

Financial Cooperation

# »» Assignment of Consultants



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

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## CHANGES TO PREVIOUS VERSION

<b>Date</b>	<b>Chapter</b>	<b>Contents</b>
01.08.2016	Various	Correction of typing errors
	1.17c)	Clarification regarding participation of state owned bidders
	1.17e)-f)	Inclusion of subcontractors
	2.04/2.05	Change in numeration of paragraphs
	2.06	Clarification on opening of documents
	2.09/2.22	Addition regarding clarification, communication with bidders
	Annexe 4	Declaration of undertaking: Clarification on core labour standards, environmental and social standards and health and safety

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## Introduction

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

These Guidelines provide information on the minimum requirements when contracting Consultants<sup>1</sup> in projects or programmes supported by KfW Development Bank using funds of German Financial Cooperation (FC), other German budget funds, KfW's own funds or funds of other donors. These Guidelines are based on standard international procedures and norms.

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

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

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

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

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

## **What is Financial Cooperation?**

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

## **1 Basic Principles**

### **1.1 Validity of the Guidelines**

1.01 These Guidelines apply to the procurement of all advisory and consulting services that are financed in full or in part by KfW Development Bank using funds of German Financial Cooperation (FC), other German budget funds or KfW's own funds. They are also used when assuming delegated cooperation, except where otherwise agreed with the mandator. The Guidelines also apply in cases where KfW awards contracts in its own name<sup>3</sup>, unless German law provides otherwise.

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

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

### **1.2 Responsibility for the assignment of Consultants**

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

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

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

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

### **1.3 The role of KfW**

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

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

1.08 All documents to be published for the Declaration of Interest and the Invitation to Tender<sup>4</sup>, the selection of the Consultant and the draft consulting contract shall require the prior approval of KfW<sup>5</sup>. Similarly, any amendments to the contract and the acceptance of consulting services by the Client must be presented to KfW for prior approval. A list of the procedures to be followed and the documents to be presented to KfW is included in Annex 2.

1.09 KfW may refuse to finance consulting services and even the entire FC project if a Consultant has not been selected in accordance with the agreed procedures, if the qualifications of the Consultant do not meet the tender specifications, if the terms of the consulting contract do not meet KfW's minimum requirements, if the selection procedure has been influenced by illegal payments, the granting or promise of other advantages, or if circumstances suggest that such influence has been exercised.

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

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



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

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

#### **1.4 Public, fair and transparent invitation to tender**

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

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

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

#### **1.5 Confidentiality**

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

1.16 Discussions with bidders on their bids are not permitted between publication of the invitation to tender and award of the contract. Exceptions are on-site visits to obtain information, participation in a meeting of pre-selected bidders or inspection of the available documents. These contacts are exclusively intended to familiarise bidders with the local conditions and the available working documents. Beyond this only written enquiries requesting clarification are permitted. Such enquiries will be answered by the Client in writing, and a copy will be sent to all the bidders. Any other enquiries or interventions are

prohibited and will lead to the exclusion of the bidder (see Section 2.8 concerning notification of the bidders after completion of the procedure).

## **1.6 Bidders entitled to take part in the procedure**

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

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

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

## **1.7 Independence of the Consultant**

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

1.19 Consultancy firms that belong to the same group of companies or affiliated companies or are linked in another way financially, organisationally or through personnel, can participate in the competitive tendering procedure individually only if no other member of the group or affiliation participates.

## **1.8 Cooperation between bidders**

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

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

1.22 Should such cooperation be proposed the documents submitted for the prequalification process must contain the necessary information on all the intended partners. In particular, they must include a binding description of their competences, fields of work, and the form the cooperation will take. The documents must include a declaration of intent signed by all the partners and naming the consultancy firm that will direct the work. If they are awarded the contract, the partners undertake to take all the steps necessary to perform the work described in the documents as stated and in the form of cooperation as stated. Groups of bidders<sup>6</sup> are required to enter into an agreement with joint and several liability. In particular cases (e.g. large projects), the request for tenders may require presentation of a detailed and binding agreement between the partners in a group (e. g. in the form of a preliminary contract).

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<sup>6</sup> Consortia, joint ventures etc.

