



KfW Development Bank

## »»» Guidelines for Procurement

# Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partner Countries

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## PREFACE

Financial Cooperation as part of German Development Cooperation is implemented by KfW Development Bank (KfW) as a public financial institution. Its function is to finance investments in economic and social infrastructure, poverty alleviation, environmental protection and the conservation of natural resources by providing loans on favourable terms and grants as well as complementary assistance and training measures. On behalf of the German Government and its Ministries, KfW provides funding to its partners. In addition to full funding by KfW, projects may be financed in full or in part by a mandator, such as the European Union.

Sustainability with respect to economic, ecologic and social matters is an overarching objective in Financial Cooperation. KfW is committed to ensuring during preparation, design, implementation and operation of the underlying projects and programmes that this objective is met, and that funding is used for the intended purpose. Therefore, all parties involved shall comply with the principles of competition, fairness, transparency, confidentiality, economic efficiency and sustainability during the procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services (in each case as defined below).

The purpose of these Guidelines is to specify KfW's requirements for procurement and contracting and to set out in detail the scope of monitoring and reviews undertaken by KfW. These Guidelines are part of the Funding Agreement (as defined below) between KfW and its partners.

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- Correction of typos, unclear or inconsistent formulations
- Addition of concise form of Declaration of Undertaking (1.2.3, 2.4.1 and Appendix 1)
- Addition of KfW Monitoring and Review processes based on project assessment (1.6, Appendix 2)
- Clarification regarding reporting of procurement related complaints (2.6)
- Appendix 2: Clarification of ESHS risk levels, addition of new KfW monitoring and review processes
- Appendix 5: Clarification of minimum content
- Appendix 6: Clarification of minimum content
- Appendix 7: Addition to payment terms and guarantees and securities

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## Definitions

Capitalized terms used in the Guidelines have the meaning ascribed to them in this Section

|                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Appendix</b>                           | Appendix to these Guidelines.                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Applicant</b>                          | Person who submitted an Application in a Tender Process.                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Application</b>                        | Set of documents submitted by an Applicant in order to prove eligibility and qualification to perform the Contract.                                                                                                                                                                                                                                                                                                                                  |
| <b>Award of Contract</b>                  | Legally binding signing of the Contract by the PEA and the Contractor or submission of a letter of formal acceptance of an Offer by the PEA, whichever is first.                                                                                                                                                                                                                                                                                     |
| <b>Bid</b>                                | Set of documents submitted by a Bidder in order to participate in a Tender Process for procurement of Non-Consulting Services, Works, Goods and Plant.                                                                                                                                                                                                                                                                                               |
| <b>Bidder</b>                             | Person who submitted an Offer in a Tender Process.                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Coercive Practice</b>                  | The impairing or harming, or threatening to impair or harm, directly or indirectly, any person or the property of the person with a view to influencing improperly the actions of a person.                                                                                                                                                                                                                                                          |
| <b>Collusive Practice</b>                 | An arrangement between two or more persons designed to achieve an improper purpose, including influencing improperly the actions of another person.                                                                                                                                                                                                                                                                                                  |
| <b>Consulting Services</b>                | Services of an advisory/professional nature, including in particular the provision of expert/strategic advice, management services, coaching, policy development, implementation and communication services as well as advisory and project-related services, e.g., feasibility studies, project management, engineering services, supervision of construction, finance and accounting services, as well as training and organisational development. |
| <b>Contract</b>                           | Legally binding written agreement signed between the PEA and the Contractor for Consulting Services, Works, Goods, Plant, or Non-Consulting Services which is awarded to a Bidder at the end of a Tender Process.                                                                                                                                                                                                                                    |
| <b>Contractor</b>                         | Bidder to whom the Contract has been awarded at the end of a Tender Process (e.g., consultant, works contractor or a supplier).                                                                                                                                                                                                                                                                                                                      |
| <b>Corrupt Practice</b>                   | The promising, offering, giving, making, insisting on, receiving, accepting or soliciting, directly or indirectly, of any illegal payment or undue advantage of any nature, to or by any person, with the intention of influencing the actions of any person or causing any person to refrain from any action.                                                                                                                                       |
| <b>Declaration of Undertaking (“DoU”)</b> | Statement of integrity, eligibility and social and environmental responsibility in the format attached as Appendix 1.                                                                                                                                                                                                                                                                                                                                |

|                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>ESHS</b>                      | Environment, Social (incl. issues of sexual exploitation and abuse and gender-based violence), Health and Safety (incl. of security for personnel).                                                                                                                                                                                                                                                                                                                        |
| <b>Fraudulent Practice</b>       | Any action or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial benefit or to avoid an obligation.                                                                                                                                                                                                                                                                                       |
| <b>Funding Agreement</b>         | Agreement between (a) KfW and a borrower (in the case of a loan) and, if applicable, a PEA or (b) KfW and a recipient (in the case of a grant) and, if applicable, a PEA, setting out the terms and conditions pursuant to which funding is made available by KfW.                                                                                                                                                                                                         |
| <b>Goods</b>                     | Commodities, raw material, machinery, equipment, vehicles, and related services, e.g., transportation, insurance, installation, commissioning, training, and initial maintenance.                                                                                                                                                                                                                                                                                          |
| <b>GTAI</b>                      | Germany Trade and Investment GmbH ("GTAI"), the economic development agency of the Federal Republic of Germany which publishes diverse project and procurement related information on its website ( <a href="http://www.gtai.de">www.gtai.de</a> ).                                                                                                                                                                                                                        |
| <b>Guidelines</b>                | KfW's Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partner Countries.                                                                                                                                                                                                                                                                                                              |
| <b>Invitation to Bid ("ITB")</b> | Set of documents inviting prequalified Applicants, interested or preselected Persons, as the case may be, to submit a Bid.                                                                                                                                                                                                                                                                                                                                                 |
| <b>Joint Venture ("JV")</b>      | Joint Venture (JV) means an association with or without a legal personality distinct from that of its members, of more than one Person where one member has the authority to conduct all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the PEA for the performance of the Contract.                                                                                                 |
| <b>Key Expert</b>                | A single individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Contract and whose CV is taken into account during the evaluation.                                                                                                                                                                                                                                                                          |
| <b>Mandate</b>                   | KfW may be given a Mandate to carry out project funding with financial means of a mandator (e.g., European Union) based on a mandate agreement.                                                                                                                                                                                                                                                                                                                            |
| <b>Non-Consulting Services</b>   | Services which are not Consulting Services. Non-Consulting Services are normally bid and contracted on the basis of performance of measurable outputs, and for which performance standards can be clearly identified and consistently applied, e.g., topographical and geotechnical surveys, soil investigations, aerial surveys and remote sensing, drilling, aerial photography, satellite imagery, mapping and similar operations, transport and distribution of Goods. |

|                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>No-Objection</b>                     | KfW's written notice concerning PEA's documents and decisions in the preparation and execution of a Tender Process. <sup>1</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Obstructive Practice</b>             | Means (i) deliberately destroying, falsifying, altering or concealing evidence material to the investigation or the making of false statements to investigators, in order to materially impede an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice, or threatening, harassing or intimidating any Person to prevent them from disclosing their knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) any act intended to materially impede the exercise of KfW's access to contractually required information in connection with an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice. |
| <b>Offer</b>                            | General term for Proposals and Bids.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Partner Country</b>                  | Country of the PEA, in which the KfW financed project/programme is implemented.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Person</b>                           | Any natural or legal person or an association of two or more of the foregoing.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Plant</b>                            | Equipped facilities, executed on the basis of design, supply, installation, commissioning, maintenance, modification and protection (e.g., power plant, sewage plant or a production facility).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Prequalification</b>                 | First stage of a Two-Stage Selection to identify a number of eligible and qualified Applicants, who will then be invited to submit an Offer.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Procurement Plan</b>                 | Document defined in Article 1.6.2 and set up by the PEA listing all Tender Processes for Contracts financed by KfW including key procurement related information.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Project Executing Agency ("PEA")</b> | Entity in charge of implementing a project, which directly or indirectly receives funds made available under the Funding Agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Proposal</b>                         | Set of documents submitted by Bidders in order to participate in a Tender Process for procurement of Consulting Services.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Public Procurement Regulation</b>    | Law or legal regulation established by the state of the PEA for the public procurement of Consulting Services, Works, Goods, Plant, or Non-Consulting Services in the Partner Country.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Request for Application</b>          | Set of documents inviting potential Applicants to submit their evidence of qualification to perform the Contract.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Request for Proposal ("RfP")</b>     | Set of documents inviting prequalified Applicants, interested or preselected Persons, as the case may be, to submit a Proposal.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

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<sup>1</sup> The term "in writing" means communicated or recorded in written form. It includes, e.g., mail, e-mail, fax or communication through an electronic procurement system (provided that the electronic system is accessible, secure, ensures integrity and confidentiality, and has sufficient audit trail features).

|                                   |                                                                                                                                                                                                                                                                               |
|-----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Sanctionable Practice</b>      | Any Coercive Practice, Collusive Practice, Corrupt Practice, Fraudulent Practice or Obstructive Practice (as such terms are defined herein) which is unlawful under the Funding Agreement.                                                                                    |
| <b>Single-Stage Selection</b>     | Tender Process in which Persons submit their evidence of qualification together with their technical and financial Offer.                                                                                                                                                     |
| <b>Standard Tender Documents</b>  | Set of Tender Documents issued by KfW for procurement in KfW-financed Projects.                                                                                                                                                                                               |
| <b>Subcontractor</b>              | Person to whom the Contractor subcontracts parts of the Contract while remaining responsible to the PEA during the Contract performance.                                                                                                                                      |
| <b>Tender Document(s)</b>         | Request for Application, ITB and RfP, including Draft Contract as well as any clarification or amendment thereof during the Tender Process.                                                                                                                                   |
| <b>Tender Procedure</b>           | Type of procedure (e.g., ICB, NCB, LCB Direct Award) undertaken to approach Persons for the procurement of Consulting Services, Works, Goods, Plant, or Non-Consulting Services.                                                                                              |
| <b>Tender Process</b>             | Process carried out to procure Consulting Services, Works, Goods, Plant or Non-Consulting Services, starting with the publication of a tender notice/invitation to submit an Offer, as the case may be, and ending with Award of Contract or cancelation of a Tender Process. |
| <b>Terms of Reference (“ToR”)</b> | Description of the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the PEA and the Contractor, and expected results and deliverables of a Consulting Services Contract.                                                      |
| <b>Two-Stage Selection</b>        | Tender Process which is divided into two consecutive stages with an upstream Prequalification.                                                                                                                                                                                |
| <b>Works</b>                      | Construction, repair, rehabilitation, deconstruction, restoration and maintenance of civil work structures as well as related services, e.g., transportation, installation, commissioning and training.                                                                       |

# 1. Scope of Application and Procurement Framework

## 1.1 Scope of Application of the Guidelines

These Guidelines apply to the procurement of Consulting Services, Works, Goods, Plant and Non-Consulting Services by the PEA in projects and programmes financed in full or in part by KfW<sup>2</sup>. The Guidelines are applicable as well if funding is made available as follows:

- (1) In the case of mandates, unless where otherwise agreed with the provider of the mandate funds;
- (2) in the case of co-financing by KfW and one or several other development partners. However, in such an event, the Guidelines may be, in all or in part, replaced by rules set out jointly with other development partners prior to any procurement procedure<sup>3</sup>;
- (3) in the case of advanced tendering as per Article 1.6.7;
- (4) in the case of Contracts prefunded by the PEA as per Article 1.6.8
- (5) in the case of indirect financing (e.g., budget support, policy-based lending, result-based lending or joint programs and funds including multi donor trust funds) as per Article 1.6.9;
- (6) in certain cases of funding to financial intermediaries (e.g., regional or national development banks or funds or specialised financial institutions) for the financing of economic or social infrastructure by final beneficiaries or borrowers as per Article 5.2. The Guidelines do not apply if the financial intermediary on-lends the funding to private borrowers which bear the financial risk.

In accordance with the Funding Agreement the Guidelines are binding on the PEA and any other entity officially in charge of procurement. The Guidelines apply without prejudice to the Public Procurement Regulation or other applicable local laws and regulations. In the case of a conflict between the Guidelines and the Public Procurement Regulation or other applicable local laws and regulations the PEA undertakes to inform KfW of its own accord and without undue delay in order to agree on provisions prior to any procurement that best preserve the basic principles as outlined in Article 1.2.1.

## 1.2 Fundamental Arrangements

### 1.2.1 Basic Principles

The Guidelines reflect the following basic principles which apply in KfW-financed procurement in accordance with internationally recognised practices:

#### Competition

Procurements must be carried out on the basis of competitive bidding. The procedures to be chosen for the procurement must address the maximum number of potential Applicants/Bidders.

#### Fairness

Potential Applicants/Bidders must be given equal opportunity to participate in a Tender Process. Unequal treatment of (potential) Applicants/Bidders must be prevented.

#### Transparency

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<sup>2</sup> The Guidelines apply analogically to KfW's procurement in its own name up to the applicable EU procurement thresholds.

<sup>3</sup> In particular, KfW is party to a partnership agreement with Agence Française de Développement (AFD) and the European Investment Bank (EIB) in the context of the Mutual Reliance Initiative (MRI).

The Tender Process must be thoroughly documented. Such information must be made available to all parties involved in accordance with their respective right to information.

### **Confidentiality**

All procurement-related information is confidential. Only the parties involved shall have access to the relevant information in accordance with their respective right to information.

### **Economic Efficiency and Sustainability**

In the interest of an efficient use of funds provided by KfW the aim of procurements is to award Contracts to Bidders with the best cost-performance-ratio. The Tender Process must take into account criteria that reflect not only the price, but also quality as well as technical and sustainability aspects.

### **Proportionality**

The basic principles set out above must be applied appropriately, taking into consideration all relevant circumstances and the balance of interests during the respective Tender Process.

#### **1.2.2 Responsibility for Procurement and Contract Performance**

The PEA is responsible for the preparation and implementation of the procurement and the administration and performance of the Contracts. The relationship between the PEA, Applicants/Bidders and Contractors is exclusively governed (i) by the Tender Documents, (ii) the respective Contract and (iii) applicable laws and regulations.

KfW provides financing pursuant to the terms and conditions as set out in the Funding Agreement. No contractual relationship shall be deemed to exist between KfW and any third party other than the PEA. Any communications which may be exchanged between any third party and KfW in the context of a project shall not constitute and shall not be interpreted as constituting any undertaking or a stipulation by KfW in favor of such a third party.

KfW may suspend or terminate a Funding Agreement without the Contractors being informed beforehand and without being entitled to claim from KfW any direct right to the amounts which, as the case may be, originate from such financing.

Unless otherwise agreed in the Funding Agreement, the PEA undertakes to retain and to make available to KfW (or an agent appointed by KfW) for a period of at least six (6) years from the date of fulfilment or termination of a Contracts records and documents relating to the Tender Process and the implementation of the Contract, in particular those documents which are subject to KfW's No-Objection as per Article 1.6.3.

#### **1.2.3 Declaration of Undertaking**

The PEA and the respective Contractor (including all JV partners and proposed or engaged Sub-contractors under the Contract) shall observe the highest standard of ethics and respect social and environmental standards during the Tender Process and the implementation of a Contract. The PEA shall require Applicants/Bidders to provide a duly signed Declaration of Undertaking<sup>4</sup> as part of any Application, Offer and Contract (see Appendix 1). In the case of co-financing, the Declaration of Undertaking may be replaced by a specific statement approved by all co-financiers prior to any Tender Process.

Should the Declaration of Undertaking not be provided or should the declarations or commitments by Applicants, Bidders or Contractors included therein not be complied with, KfW is entitled to take further measures in accordance with Articles 1.3.2 and 1.3.3.

#### **1.2.4 KfW's Standard Tender Documents**

KfW provides a set of Standard Tender Documents for use in Projects with financing from KfW and highly recommends the use thereof, especially in the case of International Competitive Bidding (ICB) in order to ensure an efficient Tender Process in compliance with the Guidelines. If the PEA

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<sup>4</sup> For Tender Procedures with an estimated Contract amount below 20,000 EUR (twenty thousand Euro), a concise version of the Declaration of Undertaking may be used.

is obliged to use Tender Documents others than KfW's Standard Tender Documents, the PEA has to ensure compliance with the provisions of the Guidelines.

