cabinet - which is thus easily accessible to the multipurpose hall during a ceremony. In the south-eastern tract, 6 more classrooms were designed.  Horizontal and vertical communications and two sanitary blocks were designed in the middle section. The administration and 5 main classrooms are designed in the north-western tract.  **The first floor** is designed at an elevation of +4.00m. In the south-eastern tract, 4 main and 6 subject classrooms are planned. In the north-western tract, 4 specialized classrooms with cabinets, 2 IT classrooms, a small classroom, a cabinet for individual work and a common area for home classrooms are planned.  The liveliness of the middle tract was contributed by a series of vertical communications, double heights, and with two sanitary blocks at the ends of the corridor that represent a landmark-focus when moving. This tract is the result of an almost mathematically defined functional organization.  **The roof** is designed at an elevation of +8.00m. The roof lantern in the line of the middle tract increases the comfort and level of illumination in the central part of the school and contributes to better fire protection.  The projected horizontal and vertical communications are clean, clear, without unnecessary obstacles and at the same time suitable for people with reduced mobility. All internal communication spaces are additionally illuminated by means of glass niches at the ends of the corridors.  The project offers an almost prototype plan, with a strict orientation of classrooms to the south-east, that is, specialized classrooms with cabinets to the north-west. In all classrooms, natural light enters from the left.  The existing gymnasium will be retained, with the necessary reconstruction of the roof, locks, parquet, facade, which will be the subject of the main project. The color of the facade and locksmith of the gymnasium needs to be matched with the color of the facade and locksmith of the elementary school.  **ACCESS AND MOVEMENT OF PERSONS WITH REDUCED MOBILITY AND PERSONS WITH DISABILITIES**  In accordance with the current Rulebook on the conditions and methods of adapting facilities for access and movement of persons with reduced mobility and persons with disabilities ("Official Gazette of Montenegro", no. 51/08, 34/11, 35/13 and 33/14), in the complex is provided with:  • Access to persons with reduced mobility on all floors and in all rooms of the school and sports hall,  • Accessible toilets (one piece each) for people with reduced mobility, on all floors of the school and sports hall,  • Parking spaces for persons with reduced mobility and persons with disabilities, in all respects according to the parameters of the Ordinance, which prescribes a minimum number of parking spaces for persons with reduced mobility of 5% of the total capacity.  • The standards of mandatory elements of accessibility for overcoming height differences, elements of accessibility of independent living in accordance with the current Rulebook, were applied.  • The building has a relief orientation plan, tactile guide strips and warning lines.  **ARCHITECTURAL DESIGN**  The architectural expression of the building is drawn from the functional specificities of the school typology, and the memory of the place. Vertical external blinds - the main design element of the school, protect the classrooms from excessive sunlight, and at the same time represent a kind of reminiscence of the building of the former Vladimir Nazor elementary school, which is dominated in part of the school pavilions by the verticality of the structural elements, i.e. the colonnade of columns in the part of the school street - the canopy that approached the pavilions.  The route of the school street - the canopy in the north-south direction has been retained, and it connects the new units of the school complex: the parking area with the entrance for the administration and further through the school, the school building with the gymnasium.  **4. CONSTRUCTION**  The construction of the school building consists of reinforced concrete walls, columns, beams and slabs, connected into one structural unit. The north-west and south-east tracts of the school have a primary reinforced concrete structural system, with a typical module of 8x8.3m, which corresponds, in a maximally economical and technologically advanced way, to the needs of school construction. The width of the middle tract is 10 m and it has reinforced concrete sanitary blocks, and stair cores at the ends of the corridor that reduce the span and contribute to the overall static stability of the building.  The undergrounding of the economic and technical premises was carried out at an elevation of -3.50m from the elevation of the AB slab of the ground floor. The detailed calculation of the structure, the adoption of characteristic structural elements and the method of foundation of the building is the subject of the main project.  **5. MATERIALIZATION**  **Facade**  The main design element of the school's facade is represented by vertical external blinds. The conceptual solution envisages their execution in a masonry system, with a final coating of aluminium bond panels on the substructure. The side walls of the school are also planned in a ventilated facade system with a final coating of aluminium bond panels on a metal substructure.  Entrance porch - the walls and ceiling are finished with HPL panels or aluminium bond panels on a metal substructure in the texture of light wood.  **Roof**  The roof of the school is planned to be flat, with final insulation with waterproofing and thermal insulation.  **Locksmith works**  Locksmith work at the school will be made of aluminium. The locksmith work is provided in the wall-curtain system, in anthracite colour with wings that open along the horizontal and/or vertical axis, and fixed full panels in the texture of light wood. In this way, thermal bridges were avoided, a high level of energy efficiency of the building was achieved, and the simplicity of the execution of the position was enabled. Typical facade windows are protected from excessive penetration of the sun's rays by means of vertical blinds.  All glazed surfaces in the classrooms are provided with systems for internal darkening of the rooms, by means of curtains/curtains, mounted on hidden guides in the suspended ceiling.  **Interior door**  All doors in the school are white RAL 9016 and yellow RAL 1023, and in the men's restrooms they are blue RAL 5023, and in the women's restrooms they are pink RAL 3014, with an adequate cover moulding - moulding in the same colour. Depending on the position and function, they are made as single or double wings. Fire doors are installed in the areas of fire protection sectors.  **Internal wall treatment**  The walls of the sanitary rooms are covered with ceramic tiles up to the height of the suspended ceiling (300 cm). The other walls were plastered and painted in white. The wall niches at the entrances to the classrooms are painted in the same yellow colour RAL 1023 as the classroom doors. The amphitheatre with bleachers and a staircase that descends to the basement level is also coloured in yellow RAL 1023. All other walls, on all floors in the school, are painted in white.  **Floors**  The floors are made of durable materials, with adequate anti-slip properties, wear-resistant and easy to maintain. In the school building, the floors vary from ceramic in the communications, sanitary and economic-technical rooms, vinyl in the classrooms, cabinets, and administration, to epoxy in the basement in the wardrobe, library and extended stay area. The epoxy floor in the basement is yellow RAL 1023. The ceramics are light gray or terrazzo gray.  All floors must be entirely horizontal, with the exception of the floors in the toilets, where there is a slope towards the sink or drip tray (0.5-1.5%).  **Ceilings**  The ceilings are designed as suspended, finished plasterboard, plastered and painted in white. The horizontal distribution of all necessary installations in the building is planned within them.  The materials and equipment of the interior rooms are designed in accordance with the Rulebook on the conditions for the establishment of institutions in the field of education and training (Official Gazette of Montenegro, No. 40 of June 22, 2006).  **6. ARRANGEMENT OF THE FIELD**  **Traffic**  Car access to the school complex is planned in two places: from Goca Delčeva Street and from Vuka Mićunovića Street. Access from Vuk Mićunovića Street is intended for the economic yard, while access from Goca Delčeva Street leads to the parking area.  The realized capacity of the parking space is 76 parking places. Within the specified number of parking spaces, 4 parking spaces for persons with reduced mobility are also planned, which fully meets the parameter from the Ordinance that prescribes a minimum number of parking spaces (5%) for persons with reduced mobility. The parking area is provided with raster of concrete elements, while the traffic roads are finished with an asphalt concrete cover.  Bicycle parking in the area of ​​the school square has a capacity of 26 parking places.  Access from the south-east facilitates pedestrian approaches, but also leave the possibility of access from the south from the direction of Goca Delčeva Street, which fully respects the character of the place.  **School square**  The school square is the central gathering space in front of the building. It is connected by paths with a parking space in the south of the plot and an economic yard in the north of the plot. The square descends through the amphitheatre to the basement floor, which further connects to the sports facilities in the north-west of the plot. The amphitheatres on both sides of the school are gathering places and additional outdoor spaces for extended stay and the library.  They are accented with colour - yellow, which is a universal detail of the school's interior. On the sides of the square, benches for sitting were designed, which were arranged linearly as a unique element with trash cans.  **Landscaping**  Arrangement of green areas with grass and tree plantings is planned. The landscape architecture project will define in detail the soundness, the removal of the existing greenery, its integration into the new plantings of the tree line, i.e. only the new trees intended for planting. |

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| Specification |

Please refer to separate folder titled: Part 2, Section VII, Technical specifications

Environmental and Social (ES) requirements

The EIB aims to add value by enhancing the environmental and social sustainability of all the projects that it is financing and as such all projects must comply with the environmental and social requirements of the Bank. The promoters are responsible for preparing, implementing and operating projects financed by the Bank and for the fulfilment of Bank environmental and social requirements.

In their procurement activities, promoters are encouraged to contribute to the protection of the environment, human well-being, human rights, gender equality, combating climate change and promotion of sustainable development, whilst ensuring that they comply with the core policy principles as set in the Guide to Procurement for projects financed by the EIB.

<https://www.eib.org/en/publications/guide-to-procurement>

Tenderers and (sub-) contractors are required to comply with applicable labour laws and national and international standards of health and safety, including those contained in any relevant International Labour Organization (ILO) conventions and international standards and agreements on environmental protection.

The Bank's environmental and social policies are available on the Bank's website:

http://www.eib.org/infocentre/publications/all/environmental-and-social-principles-and-standards.htm

The Bank requires, as a general rule for financing operations outside the EU, that promoters insert in the procurement documents and contracts the requirement from the tenderers and contractors to fill in and provide an **“Environmental and Social Covenant”** template in the form provided below. The Bank reserves the right not to finance any contract in which tenderers/contractors have not issued to the Promoter the Environmental and Social Covenant

signed by a duly authorised person.

*(Modification of the Environmental and social covenant text is not allowed)*

***(To be signed by a duly authorised person)***

*The E&S Covenant must be signed by all tenderers (including all Joint Venture / consortium members)*

**ENVIRONMENTAL AND SOCIAL COVENANT**

We, the undersigned, commit to comply with – and ensuring that all of our sub-contractors comply with – all labour laws and regulations applicable in the country of implementation of the contract, as well as all national legislation and regulations and any obligation in the relevant international conventions and multilateral agreements on environment applicable in the country of implementation of the contract.

*Labour* standards. We further commit to the principles of the eight Core ILO standards[[29]](#footnote-30) pertaining to: child labour, forced labour, non-discrimination and freedom of association and the right to collective bargaining. We will (i) pay rates of wages and benefits and observe conditions of work (including hours of work and days of rest) which are not lower than those established for the trade or industry where the work is carried out; and (ii) keep complete and accurate records of employment of workers at the site.

*Workers relations*. We therefore commit to developing and implementing a Human Resources Policy and Procedures applicable to all workers employed for the project in line with Standard 8 of the EIB’s Environmental and Social Handbook. We will regularly monitor and report on its application to the Contracting Authority (i.e. the Administration for Capital Projects) and Promoter (i.e. the Ministry of Education) as well as on any corrective measures periodically deemed necessary.

*Occupational and Public Health, Safety and Security*. We commit to (i) complying with all applicable health and safety at work laws in the country of implementation of the contract; (ii) developing and implementing the necessary health and safety management plans and systems, in accordance with the measures defined in the Project’s Environmental and Social Management Plan (ESMP) and the ILO Guidelines on occupational safety and management systems[[30]](#footnote-31); (iii) providing workers employed for the project access to adequate, safe and hygienic facilities as well as living quarters in line with the provisions of Standard 9 of the EIB’s Environmental and Social Handbook for workers living on-site; and (iv) using security management arrangements that are consistent with international human rights standards and principles, if such arrangements are required for the project.

*Protection of the Environment*. We commit to taking all reasonable steps to protect the environment on and off the site and to limit the nuisance to people and property resulting from pollution, noise, traffic and other outcomes of the operations. To this end, emissions, surface discharges and effluent from our activities will comply with the limits, specifications or stipulations as defined in [insert name of the relevant document][[31]](#footnote-32) and the international and national legislation and regulations applicable in the country of implementation of the contract.

*Environmental and social performance*. We commit to (i) submitting quarterly environmental and social monitoring reports to the Contracting Authority and promoter; and (ii) complying with the measures assigned to us as set forth in the environmental permits Environmental and Social Impact Assessment [[32]](#footnote-33) and any corrective or preventative actions set forth in the annual environmental and social monitoring report. To this end, we will develop and implement an Environmental and Social Management System commensurate to the size and complexity of the Contract and provide the Contracting Authority: Administration for Capital Projects with the details of the (i) plans and procedures, (ii) roles and responsibilities and (iii) relevant monitoring and review reports.

We hereby declare that our tender price as offered for this contract includes all costs related to our environmental and social performance obligations as part of this contract. We commit to (i) reassessing, in consultation with the Contracting Authority: Administration for Capitan Projects, Montenegro, any changes to the project design that may potentially cause negative environmental or social impacts; (ii) providing the Contracting Authority and Promoter with a written notice and in a timely manner of any unanticipated environmental or social risks or impacts that arise during the execution of the contract and the implementation of the project previously not taken into account; and (iii) in consultation with the Contracting Authority, adjusting environmental and social monitoring and mitigation measures as necessary to assure compliance with our environmental and social obligations.

*Environmental and social staff.* We shall facilitate the contracting authority’s ongoing monitoring and supervision of our compliance with the environmental and social obligations described above. For this purpose, we shall appoint and maintain in office until the completion of the contract an Environmental and Social Management Team (scaled to the size and complexity of the Contract) that shall be reasonably satisfactory to the Contracting Authority and to whom the Contracting Authority and Promoter shall have full and immediate access, having the duty and the necessary powers to ensure compliance with this Environmental and Social Covenant.

We accord the Contracting Authority and the EIB and auditors appointed by either of them, the right of inspection of all our accounts, records, electronic data and documents related to the environmental and social aspects of the current contract, as well as all those of our subcontractors.

|  |  |
| --- | --- |
| Name | In the capacity of |

|  |
| --- |
| Signed |

Duly authorised to sign the contract for and on behalf of

Date

|  |
| --- |
| Drawings |

Please refer to separate folder titled: Part 2, Section VII, Drawings

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| Supplementary Information |

Not applicable

PART 3 – Conditions of Contract and Contract Forms

Section VIII. General Conditions (GC)

**GENERAL CONDITIONS FOR WORKS CONTRACTS**

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## PRELIMINARY PROVISIONS

### Article 1 - Definitions

* 1. The definitions of the terms used throughout this general conditions are laid down in the ‘Glossary of terms’, Annex A, which forms an integral part of this contract.
  2. The headings and titles in these general conditions shall not be taken as part thereof or be taken into consideration in the interpretation of the contract.
  3. Where the context so permits, words in the singular shall be deemed to include the plural and vice versa, and words in the masculine shall be deemed to include the feminine and vice versa.
  4. Words designating persons or parties shall include firms and companies and any organisation having legal capacity.

### Article 2 - Language of the contract

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

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

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

### Article 4 - Communications

* 1. Any written communications between the contracting authority and/or the supervisor on the one hand, and the contractor on the other hand, shall state the contract title and identification number and shall be sent by post, cable, telex, facsimile transmission, e- mail or personal delivery, to the appropriate addresses designated by those parties for that purpose in the special conditions.
  2. If the sender requires evidence of receipt, it shall state such requirement in its communication and shall demand such evidence of receipt whenever there is a deadline for the receipt of the communication. In any event, the sender shall take all the necessary measures to ensure timely receipt of its communication.
  3. Wherever the contract provides for the giving or issue of any notice, consent, approval, certificate or decision, unless otherwise specified such notice, consent, approval, certificate or decision shall be in writing and the words ‘notify’, ‘consent’, ‘certify’,

‘approve’ or ‘decide’ shall be construed accordingly. Any such consent, approval, certificate or decision shall not unreasonably be withheld or delayed.

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

* 1. The supervisor shall carry out the duties specified in the contract. Except as expressly stated in the contract, the supervisor shall not have authority to relieve the contractor of any of its obligations under the contract.
  2. The supervisor may, from time to time, while retaining ultimate responsibility, delegate to the supervisor's representative any of the duties and authority vested in the supervisor and he may at any time revoke such delegation or replace the representative. Any such delegation, revocation or replacement shall be in writing and shall not take effect until a copy thereof has been delivered to the contractor. The administrative order which determines the duties, authority and identity of the supervisor's representative shall be issued by the supervisor at the moment of the commencement order. The role of the supervisor’s representative shall be to supervise and inspect works and to test and examine the materials employed and the quality of workmanship. Under no circumstances will the supervisor’s representative be empowered to relieve the contractor of its obligations under the contract or – save where express instructions to that effect are given below or in the contract – order works resulting in an extension of the period of implementation of tasks or additional costs to be paid by the contracting authority or introduce variants in the nature or scale of the works.
  3. Any communication given by the supervisor's representative to the contractor in accordance with the terms of such delegation shall have the same effect as though it had been given by the supervisor, provided that:
     1. any failure on the part of the supervisor's representative to disapprove any work, materials or plant shall not prejudice the authority of the supervisor to disapprove such work, materials or plant and to give the instructions necessary for the rectification thereof;
     2. the supervisor shall be at liberty to reverse or vary the contents of such communication.
  4. Instructions and/or orders issued in writing by the supervisor shall be considered an administrative order. Such orders shall be dated, numbered and entered by the supervisor in a register, and copies thereof delivered by hand, where appropriate, to the contractor's representative.

### Article 6 - Assignment

* 1. An assignment shall be valid only if it is a written agreement by which the contractor transfers its contract or part thereof to a third party.
  2. The contractor shall not, without the prior consent of the contracting authority, assign the contract or any part thereof, or any benefit or interest thereunder, except in the following cases:
     1. a charge, in favour of the contractor's bankers, of any monies due or to become due under the contract; or
     2. the assignment to the contractor's insurers of the contractor's right to obtain relief against any other person liable in cases where the insurers have discharged the contractor's loss or liability.
  3. For the purpose of Article 6.2 the approval of an assignment by the contracting authority shall not relieve the contractor of its obligations for the part of the contract already performed or the part not assigned for which the contractor's performance guarantee may be kept.
  4. If the contractor has assigned its contract without authorization, the contracting authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Article 63 and 64.
  5. Assignees must satisfy the eligibility criteria applicable for the award of the contract and they cannot fall under the exclusion criteria described in the tender dossier.
  6. Before giving its approval the contracting authority should receive as needed a performance guarantee which may be requested for the full contract, a pre-financing guarantee and retention guarantee, from the assignees.

### Article 7 - Subcontracting

* 1. A subcontract shall be valid only if it is a written agreement by which the contractor entrusts performance of a part of the contract to a third party. Simple plant hire, labour only and supply contracts are not considered or construed ‘subcontracts’ for the purpose of this article.
  2. The contractor shall request to the contracting authority the authorisation to subcontract. The request must indicate the elements of the contract to be subcontracted and the identity of the subcontractors.

Within 30 days of receipt of this request, the contracting authority must either extend the delay for a maximum of 15 days or notify the contractor of its decision, stating reasons should he withhold such authorization. If the contracting authority fails to notify its decision within the time limit referred to above, the request is deemed to be approved at the end of the time limit.

* 1. Subcontractors must satisfy the eligibility criteria applicable for the award of the contract. They cannot fall under the exclusion criteria described in the tender dossier and the contractor shall ensure that subcontractors are not subject to EIB restrictive measures described in the Guide to Procurement for projects financed by the EIB. <https://www.eib.org/en/publications/guide-to-procurement>
  2. Subject to Articles 7.6 and 52, no subcontract creates contractual relations between any subcontractor and the contracting authority.
  3. The contractor shall be responsible for the acts, defaults and negligence of its sub- contractors and their agents or employees, as if they were the acts, defaults or negligence of the contractor, its agents or employees. The approval by the contracting authority of the sub-contracting of any part of the contract or of the subcontractor to perform any part of the works shall not relieve the contractor of any of its obligations under the contract.
  4. If a subcontractor has undertaken any continuing obligation for a period exceeding that of the defects liability period under the contract towards the contractor in respect of the work executed or the goods, materials, plant or services supplied by the subcontractor, the contractor shall, at any time after the expiration of the defects liability period, transfer immediately to the contracting authority, at the contracting authority's request and cost, the benefit of such obligation for the unexpired duration thereof. If the contractor fails to effect such a transfer, the said continuing obligation(s) shall be transferred automatically.
  5. If the contractor enters into a subcontract without approval, the contracting authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Article 63 and 64.
  6. If a subcontractor is found by the contracting authority or the supervisor to be incompetent in discharging its duties, the contracting authority or the supervisor may request the contractor to forthwith remove the subcontractor from the site and either to provide a subcontractor with qualifications and experience acceptable to the contracting authority as a replacement, or to resume the implementation of the tasks itself.

