## ANNEX SER 1: Request for Proposal for Engineering Services

**This note is information for the Contracting Authority**

When the Service Contract is to be concluded with an Engineer or an engineering company for engineering services, i.e. for the administration and monitoring of a Works contract and the supervision of works, the following standard RFP and draft Service Contract shall be used.

|  |
| --- |
| This note is for the Contracting Authority on how to complete this Request for Proposal: *Where you see:* **(Note:….)** *this is just a guidance for you and you shall delete these notes from the document.* *Where you see <…> please enter information.**Options are marked* (Option:…).  *\*\*\*\**DELETE this Page prior to submitting the Request for Proposal*\*\*\*\****INFORM GLOL OSLO oF procurements EXCEEDing EUR 30,000** |

## Request for Proposal

TO:

|  |  |  |
| --- | --- | --- |
| <Name and address> | **Date of issue:**  | <Date> |
| **RFP no.:** | <RFP no.> |
| **Contract title:** | <Contract title> |
| **Closing date:** | <Date and time> |
| **Contracting authority:** | <Name & address>Contact person: <Name>Tel: <Number>Fax: <Number>Email: <Email> |
|  | Please note that the Proposals may be delivered to the Contracting Authority at the above address in a sealed envelope clearly marked with the above RFP Number and the name of the submitting company. |

**<Name of Contracting Authority> invites you to submit a proposal for <type of Engineering Service>**

Dear Sir/Madam,

The Service is required for <brief description of the Project> an intervention supported by <name of donor>. Please find enclosed the following documents which constitute the request for proposal:

**A - Instructions**

**B –(Option: Draft Contract) (Note: delete option if the Draft Contract is not submitted with the Request for Proposal)**

**Annex 1: Terms of Reference**

 **(Option: Annex 2: Organisation and Methodology (**to be completed by the Engineer)**)**

 **Annex 3: Proposal Submission Form** (to be completed by the Engineer)

 **Annex 4: General Terms and Conditions for Service Contracts**

 **Annex 5: Code of Conduct for Contractors**

**(Note: Delete Annex 2 if irrelevant to the Contract and revise the sequence of numbering of the Annexes)**

If this document is a PDF format, upon request, a complete copy of the above documents can be forwarded in a WORD format for electronic completion. It is forbidden to make alterations to the text.

We should be grateful if you would inform us by email of your intention to submit or not a proposal.

1. INSTRUCTIONS

In submitting a proposal the Engineer accepts in full and without restriction the special and general conditions including annexes governing this Contract as the sole basis of this procedure, whatever his/her own conditions of services may be, which the Engineer hereby waives. The Engineers are expected to examine carefully and comply with all instructions, forms, contract provisions and specifications contained in this Request for Proposal.

1. **Scope of services**

The Services required by the Contracting Authority are described in the Terms of Reference in Annex 1.

The Engineer shall offer the totality of the Services described in the Terms of Reference. Engineers offering only part of the required Services will be rejected.

1. **Cost of proposal**

The Engineer shall bear all costs associated with the preparation and submission of his proposal and the Contracting Authority is not responsible or liable for these costs, regardless of the conduct or outcome of the process.

Engineers are not eligible to participate in this procedure if they are in one of the situations listed in article 33 of the General Terms and Conditions for Service Contracts.

Engineers shall in the Proposal Submission Form attest that they meet the above eligibility criteria. If required by the Contracting Authority, the Engineer whose proposal is accepted shall further provide evidence satisfactory to the Contracting Authority of its eligibility.

Engineers are also requested to certify that they comply with the Code of Conduct for Contractors.

1. **Exclusion from award of contract**

Contracts may not be awarded to engineers who, during this procedure:

1. are subject to conflict of interest:
2. are guilty of misrepresentation in supplying the information required by the Contracting Authority as a condition of participation in the contract procedure or fail to supply this information.
3. **Documents comprising the Request for Proposal**

The Engineer shall complete and submit the following documents with his proposal:

1. Proposal Submission Form (Annex 3) duly completed and signed by the Engineer.
2. (Option: Organisation and Methodology using the structure in Annex 2) **(Note: if Annex 2 was deleted on page 1, please also delete here).**
3. C.V. highlighting the Engineer’s experience in the specific field of the Services and his/her specific experience in the country/region where the Services are to be performed.

The proposal and all correspondence and documents related to the RFP exchanged by the Engineer and the Contracting Authority must be written in the language of the procedure, which is English.

1. **Financial proposal**

The Financial Proposal shall be presented as an amount in <currency> in the Proposal Submission Form in Annex 3. The remuneration of the Engineer under the Contract shall be determined as follows:

**(Note: please select one of the options or adjust to project requirements and delete the others)**

#### (Option 1: Global price:) The Engineer shall indicate in his/her proposal his/her proposed global remuneration for the performance of the Services. The Engineer shall be deemed to have satisfied himself as to the sufficiency of his/her proposed global remuneration, to cover both his/her fee rate, including overhead, profit, all his/her obligations, sick leave, overtime and holiday pay, taxes, social charges, etc. and all expenses (such as transport, accommodation, food, office, etc.) to be incurred for the performance of the Contract. The proposed global remuneration shall cover all obligations of the successful Engineer under the Contract (without depending on actual time spent on the assignment) and all matters and things necessary for the proper execution and completion of the Services and the remedying of any deficiencies therein.

#### (Option 2: Global price for fees and actual reimbursable expenses:) The Engineer shall indicate in his/her proposal: (i) his/her proposed global remuneration and (ii) if applicable, his/her comments or counterproposals on the budget for reimbursable expenses specified in the Draft Contract. The Engineer shall be deemed to have satisfied himself as to the sufficiency of his/her proposed global remuneration, to cover his/her fee rate, including overhead, profit, all his/her obligations, sick leave, overtime and holiday pay, taxes and social charges, etc. The proposed global remuneration shall cover all obligations of the successful Engineer under the Contract (without depending on actual time spent on the assignment) and all matters and things necessary for the proper execution and completion of the services and the remedying of any deficiencies therein. The Engineer shall be entitled to the reimbursement of actual expenses incurred for the performance of the Contract as specified in the Draft Contract. Costs and expenses, which are not mentioned in the Contract, shall be deemed covered by the overhead of profit included in the fees. The Engineer may propose comments or counterproposals on the budget for such reimbursable expenses in his/her proposal (Proposal Submission Form, Annex 3).

**(Option 3: Fee/time-based price:)** The Engineer shall indicate in his/her proposal: (i) his/her proposed daily fee-rate (based on an eight-hour working day) <monthly fee rate> and (ii) if applicable, his/her comments or counterproposals on the budget for reimbursable expenses specified in the Draft Contract. Costs and expenses which are not mentioned in the Contract shall be deemed covered by the overhead of profit included in the fees.

**(Note: Describe specific national VAT and/or any sales tax documentation requirement, if any, and delete this note.**

**VAT and/or any sales tax applicable to the purchase of services shall be indicated separately in the proposal.**

1. **(Option: Candidate’s proposed personnel)**

In the Organisation and Methodology Form, Annex 2, the Engineer shall include a detailed description of the role and duties of each of the key experts or other non-key experts, which the Engineer proposes to use for the performance of the Services. The key experts are those whose involvement is considered instrumental in the achievement of the contract objectives. The CV of each key expert shall be provided highlighting his/her experience in the specific field of the Services and his/her specific experience in the country/region where the Services are to be performed. The Engineer whose proposal is accepted shall provide, if so requested by the Contracting Authority, copies of diplomas and employers’ certificates or references proving the key experts’ education, professional experience and language proficiency.

In the Proposal Submission Form, Annex 3, the Engineer shall provide detailed information about key experts’ actual availability for the performance of the Contract.

1. **Validity**

Proposals shall remain valid and open for acceptance for <30> days after the closing date.

1. **Submission of proposals and closing date**

Proposals must be received at the address mentioned on the front page in a sealed envelope not later than the closing date and time specified on the front page.

1. **Evaluation of Proposals**

The evaluation method will be the quality and cost based selection. A two-stage procedure shall be utilised in evaluating the Proposals; a technical evaluation and a financial evaluation.

Proposals will be ranked according to their combined technical (*St*) and financial (*Sf*) scores using the weights of <75%> for the Technical Proposal; and <25%> for the offered price. Each proposal’s overall score shall therefore be: St X <75>% + Sf X <25>%.