## **1.3 Eligibility Criteria**

### **1.3.1 Rules of Nationality and of Origin**

Consulting Services, Works, Goods, Plant and Non-Consulting Services are eligible for KfW financing regardless of the country of origin of the Contractors (including Subcontractors and suppliers for the execution of the Contract), except where an international embargo or sanction by the United Nations, the European Union or the German Government applies.

### **1.3.2 Grounds for Exclusion**

Applicants/Bidders (including all members of a JV and proposed or engaged Subcontractors under the Contract) shall not be awarded a KfW-financed Contract if, on the date of submission of their Application/Offer, during the ongoing tender process or on the intended date of Award of Contract, they:

- (1) are bankrupt, being wound up or ceasing their activities, are having their activities administered by courts, have entered into receivership, or are in any analogous situation;
- (2) have been:
  - a) convicted by a final judgment or a final administrative decision for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings, or have been subject to (financial) sanctions and/or embargo provisions by the United Nations, the European Union or the Federal Republic of Germany. This exclusion criterion is also applicable to legal Persons whose shares (or the majority thereof) are owned or de facto controlled by natural or legal Persons against whom such judgments, administrative decisions, (financial) sanctions and/or embargoes have been imposed and – in the case of (financial) sanctions and/or embargoes – these restrictive measures continue to apply;
  - b) convicted by a final court decision or a final administrative decision by a court, the European Union or national authorities in the Partner Country or in Germany for Sanctionable Practice during any Tender Process or the performance of any Contract or for an irregularity affecting the EU's financial interests, unless they provide supporting information together with their DoU which shows that this conviction is not relevant in the context of the respective KfW financed Contract;
- (3) have been subject, within the last five years to a Contract termination fully settled against them for significant or persistent failure to comply with their contractual obligations during Contract performance, unless (i) this termination was challenged and (ii) dispute resolution is still pending or has not confirmed a full settlement against them;
- (4) have not fulfilled applicable fiscal obligations regarding payments of taxes either the country where they are constituted or the PEA's country;
- (5) are subject to an exclusion decision of the World Bank or any other multilateral development bank and are listed in the respective table with debarred and cross-debarred firms and individuals available on the World Bank's website or any other multilateral development bank, and cannot demonstrate with supporting information along with their DoU that the exclusion is not relevant in the context of the relevant KfW financed Contract;
- (6) have given a misrepresentation in supplying the information requested by the PEA as condition to participation in the Tender Process of the relevant Contract;
- (7) violate the Guidelines. The appearance of a plausible violation is sufficient in this respect.

The Procurement Documents issued by the PEA shall include the above exclusion criteria.

### **1.3.3 Conflict of Interest**

Applicants/Bidders (including all members of a JV and proposed or engaged Subcontractors under the Contract) shall be disqualified in a procurement process if they:

- (1) are an affiliate controlled by the PEA or a shareholder controlling the PEA, unless the

stemming conflict of interest has been brought to the attention of KfW and has been fully resolved to the satisfaction of KfW;

- (2) have a business or a family relationship with a PEA's staff involved in the Procurement Process or the supervision of the resulting Contract, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;
- (3) are controlled by or control another Applicant or Bidder or are under common control with another Applicant or Bidder, receive from or grant subsidies directly or indirectly to another Applicant or Bidder, have the same legal representative as another Applicant or Bidder, maintain direct or indirect contacts with another Applicant or Bidder which allow them to have or give access to information contained in the respective applications or Offers, to influence them or influence the decisions of the PEA;
- (4) in the case of a Tender Process for Consulting Services:
  - a) are engaged in a Consulting Services activity which, by its nature, may be in conflict with the assignment that they would carry out for the PEA;
  - b) were directly involved in drawing up the ToR or other relevant information for the Tender Process. This shall not apply to consultants who have produced preparatory studies for the project or who were involved in a preceding project phase, insofar as the information they prepared, especially feasibility studies, was made available to all Bidders and the preparation of the ToR was not part of the activity.
  - c) were during the last 12 months prior to publication of the Tender Process indirectly or directly linked to the project in question through employment as a staff member or advisor to the PEA and are or were able in this connection to influence the Award of Contract.
- (5) in the case of a Tender Processes for Goods, Works, Plant or Non-Consulting Services:
  - a) prepared or have been associated with a consultant who prepared specifications, drawings, calculations and other documentation for the Tender Process;
  - b) have been recruited or are proposed to be recruited, themselves or any of their affiliates, to carry out Works supervision or inspection for this Contract.
- (6) are state-owned entities, which are not able to provide evidence that (a) they are legally and financially autonomous and (b) they do operate under commercial laws and regulations.

## 1.4 Sanctionable Practice

The PEA and the Contractors (including all members of a JV and proposed or engaged Subcontractors under the Contract) must observe the highest standard of ethics during the Tender Process and the implementation of the Contract. To such end the PEA undertakes to:

- (1) include provisions in all Tender Documents and Contracts financed in whole or in part by KfW whereby the Contractors declare that (i) they did not and will not engage in any Sanctionable Practice likely to influence the Tender Process and the corresponding Award of Contract to the PEA's detriment, and that in the case of being awarded a Contract they will not engage in any Sanctionable Practice;
- (2) include in the Contracts, a provision pursuant to which the Contractors must permit KfW and in the case of financing by the European Union also to European institutions having competence under European law, to inspect the respective accounts, records and documents, to permit on the spot checks and to ensure access to sites and the respective project relating to the Tender Process and the performance of the Contract and to have them audited by auditors appointed by KfW.

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

- (1) reject an Offer for Award of Contract if during the Tender Process the Bidder who is recommended for the Award of Contract has engaged in Sanctionable Practice, or has violated the Guidelines, directly or by means of an agent in view of being awarded the Contract. The appearance of a plausible violation is sufficient in this respect;

- (2) declare misprocurement and exercise its rights on the ground of the Financing Agreement with the PEA relating to suspension of disbursements, early repayment and termination if, at any time, the PEA, Contractors have engaged in Sanctionable Practice or have violated the Guidelines (the appearance of a plausible violation is sufficient in this respect) during the Tender Process or execution of the Contract without the PEA having taken appropriate action in due time satisfactory to KfW to remedy the situation, including by failing to inform KfW at the time they knew of such practices.

## 1.5 Social and Environmental Responsibility

Projects financed in whole or partly in the framework of Financial Cooperation have to ensure compliance with international Environmental, Social (including issues of sexual exploitation and abuse and gender-based violence), Health and Safety (ESHS) standards. As such KfW has elaborated Sustainability Guidelines<sup>5</sup>, in line with relevant World Bank/IFC standards, defines a common binding framework to incorporate ESHS standards into the planning, appraisal, implementation, and monitoring of projects financed by KfW.

To assist the PEA during the Tender Process and the implementation of individual Contracts, KfW provides Standard Tender Documents for ICB procedures which include the relevant ESHS requirements, which need to be adapted to the specific ESHS risks of the individual Contract. The relevant results of an environmental and social impact assessment (ESIA), an environmental and social management or commitment plan (ESMP/ESCP) or any other document dealing with ESHS risk mitigation in the respective project elaborated during project preparation, shall be taken into account in the preparation of the Tender Documents<sup>6</sup>.

If the PEA is obliged to use other Tender Documents than the Standard Tender Documents, the PEA has to ensure compliance with the ESHS requirements contained therein by integrating the respective ESHS requirements with project specific adaptations into its own Tender Documents.

The PEA ensures that Contractors undertake in the respective Contract to:

- (1) comply with and ensure that all their Subcontractors and major suppliers, i.e., for major supply items for the Contract comply with international environmental and labour standards, consistent with applicable laws and regulations in the country of implementation of the respective Contract and the fundamental conventions of the International Labour Organization<sup>7</sup> (ILO) and international environmental treaties; and
- (2) implement any environmental and social risk mitigation measures, as identified in the environmental and social impact assessment (ESIA) and further detailed in the environmental and social management plan/framework (ESMP/ESMF) as far as these measures are relevant to the Contract and implement measures for the prevention of sexual exploitation and abuse and gender-based violence.

The above-mentioned undertakings by Applicants, Bidders and Contractors are part of the Declaration of Undertaking as per Appendix 1.

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<sup>5</sup> For further details please see KfW's Sustainability Guidelines on [https://www.kfw-entwicklungsbank.de/PDF/Download-Center/PDF-Dokumente-Richtlinien/Nachhaltigkeitsrichtlinie\\_EN.pdf](https://www.kfw-entwicklungsbank.de/PDF/Download-Center/PDF-Dokumente-Richtlinien/Nachhaltigkeitsrichtlinie_EN.pdf)

<sup>6</sup> This applies to projects/programmes appraised after January, 1st 2019 only

<sup>7</sup> In the case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant/Bidder/Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

## 1.6 Monitoring and Review by KfW

### 1.6.1 General

KfW monitors compliance of the Tender Processes with the provisions of the Guidelines and provides No-Objection as outlined below. A No-Objection by KfW shall not relieve the PEA from its contractual obligations under the Funding Agreement.

There are different types of review processes which apply, depending on (i) the estimated value of the Contract, and (ii) the project assessment<sup>8</sup>.

### 1.6.2 Procurement Plan

The PEA is required to establish a Procurement Plan in accordance with the Funding Agreement and implement it accordingly. The Procurement Plan shall identify as far as possible the Tender Processes and KfW's monitoring responsibilities according to the type of review process for all KfW-financed Contracts. The initial Procurement Plan shall cover the whole project period and provide details for at least the first 18 months as of the Funding Agreement date. The PEA shall review and revise the Procurement Plan as necessary and shall submit the revised version timely to KfW for No-Objection of the revised version. The Procurement Plan template is enclosed in Appendix 2.

### 1.6.3 No-Objection - Full Prior Review (FPR)

The full prior review process (FPR) by KfW is the most detailed review process. According to the FPR, the PEA shall submit to KfW the documents below as far as applicable in the respective Tender Process... KfW issues No-Objections if the proposed documents and decisions comply with the Guidelines:

- (1) Tender Notice(s) (specimen see Appendix 3);
- (2) Request for Application, including evaluation details (specimen see Appendix 5);
- (3) evaluation report of Prequalification, including opening minutes (specimen see Appendix 6);
- (4) Request for Proposal or Invitation to Bid, including evaluation method and criteria-(specimen see Appendix 5);
- (5) evaluation report of Offers, including opening minutes; in the case of separate evaluation of the technical and financial Offer, the technical evaluation report shall be sent to KfW for No-Objection before opening of the financial Offers (specimen see Appendix 6);
- (6) if applicable, request for pre-award discussions with the next ranked Bidder and for cancellation of the Tender Process with appropriate justification and proposal for further action (details see Article 2.5.15);
- (7) prior to Award of Contract, the draft Contract (including the Declaration of Undertaking); and
- (8) if applicable, prior to its signature, any subsequent Contract amendments.

The PEA shall submit these documents to KfW before publication or notification to third parties, and preferably before any communication to a national regulatory or supervisory public procurement entity for approval.

If standardised Tender Documents are used for several similar Tender Processes throughout a project, KfW's individual No-Objections to the documents listed above under (1), (2) and (4) may be replaced by one common No-Objection to a standardised version of the respective Tender Documents.

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<sup>8</sup> KfW may waive the project assessment in its sole discretion in cases of extreme urgency.

In case of serial procurements<sup>9</sup> using the same Tender Documents and Contract specimen KfW may, after review and No-Objection to the first Tender Process, agree to replace the No-Objection by regular procurement audits or reviews, as per Article 1.6.4.

#### **1.6.4 No-Objection – Pre-Contract Prior Review (PCPR) and Pre-Contract Prior Review + (PCPR+)**

Subject to the outcome of the project assessment, KfW may agree on a pre-contract prior review (PCPR) instead of a FPR as per Article 1.6.3. In a PCPR, prior to Award of Contract, KfW provides No Objection to the Tender Process upon submission by the PEA of the draft Contract together with the process checklist<sup>10</sup> which includes the pertinent information related to the Tender Process.

In individual cases, KfW reserves the right to carry out a PCPR+ review procedure. In a PCPR+, KfW provides No-Objection to the (i) Request for Application, including evaluation details, (ii) Request for Proposal or Invitation to Bid, including evaluation method and criteria, as well as (iii) prior to Award of Contract, the draft Contract together with the process checklist which includes the pertinent information related to the Tender Process.

#### **1.6.5 No-Objection - Post Review**

KfW does not provide No-Objection based on a post review of the Tender Process after Award of Contract except for special financing modalities (e.g., disposition fund, prefinanced contracts as per Article 1.6.8).

#### **1.6.6 Renewed No-Objection**

Amendments, modifications or clarifications to the documents or decisions as per Articles 1.6.2. to 1.6.5. taking place after KfW's No-Objection to it require KfW's renewed No-Objection if they have significant implications on the project budget, the cost estimate of the Contract, on competition, the agreed technical overall concept, the terms of an assignment or the time schedule of the Tender Process or the implementation of the Contract.

#### **1.6.7 Advance Tendering**

Advance tendering means that the PEA initiates the Tender Process prior to the finalisation of the underlying Funding Agreement. If KfW has agreed upon a written request to advance tendering, KfW will issue provisional No-Objections. The No-Objections shall become effective if and only when the respective Funding Agreement enters into force, it being understood that such provisional No-Objection may under no circumstances be understood to constitute a commitment by KfW to finance the Contract, which remains strictly conditional upon the signing of the Funding Agreement.

#### **1.6.8 Prefinanced Contracts**

In certain cases, the PEA may have awarded a Contract and financed it in whole or in part without any involvement by KfW beforehand. KfW may agree to finance or reimburse the PEA for payments made under such a Contract. In such a case the PEA is required to demonstrate to the satisfaction of KfW that the Contract to be financed or reimbursed has been procured in compliance with the basic principles as outlined in Article 1.2.1 of the Guidelines. The PEA shall further provide a formal statement on the absence of any cases of Sanctionable Practice during the Tender Process or the performance of the Contract as well as on the eligibility of the Contractor under the Guidelines. In the event that during the Tender Process complaints have been made or during Contract execution claims by the Contractor have been made, KfW's funding shall only be granted if the PEA provides written evidence that such complaints have been handled to the full satisfaction of KfW and that Contractor's claims are reasonable.

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<sup>9</sup> Recurring contract awards in a project with essentially the same item / service to be procured and essentially the same tender documents and comparable value.

<sup>10</sup> A list documenting the whole procurement process and that will be made available by KfW to the PEA latest before commencement of any procurement or upon request.

### **1.6.9 Indirect Financing**

In addition to the financing of direct investments in projects or programmes in which individual contractual content (e.g., Consulting Services, Works, Plant, Goods, Non-Consulting Services) is procured, KfW supports other forms of indirect funding for infrastructure and non-infrastructure programmes (e.g., budget support, policy-based lending, result-based lending or joint programs and funds including multi donor trust funds). Under these forms of funding the transfer of funds is linked to the achievement of pre-defined goals or disbursement-linked indicators. The funds thus transferred are managed in accordance with the budgetary procedures of the partner country and/or the PEA generally without monitoring of individual Tender Processes.

Unless otherwise agreed, a fiduciary review of the procedures including the procurement system of the partner country and/or, the procedures and the capacities of the PEA by KfW take place prior to the signing of the Funding Agreement on the basis of the basic principles as outlined in Article 1.2.1 of these Guidelines. An overall positive result of this review is a precondition for indirect financing. Depending on the nature of the operation and the outcome of the review KfW may request the PEA to implement remedial actions and/or may intensify its monitoring.

### **1.6.10 Sanctions by KfW for Misprocurement**

Without prejudice to sanctions set out in Article 1.4. above in the case of an act of Sanctionable Practice or a violation of the Guidelines (the appearance of a plausible violation is sufficient in this respect), should the KfW reviews reveal at any time the non-compliance with the provisions of the Guidelines by the PEA or other parties involved in the tender process, KfW is entitled to declare misprocurement and to exercise any of its rights under the Funding Agreement. Where appropriate KfW is entitled to cancel the part of the funds allocated to contracts which have not been procured in compliance with the provisions and is entitled to reimbursement or early repayment in full or in part.

For the avoidance of doubt, if a Contract is awarded following a No Objection, KfW is still entitled to declare misprocurement and to take the measures set out herein if it subsequently turns out that KfW's No-Objection was issued on the basis of incomplete, inaccurate or misleading information provided by the PEA, or that the terms and conditions of the Contract were modified without KfW's No-Objection.