## OBLIGATIONS OF THE CONTRACTING AUTHORITY

### Article 8 - Supply of documents

* 1. Save where otherwise provided in the special conditions, within 30 days of the signing of the contract, the supervisor shall provide to the contractor, free of charge, a copy of the drawings prepared for the implementation of tasks as well as two copies of the specifications and other contract documents. The contractor may purchase additional copies of these drawings, specifications and other documents, insofar as they are available. Upon the final acceptance, the contractor shall return to the supervisor all drawings, specifications and other contract documents.
  2. The contracting authority co-operates with the contractor to provide information that the latter may reasonably request in order to perform the contract.
  3. Unless it is necessary for the purposes of the contract, the drawings, specifications and other documents provided by the contracting authority shall not be used or communicated to a third party by the contractor without the prior consent of the supervisor.
  4. The supervisor shall have authority to issue to the contractor administrative orders incorporating such supplementary documents and instructions as shall be necessary for the proper and adequate execution of the works and the remedying of any defects therein.

### Article 9 - Access to site

* 1. The contracting authority shall, in due time and in conformity with the progress of the works, place the site and access thereto at the disposal of the contractor in accordance

with the approved programme of implementation of tasks referred to in Article 17. The contractor grants appropriate access to other persons as set out in the special conditions or as instructed.

* 1. Any land procured for the contractor by the contracting authority shall not be used by the contractor for purposes other than the implementation of tasks.
  2. The contractor shall preserve any facilities placed at its disposal in a good state while it is in occupation and shall, if so required by the contracting authority or the supervisor, restore them to their original state on completion of the contract, taking into account normal wear and tear.
  3. The contractor shall not be entitled to any payment for improvements resulting from work carried out on its own initiative.

### Article 10 - Assistance with local regulations

* 1. The contractor may request the assistance of the contracting authority in obtaining copies of laws, regulations and information on local customs, orders or by-laws of the country in which the works are executed, which may affect the contractor in the performance of its obligations under the contract. The contracting authority may provide the assistance requested to the contractor at the contractor's cost.
  2. Subject to the provisions of the laws and regulations on foreign labour of the country in which the works are to be executed, the contracting authority provides reasonable assistance to the contractor, at its request, for its application for any visas and permits required by the law of the country in which the works are executed, including work and residence permits, for the personnel whose services the contractor and the contracting Authority consider necessary, as well as residence permits for their families.

### Article 11 - Delayed payments to the contractor's personnel

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

## OBLIGATIONS OF THE CONTRACTOR

### Article 12 - General obligations

* 1. The contractor shall, with due care and diligence, design the works to the extent stated in the contract, execute and complete the works in accordance with the contract and with the supervisor instructions, and shall remedy any defects in the works.
  2. The contractor shall provide all superintendence, personnel, materials, plant, equipment and all other items, of a temporary or permanent nature required in and for such design, execution, completion and remedying of any defects, insofar as specified in, or may be reasonably inferred from the contract.
  3. The contractor shall take full responsibility for the adequacy, stability and safety of all operations and methods of construction under the contract.
  4. The contractor shall comply with any administrative orders given to him. Where the contractor considers that the requirements of an administrative order go beyond the authority of the supervisor or of the scope of the contract, the contractor shall give notice, with reasons, to the supervisor. If the contractor fails to notify within the 30 days period after receipt thereof, he shall be barred from so doing. Execution of the administrative order shall not be suspended because of this notice.
  5. The contractor shall supply, without delay, any information and documents to the contracting authority, promoter: Ministry of Education, Montenegro and/or the European Investment Bank upon request, regarding the conditions in which the contract is being executed.
  6. The contractor shall respect and abide by all laws and regulations in force in the country in which the works are executed and shall ensure that its personnel, their dependants, and its local employees also respect and abide by all such laws and regulations. The contractor shall indemnify the contracting authority against any claims and proceedings arising from any infringement by the contractor, its employees and their dependants of such laws and regulations.
  7. Subject to Article 12.9, the contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to the performance of the contract without the prior consent of the contracting authority. The contractor shall continue to be bound by this undertaking after completion of the tasks and shall obtain from each member of its personnel the same undertaking. However, use of the contract’s reference for marketing or tendering purposes does not require prior approval of the contracting authority, except where the contracting authority declares the contract to be confidential.
  8. If the contractor acts on behalf of or is a joint venture or consortium of two or more persons, all such persons shall be jointly and severally bound in respect of the obligations under the contract, including any recoverable amount. The person designated by the consortium to act on its behalf for the purposes of this contract shall have the authority to bind the consortium. The composition or the constitution of the joint venture or consortium, including the share distribution between its members, shall not be altered without the prior consent of the contracting authority. Any alteration of the composition or the constitution of the joint venture or consortium without the prior consent of the contracting authority may result in the termination of the contract.
  9. Save where the European Investment Bank requests or agrees otherwise, the contractor shall take all relevant measures to ensure the highest visibility to the financial contribution of the European Union. Additional communication activities required by the European Commission are described in the special conditions. All visibility and, if applicable, communication activities must comply with the latest Communication and Visibility Requirements for EU-funded external action, laid down and published by the European Commission.

The Parties will consult immediately and endeavour to remedy any detected shortcomings in implementing the visibility and, if applicable, communication requirements set out in this Article and in the special conditions. Failure to perform the obligations set out in this article and in the special conditions can constitute a breach of contract in the sense of Article 63 of these general conditions, and can lead to corresponding measures taken by the Contracting Authority, including suspension of payment and/or a reduction of the final payment in proportion of the seriousness of the breach of obligations.

* 1. Any records must be kept for at least six years after the final payment is made under the contract. In case of failure to maintain such the contracting authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Article 63 and 64.

### Article 12a - Code of conduct

12a.1 The contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of its profession. It shall refrain from making public statements about the project or services without the contracting authority's prior approval. It shall not commit the contracting authority in any way whatsoever without its prior consent and shall make this obligation clear to third parties.

Physical abuse or punishment, or threats of physical abuse, sexual abuse or exploitation, harassment and verbal abuse, as well as other forms of intimidation shall be prohibited. The contractor shall also provide to inform the contracting authority of any breach of ethical standards or code of conduct as set in the present Article. In case the contractor is aware of any violations of the abovementioned standards he shall report in writing within 30 days to the contracting authority.

The EIB reserves the right not to finance any contract in which tenderers/contractors have not issued to the Contracting Authority the Covenant of Integrity signed by a duly authorised person.

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

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

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

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

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

12a.6 The execution of the contract shall not give rise to unusual commercial expenses. Unusual commercial expenses are commissions not mentioned in the contract or not stemming from a properly concluded contract referring to the contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commission paid to a company which has every appearance of being a front company. The contracting authority and/or Promoter may carry out documentary or on-the-spot checks it deems necessary to find evidence in case of suspected unusual commercial expenses.

The respect of the code of conduct set out in the present Article constitutes a contractual obligation. Failure to comply with the code of conduct is always deemed to be a breach of the contract under Article 63 of the General Conditions. In addition, failure to comply with the provision set out in the present Article can be qualified as grave professional misconduct that may lead either to suspension or termination of the contract, without prejudice to the application of administrative sanctions including exclusion from participation in future contract award procedures.

### Article 12b - Conflict of Interest

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

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

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

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

12b.5 The assessment of whether or not there is a conflict of interest has to be carried out on a case-by-case basis, considering the actual risk of conflict based on the specific circumstances of the case at stake. The individual or entity in question should declare whether they have any conflict of interest and, if so, present supporting evidence which might remove or remedy a conflict of interest. In cases where a conflict of interest cannot be effectively remedied by other less intrusive measures, the Bank requires contracting authority on behalf of promoters to exclude from participation in an EIB-financed procurement procedure or contract any tenderer or contractor affected by such a conflict of interest.

### Article 13 - Superintendence of the works

* 1. The contractor shall itself superintend the works or shall appoint a representative to do so. Such appointment shall be submitted to the supervisor for approval within 30 days of the signature of the contract. The supervisor shall approve or refuse the appointment within 10 days. The approval may at any time be withdrawn. Should the supervisor refuse the representative appointed within the deadline, or withdraw approval of the appointment, it shall set out the grounds on which its decision is based, and the contractor shall submit an alternative appointment without delay. The address of the contractor's representative shall be deemed to be the address for service given by the contractor.
  2. If the supervisor withdraws its approval of the contractor's representative, the contractor shall, as soon as is practicable, after receiving notice of such withdrawal, remove the representative from the works and replace it with another representative approved by the supervisor.
  3. The contractor's representative shall have full authority to make any decision necessary for the execution of the works, to receive and carry out administrative orders and to countersign the work register referred to in Article 39 or attachment, where appropriate. In any event, the contractor shall be responsible for ensuring that the works are carried out satisfactorily including ensuring that the specifications and administrative orders are adhered to by its own employees and by its sub-contractors and their employees.

### Article 14 - Personnel

* 1. The persons employed by the contractor must be sufficient in number and permit the optimum use of the human resources of the country in which the works are executed. Such employees must have the skills and experience necessary to ensure due progress an satisfactory execution of the works. The contractor shall immediately replace all employees indicated by the supervisor, in a letter stating reasons, as likely to jeopardize the satisfactory execution of the works.
  2. The contractor shall make its own arrangements for the engagement of all personnel and labour. The rates of remuneration and the general working conditions, as laid down by the law of the country in which the works are executed, shall apply as a minimum to employees on the site.

### Article 15 - Performance guarantee

* 1. The contractor shall, together with the return of the countersigned contract, furnish to the contracting authority a guarantee for the full and proper performance of the contract. The amount of the guarantee shall be as specified in the special conditions and shall be in the range of 5 and 10% of the amount of the contract price including any amounts stipulated in addenda to the contract.
  2. The performance guarantee shall be held against payment to the contracting authority for any loss resulting from the contractor's failure to perform its obligations under the contract.
  3. The performance guarantee shall be in the format provided for in the contract and may be provided in the form of a bank guarantee, a banker's draft, a certified cheque, a bond provided by an insurance and/or bonding company, an irrevocable letter of credit or a cash deposit made with the contracting authority. If the performance guarantee is to be provided in the form of a bank guarantee, a banker's draft, a certified cheque or a bond, it shall be issued by a bank or bonding and/or insurance company approved by the contracting authority.
  4. Unless stated otherwise in the special conditions, the performance guarantee shall be denominated in the types and proportions of currencies in which the original contract is payable.
  5. No payments shall be made in favour of the contractor prior to the provision of the guarantee. The guarantee shall continue to remain valid until the date of the issuing of the signed final statement of account referred to in Article 51.
  6. During the performance of the contract, if the natural or legal person providing the guarantee (i) is not able or willing to abide by its commitments, (ii) is not authorised to issue guarantees to contracting authorities, or (iii) appears not to be financially reliable, the guarantee shall be replaced. The contracting authority shall give formal notice to the contractor to provide a new guarantee on the same terms as the previous one. Should the contractor fail to provide a new guarantee, the contracting authority may terminate the contract.
  7. The contracting authority shall demand payment from the guarantee of all sums for which the guarantor is liable under the guarantee due to the contractor's default under the contract, in accordance with the terms of the guarantee and up to the value thereof. The guarantor shall, without delay, pay those sums upon first demand by the contracting authority and the guarantor may not raise any objection for any reason whatsoever. Prior to making any claim under the performance guarantee, the contracting authority shall notify the contractor stating the nature of the default in respect of which the claim is to be made.
  8. Unless the special conditions provide otherwise, the performance guarantee shall be released within 60 days of the issuing of the signed final statement of account referred to in Article 51, for its total amount except for amounts which are the subject of amicable settlement, conciliation, arbitration or litigation.

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

* 1. Liabilities
     1. Liability for damage to works

Without prejudice to Article 61 (defects liability) and Article 66 (force majeure), the contractor shall assume (i) full responsibility for maintaining the integrity of the works and (ii) the risk of loss and damage, whatever their cause, until the final acceptance as foreseen in Article 62.

Compensation for damage to the works resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to one million euros if the contract value is less than or equal to one million euros. If the contract value is greater than one million euros, compensation for damages resulting from the contractor's liability shall be capped to the contract value.

However, compensation for loss or damage resulting from fraud or gross negligence of the contractor, its personnel, its subcontractors and any person for which the contractor is answerable, can in no case be capped.

After the final acceptance as foreseen in Article 62, the contractor shall remain responsible for any breach of its obligations under the contract for such period as may be determined by the law governing the contract, or by default for a period of 10 years.

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

At any time, the contractor shall be responsible for and shall indemnify the contracting authority for any damage caused, during the performance of the works, to the contracting authority by the contractor, its personnel, its subcontractors and any person for which the contractor is answerable.

Compensation for damage resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to one million euros if the contract value is less than or equal to one million euros. If the contract value is greater than one million euros, compensation for damages resulting from the contractor's liability shall be capped to the contract value.

However, compensation for loss or damage resulting from the contractor's liability in case of bodily injury, including death, can in no case be capped. The same applies to compensation for any damages of any kind resulting from fraud or gross negligence of the contractor, its personnel, its subcontractors and any person for which the contractor is answerable.

* + 1. Contractor's liability in respect of third parties

The contractor shall, at its own expense, indemnify, protect and defend, the contracting authority, its agents and employees, from and against all actions, claims, losses or damage, direct or indirect, of whatever nature (hereinafter ‘claim(s)’) arising from any act or omission by the contractor, its personnel, its subcontractors and/or any person for which the contractor is answerable, in the performance of the duties.

The contracting authority must notify any third-party claim to the contractor as soon as possible after the contracting authority becomes aware of them.

If the contracting authority chooses to challenge and defend itself against the claim(s), the contractor shall bear the reasonable costs of defence incurred by the contracting authority, its agents and employees.

Under these general conditions, the agents and employees of the contracting authority, as well as the contractor's personnel, its subcontractors and any person for which the contractor is answerable are considered to be third parties.

The contractor shall treat all claims in close consultation with the contracting authority

Any settlement or agreement settling a claim requires the prior express consent of the contracting authority and the contractor.

The Bank requires that tenderers and (sub-)contractors participating in a tender procedure or a contract under a Bank-financed project shall not violate or have violated any intellectual property rights."

* 1. Insurance
     1. Insurance – general issues

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

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

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

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

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

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

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

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

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

* + 1. Insurance – Specific issues
       1. Insurance for damage to third parties

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

* + - 1. Works insurance

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

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

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

* + - 1. Motor insurance

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

* + - 1. Insurance against accidents at work

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

* + - 1. Insurance of liability related to the soundness of the works

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

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

### Article 17 - Programme of implementation of tasks

* 1. Notwithstanding any work programme submitted as part of its tender, the contractor shall provide the supervisor with a programme of implementation of tasks, broken down by activity and by month within 30 days of the signature of the contract. This programme includes at least the following information:
     1. the order and time limits within which the contractor proposes to carry out the works;
     2. the time limits within which submission and approval of the drawings are required;
     3. an organisation chart containing the names, qualifications and curricula vitae of the personnel responsible for the site,
     4. a general description of the method including the sequence, by month and by nature, which the contractor proposes to carry out the works;
     5. a plan for the setting out and organisation of the site, and
     6. such further details and information as the supervisor may reasonably require.
  2. The supervisor shall return these documents to the contractor with its approval or any relevant remarks within ten days of receipt, save where the supervisor, within those ten days, notifies the contractor of its wish for a meeting in order to discuss the documents submitted.
  3. If the supervisor fails to notify its decision or remarks or wish for a meeting within these 10 days, the programme submitted is deemed approved.
  4. The approval of the programme by the supervisor shall not relieve the contractor from any of its obligations under the contract.
  5. No material alteration to the programme shall be made without the approval of the supervisor. If, however, the progress of the works does not conform to the programme, the supervisor may instruct the contractor to submit a revised programme in accordance with the procedure laid down in Article 17.

### Article 18 - Detailed breakdown of prices

* 1. If not provided in its tender and where necessary for the purposes of the contract, the contractor shall provide a detailed breakdown of its rates and prices within no more than 20 days following the supervisor's reasoned request.
  2. Within 30 days of notification of the award of contract, the contractor shall provide to the supervisor for its information only, a detailed cash flow estimate, in quarterly periods, of all payments which may be due to the contractor under the contract. The contractor shall subsequently supply revised cash flow estimates at quarterly intervals, if so required by the supervisor. The communication shall not impose any liability whatsoever on the contracting authority or the supervisor.

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

* 1. The contractor shall submit to the supervisor for approval at its own expense, all design and construction drawings and other documents and objects necessary for the proper execution of the contract, and in particular:
     1. drawings, documents, samples and/or models as may be specified in the contract within the time limits and procedures laid down therein or in the programme of implementation of tasks;
     2. drawings as the supervisor may reasonably require for the implementation of tasks.
     3. plans, drawings and calculations needed to provide evidence of the stability and resistance of the structures, including foundation design and detailed reinforcement plan. These calculations and surveys should be sustained by sufficient site investigations and should be submitted in triplicate to the supervisor for approval at least 30 days before commencing construction of the works in question.
  2. The supervisor shall return to the contractor the drawings, documents, samples, models, design calculations, objects and other documents required under Article 19.1 with either its endorsement or its remarks within the time limits referred to in the contract or the approved programme of implementation of tasks or, if no time limit is specified, within 15 days of receipt. In the light of the complexity or the number of documents submitted for approval, if the supervisor cannot send its endorsement or its remarks within the time limit mentioned above, the supervisor shall send within 15 days of receipt a holding reply, indicating another time limit by which it will send its endorsement or its remarks, taking into account the relative urgency and complexity of the matter.

If the supervisor fails to notify its endorsement, remarks or holding reply within the time limits referred above, the drawings, documents, samples, models, design calculations, objects and other documents submitted to the supervisor according to Article 19.1 shall be deemed to be approved at the end of the time limits specified above.

* 1. Approved drawings, documents, samples and models shall be signed or otherwise identified by the supervisor and shall not be departed from except as otherwise instructed by the supervisor. Any contractor's drawings, documents, samples or models which the supervisor refuses to approve, shall be modified to meet the requirements of the supervisor and resubmitted by the contractor for approval. Within 15 days of being notified of the supervisor’s remarks, the contractor shall make the requisite corrections, adjustments etc. to the documents, drawings, design calculations etc. The corrected or adjusted documents, drawings, design calculations etc. shall be resubmitted for the supervisor’s approval under the same procedure.
  2. The contractor shall supply additional copies of approved drawings in the form and number stated in the contract or in subsequent administrative orders.
  3. The approval of any drawings, documents, samples or models by the supervisor shall not relieve the contractor from any of its obligations under the contract.
  4. The supervisor shall have the right at all reasonable times to inspect all drawings, documents, samples or models relating to the contract at the contractor's premises.
  5. Before provisional acceptance of the works, the contractor shall supply operation and maintenance manuals together with drawings to the contracting authority, which shall be in such detail as will enable the contracting authority to operate, maintain, adjust and repair all parts of the works. Unless otherwise stated in the special conditions, the manuals and drawings shall be in the language of the contract. The works shall not be considered to be completed for the purpose of provisional acceptance until such manuals and drawings have been supplied to the contracting authority.

### Article 20 - Sufficiency of tender prices

* 1. Subject to any additional provisions which may be laid down in the special conditions, the contractor shall be deemed to have inspected and examined the site and its surroundings and to have satisfied itself before submitting its tender, as to the nature of the ground and sub-soil, and to have taken into account the form and nature of the site, the extent and nature of the work and materials necessary for the completion of the works, the means of communication with and access to the site, the accommodation it may require and in general to have obtained for itself all necessary information as to risks, contingencies and all other circumstances influencing or affecting its tender.
  2. The contractor shall be deemed to have satisfied itself before submitting its tender as to the correctness and sufficiency of the tender and of the rates and prices stated in the bill of quantities or price schedule which shall, except in so far as it is otherwise provided in the contract, cover all its obligations under the contract.
  3. Since the contractor is deemed to have determined its prices on the basis of its own calculations, operations and estimates, it shall carry out without additional charge any work which is the subject of any item whatsoever in its tender for which it neither indicates a unit price nor a lump sum.