**Technical evaluation**

For the comparison and evaluation of the technical proposals, the Contracting Authority shall take the following criteria into consideration, with the indicated weights:

#### (Note: modify or delete the below criteria and weights to match requirements of the specific contract e.g. if only one Engineer delete section on key expert. Please ensure that the total of points is equal to 100)

|  |  |
| --- | --- |
| Technical evaluation | Maximum Points  |
|
| 1 | (Availability of quality assurance procedures) | <insert no> |
| 2 | (Organisation’s specialised knowledge and experience in the field of assignment and selected region | <insert no> |
| 3 | (Engineer’s relevant academic qualifications) | <insert no> |
| 4 | (Engineer’s relevant experience in the field of assignment) | <insert no> |
| 5 | (Engineer’s experience in the region/country e.g. knowledge of local language, culture, administrative system, government etc.) | <insert no> |
| 6 | (Engineer’s proficiency in <insert language>)  | <insert no> |
| 7 | (Engineer’s CSR related policies – e.g. HR policy, health and safety policy, energy policy, climate policy, Global Compact membership etc.) | <insert no> |
| 8 | (CSR related certifications e.g. ISO 26000/50001/140000 or SA80000) | <insert no> |
| **Sub-total Engineer and/or Organisation** | **<40>** |
| 1 | (To what degree does the proposal show understanding of the task?) | <insert no> |
| 2 | (Have the Terms of Reference been addressed in sufficient detail?) | <insert no> |
| 3 | (Is the conceptual framework adopted appropriate for the task?) | <insert no> |
| 4 | (Is the sequence of activities and the planning logical, realistic and promising efficient implementation to the Contract?) | <insert no> |
| 5 | (Is the work plan adequate in responding to the Terms of Reference) | <insert no> |
| **Sub-total Organisation and Methodology** | **<40>** |
| 1 | (Relevant academic qualifications) | <insert no> |
| 2 | (Relevant experience in the field of assignment) | <insert no> |
| 3 | (Experience in the region/country e.g. knowledge of local language, culture, administrative system, government etc.) | <insert no> |
| 4 | (Proficiency in <insert nation> language) | <insert no> |
| **Sub-total Key expert 1** | **<20>** |
| **Total Technical Score** | **100** |

**Interview**

The Contracting Authority reserves the right to call to interview the Engineers having submitted proposals determined to be substantially responsive.

**Financial evaluation**

Each proposal shall be given a financial score. The lowest Financial Proposal (Fm) will be given a financial score (Sf) of 100 points. The formula for determining the financial scores shall be the following:

Sf = 100 x Fm/F, in which

Sf is the financial score

Fm is the lowest price and

F is the price of the proposal under evaluation

**Negotiations**

The Contracting Authority reserves the right to contact the Engineers having submitted proposals determined to be substantially and technically responsive, in order to propose a negotiation of the terms of such proposals. Negotiations will not entail any substantial deviation to the terms and conditions of the Request for Proposal, but shall have the purpose obtaining from the Engineers better conditions in terms of technical quality, implementation periods, payment conditions, etc.

Negotiations may however have the purpose of reducing the scope of the services or revising other terms of the Contract in order to reduce the proposed remuneration when the proposed remunerations exceed the available budget.

1. **Award criteria**

The Contracting Authority will award the contract to the Engineer whose proposal has been determined to be substantially responsive to the requirements of this Request for Proposal and which has obtained the highest overall score.

1. **Signature and entry into force of the Contract**

Prior to the expiration of the period of the validity of the proposal, the Contracting Authority will inform the successful Engineer in writing that his/her proposal has been accepted and inform the unsuccessful engineers in writing about the result of the evaluation process.

Within <5> days of receipt of the Contract, not yet signed by the Contracting Authority, the successful Engineer must sign and date the Contract and return it to the Contracting Authority. On signing the Contract, the successful Candidate will become the Contractor and the Contract will enter into force once signed by the Contracting Authority.

If the successful Engineer fails to sign and return the Contract within the days stipulated, the Contracting Authority may consider the acceptance of the proposal to be cancelled without prejudice to the Contracting Authority's right to claim compensation or pursue any other remedy in respect of such failure, and the successful Engineer will have no claim whatsoever on the Contracting Authority.

1. **Cancellation for convenience**

The Contracting Authority may for its own convenience and without charge or liability cancel the procedure at any stage.

1. **Data Protection and Privacy**

The Contracting Authority may collect and process personnel data such as names, addresses, telephone numbers, email addresses, banking details and CVs. Such data will be used for the sole purpose of managing the procurement process and any subsequent Contract issued as a result of the procurement process, including transmission to bodies charged with monitoring and or inspecting procurement processes, in accordance with applicable EU, international and national law on data protection. Data may be stored for as long as a legitimate reason remains for its storage and up to a period of seven years.

Submission of any bid, proposal, quotation or offer and acceptance of any subsequent Purchase Order or Contract signifies the bidders consent to such data collection and its processing

The General Terms and Conditions provide reference to the specific rights, and regulations related to the data that is stored.

**B. Draft CONTRACT (Engineering service)**

**CONTRACT TITLE: <Title>**

**Reference no.: <Number>**

**Instructions to Engineers: At this stage of the Request for Proposals this document is for your information and intended to make you aware of the contractual provisions. The information missing in this document will be filled in when an Engineer has been selected, and the “draft” Contract will then become the “final” Contract” between the Contracting Authority and the successful Engineer*.***

<Name and address>

 ("The Contracting Authority"),

 of the one part,

and

<Name and address of engineer>

(“The Contractor”)

 of the other part,

have agreed as stipulated in the attached document:

The Contract is done in English in <three> originals, <two> originals being for the Contracting Authority and one original being for the Contractor.

**Note! Remember to initial every page of the contract.**

|  |  |
| --- | --- |
| **For the Engineer** | **For the Contracting Authority** |
| Name: |  | Name: |  |
| Title: |  | Title: |  |
| Signature: |  | Signature: |  |
| Date: |  | Date: |  |

**Special conditions**

1. **Definitions**

In addition to the definitions of article 1 of the General Terms and Conditions for Service Contracts, the following definitions shall apply to the Contract:

The term ‘**Engineer’** is to be used interchangeably with the term ‘**Candidate**’ which is used in the other Contract documents. The term Engineer also covers engineering firms.

The ’**Project**’ is the project named in the Terms of Reference for which the Works are to be provided.

The ‘**Works**’ are the works to be executed for the achievement of the Project, as preliminary defined in the Terms of Reference.

The ‘**Works Contract**’ is the contract for works of civil engineering construction to be entered into between the Contracting Authority and the Contractor for the construction of the Works.

The ‘**Standard Documents**’ are the standard documents for Works Contracts to be used by the Contracting Authority and which are included in the NCA Procurement Manual**.**

The ‘**Contractor** is the person or company to be hired by the Contracting Authority for the execution of the Works, and who will enter into the Works Contract with the Contracting Authority.

The ‘**Drawings**’ are all drawings, calculations and technical information of a like nature to be submitted by the Engineer for the implementation of the Project and the construction of the Works.

The ‘**Recipient**’ is the legal person(s) or authority(ies) which is(are) the end recipient(s) of the Works.

1. **Relations between the parties**

Article 2 of the General Terms and Conditions for Service Contracts, shall be replaced by the following: Nothing contained in the Contract shall be construed as establishing a relation of master and servant as between the Contracting Authority and the Engineer. The Engineer shall act both as agent for the Contracting Authority in the process of obtaining for the Contracting Authority the completion of the Project and as an independent person for the administration of the Works Contract.

1. **Scope of Services**

Unless otherwise specified in the Terms of Reference, the main categories of Services to be provided by the Engineer and the main obligations resulting there from, in addition to the General Terms and Conditions for Service contracts, shall be the following:

1. **Preliminary studies**

These may include project identification, definition study, pre-feasibility and/or feasibility study, project execution study. The type and contents of such studies, investigations and reports are set out in the Terms of Reference.

1. **Planning and design**

The type and contents of statements, plans, calculations, measurement, specifications, estimates, drawings, design documents and any other documents that the Engineer is to draw up, as well the degree of accuracy they must attain are specified in the Terms of Reference.

1. **Preparation of Tender Dossier and conduct of tendering procedure**

In preparing and completing the tender dossier for the award of the Works Contract, the Engineer shall strictly follow guidelines for tendering procedures and use the Standard Documents included in the NCA Procurement Manual.

The Engineer shall have special responsibility to draw the Technical Specifications, the Design Documents and Drawings, the Bill of Quantities or Breakdown of Overall Price provided for in Standard Documents. The Engineer shall ensure the consistency and adequacy of all the documents included in the procurement procedure.

In the conduct of the procurement procedure, the Engineer shall perform the duties of a member of the Procurement Committee as set out in the NCA Procurement Manual. The Engineer shall deal with all technical queries of the tenderers and provide the necessary clarifications. For the evaluation of tenders, the Engineer shall provide the Procurement Committee with detailed recommendations.

(Option: Add any detail necessary on what is expected from the Engineer in the procurement procedure for the Works Contract.) **(Note: delete option if not required)**

1. **Administration of Works Contract and inspection and supervision of Works**

For the administration of the Works Contract and the supervision/inspection of the Works, the Engineer shall perform all duties of the Engineer as set out in Standard Documents, as adapted in the Works Contract, and always according to the profession’s best practices.