## **1.9 The contract**

1.23 KfW will provide a model contract<sup>7</sup> which standardises the contents and formal requirements for consulting contracts, and which should be used wherever possible. Insofar as the parties to the contract deviate from this, the contract for consulting services shall be prepared on the basis of internationally recognised practices and standards. It shall include at least the provisions described in Annex 8. If no draft contract is enclosed with the tender documents, the main contractual arrangements that govern or affect costs shall be listed separately in the text of the invitation to tender.

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

## **2 Procedure for International Public Invitation to Tender**

### **2.1 Basic principle, publication and deadlines**

2.01 The procedure for procuring consulting services usually comprises an international, public and unrestricted invitation to tender conducted in two stages, namely prequalification and competitive tendering pursuant to Sections 2.2 and 2.3. In the first stage of the procedure the general suitability of the bidders<sup>8</sup> is examined; in the second stage a competition among the prequalified bidders is held to select the bidder who has submitted the best bid in terms of the quality of services offered and the price for those services.

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

2.03 The international, public and unrestricted invitation to tender shall be published through media with an international reach, and in the partner country. Publication will be initiated by the Client. International publication of the invitation to tender shall include at least the channels of Germany Trade and Invest<sup>9</sup> (GTAI). This publication will be free of charge. The Client shall supply GTAI with the text of the notice, plus one complete set of the tender documents free of charge. Publication in the partner country shall take place in accordance with the local regulations applicable to the Client. The invitation to tender may not be published in the partner country or elsewhere earlier than it is published through GTAI. The

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<sup>7</sup> The model contract is available in the download center on KfW's website ([www.kfw.de](http://www.kfw.de)).

<sup>8</sup> The term "bidder" is used synonymously with the term "applicant".

<sup>9</sup> Full name: Germany Trade and Invest – Gesellschaft für Außenwirtschaft und Standortmarketing mbH; website: [www.gtai.de](http://www.gtai.de), for full address details see Annex 3

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

2.04 The deadlines for preparation of the prequalification documents and for preparation of the bids must take due account of the particular circumstances of the project, its size and complexity, and ensure sufficient and transparent competition. Deadlines shall be at least 30 calendar days for prequalification procedures and 45 calendar days for bids. The deadlines may only be extended under special circumstances. All bidders must be notified of such an extension in writing after KfW has received advance notification, in good time prior to expiry of the deadline originally specified.

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

2.05 Prequalification documents and bids are to be submitted on paper and in electronic form as PDF files on standard electronic media. The storage media have to be packed into the respective separated envelopes (see 2.12). The electronic files must not permit further manipulation of the content stored. The submission of documents in electronic form is possible with prior approval of KfW subject to the use of an e-tendering platform that safeguards the confidentiality of the tender procedure.

2.06 The documents submitted by the bidder should be opened as close as possible to the submission date and – unless otherwise specified in more detail - in the presence of at least one witness (dual control principle). Before opening the documents, a record, which is to be attached to the evaluation report, is to be prepared and signed by all persons present during the opening of the documents. If the tender procedure requires that documents are to be submitted in separate envelopes (e.g. separate technical proposal and price quotation) to be evaluated consecutively an opening protocol for each opening session shall be produced. The protocol shall report whether the document was sealed properly when opened and whether it was submitted in time, as well as the bid price without examination.

## **2.2 Prequalification**

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

- a) absence of criteria for exclusion pursuant to Sections 1.6 and 1.7;
- b) experience with implementing comparable projects in the sector concerned, usually over no less than the last five years;

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

2.08 The minimum requirements to qualify for the assignment as well as the prequalification evaluation scheme (for further details and explanations see Annexes 3 and 5) will be published in the prequalification notice.

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

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

### **2.3 The tendering phase**

2.11 The Client will invite prequalified Consultants to submit an offer and send them a description of services to be performed (terms of reference), additional project related information bidders need to prepare sound technical and financial offers, as well as financially relevant draft contract data (details on the invitation to tender are given in Annex 6). The terms of reference will state whether remuneration will be paid according to actual work performed or on a lump-sum basis. In the case of lump sum remuneration, the terms of reference will define which positions are considered key personnel and are to be described in detail in the technical proposal. The Client will submit the tender documents to KfW for approval in due time before publication.