### Article 21 - Exceptional risks

* 1. If during the execution of the works the contractor encounters artificial obstructions or physical conditions which could not reasonably have been foreseen by an experienced contractor, and if the contractor is of the opinion that additional costs will be incurred and/or an extension of the period of implementation of tasks will be necessary as a result of this, it shall give notice to the supervisor in accordance with Articles 35 and/or 55. The contractor shall specify in such notice the artificial obstructions and/or physical conditions, giving details of the anticipated effects thereof, the measures it is taking or intends to take and the extent of the anticipated delay in or interference with the execution of the works.
  2. Following receipt of the notice, the supervisor may inter alia:
     1. require the contractor to provide an estimate of the cost of the measures it is taking or intends to take;
     2. approve measures referred to in Article 21.2 (a) with or without modification;
     3. give written instructions as to how the artificial obstructions or physical conditions are to be dealt with;
     4. order an amendment to, a suspension, or termination of the contract.
  3. To the extent that the supervisor decides that the whole or part of the said artificial obstructions or physical conditions could not reasonably have been foreseen by an experienced contractor, the supervisor shall:
     1. take into account any delay suffered by the contractor as a result of such obstructions or conditions in determining any extension of the period of implementation of tasks to which the contractor is entitled under Article 35; and/or
     2. in case of artificial obstructions or physical conditions other than weather conditions, determine additional payments due to the contractor in accordance with Article 55.
  4. Weather conditions shall not entitle the contractor to claims under Article 55.
  5. If the supervisor decides that the artificial obstructions or physical conditions could, in whole or in part, have been reasonably foreseen by an experienced contractor, he shall so inform the contractor as soon as practicable.

### Article 22 - Safety on sites

* 1. The contractor shall have the right to forbid access to the site to any person not involved in the performance of the contract, with the exception of persons authorised by the supervisor or the contracting authority.
  2. The contractor shall ensure the safety on sites during the whole period of execution and shall be responsible for taking the necessary steps, in the interests of its employees, agents of the contracting authority and third parties, to prevent any loss or accident which may result from carrying out the works.
  3. The contractor shall take all essential steps, on its own responsibility and at its expense, to ensure that existing structures and installations are protected, preserved and maintained. It shall be responsible for providing and maintaining at its expense all lighting, protection, fencing and security equipment which proves necessary for the proper implementation of the tasks or which may reasonably be required by the supervisor.
  4. If, during the implementation of the tasks, urgent measures are necessary to obviate any risk of accident or damage or to ensure security following any accident or damage, the supervisor shall give formal notice to the contractor to do what is necessary. If the contractor is unwilling or unable to undertake the necessary measures, the supervisor may carry out the work at the expense of the contractor to the extent that the contractor is liable.

### Article 23 - Safeguarding adjacent properties

* 1. On its own responsibility and at its expense, the contractor shall take all the precautions required by good construction practice and by the prevailing circumstances to safeguard adjacent properties and avoid causing any abnormal disturbance therein.
  2. The contractor shall indemnify the contracting authority against the financial consequences of all claims by neighbouring landowners or residents to the extent that the contractor is liable and to the extent that the damage to adjacent properties is not the result of a hazard created through the design or method of construction imposed by the contracting authority or the supervisor upon the contractor.

### Article 24 - Interference with traffic

* 1. The contractor shall ensure that the works and installations do not cause damage to, or obstruct traffic on, communication links such as roads, railways, waterways and airports, save as permitted under the special conditions. It shall, in particular, take account of weight restrictions when selecting routes and vehicles.
  2. Any special measures which the contractor considers necessary or which are specified in the special conditions or which are required by the contracting authority in order to protect or strengthen sections of roads, tracks or bridges, shall be at the expense of the contractor, whether or not they are carried out by the contractor. The contractor shall inform the supervisor of any special measures it intends to take before carrying them out. The repair of any damage caused to roads, tracks or bridges by the transport of materials, plant or equipment shall be at the expense of the contractor.

### Article 25 - Cables and conduits

* 1. Where, in the course of carrying out the works, the contractor encounters bench-marks indicating the course of underground cables, conduits and installations, it shall keep such bench-marks in position or replace them, should execution of the works have necessitated their temporary removal. Such related operations require the authorisation of the supervisor.
  2. The contractor shall be responsible for the preservation, removal and replacement, as the case may be, of the cables, conduits and installations specified by the contracting authority in the contract and for the cost thereof.
  3. Where the presence of cables, conduits and installations has not been specified in the contract but is revealed by bench-marks and references, the contractor shall be under a general duty of care and similar obligations regarding preservation, removal and replacement to those set out above. In this case, the contracting authority shall compensate it for expenditure, to the extent that such work is necessary for the execution of the contract.
  4. However, the obligations to remove and replace cables, conduits and installations and the expenditure resulting therefrom shall not be the responsibility of the contractor if the contracting authority decides to accept that responsibility. The same shall apply where this obligation and the expenditure resulting therefrom devolve upon another specialist administration or an agent.
  5. When any work on the site is likely to cause disturbances in or damage to a public utility service, the contractor shall immediately inform the supervisor in writing, giving a reasonable period of notice so that suitable measures may be taken in time to allow work to continue normally.

### Article 26 - Setting-out

* 1. The contractor shall be responsible for:
     1. the accurate setting-out of the works in relation to original marks, lines and levels of reference given by the supervisor;
     2. the correctness, of the position, levels, dimensions and alignment of all parts of the works; and
     3. the provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities.
  2. If, at any time during the execution of the works, any error appears in the position, levels, dimensions or alignment of any part of the works, the contractor, shall, if the supervisor so requires, at the contractor's cost, rectify such error to the satisfaction of the supervisor, unless such error is based on incorrect data supplied by the supervisor which an experienced contractor exercising due care would not have discovered, in which case the contracting authority shall be responsible for the cost of rectification.
  3. The checking of any setting-out or of any line or level by the supervisor shall not in any way relieve the contractor of its responsibility for the accuracy thereof and the contractor shall carefully protect and preserve all bench-marks, sight-rails, pegs and other items used in setting-out the works.

### Article 27 - Demolished materials

* 1. Where the contract includes demolition work, materials and articles obtained therefrom shall, unless the special conditions and /or the law of the country in which the works are executed otherwise provide and subject to the provisions of Article 28, become the property of the contractor.
  2. Should the special conditions reserve to the contracting authority the right of ownership of materials or all or part of the articles obtained from the demolition work, the contractor shall take all the necessary precautions to ensure that these are preserved. It shall be liable for any destruction of, or damage to, such materials or articles caused by it or its agents.
  3. Irrespective of the use to which the contracting authority intends to put the materials or articles, in respect of which it reserves the right of ownership, all costs incurred in transporting and storing them and all warehouse charges at the place indicated by the supervisor shall be borne by the contractor for any carriage not exceeding 1000 meters.
  4. Save where the special conditions provide otherwise, the contractor shall, at its expense, progressively remove rubble and other demolition materials, rubbish and debris from the site.

### Article 28 - Discoveries

* 1. Discoveries of any interest whatsoever made during excavation or demolition work shall be brought immediately to the attention of the supervisor. The supervisor shall decide how such discoveries are to be dealt with, taking due account of the law of the country in which the works are executed.
  2. The contracting authority reserves the right of ownership of materials found during the excavation and demolition work carried out on land belonging to it, subject to compensating the contractor for any special efforts.
  3. Artefacts, antiquities and natural, numismatic, or other objects which are of scientific interest, and also rare objects or objects made of precious metals found during excavation or demolition work shall be the property of the contracting authority.
  4. In the event of disagreements, the contracting authority shall have sole authority to decide as to the qualifications set out in Articles 28.1 and 28.3.

### Article 29 - Temporary works

* 1. The contractor shall carry out at its expense all the temporary works to enable the works to be carried out. The contractor shall submit to the supervisor the drawings for temporary works which the contractor intends to use, such as cofferdams, scaffolding, trusses and shuttering. The contractor shall take into account any observations made by the supervisor while assuming responsibility for these drawings.
  2. Where the design of particular temporary works is specified in the special conditions to be the responsibility of the contracting authority, the supervisor shall provide the contractor with all drawings necessary in reasonable time to enable the contractor to undertake the temporary works in accordance with its programme. In such cases, the contracting authority shall be solely responsible for the safety and adequacy of the design. However, the contractor shall be responsible for the proper construction.

### Article 30 - Soil studies

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

### Article 31 - Overlapping contracts

* 1. The contractor shall, in accordance with the requirements of the supervisor, afford all reasonable opportunities for carrying out their work to any other contractors employed by the contracting authority and their workmen, to the workmen of the contracting authority and of any other public authorities who may be employed on or near the site in the execution of any work not included in the contract, or of any contract which the contracting authority may enter into in connection with, or ancillary to, the works.
  2. If, however, the contractor, on the written request of the supervisor, makes available to any such contractor, or public authority, or to the contracting authority, any roads or ways for the maintenance of which the contractor is responsible, or permits the use by any such other persons of the contractor's temporary works, scaffolding or other equipment on the site, or provides any other service of whatsoever nature, which was not provided for in the contract, the contracting authority shall pay to the contractor in respect of such use or service, such sums and/or grant such extension of time, as shall, in the opinion of the supervisor, be reasonable.
  3. The contractor shall not by reason of Article 31 be relieved of any of its obligations under the contract nor shall it be entitled to any claims other than those provided for in Article 31.2.
  4. In no circumstances may difficulties arising with regard to one contract entitle the contractor to modify or delay implementation of other contracts. Similarly, the contracting authority may not take advantage of such difficulties to suspend payments due under another contract.

### Article 32 - Patents and licenses

* 1. Save where otherwise provided in the special conditions, the contractor shall indemnify and hold the contracting authority and the supervisor harmless for all damages and cost incurred due to any claim brought by any third party including creators and intermediaries for any alleged or actual violations of intellectual, industrial or other property rights of any kind whatsoever based on the contracting authority's use as specified in the contract of patents, licenses, drawings, designs, models, or brand or trademarks, except where such infringement results from compliance with the design or specification provided by the contracting authority and/or the supervisor.
  2. All industrial, intellectual and other property rights (including but not limited to patent rights and copyright) developed in connection with the tasks by or on behalf of the contractor, including but not limited to any rights in any documents prepared for the purpose of the contract or the tasks, shall remain vested in the contractor but the contracting authority shall have an irrevocable, royalty-free, non-exclusive licence of the above-mentioned rights for the purpose of the contract.

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

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

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

## IMPLEMENTATION OF THE TASKS AND DELAYS

### Article 33 - Commencement orders

* 1. The supervisor issues an administrative order notifying the contractor of the date on which the period of implementation of tasks must start.
  2. Save where the parties agree otherwise, the period of implementation of tasks shall not start before:
     1. in conformity with Article 9, the site, or part of the site has been placed at the disposal of the contractor according to the progress of the work set out in the programme of implementation of tasks approved by the supervisor;
     2. the documents mentioned under Article 8.1 have been provided to the contractor.
  3. Save where the parties agree otherwise, the period of implementation of tasks shall start no later than 180 days following notification of award of the contract.

### Article 34 - Period of implementation of tasks

* 1. The period of implementation of tasks shall be as laid down in the special conditions, without prejudice to extensions of the period which may be granted under Article 35.
  2. If provision is made for distinct periods of implementation of tasks for separate lots, in cases where one contractor is awarded more than one lot per contract, the periods of implementation of tasks for the separate lots will not be accumulated.

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

* 1. The contractor may request an extension to the period of implementation of tasks if it is or will be delayed in completing the contract by any of the following reasons:
     1. exceptional weather conditions in the country in which the works are executed which may affect the implementation of the tasks;
     2. artificial obstructions or physical conditions which could not reasonably have been foreseen by an experienced contractor;
     3. administrative orders affecting the date of completion other than those arising from the contractor's default;
     4. failure of the contracting authority to fulfil its obligations under the contract;
     5. any suspension of the works which is not due to the contractor's default;
     6. force majeure;
     7. any other causes referred to in these general conditions which are not due to the contractor's default.
  2. If the contractor considers itself to be entitled to any extension of the period of implementation under the contract, the contractor shall:
     1. give notice to the supervisor of its intention to make such a request no later than 15 days after the contractor became aware, or should have become aware of the event or circumstance giving rise to the request.

If the contractor fails to give notice of a request for extension of the period of implementation within such period of 15 days, the period of implementation shall not be extended and the contracting authority shall be discharged from all liability in connection with the request; and

* + 1. submit to the supervisor full and detailed particulars of the request, within 30 days from the above notification unless otherwise agreed between the contractor and the supervisor, in order that such request may be investigated.
  1. Within 30 days from receipt of the contractor's detailed particulars of the request, the supervisor shall, by notice to the contractor after due consultation with the contracting authority and, where appropriate, the contractor, grant such extension of the period of implementation as may be justified, either prospectively or retrospectively, or inform the contractor that it is not entitled to an extension.

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

* 1. If the contractor fails to complete the works within the time period(s) specified in the contract, the contracting authority shall, without formal notice and without prejudice to its other remedies under the contract be entitled to liquidated damages for every day or part thereof which shall elapse between the end of the period specified for implementation of tasks or extended period of implementation of tasks under Article 35 and the actual date of completion, at the rate and up to the maximum amount specified in the special conditions.

If the works have been the subject of partial acceptance in accordance with Article 59, the liquidated damages specified in the special conditions may be reduced in the proportion which the value of the accepted part bears to the value of the whole of the works.

* 1. If the contracting authority has become entitled to the maximum claim under Article 36.1 it may, after giving notice to the contractor:
     1. seize the performance guarantee; and/or
     2. terminate the contract; and/or
     3. enter into a contract with a third party at the contractor's cost for the provision of the balance of the works.

### Article 37 - Amendments

* 1. Contract amendments must be formalised by a contract addendum signed by both parties or by an administrative order issued by the supervisor except if the amendments result from the application of the contract.
  2. The supervisor shall have the power to order any amendment to any part of the works necessary for the proper completion and/or functioning of the works. Such amendments by administrative order may include additions, omissions, substitutions, changes in quality, quantity, form, character, kind, position, dimension, level or line and changes in the specified sequence, method or timing of execution of the works. No administrative order shall have the effect of invalidating the contract, but the financial effect, if any, of all such amendments shall be valued in accordance with Articles 37.5 and 37.7.
  3. All administrative orders shall be issued in writing, it being understood that:
     1. if, for any reason, the supervisor finds it necessary to give an order orally, it shall as soon as possible thereafter confirm the order by an administrative order;
     2. if the contractor confirms in writing an oral order given for the purpose of Article

37.3 (a) and the confirmation is not contradicted in writing forthwith by the supervisor, the supervisor shall be deemed to have issued an administrative order;

* + 1. no administrative order is required to increase or decrease the quantity of any work where such increase or decrease is the result of the quantity exceeding or being less than that stated in the bill of quantities or price schedule, as the result of measurement laid down in Article 49.
  1. Save as provided by Article 37.3 prior to issuing an administrative order, the supervisor shall notify the contractor of the nature and form of such amendment. The contractor shall then, without delay, submit to the supervisor a written proposal containing:
     1. a description of the tasks to be implemented or the measures to be taken and a programme for execution;
     2. any necessary amendments to the programme of implementation of tasks or to any of the contractor's obligations resulting from this contract; and
     3. any adjustment to the contract price in accordance with the rules set out in Article 37.
  2. Following the receipt of the contractor's submission referred to in Article 37.4, the supervisor shall, after due consultation with the contracting authority and, where appropriate, the contractor, decide without delay whether or not to accept the amendment. If the supervisor accepts the amendment, it shall notify the contractor through an administrative order stating that the contractor shall carry out the amendment at the prices and under the conditions given in the contractor's submission referred to in Article 37.4 or as modified by the supervisor in accordance with Article 37.6.
  3. The supervisor shall, for all amendments ordered by it in accordance with Article 37.3 and 37.5, ascertain the prices in accordance with the following principles:
     1. where work is of similar character and executed under similar conditions as work priced in the bill of quantities or price schedule, it shall be valued at such rates and prices contained therein;
     2. where work is not of a similar character or is not executed under similar conditions, the rates and prices in the contract shall be used as the basis for valuation as far as is reasonable, failing which the supervisor shall make a fair valuation;
     3. if the nature or amount of any amendment relative to the nature or amount of the whole contract or to any part thereof is such that, in the opinion of the supervisor, any rate or price contained in the contract for any item of work is, by reason of such amendment, rendered unreasonable, the supervisor shall fix such rate or price as he thinks reasonable and proper in the circumstances;
     4. where an amendment is required by a default or breach of contract by the contractor, any additional cost attributable to such amendment shall be borne by the contractor.
  4. On receipt of the administrative order, the contractor shall carry out the requested amendment according to the following principles:
     1. The contractor will be bound by these general conditions as if the amendment requested by administrative order were stated in the contract.
     2. The contractor shall not delay the execution of the administrative order pending the granting of any extension of time for completion or adjustment to the contract price.
     3. Where the administrative order precedes the adjustment to the contract price, the contractor shall keep records of the costs of undertaking the amendment and of the time expended thereon. Such records shall be open to inspection by the supervisor at all reasonable times.
  5. Where on provisional acceptance an increase or reduction in the total value of the works resulting from an administrative order, or from some other circumstance which is not caused by the contractor's default, exceeds 15% of the initial contract price (or as amended by addendum), the supervisor shall, after consulting the contracting authority and the contractor, determine any addition to or reduction from the contract price as a consequence of applying Article 37.6. The sum so determined shall be based on the amount by which the increase or decrease in value of the works exceeds 15%. The supervisor shall notify the sum to the contracting authority and the contractor and adjust the contract price accordingly.
  6. The contractor shall notify the contracting authority of any change of bank account. The contracting authority shall have the right to oppose the contractor's change of bank account.

### Article 38 - Suspension

* 1. Suspension by administrative order of the supervisor:

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

* 1. Suspension by notice of the contractor:

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

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

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

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

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

* 1. During the period of suspension, the contractor shall take such protective measures as may be necessary to safeguard the works, plant, equipment and site against any deterioration, loss or damage. Additional expenses incurred in connection with such protective measures may be added to the contract price, unless:
     1. otherwise provided for in the contract; or
     2. such suspension is necessary by reason of some breach or default of the contractor; or
     3. such suspension is necessary by reason of normal climatic conditions on site; or
     4. such suspension is necessary for the safety or the proper execution of the works or any part thereof insofar as such necessity does not arise from any act, breach or default by the supervisor or the contracting authority or from any of the exceptional risks referred to in Article 21, or
     5. the presumed breach of obligations or irregularities or fraud mentioned in Article

38.3 are confirmed and attributable to the contractor.

* 1. The contractor shall introduce claims for additional payment or extension of the period of implementation in accordance with Articles 35 and 55.
  2. If the period of suspension exceeds 180 days and the suspension is not due to the contractor's breach or default, the contractor may, by notice to the supervisor, request to proceed with the contract within 30 days, or terminate the contract.
  3. The contracting authority shall, as soon as possible, order the contractor to resume the contract suspended or inform the contractor that it terminates the contract.

## MATERIALS AND WORKMANSHIP

### Article 39 - Work register

* 1. A work register shall, unless otherwise provided by the special conditions, be kept on the site by the supervisor, who shall enter in it at least the following information:
     1. the weather conditions, interruptions of work owing to inclement weather, hours of work, number and type of workmen employed on the site, materials supplied, equipment in use, equipment not in working order, tests carried out in situ, samples dispatched, unforeseen circumstances, as well as orders given to the contractor;
     2. detailed statements of all the quantitative and qualitative elements of the work done and the supplies delivered and used, capable of being checked on the site and relevant in calculating payments to be made to the contractor.
  2. The statements shall form an integral part of the work register but may, where appropriate, be recorded in separate documents. The technical rules for drawing up the statements shall be as set out in the special conditions.
  3. The contractor shall ensure that statements are drawn up, in good time and in accordance with the special conditions, in respect of work, services and supplies which cannot be measured or verified subsequently; failing this, it shall accept the decisions of the supervisor, unless, at its own expense, it provides evidence to the contrary.
  4. Entries made in the work register as work progresses shall be signed by the supervisor and countersigned by the contractor or its representative. If the contractor objects, it shall communicate its views to the supervisor within 15 days following the date on which the entry or the statements objected to are recorded. Should it fail to countersign or to submit its views within the period allowed, the contractor shall be deemed to agree with the notes shown in the register. The contractor may examine the work register at any time and may, without removing the document, make or receive a copy of entries which it considers necessary for its own information.
  5. The contractor shall, on request, provide the supervisor with the information needed to keep the work register in good order.