(Option: The specific approval of the Contracting Authority is required for the following decisions of the Engineer in relation to the Works Contract: <Add list of restrictions to Engineer’s powers>.) **(Note: delete option if not required)**

The Engineer shall not receive instructions from the Recipient.

The Engineer shall have authority to make minor alterations to design as may be necessary or expedient, but he shall obtain the prior approval of the Contracting Authority for any substantial modification of the design and/or costs of the Works, except in case of emergency requiring immediate action.

In the course of the execution of the Works, the Engineer shall draw up and issue to the Contractor such supplementary Drawings, instructions and administrative orders as shall be necessary for the purpose of the proper and adequate execution and completion of the Works and the remedying of any defects therein.

In ascertaining and determining by measurement the value of the Works, the Engineer shall apply internationally recognized principles and standards.

1. **(Option: Training for operation and maintenance of the Works**

If provided so in the Terms of Reference, the Engineer shall provide training.) **(Note: delete option if not required)**

1. **Commencement Date**

(Option 1:) The Contract shall commence on <date>.

(Option 2:) The Contract shall commence after signature of this Contract by both parties.

**(Note: please select one option or insert own text e.g. a specific date. To be adjusted to the specific Contract)**

1. **(Option: Period of implementation)**

The period of implementation of the services is <number> <days/weeks> from the commencement date.

1. **Obligations of the Contracting Authority**

The Contracting Authority shall make available, and/or shall ensure that the Recipient or any

other authority or Contracting Authority’s partner in the beneficiary country shall make

available, free of cost, to the Engineer the following:

* **Engagement of Contractor for construction of Works**

The Contracting Authority shall select and engage the Contractor pursuant to Procurement Manual and Standard Documents. The Engineer shall participate in the procurement procedure as specified in article B.3.c. above.

**(Options:**

* **Other contractors or consultants to be hired by the Contracting Authority** <details>
* **Counterpart personnel** (e.g., to be trained by the Engineer) <details>
* **Equipment** <details>
* **Facilities** <details>
* **Supply of information)**

**(Note: delete options if not required)**

Where the preparation and completion of the Tender Dossier for the award of the Works Contract is a part of the Services, the Contracting Authority shall provide the Engineer with all information and documents necessary for drawing up the administrative part of the Tender Dossier**.**

1. **Remuneration**

(**Note: please select one of the following options (or adjust to project requirements). Please harmonize with clause A.6 of this Request for Proposal)**

(**Option 1: Global Price)** In consideration for his/her services, the Engineer shall receive a global remuneration of <insert currency> <insert amount>. This global remuneration covers the Engineer’s fee rate, including overhead, profit, all his/her obligations, leave, sick leave, overtime and holiday pay, taxes, social charges, etc. and all expenses (such as transport, accommodation, food, office expenses, etc) to be incurred for the performance of the Contract. The global remuneration covers all obligations of the Engineer under the Contract (without depending on actual time spent on the assignment) and all matters and things necessary for the proper execution and completion of the services and the remedying of any deficiencies therein

(**Option 2: Global price for fees and actual reimbursable expenses)**

In consideration for his/her services, the Engineer shall receive a global remuneration of <currency> <amount>. This global remuneration covers the Engineer’s fee rate, including overhead, profit, all his/her obligations, leave, sick leave, overtime and holiday pay, taxes and social charges.The global remuneration covers all obligations of the successful Engineer under the Contract (without depending on actual time spent on the assignment) and all matters and things necessary for the proper execution and completion of the services and the remedying of any deficiencies therein.

Upon presentation of invoices or receipts, the Engineer shall be entitled to the reimbursement of the following expenses duly incurred for the performance of the Contract:

* 1. <Specify transport>
	2. <Specify accommodation>
	3. <Specify per diem>
	4. <Specify office costs>
	5. <Others>

Costs and expenses, which are not mentioned above shall be deemed covered by the overhead of profit included in the Engineer’s global remuneration.

(**Option 3: Fee/time-based price)**

In consideration for his/her services, the Engineer shall receive a remuneration to be determined on the basis of a <daily> <monthly> fee rate of <currency> <amount>. This remuneration shall be determined on the basis of time actually spent by the Engineer in the performance of the services. (Option: However, the amount of <currency> <amount>, i.e. fees for a period of <number> working days <number> <months> constitute a ceiling amount, above which the Engineer’s extra work shall be deemed covered by his/her remuneration)**.** The fee rate is deemed to remunerate all the activities of the Engineer in the performance of the services and to cover all expenses and costs incurred by the Engineer who is not included in the agreed reimbursable costs. The fee rate covers the Engineer’s overhead, profit, sick leave, overtime and holiday pay, taxes and social charges. **(Note: delete option if not required)**

**(Option: If a daily fee-rate)** The daily fee rate is based on a working day of <8> hours.

**(Option: If a monthly fee-rate)** The monthly fee rate is based on a month of <number> working days, and working days of <8> hours. **(Note: delete options as required)**

The Engineer shall keep separate, accurate and systematic records and accounts in respect of the services in such form and detail as is customary in the profession and sufficient to establish accurately that the number of working days and the actual reimbursable expenditure identified in the Engineer's invoice(s) have been duly incurred for the performance of the services.

Timesheets, recording the days and hours worked by the Engineer's personnel, shall be maintained by the Engineer. The timesheets must be approved by the Contracting Authority on a monthly basis. The amounts invoiced by the Engineer must correspond to these timesheets. Time spent travelling exclusively and necessarily for the purpose of the Contract may be included in the numbers of days or hours, as appropriate.

Upon presentation of invoices or receipts, the Engineer shall be entitled to the reimbursement of the following expenses duly incurred for the performance of the Contract:

1. <Specify transport>
2. <Specify accommodation>
3. <Specify per diem>
4. <Specify office costs>
5. <Others>

Costs and expenses, which are not mentioned above shall be deemed covered by the overhead of profit included in the Engineer’s global remuneration.

**(Note: VAT and/or any sales tax applicable to the purchase of services shall be indicated separately in the Contract.)**

1. **Reporting**

The Engineer shall submit progress reports as specified in the Terms of Reference (Annex 1). The Engineer shall also keep the Contracting Authority updated on contract progress on a regular basis.

1. **Payment**

Payments shall be made in <currency> by bank transfer to the following account:

Account Number:

Name of Bank:

Address of Bank:

Account name:

Swift Code:

**(Note: please select one option below and delete the other options)**

(Option 1:) Payment will be made by the Contracting Authority within <30> days from approval by the Contracting Authority and receipt of the Engineer’s invoice.

(Option 2:) Payment will be made according to the following schedule:

<Include instalments, dates, amounts and currencies, requested invoices and reports, a reasonable payment deadline shall be specified>

(Option 3:) Payment will be made in <two instalments>.

The first instalment of <currency and amount> upon signature of the Contract and against receipt of the Engineer’s invoice in one original and two copies (Option: and provision of the performance guarantee and financial guarantee for the full amount of the pre-financing payment).

The second and last instalment of <currency and amount> will be paid within <30> days after approval of the final report and issue of the Completion Certificate by the Contracting Authority in accordance with article 25 of the General Terms and Conditions for Service Contracts and receipt of the Engineers final invoice (one original and 2 copies).

1. **Tax and customs arrangements and social contributions**

The Contracting Authority shall have no obligation or responsibility in connection with taxes or levies payable by the Engineer in its country of establishment or in the beneficiary country in connection with its performance of this Contract.

(Option: The contract shall be exempt from all duties and taxes, including VAT.) **(Note: To be amended according to any agreement in the country)**

1. **Order of precedence of contract documents**

The Contract is made up of the following documents, in order of precedence:

1. This Contract
2. Terms of Reference (Annex 1)
3. (Option: Organisation and Methodology (Annex 2)) **(Note: delete if not required)**
4. Proposal Submission Form (Annex 3)
5. General Terms and Conditions for Service Contracts(Annex 4)
6. Code of Conduct for Contractors (Annex 5)

The various documents making up the Contract shall be deemed to be mutually explanatory; in cases of ambiguity or divergence, they should be read in the order in which they appear above.

1. **Language**

The language of this Contract and of all written communications between the Engineer and the Contracting Authority shall be English.

1. **Notices**

Any written communication relating to this Contract between the Contracting Authority and the Engineer must state the Contract title and number, and must be sent by post, fax, e-mail or by hand to the addresses identified in this Contract.

**B.14. (Option: Entry into force and duration)**

The Contract shall enter into force and effect after signature by both parties of this Contract. The Contract shall remain into force and effect until the end of the liability period as defined in the General Terms and Conditions for Service Contracts. **(Note: delete if a Framework Contract)**

**Annex 1: Terms of reference**

* **Background information**

<Information of the country>

<General/relevant background information about the project, the organisation and the partner>

* **contract PURPOSE and Expected results**

**Overall objective:**

<The overall objective of the project is>

**Purpose:**

<The purpose of this contract is>

**Results to be achieved by the Engineer:**

1.

2.

3.