## 2. General Provisions for the Tender Process

### 2.1 Tender Procedures

The following types of Tender Procedures - in descending order of their level of competition - are available:

- International Competitive Bidding (ICB)
- National Competitive Bidding (NCB)
- Limited Competitive Bidding (LCB)
- Price Quotation
- Direct Award

All Contracts with an estimated value above the ICB thresholds as per Article 2.1.1. shall be subject to International Competitive Bidding as standard procedure unless exceptions as per Article 2.1.2 to 2.1.5 apply. In any case, a Tender Procedure with a higher level of competition than requested as per Article 2.1.2 until 2.1.5 may be applied at the PEA's discretion.

The choice of Tender Procedure shall be outlined in the Procurement Plan.

#### 2.1.1 International Competitive Bidding

In the case of ICB, the Tender Notice is published internationally to attract international Persons to participate in the Tender Process. Contracts with an estimated value<sup>11</sup> above the thresholds below (ICB thresholds) shall be subject to ICB:

- 5,000,000 EUR (five million Euro) for procurement of Works or Plant
- 1,000,000 EUR (one million Euro) for procurement of Goods; and
- 200,000 EUR (two hundred thousand Euro) for procurement of Consulting and Non-Consulting Services.

#### 2.1.2 National Competitive Bidding

In the case of NCB, the Tender Notice is published nationally. However, international Persons shall not be excluded from participation. NCB may be chosen for estimated Contract values below the ICB thresholds and exceptionally in duly justified cases for estimated Contract values above the ICB thresholds, provided that,

- (1) adequate competition in terms of quantity and quality on national level is expected and
- (2) the Contract is most likely not of interest on international level in view of the scope of the Contract and its implementation conditions (e.g., project size, logistical reasons, price level).

#### 2.1.3 Limited Competitive Bidding

In the case of LCB, the Tender Process is restricted to a limited number (generally at least three qualified Bidders) of preselected, qualified Persons, which are invited to submit an Offer.

To this end, the PEA will present to KfW a list of the proposed Persons from which Offers will be solicited plus a cost estimate and will demonstrate their qualification for the envisaged activity i.e., overall experience, human resources, financial resources and expertise in relation to the subject of the Contract. Where insufficient information is available, Bidders shall be requested to submit such qualification details together with the Offers solicited.

LCB may be chosen:

- (1) for Contract amounts below the ICB thresholds if a NCB Tender Procedure would be inappropriate in view of the Contract amount and this is permitted by the Public Procurement

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<sup>11</sup> Amounts are inclusive of any options and net of value added taxes (VAT). KfW might exceptionally agree to increased ICB thresholds in duly justified cases.

Regulation or,

- (2) for Contract amounts above the ICB thresholds if only a very limited number of Persons is capable of meeting the requirements of the Contract content and this can be demonstrated by extensive market knowledge or,
- (3) a fair competition is unlikely in view of the respective market situation (e.g., profit versus non-profit organisations) independent of the Contract amount.

#### **2.1.4 Price Quotation**

In the case of Price Quotation, at least three preselected qualified Persons are requested to submit an Offer. The request for quotation shall specify the technical requirements, other relevant information and the evaluation method. The selection of the Contractor is generally based on the lowest price evaluation method.

Price Quotation may only be chosen for the procurement of highly standardised commercially obtainable off-the-shelf Goods and Non-Consulting Services, that do not require elaborated specifications/task descriptions by the PEA, nor elaborated technical Offers by the Bidders (e.g., standard vehicles, office supplies, standard computer hard- and software, transport and distribution of Goods, topographical survey, food supplies). The composition of the Bidders to be invited shall ensure a fair competition, i.e., preferably only local or only international Bidders.

#### **2.1.5 Direct Award**

In the case of Direct Award, only one preselected, qualified Person is invited to submit an Offer on the basis of a functional description, a specification or terms of reference, as the case may be, elaborated by the PEA.

The PEA shall verify the appropriateness and competitiveness of the Offer as well as the Contract to be concluded and demonstrate the qualification of the selected Bidder. The outcome of this verification procedure must be documented in writing.

Direct Award may be chosen in the following cases:

- (1) Amendment of existing contracts, that means if,
  - a) the total aggregate amount of the amendments is significantly lower than the initial Contract value (as a general rule less than 25 % of the initial Contract value), or the amendment does not justify a new competitive Tender Process, and
  - b) the nature and scope of the amendment does not result in a substantial modification of the initial Contract content;
- (2) In follow-on phases of a project, if all the following criteria are fulfilled:
  - a) where attention was drawn to this potential follow-on phase in the precedent Tender Documents,
  - b) provided that the first Contract was awarded on a competitive basis,
  - c) the Contractor's performance in the previous phase is satisfactory, and
  - d) the specifications or the terms of reference are largely identical;
- (3) Following a cancellation of a Tender Process as per Article 2.5.15, provided
  - a) no fundamental changes have been made to the original terms and conditions of the Contract, and
  - b) a further competitive tender procedure is unlikely to produce appropriate results;
- (4) For reasons for extreme urgency,
  - a) brought about by unforeseeable events not attributable to the PEA (e.g., in the cases of natural disaster, crisis or conflict), and
  - b) where it is impossible to comply with the time limits set for the other procedures and laid down in Articles 2.4.10;
- (5) Unique selling point, that means, if due to a specific combination of expertise and experience required, technical reasons/features or the protection of exclusive rights (e.g., patent,

copyright), the Contract can only be performed by a specific Person;

- (6) Contracts with an estimated Contract amount below 20,000 EUR (twenty thousand Euro).

## 2.2 Two-Stage and Single-Stage Selection

During a Tender Process in general Bidders are required to submit the following documents

- (1) Evidence of qualification
- (2) Technical part of an Offer and
- (3) Financial part of an Offer

either in a single stage or in two stages.

### Two-Stage Selection

In a Two-Stage Selection the Tender Process is divided into two consecutive stages:

In the first stage, the Prequalification, Applicants are required on the basis of a Request for Application to demonstrate their qualification in terms of experience, capacity and resources to perform the Contract. Applicants which fulfil the requirements as per Request for Application are considered prequalified.

In the second stage prequalified Applicants are invited to submit a technical and financial Offer.

### Single-Stage Selection

In a Single-Stage Selection the Tender Process is conducted in one stage, which means Bidders submit their evidence of qualification together with the technical and financial Offer.

Apart from that, the same criteria as laid down for the Two-Stage Selection apply.

### Selection Methods in different Tender Procedures

In the case of ICB and NCB both selection methods are applicable, and in the case of LCB, Price Quotation and Direct Award only the One-Stage Selection method applies.

For further details see Article 3.2 concerning selection methods for the procurement of Consulting Services, and Article 4.2 concerning selection methods for the procurement of Works, Goods, Plant and Non-Consulting Services.

## 2.3 One-/Two-Envelope Submission of Offers

The term one-/two-envelope submission refers to the way the technical and financial part of the Offer are submitted, either in one or in two separate envelopes. In a single stage selection without prior prequalification the technical part of the Offer includes the Bidder's evidence of qualification.

The submission form depends on the evaluation method as described in Article 3.4 and 4.4. Generally, one-envelope submission is adequate, if the evaluation is based on the lowest price. Two-envelope submission is required, if the Bidder's technical Offer is evaluated on a point-system. In such case, the technical Offer is opened and evaluated first while the financial Offer remains unopened which allows for an unbiased evaluation of the technical Offer. Upon finalisation of the technical evaluation the financial Offers of those Bidders who fulfilled the technical requirements indicated in the Tender Documents will be opened and evaluated further. Submission by e-mail is normally not permitted.

The financial Offers of the Bidders who did not fulfil the technical requirements remain unopened and shall be sent back to the Bidders or, if agreed upon, deleted in compliance with legal data protection requirements.

## 2.4 Preparation of the Tender Process

The following provisions shall be observed during the preparation of the Tender Process. The Tender Documents shall reflect the key information as of the latest version of the Procurement Plan.

### 2.4.1 Standard Tender Documents and Draft Contract

The PEA is encouraged, especially in the case of an ICB, to use the Standard Tender Documents (see Article 1.2.4 and 1.5). If the PEA is obliged to use other Tender Documents the Request for Application, RfP and ITB shall at least include the items as per Appendix 5.

Tender Documents shall include a draft Contract or at least inform on the major contractual and commercial conditions (e.g., payment terms, required guarantees, applicable law, provisions for price adjustment, if any, defects liability period, force majeure), which adhere to the contractual provisions as per Appendix 7.

For Contracts with an estimated Contract amount below 20,000 EUR, KfW may accept deviations from the requirements as per Appendices 5, 6 and 7 depending on the context-specific circumstances.

### 2.4.2 Standards and Technical Specifications, Brand Names

Standards and technical specifications shall be designed to ensure quality and performance of the contractual content while promoting the broadest possible competition. In the case of an ICB, the Tender Documents shall specify internationally accepted and widespread standards, e.g., ISO/IEC or EN based standards. If such international standards do not exist or are inappropriate, national standards may be specified. In all cases, the Tender Documents shall state that equipment, material, or workmanship meeting other standards that are at least substantially equivalent to the specified standards will also be accepted.

Specifications shall be based on relevant technical characteristics and/or performance requirements. References to brand names, catalogue numbers, or similar classifications shall be avoided. If it is justified to specify a brand name or catalogue number of a particular manufacturer to clarify an otherwise incomplete specification, the words 'or equivalent' shall be added after such a reference to permit the acceptance of Offers for Goods that have similar characteristics and performance at least substantially equivalent to those specified.

### 2.4.3 Registration and other Administrative Requirements

In the case of ICB the Tender Documents shall provide for foreign participants in Tender Process the possibility of submitting documentary evidence of an equivalent nature to those required in the PEA's country. The registration of an Applicant/Bidder or the presentation of administrative documentary evidence in the country in which the Contract is implemented may be a condition precedent to the Award of Contract (in such case, this shall be stipulated in the Tender Documents), but the absence of documentary evidence at the stage of Prequalification or Submission of an Offer should not lead to an automatic rejection of the Application/Offer.

### 2.4.4 Joint Ventures

Applicants/Bidders may form JVs with domestic and/or foreign Persons to enhance their qualifications and capabilities. A JV may be for the long term (independent of any particular Contract) or for a specific Contract. Joint Ventures of Applicants/Bidders without joint and several liability of the partners are not acceptable. Applicants/Bidders shall be free to select their JV partners.

### 2.4.5 Language

In the case of procurement under ICB Tender Documents and Offers shall be prepared in one of the following four international languages at the PEA's discretion: English, French, Spanish or Portuguese. If the national language is different from these international languages, the Tender Documents may also be published in the national language<sup>12</sup> and Applicants/Bidders may be permitted to submit the documents in the national language in addition to the international language version. However, in the case of discrepancies, the text in the international language version of

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<sup>12</sup> The PEA bears responsibility for the translation and, if applicable, the respect of the copyright.

the documents shall prevail. The same applies to the Contract to be concluded and which shall be signed and binding in the international language only.

In the case of procurement under NCB, Tender Documents, Applications/Offer and the Contract to be concluded may only be in the national language of the Partner Country, if this differs from the four international languages. In such a case the PEA has the responsibility to furnish to KfW a translation of the documents subject to KfW's No-Objection in one of the four international languages, unless otherwise agreed.

#### 2.4.6 Currencies

The Tender Documents shall specify the currencies of the Offers, preferably EUR or the currency of the Funding Agreement. The PEA may specify in the Tender Documents that the part of the Offer reflecting local costs (to be incurred in the PEA's country) can be priced in local currency.

For the purpose of Offer evaluation and comparison, the Tender Documents shall indicate an official source for the exchange rates and a reference date (usually prior to the deadline for the submission of bids or proposals) which shall be used to convert all Offers into one currency.

#### 2.4.7 Taxes and Duties

The PEA shall inform Bidders in the Tender Documents on relevant regulations on local taxes and public duties in the Partner Country or if Contractors and its staff are exempted from local taxation. Only identifiable local taxes and public duties directly attributable to a Contract shall be considered. Taxes and duties to be paid outside the Partner Country by the Contractor and its staff are considered to be included in the overhead cost calculation.

In general, Bidders shall indicate in their Offer separately the provisional sums for taxes and duties to be paid in the Partner Country and these provisional sums shall not be considered in the financial evaluation.

The Contract concluded with the winning Bidder shall reflect the relevant provisions of the Tender Documents including the handling of taxes, the mode of payment and remuneration of local taxes and public duties as well as provisions for changes in the relevant national legislation after Contract Award (for details see Appendix 7).

#### 2.4.8 Guarantees and Securities

Any advance payment by the PEA is conditional upon the Contractor submitting an advance payment guarantee for the same amount under terms accepted by the PEA and should not exceed twenty (20) percent of the Contract amount. The PEA may, however, in agreement with KfW, decide to waive this condition depending on the nature or the volume of the Contract and, subject to this being specified in the Tender Documents.

A bid security, a performance security and a retention money security in accordance with the usual business practice of the particular sector are generally required in the case of Works, Plant, Goods and Non-Consulting Services Contracts but generally not in the case of Consulting Services Contracts (details and specimen see Appendix 7 and 8).

#### 2.4.9 Fees for Tender Documents

If a fee is charged for the Tender Documents, it shall be reasonable and reflect only the effective cost of their printing and delivery to prospective Applicants/Bidders.

#### 2.4.10 Submission Deadlines

In order to allow Applicants/Bidders to carefully prepare their Application/Offer and to arrange the shipment in time, especially for international Applicants/Bidders, the minimum time periods for the submission of Applications and Offers in ICB Tender Procedures shall be as follows:

- (1) preparation of an Application (from the date of the publication of the latest tender notice until the Application submission deadline): minimum **30 calendar days**; and
- (2) preparation of a technical and financial Offer (from the date of the publication of the tender notice or the sending of the RfP/ITB to the Bidders or prequalified Applicants until the deadline for submission of Offers): minimum **45 calendar days**.

In the case of complex Contracts, the minimum time for the preparation of a technical and financial Offer shall be increased appropriately. In duly justified cases (e.g., intensive clarifications or amendments to Tender Documents) a prolongation of the submission period may be granted, however such an extension should not take place later than 10 calendar days before the submission deadline. Tender Documents shall be made available during the entire submission period.

Any reduction of the above-mentioned minimum time periods for the submission of Applications and Offers require KfW's prior No-Objection.

In the case of an NCB the relevant provisions of the Public Procurement Regulation apply, in the case of LCB the deadline for submission of Offers may be reduced appropriately but should be no less than **20 calendar days**. Consequently, the deadline for clarification requests shall be adapted accordingly. For Price Quotation and Direct Award, the submission deadline shall be appropriate in relation to the contractual content.

Applications/Offers received after the submission deadline shall be rejected, unless late submission was due to events of force majeure (e.g., natural disasters, war). Late submission due to courier services and/or custom clearance shall not be considered as events of force majeure.

#### **2.4.11 Domestic Preference**

If applicable laws require the PEA to revert to domestic preference, KfW may agree to it, on the condition that

- (1) it is conducted in a fully transparent manner by applying a margin of preference for Goods produced locally, or for contractors for Works from the PEA's country, and that it is expressly provided for in the Tender Documents, and
- (2) it shall not lead to a de facto exclusion of foreign competition.

In any case, the domestic preference margin shall not exceed 15 % of the import price excluding taxes in the case of procurement of Goods or 7.5 % of the price in the case of procurement of Works and shall not be applicable to Consulting Services.

## **2.5 Execution of the Tender Process**

The following provisions shall be observed during the execution of the Tender Process.

### **2.5.1 Publication of Tender Notice**

In the case of ICB and NCB the PEA shall arrange a public tender notice, inviting Persons to participate in a Tender Process. The tender notice shall contain at least a brief summary of the tender content and timelines (see Appendix 3). The tender notice is regarded as the official start of a Tender Process.

Tender notices for ICB procedures are mandatorily to be published on the GTAI website, [www.gtai.de](http://www.gtai.de), and on a national level in accordance with the applicable Public Procurement Regulations.

Tender notices for NCB procedures shall be published at national level in accordance with the applicable Public Procurement Regulations.

The publication of tender notices may be in electronic or printed form and be complemented by publication in specialised media. However, the publication of tender notices in different media shall be made at the same time and in no case prior to GTAI's publication.