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

* 1. In the usual case of projects (both inside and outside the Union) financed by the Bank’s “own resources” (funds raised mainly through the Bank’s borrowings on capital markets), firms originating from all countries of the world are eligible to tender for works, goods and services contracts.
  2. The Bank shall not provide or otherwise make funds available, directly or indirectly, to or for the benefit of an individual or entity that is subject to financial sanctions imposed by the EU[[33]](#footnote-34), either autonomously or pursuant to the financial sanctions decided by the United Nations Security Council on the basis of Article 41 of the UN Charter.

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

* 1. The works, components and materials shall conform to the specifications, drawings, surveys, models, samples, patterns and other requirements in the contract which shall be held at the disposal of the contracting authority or the supervisor for the purposes of identification throughout the period of performance.
  2. Any preliminary technical acceptance stipulated in the special conditions shall be the subject of a request sent by the contractor to the supervisor. The request shall indicate the reference to the contract, the lot number and the place where such acceptance is to take place, as appropriate. The components and materials specified in the request must be certified by the supervisor as meeting the requirements for such acceptance prior to their incorporation in the works.
  3. Even if materials or items to be incorporated in the works or in the manufacture of components have been technically accepted in this way, they may still be rejected if a further examination reveals defects or faults, in which case they must immediately be replaced by the contractor. The contractor may be given the opportunity to repair and make good materials and items which have been rejected, but such materials and items will be accepted for incorporation in the works only if they have been repaired and made good to the satisfaction of the supervisor.

### Article 41 - Inspection and testing

* 1. The contractor shall ensure that the components and materials are delivered to the site in time to allow the supervisor to proceed with acceptance of the components and materials. The contractor is deemed to have fully appreciated the difficulties which it might encounter in this respect, and it shall not be permitted to advance any grounds for delay in fulfilling its obligations.
  2. The supervisor shall be entitled to inspect, examine, measure and test the components, materials and workmanship, and check the progress of preparation, fabrication or manufacture of anything being prepared, fabricated or manufactured for delivery under the contract in order to establish whether the components, materials and workmanship are of the requisite quality and quantity. This shall take place at the place of manufacture, fabrication, preparation or on the site or at such other places as may be specified in the special conditions.
  3. For the purposes of such tests and inspections, the contractor shall:
     1. provide to the supervisor, temporarily and free of charge, such assistance, test samples or parts, machines, equipment, tools, labour, materials, drawings and production data as are normally required for inspection and testing;
     2. agree, with the supervisor, on the time and place for tests;
     3. provide access for the supervisor at all reasonable times to the place where the tests are to be carried out.
  4. If the supervisor is not present on the date agreed for tests, the contractor may, unless otherwise instructed by the supervisor, proceed with the tests, which shall be deemed to have been made in the supervisor's presence. The contractor shall immediately send duly certified copies of the test results to the supervisor, who shall, if he has not attended the test, be bound by the test results.
  5. When components and materials have passed the above-mentioned tests, the supervisor shall notify the contractor or endorse the procedure's certificate to that effect.
  6. If the supervisor and the contractor disagree on the test results, each shall give a statement of its views to the other within 15 days after such disagreement arises. The supervisor or the contractor may require such tests to be repeated on the same terms and conditions or, if either party so requests, by an expert to be selected by common consent. All test reports shall be submitted to the supervisor who shall communicate the results of these tests without delay to the contractor. The results of the re-testing shall be conclusive. The cost of re-testing shall be borne by the party whose views are proved wrong by the re-testing.
  7. In the performance of its duties, the supervisor and any persons authorised by him shall not disclose to unauthorised persons information concerning the undertaking's methods of manufacture and operation obtained through inspection and testing.

### Article 42 - Rejection

* 1. Components and materials which are not of the specified quality shall be rejected. A special mark may be applied to the rejected components or materials. This shall not be such as to alter them or affect their commercial value. Rejected components and materials shall be removed by the contractor from the site within a period which the supervisor shall specify, failing which they shall be removed by the supervisor as of right at the expense and risk of the contractor. Any work incorporating rejected components or materials shall be rejected.
  2. The supervisor shall, during the progress of the works and before the works are taken over, have the power to order or decide:
     1. the removal from the site, within such time limits as may be specified in the order, of any components or materials which, in the opinion of the supervisor, are not in accordance with the contract;
     2. the substitution of proper and suitable components or materials; or
     3. the demolition and proper re-execution, or satisfactory repair, notwithstanding any previous test thereof or interim payment therefore, of any work which, in respect of components, materials, workmanship or design by the contractor for which it is responsible, is not, in the opinion of the supervisor, in accordance with the contract.
  3. The supervisor shall, as soon as reasonably practicable, give to the contractor notice of its decision specifying particulars of the alleged defects.
  4. The contractor shall with all speed and at its expense make good the defects so specified. If the contractor does not comply with such order, the contracting authority shall be entitled to employ other persons to carry out the same and all expenses consequent thereon or incidental thereto may be deducted by the contracting authority from any monies due or which may become due to the contractor.
  5. The provisions of Article 42 shall not affect the right of the contracting authority to claim under Articles 36 and 63.

### Article 43 - Ownership of plant and materials

* 1. All equipment, temporary works, plant and materials provided by the contractor shall, when brought on the site, be deemed to be exclusively intended for the execution of the works and the contractor shall not remove the same or any part thereof, except for the purpose of moving it from one part of the site to another, without the consent of the supervisor. Such consent shall, however, not be required for vehicles engaged in transporting any personnel, labour, equipment, temporary works, plant or materials to or from the site.
  2. The special conditions may provide that all equipment, temporary works, plant and materials on site owned by the contractor or by any company in which the contractor has a controlling interest shall, for the duration of the execution of the works, be:
     1. vested in the contracting authority; or
     2. made subject to a lien in favour of the contracting authority; or
     3. made subject to any other arrangement regarding priority interest or security.
  3. In the event of termination of the contract in accordance with Article 63 due to the contractor's breach of contract, the contracting authority shall be entitled to use the equipment, temporary works, plant and materials on site in order to complete the works.
  4. Any agreement for the hire by the contractor of equipment, temporary works, plant and materials brought onto the site, shall contain a provision that on request in writing made by the contracting authority within 7 days after the date on which the termination under Article 64 becomes effective, and on the contracting authority undertaking to pay all hire charges in respect thereof from such date, the owner thereof will hire such equipment, temporary works, plant or materials to the contracting authority on the same terms as they were hired by the contractor, save that the contracting authority shall be entitled to permit the use thereof by any other contractor employed by it for completing the works under the provisions of Article 64.3.
  5. Upon termination of the contract before completion of the works, the contractor shall deliver to the contracting authority any plant, temporary works, equipment or materials the property in which has vested in the contracting authority or been made subject to a lien by virtue of Article 43.2. If it fails to do so, the contracting authority may take such appropriate action as it deems fit in order to obtain possession of such plant, temporary works, equipment and materials and recover the cost of so doing from the contractor.

## PAYMENTS

### Article 44 - General principles

* 1. Payments shall be made in euro or national currency as specified in the special conditions. The special conditions shall lay down the administrative or technical conditions governing payments of pre-financing, interim and/or final payments made in accordance with the general conditions.
  2. Payments due by the contracting authority shall be made to the bank account mentioned on the financial identification form completed by the contractor. The same form, annexed to the payment request must be used to report changes of bank account.
  3. Payment to the contractor shall be done as follows:
     1. Pre-financing payments shall be made within 90 days of receipt by the contracting authority of the contractor's invoice and the documents referred to in Article 46.3. The date of payment shall be the date on which the paying account is debited.
     2. Payments to the contractor of the amounts due under each of the interim payment certificates and the final statement of account issued by the supervisor shall be made within 90 days of such certificate of statement accompanied by the contractor's invoice being delivered to the contracting authority. The date of payment shall be the date on which the paying account is debited.
  4. The period referred to in 44.3 may be suspended by notifying the contractor that the invoice cannot be paid because the sum is not due, because appropriate substantiating documents have not been provided or because there is evidence that the expenditure might not be eligible. In the latter case, an inspection may be carried out on the spot for the purpose of further checks. The contractor shall provide clarifications, modifications or further information within 30 days of being asked to do so. Within 30 days of receipt of the clarification, the supervisor shall decide and issue if need be a revised payment certificate or a final statement of account and the payment period shall continue to run from this date.
  5. The contractor undertakes to repay to the contracting authority any amounts paid in excess of the final amount due, before the deadline indicated in the debit note which is 45 days from the issuing of that note.

Should the contractor fail to make repayment within the above deadline, the contracting authority may (unless the contractor is a government department or public body of a Member State of the European Union) increase the amounts due by adding interest:

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

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

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

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

* 1. Prior to, or instead of, terminating the contract as provided for in Article 64, the contracting authority may suspend payments as a precautionary measure without prior notice.
  2. Where the award procedure or the performance of the contract proves to have been subject to breach of obligations, irregularities or fraud attributable to the contractor, the contracting authority may in addition to the possibility to suspend the performance of the contract in accordance with Article 38.3 and terminate the contract as provided for in Article 64, suspend payments and/or recover amounts already paid, in proportion to the seriousness of the breach of obligations irregularities or fraud. In addition to measures referred above, the contracting authority may reduce the contract value in proportion to the seriousness of the irregularities, fraud or of the breach of obligations, including where the activities concerned were not implemented or were implemented poorly, partially or late.

### Article 45 - Provisional price contracts

* 1. In exceptional cases, where a provisional price contract has been awarded, the amount payable under the contract shall be calculated as follows:
     1. as for cost-plus contracts in Article 49.1 (c); or
     2. initially on the basis of provisional prices and, after the conditions for performing the contract are known, as for lump-sum contracts or unit price contracts in Article 49.1 (a) and (b) respectively, or as in a hybrid contract.
  2. The contractor shall supply such information as the contracting authority, or the supervisor may reasonably require in respect of any matter relating to the contract for the purpose of the calculation. Where agreement cannot be reached on the valuation of the works, the amounts payable shall be determined by the supervisor.

### Article 46 - Pre-financing

* 1. If the special conditions so provide, pre-financing may be granted to the contractor, at its request and before the first interim payment takes place, for operations connected with the implementation of the tasks, in the cases listed hereinafter:
     1. as a lump-sum advance enabling it to meet expenditure resulting from the commencement of the contract;
     2. as pre-financing for the purchase or order of: materials, plant, equipment, machines, tools and of any other substantial prior expenses such as the acquisition of patents or study costs, necessary for the execution of the contract. A proof of the conclusion of such purchase or order shall be provided by the contractor to obtain the pre-financing.
  2. The special conditions shall state the amount of the pre-financing which shall not exceed 10% of the original contract price for the lump-sum referred to in Article 46.1 (a) and 20

% of the original contract price for all other pre-financing referred to in Article 46.1 (b).

* 1. No pre-financing shall be granted until:
     1. the signature of the contract;
     2. provision of the performance guarantee in accordance with Article 15;
     3. provision, for the full amount of the pre-financing, of a financial guarantee issued in accordance with Article 15.3 and 15.6 which shall remain effective until the pre-financing has been completely repaid by the contractor out of interim payments under the contract unless otherwise provided for in the special conditions;
     4. fulfilment of the contractor's obligation under Article 16;
     5. approval of the programme of implementation of tasks by the supervisor.
  2. The contractor shall use the pre-financing exclusively for operations connected with the implementation of the tasks. Should the contractor misuse any portion of the pre- financing, it shall become due and repayable immediately and no further pre-financing payments will be made.
  3. Should the pre-financing guarantee cease to be valid, and the contractor fail to re-validate it, either a deduction equal to the amount of the pre-financing may be made by the contracting authority from future payments due to the contractor under the contract, or the contracting authority may apply the provisions of Article 15.6.
  4. If the contract is terminated for any reason whatsoever or the Contractor has not repaid the pre-financing on request, the guarantees securing the pre-financing may be invoked forthwith in order to repay the balance of the pre-financing still owed by the contractor, and the guarantor shall not delay payment or raise objection for any reason whatever.
  5. The pre-financing guarantee provided for in Article 46 shall be released as and when pre- financing is repaid.
  6. Further conditions and procedures for granting and repaying pre-financing shall be as laid down in the special conditions.

### Article 47 - Retention monies

* 1. The sum which shall be retained from interim payments by way of guarantee to meet the contractor's obligations during the defects liability period, and the detailed rules governing that guarantee, shall be stipulated in the special conditions, provided that it shall, in no case, exceed 10% of the contract price.
  2. Subject to the approval of the contracting authority, the contractor may, if it so wishes, substitute, not later than the date fixed for the commencement of the works, these retention sums by a retention guarantee, respecting the provisions of Articles 15.3 and 15.6.
  3. The sum retained or the retention guarantee shall be released within 60 days of the issuing of the signed final statement of account referred to in Article 51, for its total amount except for amounts which are the subject of amicable settlement, conciliation, arbitration or litigation.

### Article 48 - Revision of prices

* 1. Unless otherwise stipulated in the special conditions, and except as provided in Article

48.4 the contract shall be at fixed prices which shall not be revised.

* 1. Where prices may be revised under the contract, such revision shall take into account variations in the prices of significant local or external elements which serve as a basis for the calculation of the tender price, such as manpower, services, materials and supplies, as well as charges laid down by law or regulation. The detailed rules for the revision shall be as laid down in the special conditions.
  2. Prices contained in the contractor's tender shall be deemed:
     1. to have been arrived at on the basis of the conditions in force 30 days prior to the latest date fixed for submission of tenders; or in the case of direct agreement contracts, on the date of the contract;
     2. to have taken account of the legislation and the relevant tax arrangements applicable at the reference date fixed in Article 48.3 (a).
  3. In the event of changes to, or introduction of, any national or State statute, ordinance, decree or other law, or any regulation or by-law of any local or other public authority, after the date stated in Article 48.3 which causes a change in the contractual relationship between the parties to the contract, the contracting authority and the contractor shall consult on how best to proceed further under the contract, and may as a result of such consultation decide:
     1. to amend the contract; or
     2. on payment of compensation for the resulting imbalance by one party to the other; or
     3. to terminate the contract by mutual agreement.
  4. In the event of a delay in the implementation of the tasks for which the contractor is responsible, the indices to be considered for the revision of prices during the period of delay shall be the most advantageous to the contracting authority between those applied to the last interim certificate issued for tasks implemented during the period of implementation of tasks and those revised up to the provisional acceptance of the tasks.

### Article 49 - Measurement

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

### Article 50 - Interim payments

* 1. The contractor shall submit an invoice for interim payment to the supervisor at the end of each period referred to in Article 50.7 in a form approved by the supervisor. The invoice shall include the following items, as applicable:
     1. the estimated contract value of the permanent works implemented up to the end of the period in question;
     2. an amount reflecting any revision of prices pursuant to Article 48;
     3. an amount to be withheld as retention sum under Article 47;
     4. any credit and/or debit for the period in question in respect of plant and materials on site intended for, but not yet incorporated in, the permanent works in the amount and under the conditions set out in Article 50.2;
     5. an amount to be deducted on account of the pre-financing repayment under the provisions of Article 46; and
     6. any other sum to which the contractor may be entitled under the contract.
  2. The contractor shall be entitled to such sums as the supervisor may consider proper in respect of plant and materials intended for, but not yet incorporated in, the permanent works provided that:
     1. the plant and materials conform with the specifications for the permanent works and are set out in batches in a way that they may be recognized by the supervisor;
     2. such plant and materials have been delivered to the site, and are properly stored and protected against loss or damage or deterioration to the satisfaction of the supervisor;
     3. the contractor's record of requirements, orders, receipts and use of plant and materials under the contract are kept in a form approved by the supervisor and such records are available for inspection by the supervisor;
     4. the contractor submits with its statement, the estimated value of the plant and materials on site together with such documents as may be required by the supervisor for the purpose of valuation of the plant and materials and providing evidence of ownership and payment therefor; and
     5. where the special conditions so provide, ownership of the plant and materials referred to in Article 43 shall be deemed to be vested in the contracting authority.
  3. Approval by the supervisor of any interim invoice certified by him in respect of plant and materials pursuant to Article 50 shall be without prejudice to the exercise of any power of the supervisor under the contract to reject any plant or materials which are not in accordance with the provisions of the contract.
  4. The contractor shall be responsible for any loss or damage to, and for the cost of storing and handling of, such plant and materials on site and shall effect such additional insurance as may be necessary to cover the risk of such loss or damage from any cause.
  5. Within 30 days of receipt of the said invoice for interim payment, the supervisor shall:
     1. verify that, in the supervisor's opinion, the invoice for interim payment reflects the amount due to the contractor in accordance with the contract. In cases where there is a difference of opinion as to the value of an item, the supervisor's view shall prevail.
     2. on determination of the amount due to the contractor, issue and transmit to the contracting authority for payment and to the contractor for information, an interim payment certificate for the amount due to the contractor and shall inform the contractor of the works for which payment is being made.
  6. The supervisor may, by an interim payment certificate, make any corrections or modifications to any previous certificate issued by him, and has power to modify the valuation in or withhold the issue of, any interim payment certificate if the works or any part thereof is not being carried out to its satisfaction.
  7. Unless the special conditions provide otherwise, the frequency shall be one interim payment per month.

### Article 51 - Final statement of account

* 1. Unless otherwise agreed in the special conditions, the contractor shall submit to the supervisor a draft final statement of account no later than 90 days after the issue of the final acceptance certificate referred to in Article 62. In order to enable the supervisor to prepare the final statement of account, the draft final statement of account is submitted with supporting documents showing in detail the value of the work done in accordance with the contract and all further sums which the contractor considers to be due to it under the contract.
  2. Within 90 days after receipt of the draft final statement of account and of all information reasonably required for its verification, the supervisor shall prepare and sign the final statement of account, which determines:
     1. the amount which in its opinion is finally due under the contract; and
     2. after establishing the amounts previously paid by the contracting authority and all sums to which the contracting authority is entitled under the contract, the balance, if any, due from the contracting authority to the contractor, or from the contractor to the contracting authority, as the case may be.
  3. The supervisor shall issue to the contracting authority or to its duly authorized representative, and to the contractor, the final statement of account showing the final amount to which the contractor is entitled under the contract. The contracting authority or its duly authorized representative and the contractor shall sign the final statement of account as an acknowledgement of the full and final value of the work implemented under the contract and shall promptly submit a signed copy to the supervisor together with the invoice for the payment of the agreed balance, if any, due to the contractor. However, the final statement of account and the invoice for the payment of the balance shall not include amounts in dispute which are the subject of negotiations, conciliation, arbitration or litigation.
  4. The final statement of account signed by the contractor constitutes a written discharge of the contracting authority confirming that the total in the final statement of account represents full and final settlement of all monies due to the contractor under the contract, other than those amounts which are the subject of amicable settlement, arbitration or litigation. However, such discharge becomes effective only after any payment due in accordance with the final statement of account has been made and the performance guarantee referred to in Article 15 has been returned to the contractor.
  5. The contracting authority is not liable to the contractor for any matter or thing whatsoever arising out of, or in accordance with, the contract or execution of the works, unless the contractor has included a claim in respect thereof in its draft final statement of account.

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

* 1. When the supervisor receives a claim from a sub-contractor duly approved under Article 7 to the effect that the contractor has not met its financial obligations so far as the sub- contractor is concerned, the supervisor gives notice to the contractor either to pay the sub-

contractor or to inform it of the reasons why payment should not be made. Should such payment not be made, or reasons not be given within the period of notice, the supervisor may, after satisfying itself that the work has been carried out, certify, and the contracting authority pays the debt claimed by the sub-contractor out of the sums remaining due to the contractor. The contractor remains entirely responsible for the work in respect of which direct payment has been made.