* **(OPTION: ASSUMPTIONS AND RISKS)**

**(Note: an assumption could be that the security situation permits the work to be completed or the Government is willing to cooperate. A risk could be limited access to the area, country etc. Please delete this section if irrelevant to this contract)**

* **Scope of the Services**

<Project information including geographical area to be covered>

<The tasks to be carried out by the Engineer>

<The Management structure: who is responsible for this Contract and who will the Engineer report to>

* **timing, logisitics and facilities**

<When the Contract will commence and period of implementation>

<Location of where the Engineer will be based for the duration of the task>

<Facilities to be provided by the Contracting Authority e.g. office accommodation>

<Facilities to be provided by the Engineer>

* **(Option: KEY EXPERTS AND OTHER PERSONNEL)**

<Brief description. Please see Organisation and Methodology form>

**(Note: please delete if only one Engineer)**

* **reporting**

<Report requirements; what, how and when>

<Language of the reports, no. of copies, and recipient>

* **QUALIFICATION REQUIREMENTS**

<List the required qualifications>

**(Note: do not include financial conditions (fees, reimbursable expenses and payments) in the Terms of Reference (these should be included in the Contract only))**

**(oPTION: Annex 2: Organisation and methodology)**

**(Note: please delete this annex and all references to it, if not required)**

**To be filled in by the Engineers, in compliance with the following instructions:**

**Rationale**

* Any comments on the Terms of Reference of importance for the successful execution of activities, in particular its objectives and expected results, thus demonstrating the degree of understanding of the Contract. Any comments contradicting the Terms of Reference or falling outside their scope will not form part of the final contract.
* An opinion on the key issues related to the achievement of the Contract objectives and expected results.
* (Option: An explanation of the risks and assumptions affecting the execution of the contract.) **(Note: please delete option if not required)**

**Strategy**

* An outline of the approach proposed for contract implementation.
* A list of the proposed activities considered to be necessary to achieve the contract objectives.
* The related inputs and outputs.

**Timetable of activities**

* The timing, sequence and duration of the proposed activities, taking into account mobilisation time.
* The identification and timing of major milestones in execution of the Contract, including an indication of how the achievement of these would be reflected in any reports, particularly those stipulated in the Terms of Reference.
* Include a programme.

**(Option: Logical frame)**

* A Logical frame reflecting the considerations above. **(Note: please delete if not required)**

**(Option: Key experts)**

* The Engineer shall include a detailed description of the role and duties of each of the key experts or other non-key experts, which the Engineer proposes to use for the performance of the services. The key experts are those whose involvement is considered instrumental in the achievement of the Contract objectives. The CV of each key expert shall be included highlighting his/her experience in the specific field of the services and his/her specific experience in the country/region where the services are to be performed. In addition the Engineer shall include information on current participation of key experts in other contracts and or commitments to participate in future contracts, including detailed description of their tasks and period of engagement. **(Note: please delete option if only one Engineer is required)**

**ANNEX 3: PROPOSAL SUBMISSION FORM**

My financial proposal for my/our services is as follows:

**(Note: Please select one of the below three options and harmonize this section with article A.6.)**

**(Option 1: Global price)**

|  |  |  |
| --- | --- | --- |
|  | **Currency** | **Amount**  |
| Global price (fees and expenses) |  |  |
| VAT or other tax on services |  |  |
| **Total price incl. taxes** |  |  |

 **(Option 2: Global price for fees and reimbursable expenses)**

|  |  |  |
| --- | --- | --- |
|  | **Currency** | **Amount** |
| Global price (fees) |  |  |
| **Reimbursable expenses:** |  |  |
| <Transport> |  |  |
| <Accommodation> |  |  |
| <Per diem> |  |  |
| <Office costs> |  |  |
| <Others> |  |  |
| **Total reimbursable expenses** |  |  |
| VAT or other tax on services |  |  |
| **Total price incl. taxes** |  |  |

**(Option 3: Fees/time based price)**

|  |  |  |
| --- | --- | --- |
|  | **Currency** | **Amount** |
| Fee rate |  |  |
| Number of <days> <months> |  |  |
| **Total fees** |  |  |
| **Reimbursable expenses:** |  |  |
| <Transport> |  |  |
| <Accommodation> |  |  |
| <Per diem> |  |  |
| <Office costs> |  |  |
| <Others> |  |  |
| **Total reimbursable expenses** |  |  |
| VAT or other tax on services |  |  |
| **Total price incl. taxes** |  |  |

|  |
| --- |
| **Engineer or Engineering Company information** |
| Company (legal name) |  |
| Street name and no. |  |
| City  |  |
| Postal code |  |
| Country  |  |
|  |  |
| Phone no. |  |
| Email |  |
| Website |  |
|  |  |
| Director (name) |  |

|  |
| --- |
| **(Option: GENERAL INFORMATION)** |
| Year of establishment |  |
| Number of full time employees |  |
| Licensing authority |  |
| Licence number (VAT no./TAX id) |  |
| Countries with registered office(s). |  |
| Registration Certificate – please attach |  |
| Does your company have CSR related policies in place – e.g. Health, Safety, HR, Energy or Climate policy or is a member of Global Compact? Please state which policies. |  |
| Is your company e.g. ISO 26000/50001/14000 certified or SA8000 certified? Please state which. |  |
| Does your company have a Code of Conduct? |  |

**(Note: Please adjust the information as required)**

|  |
| --- |
| **REFERENCES** |
| **Name and country of customer** | **Type of contract** | **Value** | **Contact name** | **Phone/fax and email** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

Include details of the experience and past performance on contracts of a similar nature within the past five years and information on other contracts in hand and/or future commitments including details of the actual and effective participation in each of such contracts, description of the Engineer’s assignments and periods of engagement. Additional documents can be attached to the above form.

The proposal is valid for a period of <number> days after the closing date in accordance with the article A.8 Validity.

After having read your Request for Proposal no. <number> for <contract title> dated <date>, and after having examined the Request for Proposal, I/we hereby offer to execute and complete the services in conformity with all conditions in the Request for Proposal for the sum indicated in our financial proposal.

Further, I/we hereby:

* accept, without restrictions, all the provisions in the Request for Proposal including the General Terms and Conditions for Service Contracts and the draft Service Contract including all annexes.
* provided that a contract is issued by the Contracting Authority I/we hereby commit to perform all services described in the Terms of Reference, Annex 1 (Option: within the time frame described in our Organisation and Methodology). **(Note: please delete option if not required)**
* certify and attest compliance with eligibility criteria of article 33 of the General Terms and Conditions for Service.
* certify and attest compliance with the Code of Conduct for Contractors in Annex 5.

The above declarations will become an integrated part of the Contract and misrepresentation will be regarded as grounds for termination.

Signature and stamp:

Signed by:

|  |  |
| --- | --- |
| **The Engineer** |  |
| Name of the company |  |
| Address |  |
| Telephone no.  |  |
| Email |  |
| Name of contact person |  |

**1. DEFINITIONS**

**Annex 4: General Terms and Conditions for**

**Service contracts – Ver3 2021**

In these general terms and conditions:

1. “contract” is the agreement entered into by the Contracting Authority and the Contractor for the performance of the services described in the terms of reference, to which these general terms and conditions are made applicable; the contract is constituted of the documents listed in the Service Contract.
2. The Contracting Authority’s “partners” are the organisations to which the Contracting Authority is associated or linked;
3. “personnel” is any person assigned by the Contractor to the performance of the services or any part hereof, whether through employment, sub-contracting or any other agreement; and “key experts” are those members of the personnel whose involvement is considered instrumental in the achievement of the contract objectives;
4. “beneficiary country” is the country where the services are to be performed, or where the project to which the services relate is located.

**2. RELATIONS BETWEEN THE PARTIES**

Nothing contained in the contract shall be construed as establishing a relation of master and servant or of agent and principal as between the Contracting Authority and the Contractor. Except if otherwise provided in the contract, the Contractor shall under no circumstances act as the representative of the Contracting Authority or give the impression that the Contractor has been given such authority. The Contractor has complete charge of the personnel and shall be fully responsible for the services performed by them.

**3. SCOPE OF SERVICES**

The scope of the services including the methods and means to be used by the Contractor, the results to be achieved by him and the verifiable indicators are specified in the Terms of Reference. The Contractor shall be responsible for everything which is required for the performance of the services in accordance with what is specified in the contract, or which must otherwise be regarded as forming part of the services.

4. COMPLIANCE WITH LAWS AND RESPECT OF TRADITIONS

The Contractor shall respect and abide by all laws and regulations in force in the beneficiary country 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 personnel and their dependants of such laws and regulations.

The Contractor, its personnel and their dependents shall respect human rights and undertake not to offend the political, cultural and religious practices prevailing in the beneficiary country.

5. CODE OF CONDUCT

The Contractor shall at all times act loyally and impartially and as a faithful adviser to the Contracting Authority and shall perform the services with due care, efficiency and diligence, in accordance with the best professional practice.