2.12 The technical and the financial offer shall be submitted separately in two sealed envelopes. One original of each must be sent to the Client or to a representative designated by it, and one copy of each sent to KfW, to the addresses specified and by the deadline given in the request for tenders. After that date no amendments or additions may be made to the bids. Any attempt to do this will result in the bidder concerned being excluded from the remainder of the selection process. The bids for services will be opened immediately after expiry of the deadline for submission of bids. The envelopes containing the price quotations

will remain sealed, and will only be opened with KfW's approval for those bidders who have achieved at least 75% of the points to be awarded in the assessment of the bids for services.

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

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

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

## **2.4 Evaluating the bids**

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

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

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

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

included in the assessment of price quotations if all bidders were requested to submit such offers in accordance with the terms of the invitation to tender.

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

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

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

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

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

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

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



## **2.5 Rejection of bids**

2.24 Bids will be in principle rejected if:

- a) the Consultant has influenced or attempted to influence the selection procedure with illegal payments or by granting or promising other advantages, or if circumstances suggest that such influence has been exercised;
- b) the bid has been received at the location specified in the announcement after expiry of the deadline for submission of bids, unless the bidder can prove that it is not responsible for the delay, which is due to force majeure (delays in delivery by courier services do not constitute force majeure);
- c) the bid does not fulfil the criteria in the invitation to tender in essential points, such as the prescribed conditions of contract or key specifications;
- d) the bid contains significant provisos or restrictions;
- e) the statement by the bidder that it is associated with other companies does not clearly show that the former or the latter will not apply to participate in the same project as manufacturers, suppliers or construction firms;
- f) the bidder has not submitted a Declaration of Undertaking signed with legal effect pursuant to Annex 4, insofar as this was not already obtained as part of the prequalification process.

## **2.6 Cancellation of the invitation to tender**

2.25 The invitation to tender may be cancelled if:

- a) there was no adequate competition;
- b) none of the bids for services achieved the required minimum number of points;
- c) fundamental technical or financial aspects on which the invitation to tender was based have changed significantly prior to award of the contract; or
- d) the price quotations are obviously and clearly excessive.

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

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

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

## **2.7 Negotiating the contract**

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

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

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

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

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

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

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

## **2.8 Notification of the bidders and complaints**

2.35 After conclusion of the contractual negotiations and after KfW has given its consent, the Client will notify all bidders of the award decision. On request by the bidders, the Client

may inform them of the main weaknesses of their bids. No details on the award decision will be disclosed. The bidders who were not included in the assessment of the price quotations will have their price quotations returned unopened. There is no right of appeal for the bidders beyond the rights provided for in the laws of the partner country.

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

### **3 Other Forms of Procurement**

#### **3.1 Deviations from the principle of international public invitation to tender**

3.01 With KfW's prior approval, the principle of international, public and unrestricted invitation to tender may be waived in the cases described below. The exceptions described in Section 3.2 (national invitations to tender) and Section 3.3 (solicitation of offers) are applicable up to a net contract value of EUR 200,000<sup>10</sup>, provided that no other threshold values have been agreed with KfW. A division of contracts into several parts in order to fall below the threshold values is not permissible.

#### **3.2 National invitations to tender**

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

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

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

#### **3.3 Solicitation of offers<sup>11</sup>**

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

3.04 Only qualified bidders may be requested to submit offers. To this end, the Client will present to KfW a list of the proposed bidders from whom offers will be solicited plus a cost estimate, and will explain their general suitability for the envisaged activity (background experience, human resources, financial resources and expertise in relation to the subject of

<sup>10</sup> Contract value excluding VAT, but including all other integral parts of the contract, and where applicable options.

<sup>11</sup> If KfW is the client, the valid EU threshold shall apply, value as at 2016: EUR 200,900.

the contract). When selecting the proposed bidders, importance must be attached to a balanced blend of local and international experience in the relevant area of activity.