* 1. If the contractor gives adequate reasons for refusing to settle all or part of the debt claimed by the sub-contractor, the contracting authority only pays to the sub-contractor only the amounts not in dispute. Sums claimed by the sub-contractor in respect of which the contractor has given adequate reasons for its refusal to pay shall be paid by the contracting authority only after the parties have come to an amicable settlement, or after the decision of an arbitrating authority or after a judgment of a court has been duly notified to the supervisor.
  2. Direct payments to sub-contractors shall not exceed the value at contract prices of the services performed by the sub-contractors for which they request payment; the value at contract prices is calculated or assessed on the basis of the bill of quantities, the price schedule or the breakdown of the lump sum price.
  3. Direct payments to sub-contractors are made entirely in the national currency of the country in which the works are executed, or partly in such national currency and partly in foreign currency, in accordance with the contract.
  4. Where direct payments to sub-contractors are made in foreign currency, they are calculated in accordance with Article 56. They shall not result in any increase in the total amount payable in foreign currency, as stipulated in the contract.
  5. The provisions of Article 52 apply subject to the requirements of the law applicable by virtue of Article 54 concerning the right to payment of creditors who are beneficiaries of an assignment of credit or of a collateral security.

### Article 53 - Delayed payments

* 1. Once the time-limit referred to in Article 44.3 of the general conditions has expired, the contractor will, upon demand, submitted within two months of receiving late payment, be entitled to late-payment interest:
     + at the rediscount rate applied by the central bank by the law of the country in which the works are executed if payments are in the currency of that country;
     + at the rate applied by the European Central Bank to its main refinancing transactions in euro, as published in the Official Journal of the European Union, C series, if payments are in euro,

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

* 1. Any default in payment of more than 30 days after the expiry of the time-limit stated in Article 44.3(b) shall entitle the contractor to suspend the work in accordance with the procedure laid down in Article 38.2.
  2. Any default in payment of more than 120 days after the expiry of the time-limit stated in Article 44.3(b) shall entitle the contractor to terminate the contract in accordance with the procedure laid down in Article 65.

### Article 54 - Payments to third parties

* 1. Orders for payments to third parties may be carried out only after an assignment made in accordance with Article 6. The assignment is notified to the contracting authority.
  2. Notification of beneficiaries of the assignment is the sole responsibility of the contractor.
  3. In the event of a legally binding attachment of the property of the contractor affecting payments due to it under the contract, and without prejudice to the time limit laid down in Article 53, the contracting authority has 30 days, starting from the day when it receives notification of the definitive lifting of the obstacle to payment, to resume payments to the contractor.

### Article 55 - Claims for additional payment

* 1. If the contractor considers itself being entitled to additional payment under the contract, the contractor shall:
     1. if it intends to make any claim for additional payment, give to the supervisor notice of its intention or make such claim no later than 15 days after the contractor became aware, or should have become aware of the event or circumstances giving rise of such claim, stating the reason for its claim;

If the contractor fails to give notice of a claim for additional payment within such period of 15 days, the contractor shall not be entitled to additional payment, and the contracting authority shall be discharged from all liability in connection with the request; and

* + 1. submit full and detailed particulars of its claim as soon as it is reasonably practicable, but no later than 60 days after the date of such notice, unless otherwise agreed by the supervisor. In case the supervisor agrees to another deadline than the said 60 days, the agreed upon deadline will, in any event, require that such particulars shall be submitted no later than the date of submission of the draft final statement of account. The contractor shall thereafter promptly submit such further particulars as the supervisor may reasonably require assessing the validity of the claim.
  1. When the supervisor has received the full and detailed particulars of the contractor's claim that it requires, he shall, without prejudice to Article 21.4, after due consultation with the contracting authority and, where appropriate, the contractor, determine whether the contractor is entitled to additional payment and notify the parties accordingly.
  2. The supervisor may reject any claim for additional payment which does not comply with the requirements of Article 55.

### Article 56 - End date

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

## ACCEPTANCE AND DEFECTS LIABILITY

### Article 57 - General principles

* 1. Verification of the works by the supervisor with a view to provisional or final acceptance shall take place in the presence of the contractor. The absence of the contractor shall not be a bar to verification on condition that the contractor has been summoned in due form at least 30 days prior to the date of verification.
  2. Should exceptional circumstances make it impossible to ascertain the state of the works or otherwise proceed with their acceptance during the period fixed for provisional or final acceptance, a statement certifying such impossibility shall be drawn up by the supervisor after consultation, where possible, with the contractor. The verification shall take place and a statement of acceptance or rejection shall be drawn up by the supervisor within 30 days following the date on which such impossibility ceases to exist. The contractor shall not invoke these circumstances in order to avoid its obligation of presenting the works in a state suitable for acceptance.

### Article 58 - Tests on completion

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

### Article 59 - Partial acceptance

* 1. The contracting authority may make use of the various structures, parts of structures or sections of the works forming part of the contract as and when they are completed. Any taking over of the structures, parts of structures or sections of the works by the contracting authority shall be preceded by their partial provisional acceptance. However, works may in cases of urgency be taken over prior to acceptance provided an inventory of outstanding work is drawn up by the supervisor and agreed to by the contractor and the supervisor beforehand. Once the contracting authority has taken possession of a structure, a part thereof or section of the works, the contractor shall no longer be required to make good any damage resulting otherwise than from faulty construction or workmanship.
  2. The supervisor may, at the request of the contractor and if the nature of the works so permits, proceed with partial provisional acceptance, provided that the structures, parts of structures or sections of the works are completed and suited to the use as described in the contract.
  3. In the cases of partial provisional acceptance referred to in Article 59.1 and 59.2 the defects liability period provided for in Article 62 shall, unless the special conditions provide otherwise, run as from the date of such partial provisional acceptance.

### Article 60 - Provisional acceptance

* 1. The works shall be taken over by the contracting authority when they have satisfactorily passed the tests on completion and a certificate of provisional acceptance has been issued or is deemed to have been issued.
  2. The contractor may apply, by notice to the supervisor, for a certificate of provisional acceptance not earlier than 15 days before the works, in the contractor's opinion, are complete and ready for provisional acceptance. The supervisor shall within 30 days after the receipt of the contractor's application either:
     1. issue the certificate of provisional acceptance to the contractor with a copy to the contracting authority stating, where appropriate, its reservations, and, inter alia, the date on which, in its opinion, the works were completed in accordance with the contract and ready for provisional acceptance; or
     2. reject the application giving its reasons and specifying the action which, in its opinion, is required of the contractor for the certificate to be issued.
  3. If the supervisor fails either to issue the certificate of provisional acceptance or to reject the contractor's application within the period of 30 days, he shall be deemed to have issued the certificate on the last day of that period. The certificate of provisional acceptance shall not be deemed to be an admission that the works have been completed in every respect. If the works are divided by the contract into sections, the contractor shall be entitled to apply for separate certificates for each of the sections.
  4. Upon provisional acceptance of the works, the contractor shall dismantle and remove temporary structures as well as materials no longer required for use in connection with

the implementation of the contract. It shall also remove any litter or obstruction and redress any change in the condition of the site as required by the contract.

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

### Article 61 - Defects liability

* 1. The contractor shall be responsible for making good any defect in, or damage to, any part of the works which may appear or occur during the defects liability period and which:
     1. results from the use of defective plant or materials or faulty workmanship or design of the contractor; and/or
     2. results from any act or omission of the contractor during the defects liability period; and/or;
     3. appears in the course of an inspection made by, or on behalf of the contracting authority.
  2. The contractor shall at its own cost make good the defect or damage as soon as practicable. The defects liability period for all items replaced or renewed shall recommence from the date when the replacement or renewal was made to the satisfaction of the supervisor. If the contract provides for partial acceptance, the defects liability period shall be extended only for the part of the works affected by the replacement or renewal.
  3. If any such defect appears or such damage occurs, during the defects liability period, the contracting authority or the supervisor shall notify the contractor. If the contractor fails to remedy a defect or damage within the time limit stipulated in the notification, the contracting authority may:
     1. carry out the works itself, or employ someone else to carry out the works at the contractor's risk and cost, in which case the costs incurred by the contracting authority shall be deducted from monies due to or from guarantees held against the contractor or from both; or
     2. terminate the contract.
  4. If the defect or damage is such that the contracting authority has been deprived substantially of the whole or a part of the benefit of the works, the contracting authority shall, without prejudice to any other remedy, be entitled to recover all sums paid in respect of the parts of the works concerned together with the cost of dismantling such parts and clearing the site.
  5. In case of emergency, where the contractor is not immediately available or, having been reached, is unable to take the measures required, the contracting authority or the supervisor may have the work carried out at the expense of the contractor. The contracting authority or the supervisor shall as soon as practicable inform the contractor of the action taken.
  6. Where the special conditions stipulate that the maintenance work, necessitated by normal wear and tear, shall be carried out by the contractor, such work shall be paid for from a provisional sum. Deterioration resulting from the circumstances provided for in Article 21 or from abnormal use shall be excluded from this obligation unless it reveals a fault or defect justifying the request for repair or replacement under Article 61.
  7. The defects liability period shall be stipulated in the special conditions and technical specifications. If the duration of the defects liability period is not specified, it shall be 365 days. The defects liability period shall commence on the date of provisional acceptance and may recommence in accordance with Article 61.2.
  8. After provisional acceptance and without prejudice to the defects liability referred to in Article 61, the contractor shall no longer be responsible for risks which may affect the works and which result from causes not attributable to it. However, the contractor shall be responsible as from the date of provisional acceptance for the soundness of the construction, as laid down in the law of the country in which the works are executed.

### Article 62 - Final acceptance

* 1. Upon the expiry of the defects liability period, or where there is more than one such period, upon the expiry of the latest period, and when all defects or damage have been rectified, the supervisor shall issue to the contractor a final acceptance certificate and a copy thereof to the contracting authority stating the date on which the contractor completed its obligations under the contract to the supervisor's satisfaction. The final acceptance certificate shall be given by the supervisor within 30 days after the expiration of the defects liability period, or as soon as any works ordered under Article 61 have been completed to the satisfaction of the supervisor.
  2. The works shall not be considered as completed until the final acceptance certificate has been signed by the supervisor and delivered to the contracting authority, with a copy to the contractor.
  3. Notwithstanding the issuance of the final acceptance certificate, the contractor and the contracting authority shall remain liable for the fulfilment of any obligation incurred under the contract prior to the issue of the final acceptance certificate, which remains unperformed at the time such final acceptance certificate is issued. The nature and extent of any such obligation shall be determined by reference to the provisions of the contract.

## BREACH OF CONTRACT AND TERMINATION

### Article 63 - Breach of contract

* 1. Either party commits a breach of contract where it fails to perform its obligations in accordance with the provisions of the contract.
  2. Where a breach of contract occurs, the party injured by the breach is entitled to the following remedies:
     1. damages; and/or
     2. termination of the contract.
  3. Damages may be either:
     1. general damages; or
     2. liquidated damages.
  4. Should the contractor fail to perform any of its obligations in accordance with the provisions of the contract, the contracting authority is without prejudice to its right under Article 63.2, also entitled to the following remedies:
     1. suspension of payments; and/or
     2. reduction or recovery of payments in proportion to the failure's extent.
  5. Where the contracting authority is entitled to damages, it may deduct such damages from any sums due to the contractor or call on the appropriate guarantee.

### Article 64 - Termination by the contracting authority

* 1. The contracting authority may, at any time and with immediate effect, subject to Article 64.9, terminate the contract, except as provided for under Article 64.2.
  2. Subject to any other provision of these general conditions the contracting authority may, by giving seven days' notice to the contractor, terminate the contract and expel the contractor from the site in any of the following cases where:
     1. the contractor is in serious breach of contract for failure to perform its contractual obligations;
     2. the contractor fails to comply within a reasonable time with the notice given by the supervisor requiring it to make good the neglect or failure to perform its obligations under the contract which seriously affects the proper and timely performance of the works;
     3. the contractor refuses or neglects to carry out any administrative orders given by the supervisor;
     4. the contractor assigns the contract or sub-contracts without the authorisation of the contracting authority;
     5. the contractor is bankrupt, subject to insolvency or winding up procedures, is having its assets administered by a liquidator or by the courts, has entered into an arrangement with creditors, has suspended business activities, or is in any analogous situation arising from a similar procedure provided for under any national law or regulation relevant to that contractor;
     6. any organisational modification occurs involving a change in the legal personality, nature or control of the contractor, unless such modification is recorded in an addendum to the contract;
     7. any other legal disability hindering performance of the contract occurs;
     8. the contractor fails to provide the required guarantees or insurance, or the person providing the earlier guarantee or insurance is not able to abide by its commitments;
     9. the contractor has been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
     10. it has been established by a final judgment or a final administrative decision or by proof in possession of the contracting authority that the contractor has been guilty of fraud, corruption, involvement in a criminal organisation, money laundering or terrorist financing, terrorist related offences, child labour or other forms of trafficking in human beings or circumventing fiscal, social or any other applicable legal obligations, including through the creation of an entity for this purpose;
     11. the contractor, in the performance of another contract financed by the EIB funds, has been declared to be in serious breach of contract, which has led to its early termination or the application of liquidated damages or other contractual penalties or which has been discovered following checks, audits or investigations by the EIB, the contracting authority, OLAF or the Court of Auditors;
     12. after the award of the contract, the award procedure or the performance of the contract proves to have been subject to breach of obligations, irregularities or fraud;
     13. the award procedure or the performance of another contract financed by the EIB funds and or state budget proves to have been subject to breach of obligations, irregularities or fraud which are likely to affect the performance of the present contract;
     14. the contractor fails to perform its obligation in accordance with Article 12.8, Article 12a or Article 12b;
     15. the contracting authority has become entitled to the maximum claim under Article 36.1;
     16. the contractor fails to perform its obligation in accordance with Article 61.3;
     17. the contractor is in breach of the data protection obligations resulting from Article 72 of these general conditions.

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

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

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

* 1. Termination shall be without prejudice to any other rights or powers under the contract of the contracting authority and the contractor. The contracting authority may, thereafter, complete the works itself or conclude any other contract with a third party, at the contractor's own expense. The contractor's liability for delay in completion shall immediately cease when the contracting authority terminates the contract without prejudice to any liability thereunder that may already have arisen.
  2. Upon termination of the contract or when it has received notice thereof, the contractor shall take immediate steps to bring the works to a close in a prompt and orderly manner and to reduce expenditure to a minimum.
  3. The supervisor shall, as soon as possible after termination, certify the value of the works and all sums due to the contractor as at the date of termination.
  4. In the event of termination:
     1. a report of work performed by the contractor shall be drawn up by the supervisor as soon as possible after inspection of the works, and inventory taken of temporary structures, materials, plant and equipment. The contractor shall be summoned to be present during the inspection and the taking of the inventory. The supervisor shall also draw up statements of emoluments still owed by the contractor to workers employed by him in relation to the contract and of sums owed by the contractor to the contracting authority;
     2. the contracting authority shall have the option of acquiring in whole or in part temporary structures which have been approved by the supervisor, equipment, plant and materials specifically supplied or manufactured in connection with the execution of work under the contract;
     3. the purchase price of the temporary structures, equipment, plant and materials referred to above shall not exceed the unpaid portion of the expenditure incurred by the contractor, such expenditure being limited to that required for the performance of the contract under normal conditions;
     4. the contracting authority may purchase, at market prices, the materials and items supplied or ordered by the contractor and not already paid for by the contracting authority on such conditions as the supervisor considers appropriate.
  5. The contracting authority shall not be obliged to make any further payments to the contractor until the works are completed. After the works are completed, the contracting

authority shall recover from the contractor the extra costs, if any, of completing the works, or shall pay any balance still due to the contractor.

* 1. If the contracting authority terminates the contract pursuant to Article 64.2, it shall, in addition to the extra costs for completion of the works and without prejudice to its other remedies under the contract, be entitled to recover from the contractor any loss it has suffered up to 10% of the contract price.
  2. Where the termination is not due to an act or omission of the contractor, force majeure or other circumstances beyond the control of the contracting authority, the contractor shall be entitled to claim in addition to sums owed to it for work already performed, an indemnity for loss suffered.
  3. This contract shall be automatically terminated if it has not given rise to any payment in the two years following its signing by both parties.

### Article 65 - Termination by the contractor

* 1. The contractor may, by giving 14 days' notice to the contracting authority, terminate the contract if the contracting authority:
     1. fails for more than 120 days to pay the contractor the amounts due under any certificate issued by the supervisor after the expiry of the time limit stated in Article 44.3; or
     2. consistently fails to meet its obligations after repeated reminders; or
     3. suspends the progress of the works or any part thereof for more than 180 days for reasons not specified in the contract, or not attributable to the contractor's breach or default.
  2. Such termination shall be without prejudice to any other rights of the contracting authority or the contractor acquired under the contract. Upon such termination, the contractor shall, subject to the law of the country in which the works are executed, be entitled to immediately remove its equipment from the site.
  3. In the event of such termination, the contracting authority shall pay the contractor for any loss or damage the contractor may have suffered. The maximum amount shall be 10% of the contract price.

### Article 66 - Force majeure

* 1. Neither party shall be considered to be in default or in breach of its obligations under the contract if the performance of such obligations is prevented by any circumstances of force majeure which arises after the date of notification of award or the date when the contract becomes effective.
  2. The term force majeure, as used herein covers any unforeseeable events, not within the control of either party and which by the exercise of due diligence neither party is able to overcome such as acts of God, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars whether declared or not, blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosions. A decision of the European Union to suspend the cooperation with the partner country is considered to be a case of force majeure when it implies suspension of funding this contract.
  3. Notwithstanding the provisions of Articles 36 and 64, the contractor shall not be liable to forfeiture of its performance guarantee, liquidated damages or termination for default if, and to the extent that, its delay in performance or other failure to perform its obligations under the contract is the result of an event of force majeure. The contracting authority shall similarly not be liable, notwithstanding the provisions of Articles 53 and 65, for payment of interest on delayed payments, for non-performance or for termination by the contractor for default, if, and to the extent that, the contracting authority's delay or other failure to perform its obligations is the result of force majeure.
  4. If either party considers that any circumstances of force majeure have occurred which may affect performance of its obligations, it shall promptly notify the other party and the supervisor, giving details of the nature, the probable duration and the likely effect of the circumstances. Unless otherwise directed by the supervisor in writing, the contractor shall continue to perform its obligations under the contract as far as is reasonably practicable, and shall seek all reasonable alternative means for performance of its obligations which are not prevented by the force majeure event. The contractor shall not put into effect such alternative means unless directed so to do by the supervisor.
  5. If the contractor incurs additional costs in complying with the supervisor's directions or using alternative means under Article 66.4, the amount thereof shall be certified by the supervisor.
  6. If circumstances of force majeure have occurred and continue for a period of 180 days then, notwithstanding any extension of time for completion of the works that the contractor may by reason thereof have been granted, either party shall be entitled to serve upon the other 30 days' notice to terminate the contract. If, at the expiry of the period of 30 days, force majeure persists, the contract shall terminate and, in consequence thereof under the law governing the contract, the parties shall be released from further performance of the contract.

### Article 67 - Decease

* 1. Where the contractor is a natural person, the contract shall be automatically terminated if that person dies. However, the contracting authority shall examine any proposal made by the heirs or beneficiaries if they have notified their wish to continue the contract.
  2. Where the contractor consists of a number of persons and one or more of them die, a report shall be agreed between the parties on the progress of the works, and the contracting authority shall decide whether to terminate or continue the contract in accordance with the undertaking given by the survivors and by the heirs or beneficiaries, as the case may be. The decision of the contracting authority shall be notified to those concerned within 30 days of receipt of such proposal.
  3. In the cases provided for in Article 67.1 and 67.2, persons offering to continue to perform the contract shall notify the contracting authority thereof within 15 days of the date of decease.
  4. Such persons shall be jointly and severally liable for the proper performance of the contract to the same extent as the deceased contractor. Continuation of the contract shall be subject to the rules relating to establishment of any guarantee provided for in the contract.

## SETTLEMENT OF DISPUTES AND APPLICABLE LAW

### Article 68 - Settlement of disputes

* 1. The parties shall make every effort to settle amicably any dispute relating to the contract which may arise between them, or between the supervisor and the contractor.
  2. Once a dispute has arisen, a party shall notify the other party of the dispute, stating its position on the dispute and requesting an amicable settlement. The other party shall respond to this request for amicable settlement within 30 days, stating its position on the dispute. Unless the parties agree otherwise, the maximum time period laid down for reaching an amicable settlement shall be 120 days from the date of the notification requesting such a procedure. Should a party not agree to the other party's request for amicable settlement, should a party not respond in time to that request or should no amicable settlement be reached within the maximum time period, the amicable settlement procedure is considered to have failed.
  3. In the absence of an amicable settlement, a party may notify the other party requesting a settlement through conciliation by a third person.