**6. DISCRETION AND CONFIDENTIALITY**

The Contractor shall treat all documents and information received in connection with the contract as private and confidential, and shall not, save in so far as may be necessary for the purposes of the performance thereof, publish or disclose any particulars of the contract without the prior consent in writing of the Contracting Authority. It shall, in particular, refrain from making any public statements concerning the project or the services without the prior approval of the Contracting Authority,

**7. CONFLICT OF INTEREST**

The Contractor shall refrain from engaging in any activity which conflicts with his obligations towards the Contracting Authority under the contract.

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 could 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 could arise during performance of the Contract must be notified in writing to the Contracting Authority without delay. The Contractor shall replace, immediately and without compensation from the Contracting Authority, any member of its personnel exposed to such a situation.

**8. CORRUPT PRACTICES**

The Contractor and the personnel shall refrain from performing, condoning or tolerating any corrupt, fraudulent, collusive or coercive practices, whether such practices are in relation with the performance of the contract or not. “Corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value as an inducement or reward for doing or forbearing to do any act in relation to the contract or any other contract with the Contracting Authority, or for showing favour or disfavour to any person in relation to the contract or any other contract with the Contracting Authority.

The payments to the Contractor under the contract shall constitute the only income or benefit it may derive in connection with the contract and neither it nor its personnel shall accept any commission, discount, allowance, indirect payment or other consideration in connection with, or in relation to, or in discharge of, its obligations under the contract.

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 Contractor further warrants that no official of the Contracting Authority and/or their partner has received or will be offered by the Contractor any direct or indirect benefit arising from this Contract.

**9. JOINT VENTURE OR CONSORTIUM**

If the Contractor is a joint venture or a consortium of two or more legal persons, all such persons shall be jointly and severally bound to fulfil the terms of the contract. The person designated by the joint venture or consortium to act on its behalf for the purposes of this contract shall have the authority to bind the joint venture or consortium.

For the purposes of performance of the contract, the joint venture or consortium shall act as, and be considered, a single person and, in particular, shall have bank account opened in its name, shall submit to the Contracting Authority single guarantees if required, and shall submit single invoices and single reports.

The composition of the joint venture or a consortium shall not be altered without the prior written consent of the Contracting Authority.

10. SPECIFICATIONS AND DESIGNS

The Contractor shall prepare all specifications and designs using accepted and generally recognised systems acceptable to the Contracting Authority and taking into account the latest design criteria.

11. INFORMATION

The Contractor shall furnish the Contracting Authority or any person authorised by the Contracting Authority with any information relating to the services and the project as the Contracting Authority may at any time request.

**12. REPORTS**

The frequency, deadlines, format and contents of the reports to be drawn up by the Contractor in relation to the performance of the contract shall be described in the Terms of Reference.

**13. CONTRACTOR’S PERSONNEL**

13.1. The Contractor shall employ and provide such qualified and experienced personnel as are required to carry out the services, and the Contractor shall be responsible for the quality of the personnel.

The names, outputs, duties and CVs of key experts and the titles, job descriptions, minimum qualifications, estimated periods of engagement in the carrying out of the services of each of the personnel and key experts are described in the Organisation and Methodology part of the contract. The Contractor must inform the Contracting Authority of all non-expert personnel it intends to use for the implementation of the contract. The Contracting Authority shall have the right to oppose the Contractor’s choice of personnel.

13.2. No changes shall be made in the personnel without the prior consent of the Contracting Authority. The Contractor shall provide a replacement with at least equivalent qualifications and experience and acceptable to the Contracting Authority if:

a) on account of death, sickness or accident, a member of the Personnel is unable to continue providing his services,

b) any member of the personnel is found by the Contracting Authority to be incompetent in discharging or unsuitable for the performance of his duties under the Contract,

c) for any reasons beyond the control of the Contractor, it becomes necessary to replace any member of the Personnel.

The request for replacement must be made in writing and state the reasons therefore. The Contractor shall proceed swiftly with the request and propose a replacement with at least equivalent qualifications and experience. The remuneration to be paid to the replacement cannot exceed that received by the replaced member of the personnel.

Failure by the Contractor to propose a replacement for a key expert satisfactory to the Contracting Authority, shall give the right to the Contracting Authority to terminate the contract.

Additional costs arising out of a replacement shall be borne by the Contractor.

13.3. Working hours

The days and hours of work of the Contractor or/and its personnel in the beneficiary country shall be fixed on the basis of the laws, regulations and customs of the beneficiary country and the requirements of the services.

13.4. Leave entitlement

Any taking of holiday leave by the personnel during the period of implementation of the contract must be at a time approved by the Contracting Authority.

Overtime, sick leave pay and holidays leave pay are deemed to be covered by the Contractor’s remuneration.

14. SUB-CONTRACTING

Except from the subcontractors listed in the contract, the Consultant shall not subcontract to nor engage another independent contractor to perform any part of the services without the prior written consent of the Contracting Authority. Subcontractors must satisfy the eligibility criteria applicable for the award of the contract.

The Contracting Authority shall have no contractual relations with the subcontractors. The provisions of the contract, including these general terms and conditions, and in particular article 13.2 shall, where practicable, apply to the subcontractors and their personnel.

15. LIABILITY

At its own expense, the Contractor shall indemnify, protect and defend, the Contracting Authority, its agents and employees, from and against all actions, claims, losses or damages arising from any act or omission by the Contractor in the performance of the services, including any violation of any legal provisions, or rights of third parties, in respect of patents, trademarks and other forms of intellectual property such as copyrights.

Approval by the Contracting Authority of the Contractor’s reports and issue of Completion Certificate shall not relieve the Contractor of its liability and shall not prevent the Contracting Authority from claiming damages.

The Contractor shall remain liable for any breach of its obligations under the contract for such period after the services have been performed as may be determined by the law governing the contract (the “liability period”). This time limit does not however apply when the damage arises from gross negligence or wilful misconduct of the Contractor.

During the liability period, or as soon as practicable after its expiration, the Contractor shall, at its expense, upon instruction of the Contracting Authority, remedy any deficiencies in the performance of the services. In case of default on the part of the Contractor to carry out such instructions, the Contracting Authority shall be entitled to hire another contractor to carry out the same, at the Contractor’s expense.

16. INSURANCE

Within 20 days of signing the contract, the Contractor shall take out and maintain, at its own cost, a full indemnity insurance policy covering its professional liability under the contract and article 15 above, from the commencement date and until the end of the liability period.

Within 20 days of signing the contract, the Contractor shall take out and maintain a full indemnity insurance policy for a sum up to the higher of the maximum amount foreseen by the legislation of the country of the Contracting Authority and the amount foreseen by the legislation of the country in which the Contractor has its headquarters and covering, during the period of implementation of the contract, the following risks:

a) loss of or damage to property purchased with funds provided under the contract, or produced by the Contractor;

b) loss or damage to equipment, material and office facilities made available to the Contractor by the Contracting Authority;

c) civil liability for accidents caused to third parties arising out of acts performed by the Contractor, its personnel and their dependents;

d) employer’s liability and workers’ compensation in respect of the personnel as well as sickness, accident or death affecting the personnel and their dependents, including the cost of repatriation on health grounds;

e) such other insurance as required by the laws in force in the beneficiary country.

Prior to the commencement date, the Contractor shall provide evidence to the Contracting Authority that the above insurances have been effected. During execution of the contract, the Contractor shall, when required, provide the Contracting Authority with copies of the insurance policies and the receipts for payment of premiums.

Failure on the part of the Contractor to arrange such insurance shall render the contractor liable for any losses, or claims made against the Contractor or Contracting Authority by any party in relation to the Contract.

17. INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

All reports and data such as maps, diagrams, drawings, specifications, plans, statistics, calculations, databases, software and supporting records or materials acquired, compiled or prepared by the Contractor in the performance of the contract shall, with the copyright thereto, be the absolute property of the Contracting Authority. The Contractor shall, upon completion of the contract, deliver all such documents and data to the Contracting Authority. The Contractor may not retain copies of such documents and data and shall not use them for purposes unrelated to the contract without the prior written consent of the Contracting Authority.

The Contractor shall not be in violation of any legal provisions, or rights of third parties, in respect of patents, trademarks and other forms of intellectual property such as copyrights.

The Contractor shall not publish articles relating to the services or refer to them when carrying out any services for others, or divulge information obtained from the Contracting Authority, without the prior written consent of the Contracting Authority.

18. RECORDS

The Contractor shall keep separate, accurate and systematic records and accounts in respect of the services in such form and detail as is customary in the profession and sufficient to establish accurately that the number of working days and the actual reimbursable expenditure identified in the Contractor's invoice(s) have been duly incurred for the performance of the services.