LCB, Price Quotation and Direct Award procedures do not require the publication of a tender notice.

For the minimum content of a Tender Notice see Appendix 3.

### **2.5.2 Communications, Clarification of Tender Documents and Pre-Bid Meeting**

Communications between the PEA and (potential) Applicants/Bidders during the different stages of the Tender Process shall be in writing and the PEA shall treat information relating the examination, clarification, and evaluation of Applications/Offers in such way as to avoid disclosure of their contents to any other (potential) Applicant/Bidder participating in the Tender Process, or any other party not authorised to have access to this type of information, until the PEA notifies the outcome

of the evaluation of Applications/Offer, in accordance with the procedures in the applicable Tender Documents.

Potential Applicants/Bidders may request clarifications to the Tender Documents prior to the deadline for clarification requests stated in the Tender Document. Requests shall be sent in writing to the PEA's address indicated in the Tender Documents. Any other enquiries or interventions by Applicants/Bidders are prohibited and will lead to the exclusion of the Applicant/Bidder.

The PEA's response to a request for clarification shall not disclose information which might give an unfair advantage. Any modification to issued Tender Documents shall be introduced in the form of an addendum to the Tender Documents. Modifications with substantial substantive, technical or financial implications require the approval of KfW prior to publication/informing the Applicants/Bidders. All clarifications and addenda of Tender Documents shall be in writing. They shall be sent simultaneously to each recipient of the original Tender Documents without disclosing the addressees or published in the same medium as the tender notice in sufficient time to enable potential Applicants/Bidders to take appropriate action, which means no later than ten (10) calendar days prior to the submission deadline as per Article 2.4.10.

The Tender Documents may state that a pre-bid meeting and/or site-visit for all potential Bidders will be organised by the PEA during the bid submission period in order to obtain on-site information or for the inspection of the available documents. These meetings are exclusively intended to familiarise potential Bidders with the site conditions and the available working documents and shall under no circumstances provide any competitive advantages. The PEA shall keep a written record of such meetings.

### **2.5.3 One Application/Offer per Applicant/Bidder**

Applicants/Bidders (including individual members of any JV) shall submit only one Application/Offer, either in their own name or as part of a JV in another Application/Offer. If an Applicant/Bidder, including any JV member, submits or participates in more than one Application/Offer, all Applications/Offer concerned shall be rejected.

Subcontractors may participate in the capacity as Subcontractor in more than one Application/Offer, unless competition would be adversely affected, and this is reflected in the Tender Documents. However, if a Subcontractor's qualification has been taken into account for the qualification of an Applicant this Subcontractor shall only participate in the respective Proposal. If a Subcontractor submits an Application/Offer in its own name, all Applications/Offer concerned shall be rejected.

Key Experts in Proposals for Consulting Services shall not participate in more than one Proposal, unless competition would be adversely affected, and this is reflected in the Tender Documents. In the case the same Key Expert<sup>13</sup> appears in more than one Proposal, all Proposals concerned shall be rejected unless a bidder can demonstrate to have obtained the exclusive right of the respective Key Expert to include its curricula vitae in the proposal before the submission deadline has passed.

### **2.5.4 Opening of Applications/Offer**

The opening of Applications/Offer shall in any case be conducted by a committee consisting of at least two independent members.

In the case of procurement of Works, Goods and Plant the opening of Applications/Offer shall be conducted in public in the presence of representatives of the Applicants/Bidders that wish to attend. Such a meeting shall be held very shortly after the deadline time for the submission of the Applications/Offer at the place and time specified in the Tender Documents. The opening shall take place regardless of the number of Applications/Offer received, provided that the Applications/Offer are received before end of the Application/Offer submission deadline.

When documents (evidence of qualification, technical and financial Offer) are to be submitted in separate envelopes with subsequent evaluation, an opening session shall take place for each envelope. The opening of the second envelope requires KfW's prior No-Objection to the evaluation result of the preceding envelope, unless otherwise agreed.

In the public opening session, the following shall be read aloud:

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<sup>13</sup> An individual (natural Person) which is not part of the regular staff ("freelancer") but engaged temporarily as Key Expert for the relevant Contract shall not be considered as Subcontractor in this context.

- the name of the Applicant/Bidder and at the public opening of the financial Offers
- the price of the Offer,
- including any alternative Offers or discounts.

For each (public or non-public) opening session minutes shall be prepared and signed by all members of the committee, and optionally by the representatives of the Bidders that wish to do so.

### **2.5.5 Preliminary Examination of Applications/Offers**

The preliminary examination is to verify if the Applicants/Bidders are eligible and if the Applications/Offers received are substantially complete as required by the Tender Documents before proceeding to the detailed evaluation. Applications/Offers from non-eligible Applicants/Bidders or that are not substantially complete shall be rejected. Applications/Offers shall not be rejected for minor technical or administrative nonconformities.

### **2.5.6 Evaluation of Evidence of Qualification**

Following the preliminary examination, the next step in the evaluation of an Application/Offer is the Applicant's/Bidder's evidence of qualification. Depending on the nature of the Contract the evaluation of the qualification might be on a pass/fail basis and/or through a scoring system.

#### Qualification of Applicants/Bidders

The evaluation of the evidence of qualification focuses solely on the respective Applicant/Bidder and shall not take into account any qualifications of its subsidiaries, parent entities, affiliates or any other Person different from the Applicant/Bidder, unless they are associated in the form of a JV with joint and several liability. Exceptionally an Applicant/Bidder with insufficient financial track record (e.g., start-up or spin-off companies) can demonstrate its financial qualification by presenting a legally binding letter of comfort of a financially sound parent company (to be demonstrated).

#### Qualification of Subcontractors

The qualification of Subcontractors is usually not taken into account unless the Applicant explicitly requests for it. In such a case the Applicant is obliged to include the respective performance of the Subcontractor bindingly in the Offer as indicated in the Application (cf. 2.5.3).

#### Modifications after Submission of Application

In the case of Two-Stage Selection, prequalified Bidders shall request PEA's approval for any modification in their legal status or in the composition of a JV. Such approval shall not be rejected by the PEA unless the proposed modification would result in a deterioration of the position of the Bidder with respect to the initial qualification.

For further details on qualification and evaluation see Article 3.3 for procurement of Consulting Services, and Article 4.3 for procurement of Works and Plant.

### **2.5.7 Information and Publication of Prequalified Applicants**

The PEA shall notify all Applicants in writing of the names of those Applicants who have been prequalified. In addition, those Applicants who have been disqualified will be informed separately.

In the case of an ICB and NCB the list of prequalified Applicants who will be invited to submit an Offer (prequalification-result notice), shall be published by the PEA after KfW's No-Objection to the prequalification evaluation report on GTAI's website, in the case of an ICB, and preferably in the same medium in which the original tender notice was published, in the case of an NCB.

For the minimum content of a Prequalification notice please see Appendix 3.

### **2.5.8 Evaluation of Offers**

The evaluation criteria and methodology shall be appropriate in view of the type, nature, market conditions, and complexity of the Contract content as detailed in Articles 3.4 and 4.4. The evaluation of the Offers shall strictly follow the methods and criteria as specified in detail in the Tender Documents.

In the case of Two-Stage Selection, criteria evaluated in the Prequalification shall not be evaluated a second time. However, the PEA may request Bidders to confirm that their qualification as of their Application remains unchanged.

The technical evaluation of Proposals/Bids is to verify if and to which extent the Offer fulfils the technical requirements stipulated in the Tender Documents. Depending on the evaluation methodology the technical evaluation is on a pass/fail basis or on a point system.

The financial evaluation is to correct arithmetical errors, to verify if the offered technical content and the financial Offer correspond and for price adjustments due to missing items or due to the evaluation method to the extent specified in the Tender Documents.

#### Abnormally Low Bids

An abnormally low Bid is one in which the Offer price, in combination with other elements of the Offer, appears so low either in comparison with the PEA's estimate or with the average of competing Offer or in the case of Consulting Services with the estimated expert-month that it raises material concerns with the PEA as to the capability of the Bidder to perform the Contract for the offered price. The PEA shall ask for written clarifications and shall require detailed price breakdown from the Bidder concerned.

The Offer in question shall be rejected in the absence of satisfactory answers from the Bidder to those requests for clarification or if the detailed price breakdown evidences one or several inconsistencies between the technical Offer and the price offered and therefore reasonable doubts persist as to whether the required Contract content can be provided at the price offered and if this is reasonably expected to pose a considerable risk to the performance of the Contract.

### **2.5.9 Clarification of Applications/Offers during Evaluation**

To assist in the examination, evaluation, and comparison of the Applications/Offers, the PEA may, at its discretion, ask Applicants/Bidders for a clarification, given a reasonable time for a response. Any clarification submitted by an Applicant/Bidder that is not in response to a request by the PEA shall not be considered. The PEA's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Offer shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the PEA during the evaluation of the Offers, in accordance with the Tender Document.

### **2.5.10 Extension of Offer Validity**

If an extension of the Offer validity period is necessary, this shall not lead to changes in the Offer prices. The extension entitles the Bidders to withdraw their Offers upon expiry of the original binding period without allowing the bid bond to be drawn. KfW reserves the right to refrain from financing if the Tender Process is unduly delayed.

### **2.5.11 Evaluation Report**

The PEA's evaluation committee shall prepare and sign a detailed report on the evaluation of Applications/Offers with the minimum content and in the format as described in Appendix 6. If the PEA is supported by a Consultant, the Consultant must be involved in the procurement and evaluation in accordance with the ToR; in exceptional cases where this has not been done, the Consultant's assessment must be documented separately.

The PEA shall submit to KfW the evaluation report and award recommendation in a timely manner to permit KfW's comment to be issued before expiry of the validity period. KfW reserves the right to refrain from financing if the report is not submitted in due time.

### **2.5.12 Pre-Award Discussions**

The PEA shall award the Contract during the Offer validity period to the Bidder who's Offer has been evaluated as responsive, lowest evaluated Bid or highest ranked Offer.

In exceptional cases, the procurement can give rise to discussions with the first ranked Bidder after final Offer evaluation prior to Award of Contract.

The Bidder shall not be required as a result of the pre-award discussions to provide additional Consulting Services, Works, Goods, Plant or Non-Consulting Services that are not set out in the Tender Documents or to modify its initial Offer as a condition to the Award of Contract nor to modify unit prices except for the correction of arithmetical or computational errors.

The pre-award discussions shall serve to clarify, among other things, any pending modalities for taxes and duties that shall be due locally (they may be estimated on a provisional basis in the

financial Offer but are not to be evaluated) and decide the manner in which they will be paid for, taking into account the provisions set out in the RfP/ITB.

The content of such pre-award discussions shall not be legally binding before the Award of Contract. It is highly recommended to integrate modifications resulting from such discussions to the relevant parts of the contractual documents (e.g., time schedule, Terms of Reference, specifications, price schedules, Contract) as far as possible, otherwise the signed minutes of pre-award discussions shall form part of the Contract.

In the case of failure, the PEA may enter into pre-award discussions with the next ranked Bidder, subject to prior No objection by KfW.

#### **2.5.13 Information of Bidders and Award of Contract**

Upon successful completion of the pre-award discussions, if any, the PEA shall inform all Bidders on the result of the Tender Process in writing and subsequently award the Contract to the successful Bidder.

The information sent to the Bidders shall contain the name and the Contract amount of the winning Bidder and, if relevant, the combined Offer scores of the winner and the respective Bidder.

#### **2.5.14 Publication of the Result of the Tender Process**

In the case of an ICB and NCB upon completion of the Tender Process the PEA shall publish the result of the Tender Process (award notice) on GTAI's website, in the case of an ICB, and preferably in the same medium in which the original tender notice was published, in the case of an NCB.

For the minimum content of the award notice please see Appendix 3.

#### **2.5.15 Cancellation of a Tender Process**

A Tender Process may be cancelled when:

- (1) there has been a lack of competition, or
- (2) all Offers received are not substantially compliant with the requirements of the Tender Documents, or
- (3) none of the technical Proposals meet the minimum requirements, or
- (4) all the offered prices are substantially higher than the latest updated cost estimate or the available budget, or
- (5) the underlying fundamental conditions for the Tender Process have changed significantly prior to award of the Contract, or
- (6) there has been a material procedural irregularity.

A lack of competition shall not be determined solely on the basis of the number of Offers received. Even when only one Offer is submitted, the Tender Procedure may be considered valid, if (i) the procurement was satisfactorily published, (ii) the qualification criteria were not unduly restrictive and (iii) prices are reasonable in comparison to market values.

If the PEA rejects all Offers, the PEA shall analyse the causes that led to this situation (inadequate publication, prequalification requirements, conditions and scope of Contract, design and specifications, scope of services, etc.) and remedy this before relaunching the RfP/ITB. The PEA shall not reject all Offers and relaunch a RfP/ITB using the same unmodified Tender Documents solely for the purpose of seeking lower prices.

If the rejection is due to non-compliance with the Tender Documents or technical requirements, the PEA should after thorough investigation adjust the Tender Documents or the technical requirements. In such case, the PEA may request new Offers from all of the initially prequalified Applicants if a Prequalification had taken place or those that submitted an Offer in response to the initial RfP or ITB.

If the Offer price of the first ranked and compliant Offer significantly exceeds the latest cost estimate or the available budget, the PEA shall investigate the reasons for such overrun. If the increased prices are justifiable, the PEA can envisage increasing the budget or re-launching the RfP/ITB as per the provisions above. Alternatively, the PEA may enter into discussions with the first ranked Bidder with the aim of obtaining a satisfactory Contract on the basis of a reduction of

the scope of the Contract in order to reduce the Offer price. This is only allowed when the modifications envisaged do not call into question the initial ranking of Offers following the evaluation.

The cancellation of a Tender Process and the subsequent steps require KfW's prior No-objection.

#### **2.5.16 Publication of Tender Process Cancellation**

In the case of an ICB and NCB upon cancellation of a Tender Process the PEA shall publish corresponding information (cancellation notice) on GTAI's website, in the case of an ICB, and preferably in the same medium in which the original tender notice was published, in the case of an NCB.

For the minimum content of the cancellation notice please see Appendix 3.

#### **2.5.17 Debriefing**

Unsuccessful Applicants or Bidders may make a written request to the PEA for a debriefing. The PEA shall provide a timely and meaningful debriefing to the Applicant/Bidder informing on major shortcomings and weaknesses of the Application, respectively on the Offer in relation to the winning Bidder. No additional information shall be disclosed, the debriefing shall not include point-by-point comparisons with other Applications/Bidder's Offers and information that is confidential.

### **2.6 Procurement Related Complaints**

Applicants/Bidders who consider that actions or decisions by the PEA in the course of the Tender Process result in an unfair disadvantage may file a procurement related complaint. Unless the complaints mechanism in the Public Procurement Regulation provides otherwise, such a complaint shall be addressed in writing to the PEA, with copy to KfW, detailing the grounds for the complaint with reference to the applicable provisions in the Tender Documents or other applicable regulations. Upon receipt of such a complaint the PEA shall promptly handle the complaint and respond to the complainant in writing detailing the result of the complaint's handling. Should the handling of the complaint by the PEA not be possible within three (3) working days after the receipt of the complaint the PEA should at least acknowledge its receipt and respond to the complainant with the results of the complaint's handling within ten (10) working days from the acknowledgment of the receipt. A complainant is only able to submit an identical complaint once. A procurement-related complaint that is filed repeatedly by the same complainant without presenting new facts will not be accepted.

The PEA shall ensure that all complaints and its handling in a KfW financed Tender Process, regardless of the review process, are promptly brought to the knowledge of KfW for monitoring. The award of a Contract shall not take place until all complaints have been handled adequately.

### **2.7 Electronic Procurement**

The PEA may use an electronic system to distribute tender documents, provided that KfW is satisfied with its adequacy. If Tender Documents are distributed electronically, the electronic system shall be secure to avoid modifications to the Tender Documents and shall not restrict the access of Applicants and Bidders to the Tender Documents. The PEA may also use an electronic system permitting Applicants and Bidders to submit Applications and Offers by electronic means, provided KfW is satisfied with the adequacy of the system, including, inter alia, that the system is secure, maintains the confidentiality and integrity of Applications and Offers submitted, and employs acceptable management procedures to establish date and time of submission, and facilitate modification and withdrawal. The system used must also record access to the submitted application and offer documents. Access before the deadline for submission or to the financial offer prior to the release of the technical evaluation by KfW in the event of a two-envelope procedure must be excluded. All accesses/retrievals of the submitted application and offer documents must be listed as part of the opening protocol and submitted to the KfW.