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

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

### Article 69 - Applicable Law

* 1. This contract shall be governed by the law of the country of the contracting authority as long as aligned with EIB GtP.

## FINAL PROVISIONS

### Article 70 - Administrative sanctions

* 1. Without prejudice to the application of other remedies laid down in the contract, a sanction of exclusion from all contracts and grants financed by the EU, may be imposed, after an adversarial procedure in line with the applicable Financial Regulation, upon the contractor who, in particular,
     1. is guilty of grave professional misconduct, has committed irregularities or has shown significant deficiencies in complying with the main obligations in the performance of the contract or has been circumventing fiscal, social or any other applicable legal obligations, including through the creation of an entity for this purpose. The duration of the exclusion shall not exceed the duration set by final judgement or final administrative decision or, in the absence thereof, three years;
     2. is guilty of fraud, corruption, participation in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings. The duration of the exclusion shall not exceed the duration set by final judgement or final administrative decision or, in the absence thereof, five years.
  2. In the situations mentioned in Article 70.1, in addition or in alternative to the sanction of exclusion, the contractor may also be subject to financial penalties representing 2-10% of the contract price.
  3. Where the contracting authority is entitled to impose financial penalties, it may deduct such financial penalties from any sums due to the contractor or call on the appropriate guarantee.
  4. The decision to impose administrative sanctions may be published on a dedicated internet-site, explicitly naming the contractor.

### Article 71 - Verifications, checks and audits by European Union bodies

* 1. The contractor shall permit and shall cause its agents (where declared or not), sub-contractors, sub-consultants, service providers, suppliers, and personnel, to permit the promoter the Bank and auditors appointed by either of them, as well as any authority or European Union institution or body having competence under European Union law, the right to inspect and copy the books and records of the tenderer, contractor, supplier or consultant in connection with any Bank-financed contract.

The Bank reserves the right not to finance any contract in which tenderers/contractors have not issued to the promoter the Covenant of Integrity signed by a duly authorised person.

In order to carry out these verifications and audits, the EU bodies mentioned above shall be allowed to conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document relevant to the financing of the project.

The contractor shall ensure that on-the-spot accesses is available at all reasonable times, notably at the contractor's offices, to its computer data, to its accounting data and to all the information needed to carry out the audits, including information on individual salaries of persons involved in the project. The contractor shall ensure that the information is readily available at the moment of the audit and, if so requested, that data be handed over in an appropriate form. These inspections may take place up to 7 years after the final payment.

* 1. Furthermore, the contractor will allow the promoter the Bank and auditors appointed by either of them, as well as any authority or European Union institution or body having competence under European Union law to carry out checks and verification on the spot in accordance with the procedures set out in the European Union legislation for the protection of the financial interests of the European Union against fraud and other irregularities.
  2. To this end, the contractor undertakes to give appropriate access to personnel or agents of the promoter the Bank and auditors appointed by either of them, as well as any authority or European Union institution or body having competence under European Union law to the sites and locations at which the contract is carried out, including its information systems, as well as all documents and databases concerning the technical and financial management of the project and to take all steps to facilitate their work. Access given to promoter the Bank and auditors appointed by either of them, as well as any authority or European Union institution or body having competence under European Union law shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject. Documents must be easily accessible and filed so as to facilitate their examination and the contractor must inform the contracting authority of their precise location.
  3. The contractor guarantees that the rights of the promoter the Bank and auditors appointed by either of them, as well as any authority or European Union institution or body having competence under European Union law to carry out audits, checks and verification will be equally applicable, under the same conditions and according to the same rules as those set out in this Article, to any sub-contractor or any other party benefiting from European Investment Bank’s funds.
  4. Failure to comply with the obligations set forth in Article 71.1 to 71.4 constitutes a case of serious breach of contract.

### Article 72 - Data protection

**72.1. Processing of personal data by the contracting authority**

Any personal data included in or relating to the contract, including its implementation, shall be processed in accordance with Regulation (EU) 2018/1725. Such data shall be processed solely for the purposes of the implementation, management and monitoring of the contract by the data controller.

The contractor or any other person whose personal data is processed by the data controller in relation to this contract has specific rights as a data subject under Chapter III (Articles 14-25) of Regulation (EU) 2018/1725, in particular the right to access, rectify or erase their personal data and the right to restrict the processing of their personal data or, where applicable, the right to object to processing or the right to data portability.

Should the contractor or any other person whose personal data is processed in relation to this contract have any queries concerning the processing of its personal data, it shall address itself to the data controller. They may also address themselves to the Data Protection Officer of the data controller. They have the right to lodge a complaint at any time to the European Data Protection Supervisor.

Details concerning the processing of personal data are available in the data protection notice referred to in the special conditions.

**72.2 Processing of personal data by the contractor**

The processing of personal data by the contractor shall meet the requirements of the general conditions and be processed solely for the purposes set out by the controller.

The contractor shall assist the controller for the fulfilment of the controller’s obligation to respond to requests for exercising rights of person whose personal data is processed in relation to this contract as laid down in Chapter III (Articles 14-25) of Regulation (EU) 2018/1725. The contractor shall inform without delay the controller about such requests.

The contractor may act only on documented written instructions and under the supervision of the controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.

The contractor shall grant personnel access to the data to the extent strictly necessary for the implementation, management and monitoring of the contract. The contractor must ensure that personnel authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality in accordance with the provisions of Article 12.7 of these general conditions.

The contractor shall adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the processing and to the nature, scope, context and purposes of processing, in order to ensure, in particular, as appropriate:

1. the pseudonymisation and encryption of personal data;
2. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
3. the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
4. a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
5. measures to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.

The contractor shall notify relevant personal data breaches to the controller without undue delay and at the latest within 48 hours after the contractor becomes aware of the breach. In such cases, the contractor shall provide the controller with at least the following information:

1. nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
2. likely consequences of the breach;
3. measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.

The contractor shall immediately inform the data controller if, in its opinion, an instruction infringes Regulation (EU) 2018/1725, Regulation (EU) 2016/679, or other Union or Member State or third country applicable data protection provisions as referred to in the tender specifications.

The contractor shall assist the controller for the fulfilment of its obligations pursuant to Article 33 to 41 under Regulation (EU) 2018/1725 to:

1. ensure compliance with its data protection obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users;
2. notify a personal data breach to the European Data Protection Supervisor;
3. communicate a personal data breach without undue delay to the data subject, where applicable;
4. carry out data protection impact assessments and prior consultations as necessary.

The contractor shall maintain a record of all data processing operations carried on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requests for access to personal data by third parties.

The contracting authority is subject to Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union, particularly as regards the inviolability of archives (including the physical location of data and services) and data security, which includes personal data held on behalf of the contracting authority in the premises of the contractor or subcontractor.

The contractor shall notify the contracting authority without delay of any legally binding request for disclosure of the personal data processed on behalf of the contracting authority made by any national public authority, including an authority from a third country. The contractor may not give such access without the prior written authorisation of the contracting authority.

The duration of processing of personal data by the contractor will not exceed the period referred to in Article 12.10 of these general conditions. Upon expiry of this period, the contractor shall, at the choice of the controller, return, without any undue delay in a commonly agreed format, all personal data processed on behalf of the controller and the copies thereof or shall effectively delete all personal data unless Union or national law requires a longer storage of personal data.

For the purpose of Article 7 of these general conditions, if part or all of the processing of personal data is subcontracted to a third party, the contractor shall pass on the obligations referred to in the present article in writing to those parties, including subcontractors. At the request of the contracting authority, the contractor shall provide a document providing evidence of this commitment.

\* \* \*

Glossary of terms’, Annex A

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| --- | --- |
| **Addendum** | A document modifying the terms and conditions of a contract. |
| **Bill of quantities** | The document containing an itemized breakdown of the works to be carried out in a unit price contract, indicating a quantity for each item and the corresponding unit price. |
| **Budget breakdown** | The schedule which breaks down the contract value according to the different items or services, stating out fee rate, unit prices and lump sums for each item provided. |
| **Commission** | The European Commission |
| **Conflict of interests** | Conflict of interest occurs when the impartial and objective exercise of the functions of the promoter, or the respect of the principles of competition, non-discrimination or equality of treatment with regard to the procurement procedure or contract, is compromised for reasonsinvolving family, emotional life, political or national affinity, economic interest or any other shared interest. The concept of conflict of interest covers any situation where staff members (or consultants acting on behalf) of the promoter who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure or contract execution. Promoters must take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures or contracts so as to avoid any distortion of competition and to ensure the impartial and objective exercise of the functions of the promoter and equal treatment of all tenderers or contractors.  The assessment of whether or not there is a conflict of interest has to be carried out on a case by case basis, considering the actual risk of conflict based on the specific circumstances of the case at stake. The individual or entity in question should declare whether they have any conflict of interest and, if so, present supporting evidence which might remove or remedy a conflict of interest.  In cases where a conflict of interest cannot be effectively remedied by other less intrusivemeasures, the Bank requires promoters to exclude from participation in an EIB-financed procurement procedure or contract any tenderer or contractor affected by such a conflict of interest |
| **Consortium** | A grouping of eligible natural and legal persons or public entities which submits a tender or an application, under a tender procedure or in response to a call for proposals. It may be a permanent, legally-established grouping or a grouping which has been constituted informally for a specific tender procedure or call for proposals. All members of a consortium (i.e. the leader and all other partners) are jointly and severally liable to the contracting authority. |
| **Contract** | An agreement, between two or more persons or entities. It can take either the form of procurement contract — with specific terms and an undertaking to provide services, supplies and/or works in return for a financial consideration. |
| **Contract budget** | A summary of the costs of performing the contract. The total of these costs is the contract value or contract price.  In the case of works the sum represents the initial estimate payable for the execution of the works or such other sum as ascertained by the final statement of account as due to the contractor under the contract. |
| **Contract price** | See ‘Contract budget’. |
| **Contract value** | See ‘Contract budget’. |
| **Contracting authority** | Administration for Capital Projects, Montenegro |
| **Contractor** | Any natural or legal person or public entity or consortium of such persons and/or bodies selected at the end of the procedure for the award of the contract. The successful tenderer, once parties have signed the contract. |
| **Day** | Calendar day unless otherwise specified. |
| **Dayworks** | Varied work inputs subject to payment on an hourly basis for the contractor's employees and plants. |
| **Defects liability period** | The period stated in the contract immediately following the date of provisional acceptance, during which the contractor is required to complete the works and to remedy defects or faults as instructed by the supervisor. |
| **Drawings** | Drawings provided by the contracting authority and/or the supervisor, and/or drawings provided by the contractor and approved by the supervisor, for the carrying out of the works. |
| **EC** | The European Commission. |
| **EIB** | European Investment Bank |
| **Equipment** | Machinery, apparatus, components and any other articles intended for use in the works. |
| **EU** | The European Union |
| **Execution period** | The period from contract signature until final payment for services, or until release of the performance guarantee after final acceptance for supplies and works. |
| **Expert** | A natural person employed or otherwise legally contracted by an eligible contractor, or where applicable subcontractor, engaged to provide the expertise required for the proper performance of a contract. |
| **EU** | The European Union. |
| **Final acceptance certificate** | Certificate(s) issued by the supervisor (W) to the contractor at the end of the defects liability period stating that the contractor has completed its obligations. |
| **Foreign currency** | Any currency permissible under the applicable provisions and regulations other than the Euro, which has been indicated in the tender. |
| **General conditions** | The general contractual provisions setting out the administrative, financial, legal and technical clauses governing the execution of all contracts of a particular type. |
| **General damages** | Damages which have not been agreed beforehand by the parties and awarded by a court or arbitration tribunal, or agreed between the parties, as compensation payable to an injured party for a breach of the contract by the other party. |
| **Goods** | A tangible physical product where the property of what is purchased is transferred from the contractor to the contracting authority (in the case of procurement contracts) or to the designated local partners of the beneficiary and/or final recipients of the action (in the case of grant contracts). |
| **Grave professional misconduct** | A grave professional misconduct refers to all wrongful conduct which denotes a wrongful intent or gross negligence. It encompasses the violation of applicable laws or regulations or ethical standards of the profession to which the contractor belongs, and any wrongful conduct which has an impact on the professional credibility of the contractor. |
| **Implementation period** | The period from the signature, or alternative date if specified in the special conditions, until the provisional acceptance of the works. |
| **In writing** | This includes any hand-written, typed or printed communication, including telex, cable, e-mail and fax transmissions. |
| **IR** | The Commission Internal Rules |
| **Liquidated damages** | Liquidated damages are damages which have been agreed beforehand by the parties, and recorded in the contract, as being a genuine estimate of the loss suffered by the injured party (e.g. compensation payable by the contractor to the contracting authority for failure to complete the contract or part of the contract within the contractual periods / compensation payable by the contracting authority to the contractor for failure to pay within the contractual periods shall be calculated in accordance with the method(s) outlined in the general conditions). |
| **Month** | Calendar month. |
| **National currency** | The currency of Montenegro. |
| **Promoter** | Ministry of Education, Montenegro |
| **Partner country** | The country or state outside the European Union with which the European Union has an agreed programme of cooperation. |
| **Period** | A period begins the day after the act or event chosen as its starting point. Where the last day of a period is not a working day, the period expires at the end of the next working day. |
| **Personnel** | Persons employed or contracted, directly or indirectly, by the contractor to perform the contract. |
| **Plant** | Appliances and other machinery, and, where applicable under the law and/or practice of the state of the contracting authority, the temporary structures on the site required to carry out the works but excluding equipment or other items required to form part of the permanent works. |
| **Price schedule** | The completed schedule of prices, including the breakdown of the overall price, submitted by the contractor with his tender, modified as necessary and forming a part of the unit price contract. |
| **Procurement procedure** | The procedure followed by a contracting authority to identify, and conclude a contract with, a suitable contractor to provide defined goods, works or services. |
| **Project** | The project in relation to which the services/works/supplies are to be provided under the contract, and the project in relation to which the grant contract is awarded. |
| **Project manager** | The person responsible for monitoring the implementation of a project on behalf of the contracting authority. |
| **Provisional sum** | A sum included in the contract and so designated for the implementation of works or the supply of goods, materials, plant or services, or for contingencies. In the latter case, this sum may be used in whole or in part, or not at all, with the prior agreement of the Supervisor. |
| **Restrictive measures** | The Bank shall not provide or otherwise make funds available, directly or indirectly, to or for the benefit of an individual or entity that is subject to financial sanctions imposed by the EU[[34]](#footnote-35), either autonomously or pursuant to the financial sanctions decided by the United Nations Council on the basis of Article 41 of the UN Charter.  In addition, individuals or firms may not be eligible to tender in application of section 1.4 on Ethical Conduct[[35]](#footnote-36) . |
| **SEA-H – Sexual Exploitation, Abuse and Harassment** | **Sexual Exploitation** constitutes any actual or attempted abuse by personnel of a position of vulnerability, differential power or trust for sexual purposes, including profiting monetarily, socially or politically from the sexual exploitation of another. It is a broad term, but it includes transactional sex, solicitation of transactional sex and exploitative relationships.  **Sexual Abuse** means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions. All sexual activity with children (as defined under the UN Convention on the Rights of the Child as any person under the age of 18) is sexual abuse, regardless of the age of majority or consent locally. Mistaken understanding of the age of a child is not a defence. “Sexual abuse” is a broad term, which includes a number of acts, including “sexual assault” for example, (rape, attempted rape, forcing someone to perform oral sex / touching) “sexual offence” and “sexual offence against a child”.  **Sexual Harassment** is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment. In context of the contractor or beneficiary of a grant “sexual harassment” primarily describes prohibited behaviour against another staff member or related personnel, which could also include nationals of the host state. |
|  | It involves any unwelcome sexual advance; request for sexual favours; verbal or physical conduct or gestures of a sexual nature; or any other behaviour of a sexual nature that might reasonably be expected, or be perceived, to cause offence or humiliation to another, when such conduct interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment. The definition of sexual harassment does not require a link to the work environment. Sexual harassment can be perpetrated against beneficiaries, community members, citizens, as well as staff, personnel, etc. |
| **Site** | The places provided by the contracting authority where the works are to be carried out and other places stated in the contract as forming part of the site. |
| **Special conditions** | The special conditions laid down by the contracting authority as an integral part of the tender or call for proposals dossier, including amendments to the general conditions, clauses specific to the contract or technical specifications. |
| **Subcontractor** | An economic operator that is proposed by a candidate or tenderer or contractor to perform part of a contract or by a beneficiary to perform part of the tasks co-financed by the grant. |
| **Supervisor** | The legal or natural person responsible for monitoring the execution of the contract on behalf of the contracting authority. |
| **Supervisor's representative** | Any natural or legal person, designated by the supervisor as such under the contract, and empowered to represent the supervisor in the performance of its functions, and in exercising such rights and/or powers as have been delegated to it. In this case, references to the supervisor will include its representative. |
| **Supplier** | Any natural or legal person or public entity or consortium of such persons and/or bodies offering to supply products. |
| **Taxes** | Include indirect taxes such as value added taxes, customs and import duties, other fiscal charges and duties in partner countries. |
| **Technical specifications** | The document drawn up by the contracting authority setting out its requirements and/or objectives in respect of the provision of supplies or works, specifying, where relevant, the methods and resources to be used and/or results to be achieved. |
| **Time limits** | Those periods in the contract which shall begin to run from the day following the act or event which serves as the starting point for those periods. Where the last day of the period is not a working day, the period expires at the end of the next working day. |
| **Union** | It means the European Union, the European Atomic Energy Community, or both, as the context may require. |
| **Works** | The outcome of building or civil engineering works taken as a whole that is sufficient in itself to fulfil an economic or technical function. |
| **Works contract** | Works contracts cover either the execution, or both the design and execution, of works or a work related to one of the activities referred to in Annex II to Directive 2014/24/EU or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work. A ְ‘work’ means the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic or technical function. |
| **Written communications** | Certificates, notices, orders and instructions issued in writing under the contract. |

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| Section IX. Special conditions (SC) |

**CONTENTS**

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

**Article 2 Language of the contract**

2.1 The language used shall be English. Any notice or other communication given to a party pursuant hereto Contract or in connection with the same, must be in writing and in English or, if not in English, must be accompanied by an English translation, in which case it will take precedence English translation, unless the document is a constitutional, legal or other official document.

If interim payment certificate is subject to VAT exemption it will be written in Montenegrin language.

The English version shall always govern, except in BoQs, drawings and technical descriptions, in which case Montenegrin version shall prevail. The official version of the revised project documentation is in the Montenegrin language.

**Article 4 Communication**

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

Documents shall be sent to the following address:

For the Contracting Authority, Supervisor and the Promoter:

|  |  |
| --- | --- |
| Name: | **Administration for Capital projects** |
| Contact person: | Milica Bakić |
| Address: | Arsenija Boljevica 2A |
| Fax: | +382 020 230 228 |
| e-mail: | ukp@ukp.gov.me |

For the Works Contractor *(to be filled in at the stage of the contract preparation)*

|  |  |
| --- | --- |
| Name: |  |
| Contact person: |  |
| Address: |  |
| Telephone: |  |
| Fax: |  |
| e-mail: |  |

For the Promoter: The promoter will be in a copy of the entire communication.

|  |  |
| --- | --- |
| Name: | **Ministry of Education/ PIU** |
| Contact person: | Mr. Spasoje Ostojić |
| Address: | Vaka Djurovića bb |
| Fax: | +382 20 410 119 |
| e-mail: | Spasoje.ostojic@mp.gov.me |

Any change to the above communication data will become effective only after all parties pursuant hereto Contract are properly notified of this, in writing or in electronic form using above mentioned addresses.

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

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

5.2 The Promoter shall appoint a Supervisor and his representative to carry out duties referred to in the Contract. The Supervisor may have further staff to which he delegates matters related to the Contract. Furnished office accommodation, other instruments, test facilities, etc. for the Supervisor will be provided by the Contractor as specified below:

The Contractor shall provide at least 25 m2 of adequate space (5 working stations and separate meeting room in addition) for the Supervisor and its team on the Site. The office shall be connected to electricity, lighting, heating, air-conditioning and access to internet. All utility services, such as electricity, water, wastewater pipelines, access to internet, cleaning and maintenance with regard to these facilities, shall be provided by the Contractor at his own cost. It must be fit for the purpose of use as a permanent site office, for the Supervisor's staff. It must also provide access to an internet connection.