For a fee-based contract, timesheets recording the days worked by the Contractor's personnel must be maintained by the Contractor. The timesheets must be approved by the Contracting Authority or any person authorised by the Contracting Authority or the Contracting Authority itself on a monthly basis. The amounts invoiced by the Contractor must correspond to these timesheets. In the case of long-term experts, these timesheets must record the number of days worked. In the case of short-term experts, these timesheets must record the number of hours worked. Time spent travelling exclusively and necessarily for the purpose of the Contract may be included in the numbers of days or hours, as appropriate, recorded in these timesheets.

Such records must be kept for a 7-year period after the final payment made under the contract. These documents comprise any documentation concerning income and expenditure and any inventory, necessary for the checking of supporting documents, including timesheets, plane and transport tickets, pay slips for the remuneration paid to the experts and invoices or receipts for reimbursable expenditure. Failure to maintain such records constitutes a breach of contract and will result in the termination of the contract.

19. OBLIGATIONS OF CONTRACTING AUTHORITY

19.1. The Contracting Authority shall provide the Contractor as soon as possible with any information and/or documentation at its disposal which may be relevant to the performance of the contract.

On all matters properly referred to it in writing by the Contractor, the Contracting Authority shall give its decisions so as not to delay the services, and within a reasonable time.

19.2. The contract shall specify whether the Contracting Authority is to provide the Contractor with equipment, facilities, counterpart personnel or specific assistance, and shall detail under which conditions. If the provision of such agreed counterpart personnel, equipment, facilities and assistance is delayed or not forthcoming, the Contractor shall endeavour to perform the Services as far as is possible. The parties shall agree on how the affected parts of the services shall be carried out, and the additional payments, if any is due, to be made by the Contracting Authority to the Contractor as a result of additional expenditures.

**20. CONTRACT PRICE AND PAYMENTS**

Contracts are either “global price” or “fee-based”.

20.1. Fee-based contract

In consideration of the services performed by the Contractor under the contract, the Contracting Authority shall make to the Contractor such payments of fees and such reimbursement of costs as provided in the contract.

Fees shall be determined on the basis of time actually spent by the key experts in the performance of services at the fee rates specified in the contract. Fee rates are deemed to remunerate all the activities of the Contractor in the performance of the services and to cover all expenses and costs incurred by the Contractor which are not included in the agreed reimbursable costs.

The Contracting Authority shall reimburse to the Contractor the reimbursable costs and expenses specified in the contract, actually and reasonably incurred in the performance of the services.

Costs and expenses which are not mentioned in the contract shall be deemed covered by the overhead of profit included in the fees.

The currency of payments of fees and reimbursable costs and applicable exchange rates are set out in the contract.

20.2. Global price contract

The global price covers both the Contractor’s and its personnel’s fees and all expenses to be incurred for the performance of the contract. The global price is in consideration for all obligations of the Contractor under the contract and all matters and things necessary for the proper execution and completion of the services and the remedying of any deficiencies therein.

20.3. Revision

Unless otherwise stipulated in the contract, the global price of a global price contract and the fee rates of a fee-based contract shall not be revised.

20.4. Guarantees

In the case an advance payment for fees and for reimbursable costs (fee-based contract) or a pre-financing payment (global price contract) is agreed in the contract, its payment by the Contracting Authority shall be subject to the prior presentation by the Contractor to the Contracting Authority of an approved performance security, advance payment or pre-financing guarantee, if so agreed and under the conditions specified in the Service Contract.

20.5. Conditions of Payment

Payments will be made by the Contracting Authority with the frequency, instalments, time limits, amounts and currencies, and under the conditions, in particular on the contents of invoices, specified in the special conditions of the contract. Payment of the final balance shall be subject to performance by the Contractor of all its obligations under the contract and the issue by the Contracting Authority of the completion certificate described in article 25.

20.6. Bank Account

Payment will only be made by cheque or bank transfer to the banks account as named in the Contract. Under no circumstances will payment be made in cash or to a bank account other than that specified in the Contract.

21. DELAYS IN PERFORMANCE

If the Contractor does not perform the services within the period of implementation 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 of implementation specified in the contract and the actual end of the period of implementation.

The daily rate for liquidated damages is calculated by dividing the contract value by the number of days of the period of implementation.

If these liquidated damages exceed more than 15% of the contract value, the Contracting Authority may, after giving notice to the Contractor:

a) terminate the contract; and

b) complete the services at the Contractor's own expense

22. BREACH OF CONTRACT

Either party commits a breach of contract where it fails to discharge any of its obligations under the contract.

Where a breach of contract occurs, the party injured by the breach shall be entitled to the following remedies:

a) liquidated damages; and/or

b) termination of the contract.

In any case 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.

The Contracting Authority shall be entitled to compensation for any damage which comes to light after the contract is completed in accordance with the law governing the contract.

23. SUSPENSION OF PERFORMANCE

The Contractor shall, on the request of the Contracting Authority, suspend the performance of the services or any part thereof for such time and in such manner as the Contracting Authority may consider necessary.

In such event of suspension, the Contractor shall take immediate action to reduce the costs incident to the suspension to a minimum. During the period of suspension, and except where the suspension is due to any default of the Contractor, the Contractor shall be reimbursed for additional costs reasonably and necessarily incurred by it as a result of the suspension.

24. AMENDMENT OF THE CONTRACT

Substantial modifications to the contract, including modifications to the total contract amount, must be made by means of an addendum.

25. COMPLETION CERTIFICATE

Upon completion of the services, and once (a) the Contracting Authority has approved the Contractor’s completion report, (b) the Contracting Authority has approved the Contractor’s final invoice and final audited statement, the Contracting Authority shall deliver a completion certificate to the Contractor.

26. TERMINATION BY THE CONTRACTING AUTHORITY

26.1 The Contracting Authority may terminate the contract after giving 7 days' notice to the Contractor in any of the following cases:

a) the Contractor is in breach of its obligations under the contract and/or fails to carry out the services substantially in accordance with the contract;

b) the Contractor fails to comply within a reasonable time with the notice given by the Contracting Authority 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 services;

c) the Contractor refuses or neglects to carry out instructions given by the Contracting Authority;

d) the Contractor’s declarations in respect if its eligibility (article 33) and/or in respect of article 31 and article 32, appear to have been untrue, or cease to be true;

e) the Contractor takes some action without requesting or obtaining the prior consent of the Contracting Authority in any case where such consent is required under the contract;

f) any of the key experts is no longer available, and the Contractor fails to propose a replacement satisfactory to the Contracting Authority;

g) any organisational modification occurs involving a change in the legal personality, nature or control of the Contractor or the joint venture or consortium, unless such modification is recorded in an addendum to the contract;

h) the Contractor fails to provide the required guarantees or insurance, or the person providing the underlying guarantee or insurance is not able to abide by its commitments.

26.2 Termination by Contracting Authority for convenience

The Contracting Authority may terminate the contract in whole or in part for its convenience, upon not less than 14 days’ notice. The Contracting Authority shall not use this right of termination in order to arrange for the services to be executed by another contractor, or to avoid a termination of the contract by the Contractor.

**27. TERMINATION BY THE CONTRACTOR**

The Contractor may terminate the contract after giving a 7 days’ notice to the Contracting Authority in any of the following cases:

a) the Contractor has not received payment of that part of any invoice which is not contested by the Contracting Authority, within 90 days of the due payment date,

b) the period of suspension of the performance of the contract under article 23 has exceeded six months;

c) the Contracting Authority is in material breach of its obligations under the Contract and has not taken any actions to remedy the same within 30 days following the receipt by the Contracting Authority of the Contractor’s notice specifying such breach.

If the Contractor is a natural person, the contract shall be automatically terminated if that person dies.

**28. RIGHTS AND OBLIGATIONS UPON TERMINATION**

28.1. Upon termination of the contract by notice of either party to the other, the Contractor shall take immediate steps to bring the services to a close in a prompt and orderly manner and in such a way as to keep costs to a minimum.

28.2. If the Contracting Authority terminates the contract in accordance with article 26.1 it may, thereafter, complete the services itself, or conclude any other contract with a third party, at the Contractor’s expense.

The Contracting Authority shall, as soon as is possible after termination, certify the value of the services and all sums due to the Contractor as at the date of termination. It shall, subject to article 28.1 and 28.3, make the following payments to the Contractor:

(a) remuneration pursuant to the contract for services satisfactorily performed prior to the effective date of termination;

(b) reimbursable costs (if fee-based contract) for costs actually incurred prior to the effective date of termination;

(c) except in the case of termination pursuant to article 26.1 reimbursement of any reasonable cost incident to the prompt and orderly termination of the contract;

(d)   in case of termination under article 26.2 and 27, reimbursement for the actual and reasonable costs incurred by the Contractor as a direct result of such termination and which could not be avoided or reduced by appropriate mitigation measures.

The Contractor shall not be entitled to claim, in addition to the above sums, compensation for any loss or injury suffered.

28.3. In case of termination of the contract for any reason whatsoever, any pre-financing guarantee which might have been granted to the Contracting Authority under article 20.4, may be invoked forthwith by the Contracting Authority in order to repay any balance still owed to the Contracting Authority by the Contractor, and the guarantor shall not delay payment or raise objection for any reason whatever.