The use of e-reverse-auctions as part of an e-procurement system shall be limited to highly standardised and unambiguously specified Goods or Non-Consulting Services if there is adequate competition among Persons and the lowest price only is considered for award.

## 3. Provisions for Procurement of Consulting Services

### 3.1 Tender Agents and Agency Contract

At the PEA's discretion or upon KfW's recommendation assistance from a specialised consultant (so-called tender agent) may be obtained for certain steps of the Tender Process. With the exception of the Award of Contract, the assistance may range from individual support to a complete delegation of the PEA's respective tasks and shall be agreed upon in the Contract between PEA and Tender Agent. The No-Objection provisions as set out in Article 1.6 apply unchanged.

In exceptional cases, KfW may assist the PEA in the Tender Process upon express request and based on an agency contract between PEA and KfW. If not agreed otherwise, such an agency contract encompasses the delegation of the entire Tender Process to a tender agent with KfW signing the Contract on behalf of the PEA.

### 3.2 Two-Stage Selection for Consulting Services

In the case of an ICB and in the case of an NCB above the thresholds as per Article 2.1.1 the Two-Stage Selection with Prequalification of Applicants is the standard selection procedure for the procurement of Consulting Services. A Single-Stage Selection is not recommended in such cases as the latter may result in a reduced number of Bidders due to the fact that the elaboration of an Offer comprising the evidence of qualification, a technical and financial Proposal represents a significant effort without increasing the likelihood of Award of Contract.

### 3.3 Pre-Qualification for Consulting Services

In order to establish the qualification of eligible Applicants to perform the Contract the following criteria shall be taken into account:

- (1) Overall financial situation and minimum turn-over in relation to the estimated Contract value;
- (2) Experience in implementing similar projects in the subject matter, in the relevant sector, function and role as per the requirements of the project (e.g., studies, surveys, design, tendering and contracting, technical/organisational/financial project management, ESHS, maintenance and operation, specialised technical/legal/management expertise), generally within the last five years;
- (3) Geographical experience in similar countries or environments;
- (4) Access to expertise relevant for the assignment, possibly supplemented with external resources and available own personnel, including backstopping capacities.

The qualification requirements shall be chosen in relation to the size and complexity of the Contract content.

Applications are considered responsive if they comply with all pass/fail-criteria and score at least 70 % of the total points. Only Applicants who submitted a responsive Application are considered as qualified to perform the Contract. A ranking of all qualified Applicants will be established based on their score and if not otherwise laid down in the Tender Documents, the five top ranked Applicants shall be invited to submit a Proposal in the second stage. Should the number of prequalified Applicants be below the predefined number as per Tender Documents the Tender Process may be continued with these prequalified Applicants.

For further details see Appendix 4 and KfW's Standard Tender Documents<sup>14</sup>,

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<sup>14</sup> For further details about the evaluation of qualification criteria see KfW's Standard Tender Documents available at Procurement regulations | KfW Development Bank (kfw-entwicklungsbank.de)

### 3.4 Evaluation Methods for Consulting Services

The following evaluation methods may be used for evaluation of Proposals, with Quality and Cost-Based Selection (QCBS) being the recommended standard method.

#### 3.4.1 Quality and Cost-Based Selection (QCBS)

The two-envelope submission applies to QCBS.

##### Technical Evaluation

The technical evaluation shall focus on the proposed concept and methodology as well as on the proposed staff for the execution of the Contract as detailed in Appendix 4. Technical Proposals are considered responsive if they achieve at least the technical minimum score of 75 % of the total points for the technical Proposal. Non-responsive technical Proposals are rejected at this step.

##### Financial Evaluation

If payments are based on agreed hourly, daily, weekly, or monthly rates for staff and on reimbursable items using actual expenses and/or agreed unit prices (time-based Contract) as per RfP, the evaluation committee will (a) correct any computational or arithmetical errors and adjust the prices if they fail to reflect all inputs, which, in accordance with the RfP have to be indicated and priced separately, using the highest rates for the corresponding items indicated in the financial Proposals of competing Proposals.

In the case of a discrepancy between the technical and financial Proposals in indicating quantities of input, the technical Proposal prevails and the evaluation committee shall correct the quantification indicated in the financial Proposal so as to make it consistent with that indicated in the technical Proposal, apply the relevant unit price included in the financial Proposal to the corrected quantity, and correct the total Proposal cost.

If payments are linked to outputs/deliverables, such as studies, design services, elaboration of Tender Documents (lump-sum Contract) as per RfP, the consultant is deemed to have included all prices in the financial Proposal and therefore no price adjustments shall be made. The total price, net of taxes shall be considered as the offered price.

If the Contract combines time based and lump sum services, the evaluation shall apply these provisions accordingly.

Notwithstanding the above, the offered price may be adjusted for reimbursable items to allow for comparison, but only for such items explicitly requested to be offered in the RfP.

##### Weighting

The weighting should generally be 80% for the technical Proposal and 20% for the financial Proposal 4.

The overall score will be calculated by summing up the technical and financial score per Proposal and the Proposal selected for Award of Contract is the one that obtains the highest overall score as further detailed in Appendix 4.

#### 3.4.2 Least Cost Based Selection (LCS)

The Contract is awarded to the lowest-priced, substantially responsive Proposal. A Proposal is considered responsive, if it complies with the minimum requirements as defined in the Tender Documents. This selection method may only be envisaged for standard, non-complex Consulting Services of limited cost (e.g., translation work).

### **3.4.3 Quality Based Selection (QBS)**

The two-envelope submission applies to QBS.

The QBS method may be used on exceptional basis for the procurement of Consulting Services which cannot be functionally described, are not yet marketable and require significant creative input by Bidders. This method may be used for complex projects or projects with major technical impacts, but in this case, caution is required as it carries a risk of technical overpricing and requires an extremely good knowledge of market prices on the part of the PEA in order to conduct the financial evaluation properly. It may also be used for the short-term recruitment of individual consultants with limited size if the rates for such services are well known.

The Contract is awarded to the highest scored technical Proposal.

### **3.4.4 Fixed Budget Based Selection (FBS)**

A maximum budget is indicated in the RfP and the highest scored technical Proposal is selected, provided that the price Proposal is within the budget. The maximum budget must be determined appropriately (neither overestimated nor underestimated on the basis of a detailed assessment of the expert-months/days required and of market prices). Subject to this important reservation, this method may be worthwhile, notably in the case of small studies and simple services.

## **3.5 Availability and Replacement of Proposed Key Staff before Award of Contract**

With the submission of the Proposal the Bidder confirms the unrestricted availability of the proposed Key Experts in accordance with the requirements defined in the Tender Documents in the case of Award of Contract. After finalisation of the evaluation and before Award of Contract or any pre-award discussions, whichever is first, the PEA shall request the Bidder proposed for Award of Contract to confirm the availability of the proposed Key Experts.

Should any of the proposed Key Experts during the initial Proposal validity period become unavailable for duly justified reasons beyond the control of the Bidder (e.g., sickness or accident), the Bidder shall propose an alternative expert with an equal or better qualification. If the replacement Key Expert's qualification is not equal or better than the qualification of the initial candidate, the Proposal shall be rejected.

If an extension of the Proposal validity period becomes necessary, Bidders shall be requested to confirm the availability of the Key Experts along with their response to the extension request by the PEA. At this stage Bidders shall be allowed to propose replacement Key Expert(s) without justification. The replacement Key Expert(s) shall have equal or better qualification otherwise the Proposal shall be rejected.

## 4. Provisions for Procurement of Works, Plant, Goods & Non-Consulting Services

### 4.1 Engagement of a Consultant

Planning, design, tendering, contracting and implementation supervision of Works, Plant and Goods Contracts requires considerable and frequently interdisciplinary expertise and absorbs significant resources. Therefore, KfW highly recommends the engagement of specialised and experienced consultants to assist the PEA during project preparation and implementation.

### 4.2 Single- and Two-Stage Selection

For Works and Plant Contracts, whether a Single or a Two-Stage Selection is applied depends on the nature and complexity of the assignment.

For Goods and Non-Consulting Service Contracts generally a Single-Stage Selection is appropriate.

In any case only Bidders with adequate qualification, experience and financial capacity in relation to the Contract content and volume shall be considered for the evaluation of Bids according to the provisions included in the Tender Documents.

### 4.3 (Pre-)Qualification for Works and Plant Contracts

In order to establish the qualification of eligible Applicants/Bidders to perform the Contract the following criteria shall be taken into account:

- (1) Overall financial situation and minimum turn-over in relation to the estimated Contract value, including pending litigation,
- (2) General and specific construction experience in implementing similar projects, generally within the last five years, and
- (3) Experience, capacity and handling of environmental, health and safety (ESHS) issues, with special focus on occupational health and safety (OHS) on site. Depending on the ESHS risks the Tender Documents shall include a minimum score/level to be achieved by Applicants/Bidders.

The qualification requirements shall be chosen in relation to the size and complexity of the Contract and shall not unduly limit the competition.

All Applicants/Bidders considered qualified will be invited to submit a Bid in the case of Two-Stage Selection, or their Bids will be considered further in the case of Single-Stage Selection.

### 4.4 Evaluation Methods for Works, Plant, Goods and Non-Consulting Services

#### 4.4.1 Lowest Price Evaluation

When applying the lowest price evaluation method, the Contract will be awarded to the Bidder who is qualified to perform the Contract and whose financial Bid has been determined to be the responsive, lowest evaluated Bid (after correction of arithmetical errors) and is substantially responsive to the requirements contained in the Tender Documents.

This evaluation method is appropriate for Works Contracts for which a detailed design (including drawings, itemised bill of quantity and technical specifications) is provided in the Tender Documents. The lowest price evaluation method is also suitable for highly standardised off-the shelf Goods and Non-Consulting Services.

This method relies on the price as award criterion.

#### 4.4.2 Bonus-Malus Adjusted Price Evaluation

This evaluation method is partly identical with the lowest price evaluation method. However, once the lowest evaluated price is determined this figure may be adjusted either by a factor below or above 1.0 or by a positive or negative price mark-up. The adjustment factor or the price adjustment is derived by comparing the values of technical parameters of major technical components offered by Bidders to reference values and calculate the adjustment accordingly as indicated in the Tender Document.

Such a method allows to take into account during the evaluation certain features or parameters of individual items of the Bid or the whole of it by charging such aspects financially with a bonus or a malus. For example, when purchasing power transformers or generators the Tender Documents may specify a target efficiency ratio and during Bid evaluation each percent above or below that value will be credited or charged by a certain fixed amount or a percentage of the Bid price.

The method of such a price adjustment and the reference values shall be clearly defined in the Tender Documents and should be limited to few important items whose features or parameters are easily verifiable and measurable.

The award criterion of this evaluation method is the lowest adjusted price.

#### 4.4.3 Weighted Evaluation

In a weighted evaluation scheme, each of the technical and the financial Bids are evaluated separately and are attributed a score. The weighted score of both is added up to the combined score. The Bid with the highest evaluated combined score will be awarded the Contract.

The application of such an evaluation scheme is suitable in the cases where the PEA provides in the Tender Documents a functional description of the Contract content instead of a detailed design. Bidders elaborate and submit on this basis a technical Bid of their own which is evaluated strictly in accordance with the criteria published in the Tender Documents.

The evaluation procedure follows the steps as indicated for QCBS for consultants outlined in Article 3.4.1. The Tender Documents shall specify a minimum score for the technical Bid to be considered as technically responsive and shall include a precise definition of responsiveness. The weighting of the technical Bid should not exceed the weighting of the financial Bid.

#### 4.4.4 Life Cycle Cost Evaluation (LCC)

The LCC evaluation method takes into account the cost occurring during the whole life-cycle of the Contract content (e.g. Works, Goods, etc.) such as:

- (1) Investment cost (e.g., the purchase price incl. all associated cost elements),
- (2) Operation and maintenance cost (e.g., energy, consumables, spare parts, repair),
- (3) End of life costs (e.g., for removal, disposal, recycling) and costs attributed to environmental externalities (e.g., emissions of greenhouse gases or pollutants), to be considered only in exceptional cases, if the local market provides reliable and verifiable cost figures (end of life cost) or if internationally recognised calculation methods are used (environmental cost).

This evaluation method may be used when the additional cost of (2) and, if applicable (3) over the specified life of the Contract content are estimated to be considerable in comparison with the initial investment cost (1) and may vary among different Bids due to different technical solutions proposed by Bidders. The Tender Documents shall clearly and in detail specify the calculation methods and parameters (e.g., calculation period, discount rate and other factors and parameters to be taken into account). The application of the LCC evaluation method requires highly qualified expertise for the elaboration of Tender Documents and Bid evaluation.

### 4.5 Alternative Bids

The Tender Documents may allow Bidders to submit alternative Bids, in order to minimise costs or permit technically attractive solutions. The Tender Documents shall, in such case, clearly indicate the evaluation method of such alternative Bids.

### 4.6 Discounts

A Bid may include an unconditional discount, which is always taken into account during the evaluation. The Bid shall indicate the manner in which the discount is to be applied.

If the Bid is divided into several lots, Bidders may also offer one or several conditional discounts in the case they would be awarded several lots. In such a case, this discount shall only be taken into consideration under the terms indicated in the Tender Documents and provided that all Bids, for all lots, are submitted and opened at the same time.

#### **4.7 Transport and Insurance**

Bidders shall submit their Bid according to the international rules established by the International Chamber of Commerce for the interpretation of commercial terms used for international trade (Incoterms). The Bids shall preferably be requested on the basis of CIP (Carriage and Insurance Paid to a named place of destination) for Goods.

The Contract content shall be insured to an appropriate and customary extent against risks that may arise during transport and the implementation of the project. Its replacement or recovery by means of the insurance must be possible. The insurance policies should be established in the currency of the relevant Contract.

#### **4.8 Force Account, Target Group-implemented Measures**

Recourse to force account, that is the provision of Services using the PEA's own personnel (or personnel of entities subordinate to it) and equipment, or directly by the target group to achieve greater sustainability or employment, may in certain cases be envisaged if it is the only available method. This refers namely, but not exclusively, to Works which cannot be quantified in advance, small and scattered Works (e.g., routine maintenance on an infrastructure network) or emergency Works and is subject to KfW's prior consent. In this case, the Contract design must be adapted to the particular requirements.

To obtain KfW's prior consent, the PEA shall provide KfW with:

- (1) information justifying the use of force account,
- (2) information evidencing its capacity of performing the said work, and
- (3) the implementation schedule along with a breakdown of the estimated cost.

## 5. Procurement not subject to Public Procurement Regulations, Financial Intermediaries and Special Cases

### 5.1 Procurement not subject to Public Procurement Regulations

Certain PEAs may, due to their legal status, not be bound to the Public Procurement Regulations in the Partner Country. This may apply to private banks and firms, privatised entities, non-governmental organisations (NGOs), and international organisations such as UN organisations. In such a case, the PEA may,

- (1) subject to prior review and approval of KfW, use their own internal procurement regulations or,
- (2) in the absence of their own regulations, rely on the provisions of the Guidelines; or
- (3) if no internal regulations exist for the procurement of consulting services, works, supplies, equipment or other services, prepare a project-specific procurement manual, the application of which must be reviewed and approved by KfW.

Depending on the result of the review by KfW, the procurement regulations of the PEA as defined in (1) above or the project-specific procurement manual as defined in (3) above may apply in full or with restrictions. In the event of a conflict with the Guidelines, KfW and the PEA shall agree on appropriate provisions prior to the first procurement that best preserve the basic principles set out in Article 1.2.1. In the event of substantial deviations, KfW reserves the right to object to the application of the procurement regulations or the project-specific procurement manual. In this case, compliance with the Guidelines is mandatory. In addition, KfW reserves the right to request the PEA to publish tender notices as outlined in Article 2.5.1 especially for major Contracts above the ICB thresholds.

The No-Objection provisions as laid down in these Guidelines apply accordingly as agreed upon between PEA and KfW.

### 5.2 Financial Intermediaries

In certain cases, the financing of Financial Cooperation projects is carried out through a financial intermediary ("FI") (for example a financial institution under public or private law, or another legal Person organised under private law or a financial institution, or a private legal Person) that manages funds from one or more donors to provide financial services for the receipt, custody, investment and on-lending of the funds to the final beneficiaries.