Separate sanitary facilities shall be provided as well, including the facility with a toilet and section for handwashing, to be used exclusively by the Supervisor's staff during the duration of the Contract.

The space should allow for a place for regular meetings to which the Supervisor and the Contractor(s), as well as others (if applicable) would be invited.

The Contractor shall bear all costs stemming from or in connection with this Sub-clause (including the procurement of furniture).

5.3 The Supervisor requires the consent of the contracting authority before exercising the following duties:

• Approve of subcontractor for execution of works under Article 7;

• Exceptional risks determined under Article 21;

• Approve of amendment, suspension or termination of the works contract under article 21. 2d);

• Approve any extension of the period of implementation under Article 35;

• Order a modification under Article 37 which may increase the Contract Price or in any substantial way change the scope, character or quality of the Works;

• Order a suspension of the works under Article 38;

• Determine any matter which may increase the contract price under Article 55;

• Proceed with partial acceptance under Article 59;

• Issue a certificate of provisional acceptance under Article 60;

• Issue a certificate of final acceptance under Article 62.

Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Supervisor, an emergency occurs affecting the safety of life or of the works or adjoining propet1y, he may, without relieving the Contractor of any of his duties and responsibilities under the contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Supervisor, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the contracting authority, with any such instruction of the Supervisor. The Supervisor shall determine an addition to the contract price in respect of such instruction and shall notify the Contractor accordingly, with a copy to the contracting authority.

5.4 Approval or rejections of instructions and/or orders will be given through administrative orders, issued by the Supervisor, except when it is foreseen otherwise consensus from the contract authority, according Article 5.3. of Special Conditions (SC). The Supervisor shall send administrative orders electronically (by email) to representatives of the Contractor, the promoter and to the contracting authority. Hard copies shall be delivered by hand to representatives of the Contractor, and also to the representative of the contracting authority.

Administrative orders issued by the Supervisor shall be dated, numbered and entered in a register. Hard copies shall be delivered by hand to representatives of the Contractor and to the representative of the Contracting Authority.

**Article 8 Documents to be provided**

8.1 Main Design has been completed by the responsible designer and was subject of Technical Review which was been obtained for the Works by the Promoter. Within 30 days of the establishment of the performance guarantee provided for in Article 15, the Supervisor shall provide to the Contractor, free of charge, the stamped and reviewed final design in electronic (including AutoCad format) and analogue forms respectively and a notification of building work in line with the relevant country law.

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

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

The Contractor is obliged to execute the works in accordance with the Main Design, Technical specifications and signed contract. For any changes according to the design and deviations of any kind, both in terms of technical solutions and in terms of material selection (if any), the Contractor must obtain the consent of the Supervisor.

**Article 9 Access to the site**

9.1 The contractor is reminded that there is the Ministry of Education in the state of the Promoter. The contractor is obliged to give the Promoter free access to its sites, factories, workshops, etc., and generally assist the Promoter, like the project Supervisor, in the performance of his duties. The same provisions also apply to the appointed representatives of the Promoter.

All correspondence between the contractor and the contracting authority or project supervisor must be copied, for information, to the Promoter at the following official address:

|  |  |
| --- | --- |
| Name: | Ministry of Education/Project implementation Unit |
| Contact person: | Mr. Spasoje Ostojić |
| Address: | Vaka Djurovića bb |
| Fax: | +382 20 410 119 |
| e-mail: | Spasoje.ostojic@mp.gov.me |

Any change to the above communication data will become effective only after all parties pursuant hereto Contract are properly notified of this, in writing or in electronic form using above mentioned addresses

**Article 12 General obligations**

12.1 The Contractor shall not carry out mobilization to Site unless the Supervisor gives consent that appropriate measures are in place to address environmental and social risks and impacts, which at a minimum shall include applying the Management Strategies and Implementation Plans (MSIPs)

During the supervision of civil works the Supervisor will have his office (equipped with six working stations, meeting facilities, toilets etc) provided by the Contractor at his own cost on the work site covering all utility costs apart from phone expenses.

12.9 Within a month of the date of the Administrative Order to Commence issued under sub-Article 33.1, the Contractor shall provide, erect and maintain for the duration of the contract a water-resistant Project Identification Sign Boards at the entrance to the Site, or other location approved by the Supervisor’s Representative. The design of the signboard and given information needs to be approved by the Supervisor’s Representative prior to manufacture and erection. This panel is in addition to any of the legal requirements for marking a construction site.

The promoter and the contracting authority will undertake all appropriate measures in order to publicly highlight the fact that services are financed through financial support under the EIB's Economic Resilience Initiative (ERI)EIB. Information provided to journalists or any third party, all advertising material, official notices, reports and publications should confirm that services have been delivered "financed through the Economic Resilience Initiative (ERI) of the EIB".

No other advertisements may be placed on the site unless the prior approval of the contracting authority is given.

12.a.1 It is the Bank’s policy to require that promoters, as well as tenderers, contractors, suppliers and consultants under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. The Bank reserves the right to take all appropriate action in order to enforce this policy.

Moreover, the Bank is committed to ensuring that its loans are used for the purposes intended and its operations are free from Prohibited Conduct (including but not limited to, fraud, corruption, collusion, coercion, obstruction, money laundering and terrorist financing[[36]](#footnote-37)).

In pursuance of this policy as set out in EIB’s Anti-Fraud Policy, if it is established to the required standards[[37]](#footnote-38) that a project-related party[[38]](#footnote-39) has engaged in Prohibited Conduct in the course of a procurement process or implementation of a contract (to be) financed, the Bank:

a) May seek appropriate remediation of the Prohibited Conduct to its satisfaction;

b) May declare ineligible such project-related party to be awarded the contract; and/or

c) May withhold the Bank’s no objection to contract award[[39]](#footnote-40) and may apply appropriate contractual remedies, which may include suspension and cancellation, unless the Prohibited Conduct has been dealt with to the satisfaction of the Bank.

Furthermore, within the framework of its Exclusion Policy, the Bank may declare such project related party ineligible to be awarded a contract under any EIB project or to enter into any relationship with the Bank.

12.a.3 The contractor and (sub-) contractors are required to comply with applicable labour laws and national and international standards of health and safety, including those contained in any relevant International Labour Organization (ILO) conventions and international standards and agreements on environmental protection. The Bank's environmental and social policies are available on the Bank's website**:**

http://www.eib.org/infocentre/publications/all/environmental-and-social-principles-and-standards.htm.

The EIB reserves the right not to finance any contract in which tenderers/contractors have not issued to the Contracting Authority the Environmental and Social Covenant signed by a duly authorised person.

12.9 The Contractor shall take the necessary measures to ensure the visibility of the European Union financing or co financing. These activities must comply with the rules lay down in the WBIF Communication and Visibility Plan and Guidelines 2022 published on the WBIF web site: https://wbif.eu/storage/app/media/Library/11.Funding/cv-plan-guidelines-2022.pdf

**Article 15 Performance guarantee**

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

Bid security shall be issued in original by a reputable bank acceptable to the Contracting Authority..

**Article 16 Liabilities and insurance**

16.2 a) By derogation from Article 16.2(a) first paragraph of the general conditions, at the latest 30 days from the countersignature of the contract, the contractor shall ensure that itself, its staff, its subcontractors and any person for which the contractor is answerable, are adequately insured with insurance companies recognized on the international insurance market, unless the contracting authority has given its express written consent on a specific insurance company.

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

**Article 17 Programme of implementation of tasks**

17.1 Notwithstanding the work programme given as part of the tender, the Contractor shall within 30 days after the commencement date provide the project Supervisor with a programme of implementation of tasks broken down by activity and by month and including the following documents in addition to the provisions in the GC:

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

The programme is to be supplemented by weekly programmes and progress returns and plant and labour returns.

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

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

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

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

19.1 To be added after point c):

(d) The Contractor shall develop and keep up-to-date ‘as built drawings’ and other drawings and technical documentation, as required for successful project completion and under the local legislation in force, and submit it to the Supervisor for approval.

The Contractor shall prepare three (3) hard copies of as built-design documentation/ drawings and Operation and Maintenance Manuals in line with the Technical Specification. Two hard copies and digital format shall be supplied to the Supervisor’s Representative prior to the commencement of the Tests on Completion.

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

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

19.7 Drawings, manuals and manufacturer’s schemes of supplied/installed equipment and as built drawings and other technical documentation required under the local legislation in force for the purpose of technical commissioning shall be provided in local language only, unless otherwise instructed by the Contracting Authority and/or Supervisor.

**Article 20 Sufficiency of tender prices**

20.1 The Contractor will calculate and present the amount for each item based on quantities of materials and works defined in the Bill of Quantities (BoQ). Any outside costs recognised throughout the implementation of the Project, such as site facilities maintenance, use of water and electricity, etc. shall be at the expenses of the Contractor.

20.4 The use of contingencies included in the Bills of Quantities is subject to the prior approval of the contracting authority and the Supervisor. The Contractor shall at his costs include all items not specifically mentioned in the technical specification, drawings and/or Bills of Quantities to ensure that newly constructed facility is completely operational.

**Article 27 Demolished materials**

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

**Article 29 Temporary works**

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

Temporary Works design shall be completed and forwarded by the contractor to the supervisor for approval before installation or erection may commence. It shall be the sole responsibility, notwithstanding approval of working drawings, of the contractor to determine and check site conditions and dimensions and construction to suit. Two weeks should be allowed for discussion and approval after submission and if drawings are not rejected within two weeks after submission, drawings shall be deemed to be approved.

**Article 34 Period of implementation of tasks**

34.1 The period of implementation of tasks is seventeen months (17) after issuance of commencement order from the commencement date mentioned in the administrative order issued in accordance with article 33.1 of the general conditions and followed by twelve 12 (twelve) months of Defect Liability Period starting from issuance of Provisional Acceptance Certificate.

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

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

The Contractor shall program his works in accordance with public holidays of Montenegro.

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

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

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

**Article 37 - Amendments**

37.8After the contract signature, any contract modification the cumulative effect of which causes an increase from the original contract price by more than 15% prior to its conclusion must be sent to the Bank by the Contracting Authority.

**Article 39 Work register**

39.1 Under the obligation of the Law on Spatial Planning and Construction of Structures ("Official Gazette of Montenegro", No. 064/17, 044/18, 063/18, 011/19, 082/20) and its bylaws, the Contractor shall maintain a Work Register. The Work Register shall be kept on the site by the Contractor, who shall enter in it at least the following information:

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

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

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

39.2 The statements shall be prepared by the Contractor, in accordance with the Specifications and the Bills of Quantities respectively. The statements shall consist of two separate documents, one for quality control and one for quantitative measurements. The documents shall be permanently kept at the site, in hard copy and in electronic format. The Contractor shall measure, in cooperation with the Supervisor's staff, and prepare records of the work executed in such detail as instructed by the Supervisor.

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

40.1 All equipment, material, and services to be incorporated in or required for the Works shall have their origin in any eligible source country as defined by the Bank.

The Bank shall not provide or otherwise make funds available, directly or indirectly, to or for the benefit of an individual or entity that is subject to financial sanctions imposed by the EU[[40]](#footnote-41), either autonomously or pursuant to the financial sanctions decided by the United Nations Security Council on the basis of Article 41 of the UN Charter.

A category of similar goods to be purchased shall not be broken down over more than 1 item of the bill of quantities.

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

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

40.2 The works and the objects, appliances, equipment or materials used in their construction must comply with the Technical Specification and the Drawings contained in the contract document.

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

Not more than thirty (30) days after the award date the Contractor shall submit a detailed Quality Assurance Management System in accordance with the scheme UNI EN ISO 9001:2000 for review and approval by the Supervisor’s Representative. The System shall cover the quality assurance of all aspects of the Works, and contain, as a minimum, the following items:

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

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

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

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

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

**Article 41 Inspection and testing**

41.1 Inspection and testing referred to in Article 41 of the general conditions shall be performed in accordance with the requirements of the applicable technical regulations and corresponding legislation of Montenegro. The costs of inspection and testing shall be borne by the Contractor.

The Supervisor’s Representative will at regular interval inspect and test materials and completed work for compliance with the specified requirements, and, where applicable the various specified judgement plans, will be applied. The testing frequencies and sample and lot sizes for routine testing shall be at the Supervisor’s Representative discretion.

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

**Article 43 Ownership of plant and materials**

43.2 All equipment, temporary works, plant and materials in Montenegro for the purposes of the contract, owned by the Contractor or by any company in which the Contractor has a controlling interest shall, for the duration of the execution of the Works, shall be vested in the Contracting Authority and visibly marked as such.

**Article 44: General principles for payments**

44.1 Payments shall be made in euro.

44.2 If invoices are submitted to the contracting authority, the contractor shall inform the Promoter thereof by sending a copy to the:

Ministry of Education

Ms. Vesna Krivokapic

E mail: vesna.krivokapic@mp.gov.me

44.3 By derogation, pre-financing payment to the contractor for the lump-sum advance shall be made within 30 days. Other pre-financing payments to the contractor shall be made within 60 days. Interim payments to the contractor of the amounts due under each of the interim payment certificates approved by the supervisor shall be made within 60 days, and the final payment to the contractor of the amounts due after the final statement of account issued by the supervisor shall be made within 60 days.

**Article 46 Pre-financing**

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

46.2 Lump-sum advance payment is possible in amount of 10% of the contract Price. Additional pre-financing (up to max 20% of the contract price) may be given for the purchase or order of materials, goods and other supplies/installations to be incorporated into permanent works as foreseen in the contract

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

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

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

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



where:

R = the amount to be repaid

Va = the total amount of pre-financing

Vt = the initial contract amount

D = the amount of the instalment.

The result is rounded up to two decimal places.

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

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



where:

R = the amount to be repaid

Va = the total amount of pre-financing

Vt = the initial contract amount

D = the amount of the instalment.

**Article 47 Retention monies**

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

When the Provisional Acceptance Certificate has been issued for the works, the first half of the Retention Money shall be certified by the Supervisor’s Representative for payment to the Contractor.

After Provisional Acceptance Certificate is issued by the Supervisor’s Representative, 5% of the retention money will be paid back to the Contractor.

**Article 49 Measurement**

49.1 This is a unit-price contract.

**Article 50 Interim payments**

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

Minimum amount of any Interim Payment Certificate shall be no less than 2% of the original contract price.

50.2 The entitled sum is 80% of the on-site value of the materials, which includes any transportation and local duties and taxes.

50.5 The Supervisor shall inform the Contractor of the amount to be paid and the Contractor will submit a commercial invoice for this amount to the Supervisor. The commercial invoice will be attached to the interim payment certificate referred to under Article 50.5 b). The payment period referred to in Article 44.3 will be calculated from the day on which the commercial invoice and certificate are jointly delivered to the Contracting Authority.

**Article 51 Final statement of account**

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

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

**Article 53 Delayed payments**

53.1 Once the time-limit referred Article 44.3 has expired, the contractor shall be entitled to legally prescribed late-payment interest at the rate and for the period for the time elapsed between the expiry of the payment deadline and the date on which the contracting authority’s account is debited.

**Article 60 Provisional acceptance**

60.1 In complement to article 60.1 of the General Conditions the Supervisor shall prior to the provisional acceptance, carry out joint site inspections and surveys and agree a defect list with the Contractor. When it is agreed that the works are substantially complete, all substantial as built drawings have been submitted with operation manuals, the Contractor may request for a provisional handing over of the completed works. The Supervisor shall prepare, in coordination with the Contracting Authority, the provisional acceptance certificate and submit it to the Contractor.

Provisional Acceptance Certificate to be issued by the Supervisor has to be co-signed for its validity by the Promoter and the Contracting Authority.

**Article 61 Defects liability**

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

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

**Article 68 Dispute settlement**

68.4 Any dispute arising out of or relating to this contract which cannot be settled otherwise shall be addressed in accordance with be following:

(a) Contract with foreign Contractor:

All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.

(b) Contracts with Supplier national of the Purchaser’s country:

In the case of a dispute between the Purchaser and a Contractor who is a national of the Purchaser’s country, the dispute shall be referred to adjudication or arbitration in accordance with the laws of the Purchaser’s country.

**Article 72 Data protection**

1. Processing of personal data related to the implementation of the contract by the contracting authority takes place in accordance with the national legislation of the state of the contracting authority and with the provisions of the respective financing agreement.

2. To the extent that the contract covers an action financed by the European Union, the Contracting Authority may share communications related to the implementation of the contract, with the European Commission. These exchanges shall be made to the Commission, solely for the purpose of allowing the latter to exercise its rights and obligations under the applicable legislative framework and under the financing agreement with the Partner country – contracting authority. The exchanges may involve transfers of personal data (such as names, contact details, signatures and CVs) of natural persons involved in the implementation of the contract (such as contractors, personnel, experts, trainees, subcontractors, insurers, guarantors, auditors and legal counsel). In cases where the contractor is processing personal data in the context of the implementation of the contract, he/she shall accordingly inform the data subjects of the possible transmission of their data to the Commission. When personal data is transmitted to the Commission, the latter processes them in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC[[41]](#footnote-42).