28.4. If the Contracting Authority terminates the contract under article 26.1, it shall be entitled to recover from the Contractor any loss it has suffered up to that part of the contract value which corresponds to that part of the services which has not, by reason of the Contractor’s default, been satisfactorily completed.

29. FORCE MAJEURE

Neither party shall be considered to be in breach of its obligations under the contract if the performance of such obligations is prevented by any circumstances of force majeure which arise after the date of signature of the contract by both parties.

The term "force majeure", as used herein shall mean 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, unseasonal floods, washouts, civil disturbances, explosions, and any other similar unforeseeable events, beyond the control of either party and which by the exercise of due diligence neither party is able to overcome.

A party affected by an event of force majeure shall take all reasonable measures to remove such party's inability to fulfil its obligations hereunder with a minimum of delay.

If either party considers that any circumstances of force majeure have occurred which may affect performance of its obligations it shall notify the other party immediately giving details of the nature, the probable duration and likely effect of the circumstances. Unless otherwise directed by the Contracting Authority 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 Contracting Authority.

**30. APPLICABLE LAW AND DISPUTES**

The contract is governed by, and shall be construed in accordance with the laws of the Contracting Authority’s country.

Any dispute or breach of contract arising under this contract shall be solved amicably if at all possible. If not possible and unless provided in the Service Contract, it shall be settled finally by court decision, which shall be held under the law of the Contracting Authority’s country. Any ruling by the court will be final and directly executable in the country of the Contractor.

**31. CHILD LABOUR AND FORCED LABOUR**

The Contractor (and each member of a joint venture or a consortium) warrants that it and its affiliates comply with the UN *Convention on the Rights of the Child* - UNGA Doc A/RES/44/25 (12 December 1989) with Annex – and that it or its affiliates has not made or will not make use of forced or compulsory labour as described in the *Forced labour Convention* and in *the Abolition of Forced Labour Convention 105* of the International Labour Organization. Furthermore the Contractor warrants that it, and its affiliates, respect and uphold basic social rights and working conditions for its employees. Any breach of this representation and warranty, in the past or during the performance of the contract, shall entitle the Contracting Authority to terminate this contract immediately upon notice to the Contractor, at no cost or liability for the Contracting Authority.

**32. MINES**

The Contractor and each member of the joint venture or a consortium) warrants that it and its affiliates is NOT engaged in any development, sale or manufacture of anti-personnel mines and/or cluster bombs or components utilized in the manufacture of anti-personnel mines and/or cluster bombs. Any breach of this representation and warranty shall entitle the Contracting Authority to terminate this contract immediately upon notice to the Contractor, at no cost or liability for the Contracting Authority.

**33. INELIGIBILITY**

By signing the purchase order, the Contractor (or, if a joint venture or a consortium, any member thereof) certifies that they are NOT in one of the situations listed below:

1. They are bankrupt or being wound up, are having their affairs administrated by courts, have entered into an agreement with creditors, have suspended business activities, are the subject of proceedings concerning house matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
2. They have been convicted of an offence concerning their professional conduct by a judgement that has the force of *res judicata;*
3. They have been guilty of grave professional misconduct proven by any means that the Contracting Authority can justify;
4. They have not fulfilled obligations relating to the payment of social security contributions or payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the Contracting Authority or those of the country where the contract is to be performed;
5. They have been the subject of a judgement that has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Contracting Authority or the European Communities’ financial interests;
6. Following another procurement procedure or grant award procedure financed by the European Community budget or following another procurement procedure carried out by the Contracting Authority or one of their partners, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

**34. CHECKS AND AUDITS**

The Contractor shall permit the Contracting Authority or its representative to inspect, at any time, records including financial and accounting documents and to make copies thereof and shall permit the Contracting Authority or any person authorized by it, including the Contracting Authorities donors and representatives at any time, to have access to its financial accounting documents and to audit such records and accounts both during and after the provision of the services. In particular, it may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in case of suspected unusual commercial expenses

**35. LIABILITY**

Under no circumstances or for no reason whatsoever will the donor entertain any request for indemnity or payment directly submitted by the Contracting Authority’s contractors. Further, the Contracting Authority shall not be liable for or held responsible for any actions or omissions on the part of the Contractor.

**36. ELECTRONIC SCREENING**

NCA may be required to verify the identity of its suppliers/contractors and to check that its suppliers/contractors have not been involved in illegal activities. NCA reserves the right to use electronic screening tools for this purpose.

**37. Data Protection and Privacy**

Any personal data collected by the Contracting Authority in connection to the management or implementation of procurement processes or Procurement Contracts will be done in accordance with European Union General Data Protection Regulations (EU GDPR) and any international and national law on data protection. The Contracting Authority has a legitimate interest in data retention in order to ensure compliance to contractual obligations as set forth by the Contracting Authorities funding agencies.

Private individuals whose personal data is collected by the Contracting Authority have:

the right to be informed;

the right of access;

the right to rectification;

the right to erasure;

the right to restrict processing;

the right to data portability;

the right to object;

rights in relation to automated decision making and profiling;

the right to complain about the processing of personnel data to complaint@nca.no

There are certain exemptions from these rights, as defined by the EU GDPR, which cannot be claimed in all cases.



 **Code of conduct for contractors Ethical principles and standards**

**By this Code of Conduct**, the Contracting Authority applies ethics to procurement. We expect our contractors to act socially and environmentally responsible and actively work for the implementation of the standards and principles in this Code of Conduct. The Code of Conduct is applicable for all our contractors who supply goods, services and works to our operations and projects.

This Code of Conduct and its related principles and standards are based on recommendations from the Norwegian Initiative for Ethical Trade (IEH)[[1]](#footnote-1), the UN Global Compact principles[[2]](#footnote-2) and ECs Objectives and general principles of humanitarian aid [[3]](#footnote-3).

**General Conditions**

The Code of Conduct defines the ethical requirements and standards for our contractors, whom we expect to sign and respect the Code of Conduct, and work actively towards the implementation hereof. By signing the Code of Conduct contractors agree to place ethics central to their business activities.

The provision of the ethical standards constitutes minimum rather than maximum standards. International and national laws shall be complied with, and where the provisions of law and the Contracting Authority’s standards address the same subject, the highest standard shall apply.

It is the responsibility of the contractor to assure that their contractors and subcontractors comply with the ethical requirements and standards set forth in this Code of Conduct.

The Contracting Authority acknowledge that implementing ethical standards and ensuring ethical behaviour in our supply chain is a continuous process and a long term commitment for which we also have a responsibility. In order to achieve high ethical standards for procurement we are willing to engage in dialogue and collaboration with our contractors. In addition we expect our contractors to be open and willing to engage in dialogue with us to implement ethical standards for their businesses.

Unwillingness to co-operate or serious violations of the Code of Conduct will lead to termination of contracts.

**Human Rights and Labour Rights**

Contractors must at all times protect and promote human- and labour rights and work actively to address issues of concern. As a minimum they are obliged to comply with the following ethical standards:

* *Respect for Human Rights* (UN Universal Declaration of Human Rights)

The basic principles of the Universal Human Rights are that all human beings are born free and equal in dignity and in rights, and everyone has the right to life, liberty and security of the person. Contractors must not flaunt their responsibility to uphold and promote the Human Rights toward employees and the community in which they operate.

* *Non exploitation of Child Labour* (UN Child Convention on the Rights of the Child, and ILO Convention C138 & C182)

Contractors must not engage in the exploitation of child labour*[[4]](#footnote-4)* and contractors must take the necessary steps to prevent the employment of child labour. A child is defined as a person under the age of 18 and children shall not be engaged in labour that compromise their health, safety, mental and social development, and schooling. Children under the age of 15 (in developing countries 14) may not be engaged in regular work, but children above the age of 13 (in developing countries 12) can be engaged in light work if it does not interfere with compulsory schooling and is not harmful to their health and development.

* *Employment is freely chosen* (ILO Convention C29 & C105)

Contractors must not make use of forced or bonded labour and must respect workers freedom to leave their employer.

* *Freedom of association and the right to collective bargaining* (ILO Convention C87 & C98)

Contractors must recognise workers right to join or form trade unions and bargain collectively, and should adopt an open attitude towards the activities of trade unions (even if this is restricted under national law).

* *Living wages are paid* (ILO convention C131)

As a minimum, national minimum wage standards or ILO wage standards must be met by contractors. Additionally a living wage must be provided. A living wage is contextual, but must always meet basic needs such as food, shelter, clothing, health care and schooling and provide a discretionary income[[5]](#footnote-5) - which is not always the case with a formal minimum wage.

* *No discrimination in employment* (ILO Convention C100 & C111 and the UN Convention on Discrimination against Women)

Contractors must not practice discrimination in hiring, salaries, job termination, retiring, and access to training or promotion - based on race, national origin, caste, gender, sexual orientation, political affiliation, disability, marital status, or HIV/AIDS status.