A financial intermediary may also mandate another legal Person that has its own legal personality or appoint a trustee for the implementation of accompanying measures. This is a specific instrument for providing services (as opposed to pure funding) to final beneficiaries (e.g., Technical Assistance Facility "TAF").

The final beneficiaries may be natural Persons or legal Persons under public or private law.

#### 5.2.1 Procurement through financial intermediaries

For procurement carried out by the financial intermediary for its own needs (e.g., consulting services, supplies)

- (1) where the FI is not subject to the Public Procurement Regulations, the provisions of the Guidelines or the FI's procurement regulations may apply, subject to prior review in accordance with 5.1; or
- (2) if the FI is subject to the Public Procurement Regulations, the provisions of the Guidelines shall apply.

For procurement carried out by the financial intermediary for the benefit of final beneficiaries, the following shall apply:

- (1) in cases where funds of the financial intermediary are provided exclusively by KfW, the provisions of the Guidelines shall apply; or

- (2) in cases where funds of the financial intermediary are provided from different sources (public and private) or by several donors, (i) the procurement guidelines of the lead donor or (ii) the procurement regulations or the project-specific procurement manual of the financial intermediary apply after prior review in accordance with 5.1.

Unless otherwise agreed in the Funding Agreement, procurement carried out by the FI – both for its own needs and for the benefit of final beneficiaries – shall be audited by an independent auditor for compliance with the agreed procurement guidelines and other relevant contractual obligations. The FI will subsequently report on this as part of its regular reporting procedures to KfW.

### **5.2.2 Procurement by final beneficiaries**

Final beneficiaries may be subject to the Public Procurement Regulation on account of their legal form (e.g., municipalities, state owned entities).

In such cases, the procurement procedures applied must comply with the basic principles of the Guidelines as outlined in Article 1.2.1. Unless otherwise agreed in the Funding Agreement, the financial intermediary will monitor the procurement by the final beneficiaries and subsequently report on it as part of its regular reporting procedures to KfW.

## **5.3 Specific Case of Concessions and Output Based Contracts**

In the cases where KfW finances projects implemented under a public concession or in which the Contractor is paid for outputs (e.g., BOT models, auctions, least cost subsidy selection, supply of energy), the following applies:

- (1) If the concessionaire or Contractor has been selected following a fair and transparent competitive procedure which is acceptable to KfW the said concessionaire or Contractor may freely procure Works, Goods, Plant, No-Consulting Services or Consulting Services for the fulfillment of the Contract using its own procedures unless the Tender Documents for the Contract provide otherwise; or
- (2) If the selection of the concessionaire took place without competition the provisions of the Guidelines shall apply.

## Appendices

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## Appendix 1a – Declaration of Undertaking

Reference name of the Application/Offer/Contract:

("Contract")<sup>15</sup>

To:

("Project Executing Agency")

1. We recognise and accept that KfW only finances projects of the Project Executing Agency ("PEA")<sup>16</sup> subject to its own conditions which are set out in the Funding Agreement it has entered into with the PEA. As a matter of consequence, no legal relationship exists between KfW and our company, our Joint Venture or our Subcontractors under the Contract. The PEA retains exclusive responsibility for the preparation and implementation of the Tender Process and the performance of the Contract.
2. We hereby certify that neither we nor any of our board members or legal representatives nor any other member of our Joint Venture including Subcontractors under the Contract are in any of the following situations:
  - 2.1) being bankrupt, wound up or ceasing our activities, having our activities administered by courts, having entered into receivership, reorganisation or being in any analogous situation;
  - 2.2) having been convicted by a final judgment or a final administrative decision or a preliminary investigation/charge is pending against us for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings, or have been subject to (financial) sanctions and/or embargo provisions by the United Nations, the European Union or the Federal Republic of Germany. This exclusion criterion is also applicable to legal persons whose shares (or the majority thereof) are owned or de facto controlled by natural or legal persons against whom such judgments, administrative decisions, (financial) sanctions and/or embargoes have been imposed and – in the case of (financial) sanctions and/or embargoes – these restrictive measures continue to apply;
  - 2.3) having been convicted by a final court decision or a final administrative decision by a court, the European Union, national authorities in the Partner Country or in Germany for Sanctionable Practice in connection with a Tender Process or the performance of a Contract or for an irregularity affecting the EU's financial interests (*in the event of such a conviction, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this conviction is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*);
  - 2.4) having been subject within the past five years to a Contract termination fully settled against us for significant or persistent failure to comply with our contractual obligations during such Contract performance, unless this termination was challenged and dispute resolution is still pending or has not confirmed a full settlement against us;
  - 2.5) not having fulfilled the applicable fiscal obligations with regard to the payment of taxes at the respective tax residence and in the country of origin of the PEA (*contractors based in Annex 1 countries (<https://www.consilium.europa.eu/de/policies/eu-list-of-non-co-operative-jurisdictions/>) must submit a fully completed and legally countersigned declaration of tax conformity (Appendix1 to the Declaration of Undertaking) in addition to the Declaration of Undertaking at the time of award of the contract/contract review. This shall become an integral part of the contract. Failure to submit may result in exclusion from the awarding procedure. For*

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15 Capitalised terms used, but not otherwise defined in this Declaration of Undertaking have the meaning given to such term in KfW's "Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partner Countries".

16 The PEA means the purchaser, the employer, the client, as the case may be, for the procurement of Consulting Services, Works, Plant, Goods or Non-Consulting Services.

*contractors based in countries not listed as Annex I countries, only the Declaration of Undertaking must be submitted, and not the declaration of tax conformity);*

- 2.6) being subject to an exclusion decision of the World Bank or any other multilateral development bank and being listed on the website <http://www.worldbank.org/debarr> or respectively on the relevant list of any other multilateral development bank (*in the event of such exclusion, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this exclusion is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*); or
  - 2.7) being guilty of misrepresentation in supplying the information required as a condition of participation in the Tender.
3. We hereby certify that neither we, nor any of the members of our Joint Venture or any of our Subcontractors under the Contract are in any of the following situations of conflict of interest:
- 3.1) being an affiliate controlled by the PEA or a shareholder controlling the PEA, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;
  - 3.2) having a business or family relationship with a PEA's staff involved in the Tender Process or the supervision of the resulting Contract, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;
  - 3.3) being controlled by or controlling another Applicant or Bidder, or being under common control with another Applicant or Bidder, or receiving from or granting subsidies directly or indirectly to another Applicant or Bidder, having the same legal representative as another Applicant or Bidder, maintaining direct or indirect contacts with another Applicant or Bidder which allows us to have or give access to information contained in the respective Applications or Offers, influencing them or influencing decisions of the PEA;
  - 3.4) being engaged in a Consulting Services activity, which, by its nature, may be in conflict with the assignments that we would carry out for the PEA;
  - 3.5) in the case of procurement of Works, Plant or Goods:
    - i. having prepared or having been associated with a Person who prepared specifications, drawings, calculations and other documentation to be used in the Tender Process of this Contract;
    - ii. having been recruited (or being proposed to be recruited) ourselves or any of our affiliates, to carry out works supervision or inspection for this Contract;
4. If we are a state-owned entity, and compete in a Tender Process, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.
5. We undertake to bring to the attention of the PEA, which will inform KfW, any change in situation with regard to points 2 to 4 here above.
6. In the context of the Tender Process and performance of the corresponding Contract:
- 6.1) neither we nor any of the members of our Joint Venture nor any of our Subcontractors under the Contract have engaged or will engage in any Sanctionable Practice, or violate the Guidelines during the Tender Process and in the case of being awarded a Contract will engage in any Sanctionable Practice during the performance of the Contract;
  - 6.2) neither we nor any of the members of our Joint Venture or any of our Subcontractors under the Contract shall acquire or supply any equipment nor operate in any sectors under an embargo of the United Nations, the European Union or Germany; and
  - 6.3) we commit ourselves to complying with and ensuring that our Subcontractors and major suppliers under the Contract comply with international environmental and

labour standards, consistent with laws and regulations applicable in the country of implementation of the Contract and the fundamental conventions of the International Labour Organisation<sup>17</sup> (ILO) and international environmental treaties. Moreover, we shall implement environmental and social risks mitigation measures when specified in the relevant environmental and social management plans or other similar documents provided by the PEA and, in any case, implement measures to prevent sexual exploitation and abuse and gender-based violence.

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

Name: \_\_\_\_\_ In the capacity of: \_\_\_\_\_

Duly empowered to sign in the name and on behalf of<sup>18</sup>: \_\_\_\_\_

Signature:

Dated:

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<sup>17</sup> In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant/Bidder/Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

<sup>18</sup> In the case of a JV, insert the name of the JV. The person who will sign the application, bid or proposal on behalf of the Applicant/Bidder shall attach a power of attorney from the Applicant/Bidder.

## Appendix 1

### *Appendix1 to the Declaration of Undertaking*

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

##### **Name of company**

I hereby confirm with my signature that:

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

.....  
(Place)

.....  
(Date)

.....  
(Name of the consultant)

.....  
(Signature(s))

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

I hereby confirm with my signature that:

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

.....

(Place)

.....

(Date)

.....

(Name of the person)

.....

(Signature)

## Appendix 1b – Declaration of Undertaking (Concise Version)

Reference name of the Application/Offer/Contract: ("Contract")  
To: ("Project Executing Agency")

1. We (including any members of our Joint Venture and any proposed or engaged sub-contractors) hereby confirm that the criteria specified in KfW's "Guidelines for the Procurement of Consulting Services, Works, Goods, Plant and Non-Consulting Services in Financial Cooperation with Partner Countries":
  - a. Art. 1.3.2 (Exclusion criteria) do not apply and
  - b. there is no conflict of interest pursuant to Art. 1.3.3.
2. We (including any members of our Group of companies or Joint Venture and any proposed or engaged sub-contractors) further declare that during the Tender Process, and in case of being awarded a contract during contract performance:
  - a. did not and will not engage in any Sanctionable Practice as defined in KfW's "Guidelines for the Procurement of Consulting Services, Works, Goods, Plant and Non-Consulting Services in Financial Cooperation with Partner Countries" and in case of Sanctionable Practice we are fully bound to Art. 1.4 (Sanctionable Practice).
  - b. commit ourselves to complying with and ensuring that our Subcontractors and major suppliers under the Contract comply with international environmental and labour standards, consistent with laws and regulations applicable in the country of implementation of the Contract and the fundamental conventions of the International Labour Organisation (ILO) and international environmental treaties. Moreover, we shall implement environmental and social risks mitigation measures when specified in the relevant environmental and social management plans or other similar documents provided by the PEA and, in any case, implement measures to prevent sexual exploitation and abuse and gender-based violence.

Name: \_\_\_\_\_ In the capacity of: \_\_\_\_\_

Duly empowered to sign in the name and on behalf of<sup>19</sup>: \_\_\_\_\_

Signature:

Place:

Dated:

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<sup>19</sup> In the case of a JV, insert the name of the JV. The person who will sign the application, bid or proposal on behalf of the Applicant/Bidder shall attach a power of attorney from the Applicant/Bidder.

## Appendix 2 – Procurement Plan

### User's Guidance Notes for the Preparation of a Procurement Plan

Article 1.6.2 of the Guidelines requires the PEA to prepare a Procurement Plan which identifies each Contract to be financed in whole or in part by KfW:

- Contract type (Consulting Services, Goods, Works, Plant or Non-Consulting Services) and content,
- estimated Contract amount, the source(s) of funds and the KfW disbursement procedure,
- envisaged Tender Procedure and Single- or Two Stage Selection,
- envisaged standardised Tender Documents,
- type of review required by KfW (Full Prior Review, Pre-Contract Prior Review, Pre-Contract Prior Review +, or Post Review),
- estimated ESHS risk-level (level 1 – low, level 2 – medium, level 3 – high risk) per Contract (lot) as provisional indication at the time of first establishment of the procurement plan (not equivalent to the ESHS risk category of the whole project (i.e., A, B+, B, C)),
- estimated date of tender publication or, in the case of limited competition, date of inviting firms to submit proposals.

For serial Contracts with similar content and procedures a single Contract may be used as a representation; this shall be described accordingly in the comment column. In the case of programs for which the individual Contracts cannot be identified in advance, the Procurement Plan may include the envisaged Tender Procedures and, where applicable, thresholds for the different types and values of Contracts as far as possible.

The first Procurement Plan shall be initially created, as a draft during the appraisal mission of the project. ~~The Procurement Plan is part of the quarterly reports of the PEA to KfW.~~ Substantial updates, amendments or modifications of the Procurement Plan are subject to KfW's renewed No-Objection. Any modifications should therefore be clearly indicated.

Along with the Procurement Plan the PEA shall provide KfW with the respective rational or explanations in order to document compliance with the Guidelines (e.g., justification in the case of a LCB or a Direct Award).

The Procurement Plan is an annex to a separate agreement to the Funding Agreement or directly to the Funding Agreement. An amendment to the Funding Agreement due to an update, amendment or modification of the Procurement Plan is necessary only if these have significant implications on the Funding Agreement or lead to significant increases of agreed budget items.

For the sake of clarity, KfW's No-Objection to changes in the Procurement Plan does not imply acceptance by KfW of the financing of new Contracts, or the increased cost of Contracts, unless such financing has been agreed upon by KfW as part of the cost and financing schedule in the Funding Agreement.

The establishment of a Procurement Plan is generally not required for prefinanced Contracts as per Article 1.6.8, for indirect financing as per Article 1.6.9 and funding through financial intermediaries as per Article 5.2.

## Appendix 2 – Procurement Plan

(Version No. \_\_\_\_, dated \_\_\_\_)

| Serial No. | KfW Procurement No. <sup>20</sup> | Type of contract <sup>21</sup> | Short Description of Contract Content | Estimated Contract Amount <sup>22</sup> | Source of Funds <sup>23</sup> | KfW Disbursement Procedure <sup>24</sup> | Tender Procedure <sup>25</sup> | Stages <sup>26</sup> | Tender Documents <sup>27</sup> | KfW Review Method <sup>28</sup> | ESHS risk level <sup>29</sup> | Estimated Tender Publication | Comments <sup>30</sup> |
|------------|-----------------------------------|--------------------------------|---------------------------------------|-----------------------------------------|-------------------------------|------------------------------------------|--------------------------------|----------------------|--------------------------------|---------------------------------|-------------------------------|------------------------------|------------------------|
| 1          |                                   |                                |                                       |                                         |                               |                                          |                                |                      |                                |                                 |                               |                              |                        |
| 2          |                                   |                                |                                       |                                         |                               |                                          |                                |                      |                                |                                 |                               |                              |                        |
| 3          |                                   |                                |                                       |                                         |                               |                                          |                                |                      |                                |                                 |                               |                              |                        |
| 4          |                                   |                                |                                       |                                         |                               |                                          |                                |                      |                                |                                 |                               |                              |                        |
| ...        |                                   |                                |                                       |                                         |                               |                                          |                                |                      |                                |                                 |                               |                              |                        |

Additional agreement(s): ..... *List of other procurement related general arrangements or exceptions, if any.*

20 KfW's Procurement No. for the respective Tender Process to be provided by KfW's procurement manager; "n/a" if not yet available.

21 "C" for Consulting Services, "W" for Works, "G" for Goods, "P" for Plant and "NC" for Non-Consulting Services. Incl. Contracts contracted beforehand, if any.

22 Amounts are inclusive of any options and net of value added taxes (VAT). To be completed in the currency of the underlying Funding Agreement with KfW. If possible, broken down to individual tender lots.

23 Share (in %) of the Contract financed by KfW, through the PEA's own funds and/or other financing institutions.

24 To be completed according to Appendix 4 „Disbursement Procedures" of the separate agreement of the funding agreement.

25 "ICB" for International Competitive Bidding, "NCB" for National Competitive Bidding, "LCB" for Limited Competitive Bidding, "Q" for Price Quotation and "DA" for Direct Award. For LCB or Q, at least 3 bidders are usually required.

26 "1" for Single-Stage Selection or "2" for Two-Stage Selection

27 Institution whose standardized Tender Documents are used. It is recommended to use KfW's Standard Tender Documents.

28 "F" for Full Prior Review, "PCPR" for Pre-Contract Prior Review, "PCPR+" for Pre-Contract Prior Review +, or "PoR" for Post Review. This is usually inserted by KfW.