\* \* \*

**Special conditions**

**Annex B:**

Statements given under Section VI and VII: Covenant of Integrity and Environmental and Social Covenant will be attached to the Contract Agreement under Annex B

**Special conditions**

**Part D- Environmental and Social Metrics for Progress Reports (including Health and safety statistics of construction activities)**

***The metrics that are required should be determined by the ES risks and impacts of the Works.***

***Metrics for regular reporting:***

a. *environmental incidents or non-compliances with contract requirements, including contamination, pollution or damage to ground or water supplies;*

*b. health and safety incidents, accidents, injuries that require treatment and all fatalities;*

*c. interactions with regulators: identify agency, dates, subjects, outcomes (report the negative if none);*

d. *status of all permits and agreements:*

i. work permits: number required, number received, actions taken for those not received;

ii. status of permits and consents:

- list areas/facilities with permits required (quarries, asphalt & batch plants), dates of application, dates issued (actions to follow up if not issued), dates submitted to resident engineer (or equivalent), status of area (waiting for permits, working, abandoned without reclamation, decommissioning plan being implemented, etc.);

- list areas with landowner agreements required (borrow and spoil areas, camp sites), dates of agreements, dates submitted to resident engineer (or equivalent);

- identify major activities undertaken in each area in the reporting period and highlights of environmental and social protection (land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation);

- for quarries: status of relocation and compensation (completed, or details of activities and current status in the reporting period).

e. *health and safety supervision:*

i. safety officer: number days worked, number of full inspections & partial inspections, reports to construction/project management;

ii. number of workers, work hours, metric of PPE use (percentage of workers with full personal protection equipment (PPE), partial, etc.), worker violations observed (by type of violation, PPE or otherwise), warnings given, repeat warnings given, follow-up actions taken (if any);

f. *worker accommodations:*

i. number of expats housed in accommodations, number of locals;

ii. date of last inspection, and highlights of inspection including status of accommodations’ compliance with national and local law and good practice, including sanitation, space, etc.;

iii. actions taken to recommend/require improved conditions, or to improve conditions.

g. *Health services: provider of health services, information and/or training, location of clinic, number of non-safety disease or illness treatments and diagnoses (no names to be provided);*

h. *gender (for expats and locals separately): number of female workers, percentage of workforce, gender issues raised and dealt with (cross-reference grievances or other sections as needed);*

i. *training:*

i. number of new workers, number receiving induction training, dates of induction training;

ii. number and dates of toolbox talks, number of workers receiving Occupational Health and Safety (OHS), environmental and social training;

iii. number and dates of communicable diseases (including STDs) sensitization and/or training, no. workers receiving training (in the reporting period and in the past); same questions for gender sensitization, flag person training.

iv. number and date of SEA and SH prevention, sensitization and/or training events, including number of workers receiving training on Code of Conduct for Contractor’s Personnel (in the reporting period and in the past), etc.

j. *environmental and social supervision:*

i. environmentalist: days worked, areas inspected and numbers of inspections of each (road section, work camp, accommodations, quarries, borrow areas, spoil areas, swamps, forest crossings, etc.), highlights of activities/findings (including violations of environmental and/or social best practices, actions taken), reports to environmental and/or social specialist/construction/site management;

ii. sociologist: days worked, number of partial and full site inspections (by area: road section, work camp, accommodations, quarries, borrow areas, spoil areas, clinic etc.), highlights of activities (including violations of environmental and/or social requirements observed, actions taken), reports to environmental and/or social specialist/construction/site management; and

iii. community liaison person(s): days worked (hours community center open), number of people met, highlights of activities (issues raised, etc.), reports to environmental and/or social specialist /construction/site management.

k. *Grievances: list new grievances (e.g. number of allegations of SEA and SH) received in the reporting period and number of unresolved past grievances by date received, complainant’s age and sex, how received, to whom referred to for action, resolution and date (if completed), data resolution reported to complainant, any required follow-up (Cross-reference other sections as needed):*

i. Worker grievances;

ii. Community grievances

l. *Traffic, road safety and vehicles/equipment:*

i. traffic and road safety incidents and accidents involving project vehicles & equipment: provide date, location, damage, cause, follow-up;

ii. traffic and road safety incidents and accidents involving non-project vehicles or property (also reported under immediate metrics): provide date, location, damage, cause, follow-up;

iii. overall condition of vehicles/equipment (subjective judgment by environmentalist); non-routine repairs and maintenance needed to improve safety and/or environmental performance (to control smoke, etc.).

m. *Environmental mitigations and issues (what has been done):*

i. dust: number of working bowsers, number of waterings/day, number of complaints, warnings given by environmentalist, actions taken to resolve; highlights of quarry dust control (covers, sprays, operational status); % of rock/ spoil lorries with covers, actions taken for uncovered vehicles;

ii. erosion control: controls implemented by location, status of water crossings, environmentalist inspections and results, actions taken to resolve issues, emergency repairs needed to control erosion/sedimentation;

iii. quarries, borrow areas, spoil areas, asphalt plants, batch plants: identify major activities undertaken in the reporting period at each, and highlights of environmental and social protection: land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation;

iv. blasting: number of blasts (and locations), status of implementation of blasting plan (including notices, evacuations, etc.), incidents of off-site damage or complaints (cross-reference other sections as needed);

v. spill clean-ups, if any: material spilled, location, amount, actions taken, material disposal (report all spills that result in water or soil contamination;

vi. waste management: types and quantities generated and managed, including amount taken offsite (and by whom) or reused/recycled/disposed on-site;

vii. details of tree plantings and other mitigations required undertaken in the reporting period;

viii. details of water and swamp protection mitigations required undertaken in the reporting period.

n. *compliance:*

i. compliance status for conditions of all relevant consents/permits, for the Work, including quarries, etc.): statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance;

ii. compliance status of C-ESMP/ESIP requirements: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance

iii. compliance status of SEA and SH prevention and response action plan: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance

iv. compliance status of Health and Safety Management Plan re: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance

v. other unresolved issues from previous reporting periods related to environmental and social: continued violations, continued failure of equipment, continued lack of vehicle covers, spills not dealt with, continued compensation or blasting issues, etc. Cross-reference other sections as needed.

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| Section X. Contract Forms |

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Notification of Intention to Award

[*This Notification of Intention to Award shall be sent to each Bidder that submitted a Bid.*]

[*Send this Notification to the Bidder’s Authorized Representative named in the Bidder Information Form*]

For the attention of Bidder’s Authorized Representative

Name: *[insert Authorized Representative’s name]*

Address: *[insert Authorized Representative’s Address]*

Telephone/Fax numbers: *[insert Authorized Representative’s telephone/fax numbers]*

Email Address: *[insert Authorized Representative’s email address]*

*[IMPORTANT: insert the date that this Notification is transmitted to Bidders. The Notification must be sent to all Bidders simultaneously. This means on the same date and as close to the same time as possible.]*

**DATE OF TRANSMISSION**: This Notification is sent by: [*email/fax*] on [*date*] (local time)

**Notification of Intention to Award**

**Contracting Authority:** *[insert the name]*

**Project:***[insert name of project]*

**Contract title:** *[insert the name of the contract]*

**Country:** *[insert country where RFB is issued]*

**Loan No. /Credit No. / Grant No.:** *[insert reference number for loan/credit/grant]*

**RFB No:** *[insert RFB reference number from Procurement Plan]*

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period you may:

1. submit a Procurement-related Appeal in relation to the decision to award the contract.
2. **The successful Bidder**

|  |  |
| --- | --- |
| **Name:** | [*insert name* *of successful Bidder*] |
| **Address:** | [*insert address* *of the successful Bidder*] |
| **Contract price:** | [*insert contract price of the successful Bid]* |

1. **Other Bidders *[INSTRUCTIONS: insert names of all Bidders that submitted a Bid. If the Bid’s price was evaluated include the evaluated price as well as the Bid price as read out.]***

|  |  |  |
| --- | --- | --- |
| **Name of Bidder** | **Bid price** | **Evaluated Bid price**  **(if applicable)** |
| [*insert name*] | [*insert Bid price*] | [*insert evaluated price*] |
| [*insert name*] | [*insert Bid price*] | [*insert evaluated price*] |
| [*insert name*] | [*insert Bid price*] | [*insert evaluated price*] |
| [*insert name*] | [*insert Bid price*] | [*insert evaluated price*] |
| [*insert name*] | [*insert Bid price*] | [*insert evaluated price*] |

1. **Reason/s why your Bid was unsuccessful**

|  |
| --- |
| *[INSTRUCTIONS: State the reason/s why this Bidder’s Bid was unsuccessful. Do NOT include: (a) a point by point comparison with another Bidder’s Bid or (b) information that is marked confidential by the Bidder in its Bid.]* |

1. **How to make an Appeal**

|  |
| --- |
| **Period: Procurement-related Appeal challenging the decision to award shall be submitted by midnight, [*insert date*] (local time).**  Provide the contract name, reference number, name of the Bidder, contact details; and address the Procurement-related Appeal as follows:  **Attention**: [*insert full name of person, if applicable*]  **Title/position**: [*insert title/position*]  **Agency**: [*insert name of Purchaser*]  **Email address**: [*insert email address*]  **Fax number**: [*insert fax number*] ***delete if not used***  At this point in the procurement process, you may submit a Procurement-related Appeal challenging the decision to award the contract. Your Appeal must be submitted in accordance with ITB 40.1 - Appeal procedure given under the Section VI. |

1. **Standstill Period**

|  |
| --- |
| DEADLINE: The Standstill Period is due to end at midnight on [*insert date*] (local time).  The Standstill Period lasts ten (10) Calendar Days after the date of transmission of this Notification of Intention to Award.  The Standstill Period may be extended as stated in Section 4 above. |

If you have any questions regarding this Notification please do not hesitate to contact us.

On behalf of the Contracting authority:

**Signature:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Name:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Title/position:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Telephone:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Email:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\* In the case of the Bid submitted by a Joint Venture specify the name of the Joint Venture as Bidder. In the event that the Bidder is a joint venture, each reference to “Bidder” in the Beneficial Ownership Disclosure Form (including this Introduction thereto) shall be read to refer to the joint venture member.

\*\* Person signing the Bid shall have the power of attorney given by the Bidder. The power of attorney shall be attached with the Bid Schedules.

Notification of Award

Letter of Acceptance

*[letterhead paper of the Contracting authority]*

*[date]*

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

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

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

Authorized Signature:

Name and Title of Signatory:

Name of Agency:

**Attachment: Contract Agreement**

|  |
| --- |
| Contract Agreement  PROJECT <title and reference in the financing agreement/decision>  CONTRACT TITLE <Contract title>  No. <Contract number |

THIS AGREEMENT made the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_, between

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter “the Contracting authority”), of the one part,

and

<Full official name of contractor>

[<Legal status/title>]

[<Official registration number>]

<Full official address>

[<VAT number>],

(hereinafter “the Contractor”), of the other part:

WHEREAS the Contracting authority desires that the Works known as CONSTRUCITON OF THE ELEMENTARY SCHOOL VLADIMIR NAZOR, PODGORICA should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

The Contracting authority and the Contractor agree as follows:

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

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

1. the Letter of Acceptance;
2. the Letter of Bid;
3. the addenda Nos \_\_\_\_\_\_\_\_(if any);
4. the Special Conditions;
5. the General Conditions;
6. delete if not applicable: [the bill of quantities (after arithmetical corrections) and detailed breakdown of prices]
7. the Specification;
8. the Drawings*;* and
9. the completed Schedules and any other documents forming part of the contract, including, but not limited to:
   * 1. the ES Management Strategies and Implementation Plans**;**
     2. Covenant of integrity; and
     3. Environmental and social covenant
   1. In consideration of the payments to be made by the Contracting authority to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Contracting authority to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
   2. The Contracting authority hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price:

* Contract price (excluding VAT/other taxes) EUR<amount>
* The EU component EUR[[42]](#footnote-43)<amount>
* **[where necessary, <enter other sources of financing>]**
* VAT and other taxes [EUR] [Only in case VAT/taxes are to be paid by the contracting authority to the contractor, fill in the amount thereof. The contract price excluding VAT/other taxes, must coincide with the total of Bill of quantities).
* Contract price [EUR] [inset figures] <amount in words>

or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

VAT will be paid in compliance with the binding regulations, national law and international agreements concerning the execution of the project.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

This Agreement shall take effect on the date on which it is signed by the last party, namely the contractor.

Done in English in three originals,one original for the contracting authority, one original for the Ministry of Education (Promoter) and one original for the contractor.

|  |  |  |  |
| --- | --- | --- | --- |
| **For the contractor** | | **For the contracting authority** | |
| Name: |  | Name: |
| Title: |  | Title: |
| Signature: |  | Signature: |
| Date: |  | Date: |

|  |
| --- |
| Performance Security |

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

**Beneficiary:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Date:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**PERFORMANCE GUARANTEE No.:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Guarantor:** *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

We have been informed that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter called "the Applicant") has entered into Contract No. \_\_\_\_\_\_\_\_\_\_\_\_\_ dated \_\_\_\_\_\_\_\_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_\_\_\_\_\_\_ ( ),[[43]](#footnote-44)1 such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the …. Day of ……, 2… [[44]](#footnote-45)2, and any demand for payment under it must be received by us at this office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
*[signature(s)]*

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

|  |
| --- |
| Advance Payment Security |

**Demand Guarantee**

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

**Beneficiary:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Date:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ADVANCE PAYMENT GUARANTEE No.:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Guarantor:**  *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

We have been informed that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter called “the Applicant”) has entered into Contract No. \_\_\_\_\_\_\_\_\_\_\_\_\_ dated \_\_\_\_\_\_\_\_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum \_\_\_\_\_\_\_\_\_\_\_ ( )is to be made against an advance payment guarantee.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_\_\_\_\_\_\_ ( ) *[[45]](#footnote-46)1* upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

* + 1. has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
    2. has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary’s bank stating that the advance payment referred to above has been credited to the Applicant on its account number \_\_\_\_\_\_\_\_\_\_\_ at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_..

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the \_\_\_ day of \_\_\_\_\_, 2\_\_\_,[[46]](#footnote-47)2 whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date..

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
*[signature(s)]*

*Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.*

|  |
| --- |
| Retention Money Security |

**Demand Guarantee**

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[Insert name and Address of* Contracting authority*]*

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

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

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

We have been informed that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. \_\_\_\_\_\_\_\_\_\_\_\_\_ *[insert reference number of the contract]* dated \_\_\_\_\_\_\_\_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[insert name of contract and brief description of* Works*]* (hereinafter called "the Contract").

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

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_\_\_\_\_\_\_ *[insert amount in figures]* ( ) *[amount in words][[47]](#footnote-48)1* upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without your needing to prove or show grounds for your demand or the sum specified therein.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary’s bank stating that the second half of the Retention Money as referred to above has been credited to the Applicant on its account number \_\_\_\_\_\_\_\_\_\_\_ at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[insert name and address of Applicant’s bank]*.

This guarantee shall expire no later than the …. day of ……, 2… [[48]](#footnote-49)2, and any demand for payment under it must be received by us at the office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
*[signature(s)]*

*Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.*

1. Pursuant to Chapter 2 of Title V of the TEU and the objectives of the Common Foreign and Security Policy set out in Article 21 of the TEU and Article 215 of the TFEU [↑](#footnote-ref-2)
2. Pursuant to Chapter 2 of Title V of the TEU and the objectives of the Common Foreign and Security Policy set out in Article 21 of the TEU and Article 215 of the TFEU. [↑](#footnote-ref-3)
3. See the EIB’s Anti-Fraud Policy for definitions (http://www.eib.org/en/infocentre/publications/all/anti-fraud-policy.htm).1 [↑](#footnote-ref-4)
4. In accordance with the EIB’s Investigation Procedures. [↑](#footnote-ref-5)
5. See the EIB’s Anti-Fraud Policy [↑](#footnote-ref-6)
6. For contracts subject to prior review in operations outside the EU.  
    [↑](#footnote-ref-7)
7. Pursuant to Chapter 2 of Title V of the TEU and the objectives of the Common Foreign and Security Policy set out in Article 21 of the TEU and Article 215 of the TFEU [↑](#footnote-ref-8)
8. An individual firm is considered a domestic bidder for purposes of the margin of preference if it is registered in the country of the Contracting authority, has more than 50 percent ownership by nationals of the country of the Contracting authority, and if it does not subcontract more than 10 percent of the contract price, excluding provisional sums, to foreign contractors. JVs are considered as domestic bidders and eligible for domestic preference only if the individual member firms are registered in the country of the Contracting authority or have more than 50 percent ownership by nationals of the country of the Contracting authority, and the JV shall be registered in the country of the Borrower. The JV shall not subcontract more than 10 percent of the contract price, excluding provisional sums, to foreign firms. JVs between foreign and national firms will not be eligible for domestic preference. [↑](#footnote-ref-9)
9. Pursuant to Chapter 2 of Title V of the TEU and the objectives of the Common Foreign and Security Policy set out in Article 21  
   of the TEU and Article 215 of the TFEU. [↑](#footnote-ref-10)
10. Non performance, as decided by the Contracting authority, shall include all contracts where (a) non performance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the contractor. Non performance shall not include contracts where Contracting authority’s decision was overruled by the dispute resolution mechanism. Non performance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the Bidder have been exhausted. [↑](#footnote-ref-11)
11. This requirement also applies to contracts executed by the Bidder as JV member. [↑](#footnote-ref-12)
12. The Bidder shall provide accurate information on the letter of Bid about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the last five years. A consistent history of court/arbitral awards against the Bidder or any member of a joint venture may result in disqualifying the Bidder. [↑](#footnote-ref-13)
13. *Construction turnover must relate to professional area covered by the contract (i.e construction activities related to public building)* [↑](#footnote-ref-14)
14. The similarity shall be based on the physical size, complexity, methods/technology and/or other characteristics described in Section VII, Work’s Requirements. Summation of number of small value contracts (less than the value specified under requirement) to meet the overall requirement will not be accepted. [↑](#footnote-ref-15)
15. Substantial completion shall be based on 80% or more works completed under the contract. [↑](#footnote-ref-16)
16. For contracts under which the Bidder participated as a joint venture member or sub-contractor, only the Bidder’s share, by value, shall be considered to meet this requirement. [↑](#footnote-ref-17)
17. In the case of JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated. [↑](#footnote-ref-18)
18. In order to calculate portion subject to VAT exemption please refer to document titled: EXISTING NORMATIVE SOLUTIONS THAT REGULATE THE PROCEDURE FOR EXEMPTION FROM PAYMENT OF VAT DEPENDING ON THE SOURCE OF FINANCING, attached to Letter of Bid. [↑](#footnote-ref-19)
19. Pursuant to Chapter 2 of Title V of the TEU and the objectives of the Common Foreign and Security Policy set out in Article 21 of the TEU and Article 215 of the TFEU. [↑](#footnote-ref-20)
20. *Bidder to use as appropriate.* [↑](#footnote-ref-21)
21. EIB’s Anti-Fraud Policy for definitions (http://www.eib.org/infocentre/publications/all/anti-fraud-policy.htm) [↑](#footnote-ref-22)
22. If the most recent set of financial statements is for a period earlier than 12 months from the date of bid, the reason for this should be justified. [↑](#footnote-ref-23)
23. Pursuant to Chapter 2 of Title V of the TEU and the objectives of the Common Foreign and Security Policy set out in Article 21 of the TEU and Article 215 of the TFEU. [↑](#footnote-ref-24)
24. See the EIB’s Anti-Fraud Policy for definitions (http://www.eib.org/en/infocentre/publications/all/anti-fraud-policy.htm).1 [↑](#footnote-ref-25)
25. In accordance with the EIB’s Investigation Procedures. [↑](#footnote-ref-26)
26. See the EIB’s Anti-Fraud Policy [↑](#footnote-ref-27)
27. For contracts subject to prior review in operations outside the EU.  
     [↑](#footnote-ref-28)
28. EIB’s Anti-Fraud Policy for definitions (http://www.eib.org/infocentre/publications/all/anti-fraud-policy.htm). [↑](#footnote-ref-29)
29. <http://www.ilo.org/global/standards/introduction-to-international-labourstandards/conventions-and-recommendations/lang--en/index.htm> [↑](#footnote-ref-30)
30. [http://www.ilo.org/safework/info/standards-and-instruments/WCMS\_107727/lang en/index.htm](http://www.ilo.org/safework/info/standards-and-instruments/WCMS_107727/lang%20en/index.htm) [↑](#footnote-ref-31)
31. For instance: ESIA (Environmental and Social Impact Assessment) and ESMP (Environmental and Social Management Plans). [↑](#footnote-ref-32)
32. For instance: ESIA (Environmental and Social Impact Assessment) and ESMP (Environmental and Social Management Plans). [↑](#footnote-ref-33)
33. Pursuant to Chapter 2 of Title V of the TEU and the objectives of the Common Foreign and Security Policy set out in Article 21  
    of the TEU and Article 215 of the TFEU [↑](#footnote-ref-34)
34. Pursuant to Chapter 2 of Title V of the TEU and the objectives of the Common Foreign and Security Policy set out in Article 21of the TEU and Article 215 of the TFEU. [↑](#footnote-ref-35)
35. https://www.eib.org/en/publications/guide-to-procurement [↑](#footnote-ref-36)
36. See the EIB’s Anti-Fraud Policy for definitions (http://www.eib.org/en/infocentre/publications/all/anti-fraud-policy.htm).1 [↑](#footnote-ref-37)
37. In accordance with the EIB’s Investigation Procedures. [↑](#footnote-ref-38)
38. See the EIB’s Anti-Fraud Policy [↑](#footnote-ref-39)
39. For contracts subject to prior review in operations outside the EU.  
     [↑](#footnote-ref-40)
40. Pursuant to Chapter 2 of Title V of the TEU and the objectives of the Common Foreign and Security Policy set out in Article 21  
    of the TEU and Article 215 of the TFEU. [↑](#footnote-ref-41)
41. OJ L 205 of 21.11.2018, p. 39 [↑](#footnote-ref-42)
42. In the event of cofinancing, the EU-contribution must normally be entered as a lump sum in euro. [↑](#footnote-ref-43)
43. *1 The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency(cies) of the Contract or a freely convertible currency acceptable to the Beneficiary.* [↑](#footnote-ref-44)
44. *2 Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Contracting authority should note that in the event of an extension of this date for completion of the Contract, the Contracting authority would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Contracting authority might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”* [↑](#footnote-ref-45)
45. 1 *The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Contracting authority.* [↑](#footnote-ref-46)
46. 2 *Insert the expected expiration date of the Time for Completion. The Contracting authority should note that in the event of an extension of the time for completion of the Contract, the Contracting authority would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Contracting authority might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”* [↑](#footnote-ref-47)
47. 1 *The Guarantor shall insert an amount representing the amount of the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and denominated either in the currency(ies) of the second half of the Retention Money as specified in the Contract, or in a freely convertible currency acceptable to the Beneficiary.* [↑](#footnote-ref-48)
48. *2 Insert the same expiry date as set forth in the performance security, representing the date twenty-eight days after the completion date described in GC Clause 34. The Contracting authority should note that in the event of an extension of this date for completion of the Contract, the Contracting authority would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Contracting authority might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”* [↑](#footnote-ref-49)