* *No harsh or inhumane treatment of employees*

The use of physical abuse, disciplinary punishment, sexual abuse, the threat of sexual and physical abuse, and other forms of intimidation may never be practiced by contractors.

* *Working conditions are safe and hygienic* (ILO Convention C155)

Contractors must take adequate steps to provide safe and hygienic working environments. Additionally workers safety must be a priority and adequate steps must be taken to prevent accidents and injury to health associated with or occurring in the course of work.

* *Working hours are not excessive* (ILO Convention C1 & C14)

Contractors must ensure that working hours comply with national law and international standards. A working week of 7 days should not exceed 48 hours and employees must have one day off per week. Overtime shall be compensated, limited and voluntary.

* *Regular employment is provided* (ILO Convention C143)

All Work performed must be on the basis of a recognised employment relationship established through international conventions and national law. Contractors must protect vulnerable group’s regular employment under these laws and conventions and must provide workers with a written contract.

* *Condition outside the workplace*

 *Property rights and traditional use of resources*

 In case of conflicts with local societies about the use of land or

 other natural resources, the parties, must through negotiations

 secure respect for individual and collective rights to areas and

 resources based on custom/practice. This also applies to cases

 where the rights are not formalised.

 *Marginalized groups*

 The production and sourcing of raw materials for production

 must not contribute to harm the livelihood of marginalized

 groups, e.g. by occupying large land areas or other natural

 resources the groups in question are dependent on.

**International Humanitarian Law**

Contractors linked to armed conflicts or operating in armed conflict settings shall respect civilian’s rights under International Humanitarian Law and not be engaged in activities which directly or indirectly initiate, sustain, and/or exacerbate armed conflicts and violations of International Humanitarian Law[[6]](#footnote-6). Contractors are expected to take a ‘do no harm’ approach to people affected by armed conflict.

Additionally, Contractors shall not be engaged in any other illegal activity.

**Involvement in Weapon Activities**

The Contracting Authority advocates for the Ottawa Convention against landmines and the Convention on Cluster Munitions against cluster bombs. Contractors shall not engage in any development, sale, or manufacturing of anti-personnel mines, cluster bombs or components, or any other weapon which feed into violations of International Humanitarian Law or is covered by the Geneva Conventions and Protocols.

**Protection of the Environment**

The Contracting Authority wishes to minimise the environmental damages applied to nature via our procurement activities and we expect our suppliers and contractors to act in an environmentally responsible manner. This involves respecting applicable national and international environmental legislation and acting in accordance with the Rio Declaration.

As a minimum contractors should address issues related to proper waste management, ensuring recycling, conservation of scarce resources, and efficient energy use.

**Anti-Corruption**

Corruption is by the Contracting Authority defined as the misuse of entrusted power for private gain and it includes bribery, fraud, embezzlement and extortion. The Contracting Authority holds a great responsibility to avoid corruption and ensure high standards of integrity, accountability, fairness and professional conduct in our business relations. Contractors are expected to have the same approach by undertaking good and fair business ethics and practices, take action to prevent and fight corruption, and abide by international conventions as well as international and national laws. To fight corruption and promote transparency, contractors who are confronted with corrupt practices are advised to file a complaint in the NCA Complaint Mechanism[[7]](#footnote-7).

A contractor’s involvement in any form of corrupt practice during any stage of a selection process, in relation to the performance of a contract or in any other business context is unacceptable and will lead to the rejection of bids or termination of contracts.

**Sexual Harassment, Exploitation and Abuse**

Contractors, their staff, sub-contractors and any other personnel engaged by the contractor, must not:

1. Sexually harass, exploit or sexually abuse any individual.
2. Engage in any sexual activity with a child or children regardless of the age of majority or age of consent locally. A child is defined as being below 18 years of age. Mistaken belief in the age of a child is not a defence.
3. Act in ways that may place a child at risk of abuse, including not giving due consideration to assessing and reducing potential risks to children as a result of implementing activities. Behaviours and actions that are prohibited include, but are not limited to, using inappropriate language or behaviour when dealing with a child or children, bullying and harassing a child verbally or physically, physical punishment, exposing a child to pornography including on-line grooming and trafficking. Whenever possible avoid being alone with a child.
4. Consume, purchase, sell, possess and distribute any forms of child pornography.
5. Exchange money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour. This includes the buying of or profiting from sexual services as well as exchange of assistance that is due to right holders for sexual favours.
6. Exploit the vulnerability of any target group in the context of development, humanitarian and advocacy work, especially women and children, or allow any person/s to be put into compromising situations. Never abuse a position to withhold development or humanitarian assistance, or give preferential treatment; in order to solicit sexual favours, gifts, payments of any kind, or advantage.
7. Engage in sexual relationships with members of crisis-affected populations given their increased vulnerability and since such relationships are based on inherently unequal power dynamics and undermine the credibility and integrity of aid work.

**Complaints**

Contractors, sub-contractors, their staff and other individuals are encouraged to report any breaches or suspected breaches of this Code of Conduct to complaint@nca.no.

**List of International Conventions and Treaties covered by this Code of Conduct for Contractors**

* + UN Universal Declaration of Human Rights, 1948;

*https://www.un.org/en/about-us/universal-declaration-of-human-rights*

* + Un Guiding Principles on Business and Human Rights, 2011;

*http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\_EN.pdf*

* + Geneva Conventions I-IV, 1949 and additional Protocols;

*http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/index.jsp*

* + ILO Declaration on Fundamental Principles and Rights at Work, 1998; *http://www.ilo.org/declaration/lang--en/index.htm* and *http://www.ilo.org/wcmsp5/groups/public/---ed\_norm/---declaration/documents/publication/wcms\_095898.pdf*
	+ UN Child Convention on the Rights of the Child, 1990; *https://www.ohchr.org/en/professionalinterest/pages/crc.aspx*
	+ C182, Worst Forms of Child Labour Convention, 1999; *https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\_ILO\_CODE:C182*
	+ C138, Minimum Age Convention, 1973; *https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:::NO:11300:P11300\_INSTRUMENT\_ID:312283:NO*
	+ C87, Freedom of Association and Protection of the Right to Organise Convention, 1948 *https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\_INSTRUMENT\_ID:312232*
	+ C98, Right to Organise and Collective Bargaining Convention, 1949; *https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\_ILO\_CODE:C098*
	+ C29, Forced Labour Convention, 1930; *https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\_ILO\_CODE:C029*
	+ C105, Abolition of Forced Labour Convention, 1957; *https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0:::55:P55\_TYPE,P55\_LANG,P55\_DOCUMENT,P55\_NODE:CON,en,C105,/Document*
	+ C131, Minimum Wage Fixing Convention, 1970; *https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\_ILO\_CODE:C131*
	+ C100, Equal Remuneration Convention, 1951; *https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\_ILO\_CODE:C100*
	+ C111, Discrimination (Employment and Occupation) Convention, 1958; *https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\_ILO\_CODE:C111*
	+ The UN Convention on the Elimination on All Forms of Discrimination against Women 1979; *http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm*
	+ C1, Hours of Work (Industry) Convention, 1919; *https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\_ILO\_CODE:C001*
	+ C14, Weekly Rest (Industry) Convention, 1921; *https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:::NO:12100:P12100\_INSTRUMENT\_ID:312159*
	+ C143, Migrant Workers (Supplementary Provisions) convention, 1975;

*https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\_ILO\_CODE:C143*

* + C155, Occupational Safety and Health Convention, 1981; *https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\_ILO\_CODE:C155*
	+ The Rio Declaration on Environment and Development, 1992; *https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\_CONF.151\_26\_Vol.I\_Declaration.pdf*
	+ The Ottawa Convention, 1997; *https://www.un.org/disarmament/anti-personnel-landmines-convention/*
	+ The Convention on Cluster Munitions, 2007; *http://www.clusterconvention.org/files/2011/01/Convention-ENG1.pdf*
1. 1. https://etiskhandel.no/en/ [↑](#footnote-ref-1)
2. 2. http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/

index.html [↑](#footnote-ref-2)
3. 3. https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31996R1257&from=FR [↑](#footnote-ref-3)
4. 4. The definition of Child Labour can be found at: https://www.ilo.org/ipec/facts/lang--en/index.htm [↑](#footnote-ref-4)
5. 5. Discretionary income is the amount of an individual's income that is left for spending, investing, or saving after taxes and personal necessities (such as food, shelter, and clothing) have been paid. [↑](#footnote-ref-5)
6. 6.This includes pillage/looting which is the unlawful taking of private property for personal or private gain based on force, threats, intimidation, pressure and through a position of power accomplished due to the surrounding conflict. [↑](#footnote-ref-6)
7. 7. https://www.kirkensnodhjelp.no/en/about-nca/accountability/complaints/ [↑](#footnote-ref-7)