29 Relevant for works and plant contracts and for goods contracts only if it contains significant construction / assembly works. "Level 1" for low, "Level 2" for medium, "Level 3" for high ESHS risk classification or "n/a" if not applicable. The ESHS risk level of a specific Contract is not to be mistaken for the Environmental and Social risk category of the whole project/programme (please note the different classification applied). The classification at the time of first establishment of the procurement plan may be indicative and finalised once the project ESMP is available, but latest when preparing the Tender Documents for the Contract. See also KfW's Standard Tender Documents (e.g., Standard Prequalification Document for Procurement of Works) for further guidance.

30 Contract related explanation / procedural arrangements (e.g., justification for direct award, One-/two-envelope, evaluation method, thresholds for Tender Procedures in programs).

## **Appendix 3 – Minimum Content of a Tender, PQ-Result, Contract Award and Cancellation Notice**

### **Tender Notice**

The PEA shall prepare a tender notice to be published as per Article 2.5.1 including at least the following information:

- Partner Country,
- name and address of the PEA,
- Application/Offer submission details (submission deadline, address, language, originals, copies, etc.),
- title of the project,
- title of the Contract/Lot being procured,
- KfW's procurement number of the Contract being procured,
- type of notice (Tender Notice, PQ-Result Notice, Award Notice, or Cancellation Notice),
- brief description of the project, the context, time schedule and further information,
- brief description of the Contract content to be procured, and
- address where the complete Tender Documents can be obtained.

### **Prequalification-Result Notice**

In the case of Two-Stage Selection, the PEA shall prepare a PQ-result notice to be published as per Article 2.5.7 including at least the following information:

- list with name and country of prequalified Applicants, and
- reference to initial tender notice (including corrigenda, addenda if any), e.g., electronic link to initial tender notice or copy of initial tender notice.

### **Award Notice**

The PEA shall prepare an award notice as per Article 2.5.14 including at least the following information:

- name and country of successful Contractor,
- start and end date of the Contract,
- Contract amount, and
- reference to initial tender notice, e.g., electronic link to initial notice or copy of initial notice.

### **Cancellation Notice**

The PEA shall prepare a cancellation notice as per Article 2.5.16 including at least the following information:

- information about cancellation of Tender Process, and
- reference to initial tender notice, e.g., electronic link to initial notice or copy of initial notice.

### **Addenda/Corrigenda to Initial Notices**

Any addenda/corrigenda to an initial notice shall be published in due time and in the same medium as the initial notice with a reference to the initial notice.

## Appendix 4 – Evaluation Criteria for Procurement of Consulting Services

### 1. Pre-Qualification

To be qualified for a Consulting Services Contract under an ICB procedure Applicants shall demonstrate their qualification in terms of financial capacity, experience and resources in relation to the requirements of the tasks and risks.

The verification of the financial capacity of Applicants shall be the basis of audited income statements and/or balance sheets and take into account the annual turn-over and the profitability of at least the last three years. The annual turn-over should be three times the estimated annual payments received out of the Contract amount; the ratio might be reduced for short term assignments or increased for long-term assignments. Profitability may be demonstrated through a positive cash-flow (in average) and (indirectly) the availability of a credit line. Applicants which do not fulfil the requirements of the Request for Applications shall be rejected.

For verification of adequate experience and resources the following criteria and scoring system should be applied with appropriate project relevant modifications.

| Qualification criteria                                                                                                                                                                                                                                                                                                                                                                                      | Scoring Range |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| 1. Applicant's Experience                                                                                                                                                                                                                                                                                                                                                                                   | 40 – 60       |
| 1.1 Experience in implementing similar projects<br><i>Description of the key features, reference projects shall demonstrate in order to be considered similar to the assignment. If applicable separate sub-criteria for ESHS requirements should be added here.</i>                                                                                                                                        | 25 – 35       |
| 1.2 Experience with working-conditions in developing and/or transition countries/in particular regions.                                                                                                                                                                                                                                                                                                     | 15 – 25       |
| 2. Applicant's Capabilities                                                                                                                                                                                                                                                                                                                                                                                 | 40 – 60       |
| 2.1 Qualitative assessment of the Applicant's available Expertise<br><i>Assessment of the quality of the expertise, to which the Applicant has access to, possibly completed with external expertise for the execution of the assignment in relation to the project team profiles described in the prequalification request. If applicable separate sub-criteria for ESHS requirements should be added.</i> | 25 – 35       |
| 2.2 Quantitative assessment of the Applicant's Human Resources Capacity<br><i>Assessment of the Applicants own human resources in relation to the required expertise as described in the prequalification document. If applicable separate sub-criteria for ESHS requirements should be added.</i>                                                                                                          | 10 – 20       |
| 3. Is the Application concise and related to the project?                                                                                                                                                                                                                                                                                                                                                   | 5             |
| <b>Total Prequalification Score</b>                                                                                                                                                                                                                                                                                                                                                                         | <b>100</b>    |

It is strongly recommended that sub-criteria descriptions be made as detailed and specific as possible. No other sub-criteria are allowed during evaluation than the ones indicated in the prequalification document.

If the Consulting Services are dedicated to project design, tendering and implementation supervision services for Works or Plant Contracts with ESHS risks and no specialised ESHS consultant is engaged, candidates shall be required to demonstrate the ability and capacity to specify and design relevant mitigation and protective measures and to monitor its implementation on site in addition to the above-mentioned requirements. However, ESHS requirements shall be carefully and adequately designed to reflect the ESHS risks associated to the individual Contract under consideration.

In such cases a percentage between 10% and 25% of the qualification criteria 1.1, 2.1 and 2.2 shall be applied to such ESHS experience and capability of the Applicant. The qualification criteria and scheme above shall be adapted accordingly.

Only Applications scoring 70% or more of the total points will be considered as qualified for the Contract. However, if the number of prequalified Applicants exceeds a predefined number as specified in the Request for Application. Applicants will be invited as per their ranking. The number of Applicants to be invited shall be at least five (5) but not more than eight (8). Should the number of prequalified Applicants be below the predefined number the Tender Process may continue with a reduced number of candidates, if i) the Tender Notice has been published widely and ii) the prequalification criteria have not been too ambitious. Otherwise, the Tender Process should be cancelled, followed by a new Tender Process more widely published and/or with amended qualification criteria.

For projects with significant ESHS risks during implementation the prequalification document may specify that Applications which do not meet the minimum ESHS score (usually 70% of the total of the ESHS sub-criteria) shall be rejected, independent from the total score.

## 2. Evaluation of Proposals

The technical evaluation shall be based on the following criteria and point system. No additional criteria or sub-criteria than those indicated in the RFP shall be used for the evaluation of the technical Proposals.

|                              |                                                                                                                                                |    |            |  |
|------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|----|------------|--|
| 1.                           | Concept and methodology                                                                                                                        |    | 35         |  |
| 1.1                          | Clarity and completeness of the tender                                                                                                         | 5  |            |  |
| 1.2                          | Critical analysis of the project objectives and the Terms of Reference (TOR)                                                                   | 10 |            |  |
| 1.3                          | Proposed concepts and methods <i>[If applicable add separate sub-criteria for ESHS requirements]</i>                                           | 20 |            |  |
| 2.                           | Qualifications of proposed staff <i>[If applicable add separate sub-criteria for ESHS requirements to the team or individual team members]</i> |    | 65         |  |
| 2.1                          | Team leader/portfolio manager                                                                                                                  | 30 |            |  |
| 2.2                          | Other Key staff to be employed on the project                                                                                                  | 30 |            |  |
| 2.3                          | Personnel in the home office who will monitor and control the team, and provide back-up services                                               | 5  |            |  |
| <b>Total Technical Score</b> |                                                                                                                                                |    | <b>100</b> |  |

The sub-criteria and point system indicated above are indicative. It is strongly recommended that sub-criteria descriptions be made as detailed and specific as possible. Depending on the nature of the assignment the distribution of points may vary from the one indicated above between 35 to 65 points for the staff proposal.

In the case the project structure does not foresee the assignment of a dedicated ESHS consultant during execution of Works/Plant Contracts by contractor(s) the implementation consultant will be required to oversee that ESHS requirements are adequately addressed and adhered to during project implementation. In line with the ESHS requirements during the prequalification phase, the evaluation of the consultant's concept and the proposed team shall take into account ESHS aspects accordingly.

In such a case a percentage between 10% and 25% of the score for concept and methodology (1.3) and for the proposed team (2.) shall be dedicated to ESHS). The Consultant shall be required to demonstrate which of the team member(s) are responsible for such ESHS issues. The evaluation criteria and scheme above shall be adapted accordingly.

For projects with significant ESHS risks during implementation the RfP may specify that technical Proposals which do not meet the minimum ESHS score (usually 70% of the total of the ESHS sub-criteria) shall be rejected, independent from the Total Technical Score.

The evaluation of the technical and the financial Proposals shall take place as detailed in Article 3.4.1. Upon conclusion of the technical evaluation the weighted technical score of those Proposals having achieved the technical minimum score shall be calculated as follows:

$PT = WT * T$ , with

PT = weighted technical score (points) of the technical Proposal,

WT = weight (factor) of the technical Proposal

T = technical score (points) as per technical evaluation,

After evaluation of the relevant financial Proposals the financial score shall be calculated:

$PF = WF * (Co / C) * 100$  points, with

PF = weighted financial score (points) of the financial Proposal,

WF = weight (factor) of the financial proposal

Co = lowest evaluated price (monetary units) of all financial Proposals

C = evaluated price (monetary units) of the financial Proposal,

and finally, the overall score shall be calculated as follows:

$P = PF + PT$  and whereas  $WT + WF = 1$ .

Under Quality Cost based selection (QCBS) method the weightings should generally be 80% (WT = 0.8) for the technical Proposal and 20% (WF = 0.2) for the financial Proposal, under Fixed Budget Selection (FBS) and Quality Based Selection (QBS) methods the weighting of the technical proposal is 100 % (WT = 1). For Least Cost Selection (LCS) only the price is relevant for the ranking (WF = 1).

## Appendix 5 – Minimum Content of Tender Documents

### **Request for Application**

Requests for Application are to be used for Prequalification of Applicants in Tender Processes with Two-Stage Selection and include the following minimum content:

- (1) General information about the PEA issuing the tender, source of funds and entity conducting the Tender Process including contact details;
- (2) description of the whole Prequalification process, including e.g., conditions of participation, format and list of documents to be submitted by Applicants, deadlines for clarification requests and Application submission, evaluation criteria and method;
- (3) short description of the Contract content
- (4) application forms, which reflect the eligibility and evaluation criteria and
- (5) KfW's Declaration of Undertaking.

### **Request for Proposal/Invitation to Bid**

Requests for Proposal/Invitations to Bid are to be used for selection of Contractors in Tender Processes with Two-Stage or Single-Stage Selection and include the following minimum content:

- (1) General information about the PEA issuing the tender, source of funds and entity conducting the Tender Process including contact details;
- (2) description of the whole Offer process, including e.g., conditions of participation, format and list of documents to be submitted by Bidders, deadlines for clarification requests and Offer submission, evaluation criteria and method;
- (3) in the case of Single-Stage Selection eligibility criteria, qualification criteria and evaluation method of the latter.
- (4) detailed Terms of Reference/technical specifications, including e.g., context of the project and ESHS requirements, expected outcomes of the Contract, respective responsibilities of the contracting parties and duration of the Contract;
- (5) draft Contract;
- (6) Forms or requirements for the preparation of the technical and financial Offer, which reflecting the specifies requirements
- (7) KfW's Declaration of Undertaking.

## Appendix 6 – Minimum Content of Minutes of Application/Offer Opening and Evaluation Reports

The PEA shall provide KfW with a report of the opening (minutes of Application/Offer opening) and of the evaluation of Applications (Prequalification evaluation report) and Offers (Proposal/Bid evaluation report) as defined in the Guidelines.

These reports contain the following information:

### **Minutes of Application/Offer Opening**

- (1) Names of persons in charge of Application/Offer opening (Application/Offer opening committee);
- (2) Names of other participants (e.g., representatives of Applicants/Bidders);
- (3) Date, time and venue of Offer opening;
- (4) Statement on the status of the envelopes:
  - timely or delayed delivery,
  - number of Application/Offer originals/copies,
  - envelope(s) sealed properly;
- (5) Short description of opening procedure:
  - Which envelope has been opened? Outer/inner envelope? Envelope containing qualification documents, technical Offer and/or financial Offer?
  - Which envelopes remain closed?
  - For financial Offer opening: price as per price sheet to be stated;
- (6) Date of preparation of the report and signature of all members of the Application/Offer opening committee.

For paperless e-procurement Tender Processes equivalent evidence of Offer opening needs to be provided.

### **Prequalification and Offer Evaluation Reports**

On completion of the Application/Offer evaluation the PEA must prepare a detailed report on the evaluation and comparison of the Applications/Offers including a substantiated recommendation for the invitation of prequalified Applicants (RfP/ITB) or Award of Contract. The PEA must coordinate the Award of Contract with any government agencies of the Partner Country whose involvement may be required.

- (1) Introduction
  - Short information on project and Contract content;
  - Tender Procedure (e.g., ICB, NCB), Single- or Two-Stage Selection, One- or Two-Envelope Submission;
  - What/which stage/envelope is being evaluated in the present report (e.g., Prequalification evaluation, technical Offer evaluation, financial Offer evaluation, combined evaluation);
  - Names of persons in charge of Application/Offer evaluation (members of Application/Offer evaluation committee);
  - Start and end of Application/Offer submission period, including any extensions thereof with reasoning and proof of its publication;
  - Date and medium of publication of tender notice and in the case of Two-Stage Selection PQ-result notice, or when and how the invitation was delivered to the interested/preselected Person (evidence of publication to be attached as annex to the report in the case of an ICB and an NCB);
  - In the case of a pre-bid meeting: date, time and venue; participants and minutes of meeting to be attached as annex to the report;

- Clarifications/addenda to Tender Documents during the Application/Offer submission period (any clarifications with Applicants/Bidders during the Application/Offer submission period and during the evaluation phase to be attached as annex to the report).

(2) Results of Preliminary Examination

- Names of all Applicants/Bidders
- Minutes of Application/Offer opening to be attached as annex to the report);
- If the Application/Offer fails preliminary acceptance, the reasons must be clearly explained
- Applications/Offers which have been considered for further evaluation.

(3) Application/Offer Evaluation Process

- Basis for evaluation (e.g., KfW's Guidelines, Tender Documents, Public Procurement Regulations);
- Results of evaluation (usually a summary is provided in the report and details are provided as annex to the report)
- pass/fail criteria: have they been met or not?
- scoring criteria: every score needs to be justified in accordance with the evaluation criteria and matrix.

(4) Conclusion

- List of Applicants proposed to be invited to submit an Offer (Prequalification evaluation report), or which Bidders have submitted a technically responsive Offer and can be considered for financial evaluation, or which Bidders have submitted a responsive financial offer;
- List of identified errors, omissions, deficiencies or other subject matter for each Offer substantially compliant with the requirements of the RfP/ITB and which will be subject to clarifications before Award of Contract;
- Which Applicants/Bidders are rejected and for what reason;
- Final ranking, which Offer is first ranked/has the lowest evaluated price and thus is proposed for Award of Contract;
- Signature of all members of the Application/Offer evaluation committee and the Consultant's statement, where applicable.

In order to assess the provided reports KfW reserves the right to ask the PEA for further documents, e.g., complete Offers or extracts thereof.

## Appendix 7 – Contractual Provisions

Contracts between the PEA and its Contractors for Consulting Services, Works, Plant, Goods and Non-Consulting Services Contracts shall include appropriate terms and conditions with a fair distribution of risks between the contractual parties and shall adhere to the contractual provisions below.

### 1. Contract Models

KfW strongly recommends that Contracts be based on internationally recognised and accepted model Contracts such as those published by FIDIC (Fédération Internationale des Ingénieurs Conseils) for Works and Plant. For Consulting Services KfW makes available model Contracts reflecting international best practice. These Contract forms are integrated in KfW's standardised Tender Documents, which the PEA is encouraged to use. The original general conditions of Contract of these model Contracts shall remain unchanged. Any project specific adaptation shall be included in their special conditions without substantial modification of the general conditions of Contract.

In the case of using other Contract forms the provisions included therein shall adhere to the rules below for Contracts awarded under ICB and as far as applicable in Contracts under NCB or any other tender procedure as per article 2.1 of these Guidelines.

The Tender Documents shall include a draft Contract model or at least inform on the major contractual and commercial conditions (e.g., payment terms, required guarantees, applicable law, provisions for price adjustment, if any, defects liability period, force majeure).

### 2. Contractual Requirements

#### 2.1 Performance Parameters

Performance parameters or characteristics which were taken into account during the evaluation of Offers for Work, Plant or Goods (e.g., efficiency ratio, cost of consumables, output performance, emissions) shall be reflected in the Contract as offered by the Bidder, or as finally agreed upon by the contractual parties. The Contract should also include provisions in the case of variations of such parameters over time and indemnification in the case of underachievement.

#### 2.2 Liability

Provisions regarding liability between the contractual parties shall be formulated in such a manner as to prevent any gaps in liability. Whenever a JV is awarded a Contract the JV partners shall be jointly and severally liable.

#### 2.3 Defaults

The Contract shall include provisions such as suspension and termination, addressing contractual defaults by either party.

#### 2.4 Payment Terms

The contract shall include full details of a single bank account for all payments to the Contractor (including when the Contractor is a Joint Venture) in the following or similar format:

*Payments shall be made to the following account:*

*Account holder/account name (if different from the account holder):*

*Bank:*

*BIC:*

*Account number:*

*Currency of account:*

*(where applicable) IBAN:*

*(If the Consultant's account-holding bank is not located in the currency area of the currency of payment the additional BIC of the correspondent bank is obligatory): BIC of correspondent bank.*

Payment terms shall be in accordance with the international commercial practices applicable to the type of Contract (Consulting Services, Works, Plant, Goods and Non-Consulting Services) and be designed for efficient disbursement procedures (e.g., minimum disbursement amounts, especially if agreed in the Funding Agreement; avoidance of multiple recipients of payments, notably

in the case of JVs; payments preferably in EUR or USD). In the payment terms, the amounts shall be indicated in words and figures as well as percentages(if applicable).

Contracts for Goods usually provide for full payment on the delivery and inspection (if required) of the contracted Goods, except for Contracts involving installation and commissioning; for such contracts, a portion of the payment may be made as advance payment and final payment after the Contractor has complied with all its obligations under the Contract.

Contracts for Works, Plant and Non-Consulting Services may be either ad measurement Contracts or lump sum Contracts. Typically, ad measurement Contracts are most suited when the PEA provided the design for the contractual content and/or the nature of the contractual content is not suitable for lump sum remuneration due to high unforeseen risks (e.g., rehabilitation of a power plant). Ad measurement Contracts usually include an advance payment of up to twenty (20) percent, regular interim payments depending on the progress and a final payment of up to ten (10) percent, payable upon taking over or the issuance of the preliminary acceptance. Lump sum remuneration is applied mostly to Contracts under which the Contractor is responsible for the design of the Works or Plant to be delivered (e.g., turn-key Contracts, design-build-operate Contracts). Payment terms usually include either regular percentage-based instalments or instalments against the achievement of predefined milestones.

Contracts for Consulting Services may include remuneration on a lump sum or on a time-based basis or a combination of both. Typically, feasibility studies, expert opinions, short term advise, construction design and elaboration of Tender Documents are most suited for lump sum remuneration. Payment terms usually include either regular percentage-based instalments or instalments against the delivery of documents or services. Implementation supervision services and long-term technical assistance or training services are usually remunerated on a time-based basis. Such Contracts foresee an advance payment of up to twenty (20) percent, regular interim payments, preferably on a quarterly basis and a final payment generally between five (5) and ten (10) percent, payable upon acceptance of the services.

## **2.5 Guarantees and Securities**

The presentation of an advance payment guarantee in the same amount as the advance payment is generally conditional for the payment of the advance payment. The advance payment guarantee ensures that in the case Contracts are not performed the PEA will be refunded. Depending on the volume and the associated risk, KfW may agree to waive this requirement. The contracts as well as amendments should always contain explanations of the settlement mode of the advance payment guarantee.

A performance security in accordance with the usual business practice in the particular sector is generally required to guarantee that all contractual obligations will be duly fulfilled by the Contractor throughout the whole Contract period for Contracts for Works, Goods, Plant and major Non-Consulting Services Contracts. The performance security amounts up to ten (10) percent of the Contract value until preliminary acceptance and a portion of it, usually half of the initial amount, shall be extended to cover the defects liability period or the maintenance period.

A retention money security is required if after preliminary acceptance the terms of payment foresee the payment of retention money withheld on interim payments. The retention money security usually is half the amount of the performance security and is to guarantee that Contractors fulfill the remaining obligations after preliminary acceptance during the defects liability or the maintenance period.

Both, the advance payment guarantee, and the performance security shall be abstract guarantees, valid until the secured performance has been affected. In the event of a postponement of the completion date laid down in the initial Contract, the PEA needs to request an extension of the performance security and retention money security from the Guarantor. Such request shall be in writing and must be made prior to the expiration date established in the security.

Contractors shall be allowed to submit guarantees or securities by a reputable bank of their choice. However, if the guarantor is located outside the PEA's country, if it is not enforceable, the guarantor shall have a correspondent financial institution located in the PEA's country to make it enforceable. In exceptional cases and upon prior approval, KfW may accept guarantees and securities from insurances.

For samples of KfWs' various types of guarantees and securities see Appendix 8. The use of other forms of guarantees or securities requires KfW's prior approval.**2.6 Price Adjustment**

The Contract shall state either a) that Contract prices shall be fixed or b) that Contract price adjustments will be made to reflect any changes in major cost components of the Contract, such as labour and materials. The Contract may include the possibility of either a general price adjustment applicable after a predefined number of month (generally between 18 to 24) from a defined date (generally Offer submission or Offer expiry date) for all contractual items or an index-based price adjustment for price sensitive items (e.g., steel, copper, aluminum or fuel) applicable at the time of purchase or billing.

The formula, the applicable price indices, and the base date for application shall be clearly defined in the Contract. The Contract shall also have appropriate provisions for treatment of the impact changes in laws and regulations on the Contract, including taxes and duties in the PEA's country, if after 28 days prior to the date of Offer submission, that subsequently affects the Contract completion period/delivery date and/or the Contract price.

## **2.7 Taxes, Duties and Levies**

Contracts shall have provisions on the treatment of taxes and public duties, payable by the Contractor in the Partner Country and reflect the tax provisions in the Tender Documents. Generally, only identifiable local taxes and public duties directly attributable to the Contract shall be considered in this context (e.g., VAT or withholding tax on revenue or income generated through the Contract). Depending on the legal situation governing the Contract the following general cases may occur:

- the Contractor and its staff are exempted from local taxes and public duties, in such cases a copy or at least a reference to the legal act testifying the tax exemption should be attached to the Contract,
- the Contractor and its staff are subject to local taxes and public duties directly attributable to the Contract and the PEA will either remunerate the Contractor or pay these taxes and duties on behalf of the Contractor to tax authorities. In such cases the Contract should specify the nature and amounts of taxes and the procedure of invoicing by the Contractor and the mode of payment by the PEA,
- the Contractor and its foreign staff are subject to local taxes and public duties directly attributable to the Contract which will be borne by the Contractor and its staff. In such cases offered prices are considered inclusive of local taxes and public duties, i.e., local taxes and public duties shall be considered to be included in the overhead cost calculation and will not be subject to any separate payment.

The Contract shall include a provision for the handling of any changes in local tax law after Award of Contract which has an effect on the cost incurred by the Contractor or its foreign staff and should include the mode of remuneration of an increase or decrease in costs.

For the sake of clarity, other local taxes not directly attributable to the Contract (e.g., profit tax, corporate tax, income tax) as well as tax liabilities of the Contractor and its staff outside the Partner Country shall be included in the overhead cost calculation and will not be subject to any separate remuneration.

## **2.8 Warranty/Defects Liability Period**

The Contractor's warranty or defects liability period shall be defined in accordance with international industry practice, generally 12 to 24 months. The Contract should further include provisions if the Contractor fails to remedy defects after a given time for reasons attributable to him.

## **2.9 Liquidated Damages**

The time for the completion of Works/delivery of Goods or services shall be specified, generally in the form of a contractual time schedule. Provisions for liquidated damages or similar provisions shall be included in the Contract when delays in the delivery of Consulting Services, Goods, completion of Works, or failure of the Goods, Works, and Non-Consulting Services to meet performance requirements would result in extra cost or loss of revenue or other benefits to the PEA. The amount of the liquidated damages is usually a specific amount or a portion in relation to a time unit

(e.g., an amount of money or percentage of the Contract price per week) with a ceiling (usually five to 10 per cent of the Contract price).

In exceptional cases provision may also be made for a bonus to be paid to Contractors for completion of Works or delivery of Goods ahead of the times specified in the Contract when an earlier completion or delivery would be of benefit to the PEA.

## **2.10 Insurance**

Contracts shall include types and terms of insurance to be provided by Contractors. Normally Works, Plant and complex Goods contracts shall include an 'all risk' type of insurance policy shall be specified to ensure replacement in the event of damage or loss and injury to any person and Contractor's personnel and damage to property.

Transport insurance for Goods shall be at least 110% (one hundred and ten) of the CIP price of the Goods on "all risks" basis and should include war risks and strike clauses.

Contracts for Consulting Services should include insurance cover for professional and personal liabilities and, if relevant, insurance for loss or damage for equipment or for motor vehicle third party liability for vehicles if such equipment or vehicles are paid by the PEA and used by consultant, in the context of the Contract.

In the case of Contracts in foreign currency payments due from the insurance undertaking shall be made in the same currency of the Contract or in a freely convertible currency on an account to be provided by the PEA after consultation with KfW.

## **2.11 Force Majeure**

The Contract shall include provisions for events of force majeure that prevent the parties to perform their contractual obligations. Such events are beyond the control of any of the parties to the Contract, such as natural disasters, war, or disruption of public order. The provisions shall include stipulations for adequate adaptation of the contractual time schedule, extraordinary measures by a Contractor to prevent or reduce damage, reimbursement of the Contractor for such measures and a termination clause, in the case force majeure persists including the mode of compensation of the Contractor.

## **2.12 Applicable Law, Settlement of Disputes and Arbitration**

The applicable law shall be specified in the Contract between the PEA and the Contractor as well as the procedure for the settlement of disputes and arbitration. The provisions should foresee an amicable settlement of disputes between the parties as the first option. The place of arbitration shall be determined by agreement between the PEA and the Contractor.

In complex infrastructure projects the nomination of one or more dispute adjudicators should be foreseen as well as the rules for the arbitration procedure. The last and final instance for the settlement of disputes should be international commercial arbitration, preferably by recourse to the International Chamber of Commerce (ICC). Instead, or in addition to dispute adjudication a mediation procedure might also be taken into account, especially for Contracts with a small Contract value.

KfW shall not be appointed as an arbitrator, nor be requested to appoint one.

## **2.13 Use of Results**

The Contractor shall grant the PEA and KfW and, if required the provider of the funds (e.g., German Government or European Union) the right to use, to share, to publish, to duplicate, to quote preferably free of charge the results of the project, including reports and documents relating to it.

## **2.14 Communication and Visibility**

The Contractor shall be required to indicate the provider of the funds for the Contract (e.g., the German Government or European Union) according to the requirements of the respective institution<sup>31</sup>. Depending on the nature of the Contract this may include an indication on the provider of the funds on documents, on publicity material or on reports as well as a logo on vehicles, major

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<sup>31</sup> Further details can be made available on request

equipment and major supplies purchased with these funds and indications on the provider of the funds on temporary construction site display panels or an acknowledgment on permanent display panels.

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

### **2.15 Declaration of Undertaking**

A Declaration of Undertaking<sup>32</sup> as per Appendix 1 duly signed by the Contractor shall be attached to the Contract as an integral part of it.

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<sup>32</sup> For Tender Procedures with an estimated Contract amount below 20,000 EUR (twenty thousand Euro), a concise version of the Declaration of Undertaking may be used.

## Appendix 8 – Models for Guarantees and Securities

### Appendix 8.1 - Advance Payment Guarantee

**Beneficiary:** *[insert name and address of PEA]*

**Date of Issue:** *[insert date]*

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

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

We have been informed that *[insert name and address of Contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called “the Contractor”) has entered into Contract No. *[insert reference number of the Contract]* dated *[insert Contract date]* with the Beneficiary, for the execution of *[insert object of the Contract and brief description of the contractual content]* (hereinafter called “the Contract”). Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of *[insert amount and currency in words and figures]*<sup>33</sup>, representing *[insert percentage in words and figures]* percent of the Contract price is to be made against an advance payment guarantee.

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

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

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

This guarantee shall be automatically reduced pro rata in accordance with the payments performed and expire not later than *[insert expiry date]*.

Any demand for payment must be received by us at this office on or before that date by letter or encoded telecommunication.

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

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

*[In the case the issuing bank will not add the preferred option, insert: This guarantee is governed by the law of [insert country of jurisdiction where the bank’s branch issuing the guarantee is physically located].*

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Place, date

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Guarantor’s authorised signature(s)

*Note: All italicised text (including footnotes) is for use in preparing this form and shall be deleted from the final version.*

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<sup>33</sup> This guarantee must be issued in the Contract currency only.

## Appendix 8.2 - Performance Security

**Beneficiary:** *[insert name and address of PEA]*

**Date of Issue:** *[insert date]*

**PERFORMANCE SECURITY No.:** *[insert security reference number]*

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

We have been informed that *[insert name and address of Contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called "the Contractor") has entered into Contract No. *[insert reference number of the Contract]* dated *[insert Contract date]* with the Beneficiary, for the execution of *[insert object of the Contract and brief description of the contractual content]* (hereinafter called "the Contract"). Furthermore, we understand that, according to the conditions of the Contract, a performance security is required for *[insert percentage in words and figures]*<sup>34</sup> percent of the Contract price.

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

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

This security shall expire not later than *[insert expiry date]*<sup>35</sup>. By this date we must have received any claims for payment by letter or encoded telecommunication.

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

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

*[In the case the issuing bank will not add the preferred option, insert: This guarantee is governed by the law of [Insert country of jurisdiction where the bank's branch issuing the guarantee is physically located].*

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Place, date

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Guarantor's authorised signature(s)

*Note: All italicised text (including footnotes) is for use in preparing this form and shall be deleted from the final version*

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<sup>34</sup> This security must be issued in the Contract currency only.

<sup>35</sup> This security shall be valid for at least 28 calendar days as of the completion date laid down in the Contract (including warranty obligations).

## Appendix 8.3 - Retention Money Security<sup>36</sup>

**Beneficiary:** *[insert name and address of PEA]*

**Date of Issue:** *[insert date]*

**RETENTION MONEY SECURITY No.:** *[insert guarantee reference number]*

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

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

Furthermore we understand that, according to the conditions of the Contract, the Beneficiary retains moneys up to the limit set forth in the Contract ("the Retention Money"), and that when the taking-over certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, payment of *[insert the second half of the Retention Money amount and currency in words and figures or if the amount guaranteed under the Performance Security when the taking-over certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security]* is to be made against a Retention Money security.

Waiving all objections and defences, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert security amount and currency in words and figures]*<sup>37</sup> upon receipt by us of the Beneficiary's first demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Contractor is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or show grounds for the demand or the sum specified therein.

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

In the event of any claim under this security, payment shall be effected to *[insert the account on which payments are to be made]*, for the account of *[insert name of the Beneficiary and the Beneficiary's country]*.

This security shall expire not later than *[insert expiry date]*<sup>38</sup>.

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

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

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

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<sup>36</sup> This model is designed for Works, Plant and similar Contracts, if used exceptionally, for Consulting Services the text needs to be adapted

<sup>37</sup> The Guarantor shall insert an amount representing the amount of the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the taking-over certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and denominated in the Contract currency(ies) only.

<sup>38</sup> Insert the same expiry date as set forth in the performance security, representing the date twenty-eight days after the completion date described in the Contract. The Beneficiary should note that in the event of an extension of this date for completion of the Contract, the Beneficiary would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Beneficiary might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

*[In the case the issuing bank will not add the preferred option, insert: This guarantee is governed by the law of [insert country of jurisdiction where the bank's branch issuing the guarantee is physically located].*

---

Place, date

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Guarantor's authorised signature(s)

*Note: All italicised text (including footnotes) is for use in preparing this form and shall be deleted from the final version.*

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