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

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

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

### **3.4 Direct award**

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

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

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

## **4 Projects Involving Financial Intermediaries and Private Sector Projects**

### **4.1 Projects involving financial intermediaries**

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

### **4.2 Private sector projects**

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

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

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

## **Annexes**

## **Areas of Work for Consulting Services**

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

### **a) Preparation**

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

### **b) Execution**

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

### **c) Operation**

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

### **d) Other support and advisory measures**

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

## KfW's Rights of Information and Approval

### 1. Planning the contracting procedure

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

- description of any particular local features and statement of any local regulations that are applicable to contracting procedures
- draft list of services required (terms of reference)
- timetable for the contracting procedure
- cost estimate for the consulting services
- estimated timetable for the performance of consulting services
- draft consulting contract, covering *inter alia*
  - local specifics and binding law relating to the execution and performance of consulting contracts<sup>12</sup>
  - counterpart services offered free of charge by the Client (e.g. provision of office premises, vehicles, equipment and personnel)
  - possibility of and conditions for the exemption of consulting services from customs and excise duties, taxes and levies in the Client's country
  - type of contract (lump sum remuneration or based on work performed).

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

### 2. Implementing the contracting procedure

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

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

<sup>12</sup> Wherever possible KfW's model contract should be used.



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

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

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

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

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

### Essential Items in the Prequalification Notice

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

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

The prequalification notice must contain at least the following items:

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

**Declaration of Undertaking**

We underscore the importance of a free, fair and competitive contracting procedure that precludes abusive practices. In this respect we have neither offered nor granted directly or indirectly any inadmissible advantages to any public servant or other person nor accepted such advantages in connection with our bid, nor will we offer or grant or accept any such incentives or conditions in the present tendering process or, in the event that we are awarded the contract, in the subsequent execution of the contract. We also declare that no conflict of interest exists in the meaning of the kind described in the corresponding Guidelines<sup>13</sup>.

We also underscore the importance of adhering to environmental and social standards in the implementation of the project. We undertake to comply with applicable labour laws and the Core Labour Standards of the International Labour Organization (ILO) as well as national and applicable international standards of environmental protection and health and safety standards.

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

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

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

.....	.....	.....
(Place)	(Date)	(Name of company)
		.....
		(Signature(s))

<sup>13</sup> See "Guidelines for the Assignment of Consultants in Financial Cooperation with Partner Countries" and "Guidelines for Procurement of Goods, Works and associated Services in Financial Cooperation with Partner Countries"

## Information on the Prequalification Process

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

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

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

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

<b>Criteria</b> <i>(the weighting of the sub items provides only a rough indication and should be adjusted to suit the specific project)</i>	<b>Points</b>
<b>1. Proof of experience</b>	<b>40</b>
1.1 <i>Experience in handling similar projects:</i>	<i>about 25</i>
1.2 <i>Experience of the various working conditions in developing, transition or emerging countries</i>	<i>about 10</i>
1.3 <i>Experience in the region or country, preferably in the same sector</i>	<i>about 5</i>
<b>2. Suitability for this specific project</b>	<b>60</b>
2.1 <i>Assessment of available expertise specific to this project for implementation of the activities</i>	<i>about 25</i>
2.2 <i>Assessment of the bidder's own staffing levels with respect to the services required</i>	<i>about 20</i>
2.3 <i>Assessment of the key personnel permanently available to monitor and support the project team from the head office</i>	<i>about 10</i>
2.4 <i>Do the application documents meet the formal criteria, are they complete and are they specific to the project?</i>	<i>about 5</i>
<b>Total</b>	<b>100</b>

### **Notes on the criteria**

#### **1.1 Experience in handling similar projects**

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

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

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

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

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

The term “region” refers primarily to the country in which the project is located, but experience in comparable neighbouring countries or a large geographical region will be considered in the assessment. Knowledge of the sector (if appropriate several sectors<sup>14</sup>) should be shown in the form of brief project descriptions<sup>15</sup>, including a description of the services the Consultant has performed in each case.

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

This criterion is designed to assess the bidder’s professional expertise for performance of the planned tasks. The bidder must show that it can provide the requisite expertise in the specialist areas required for implementation of the activities, without restriction. The bidder is not required to name a team, but merely to present the existing expertise and experience in relation to the professional demands and thematic areas in the terms of reference that form part of the prequalification documents. If a firm does not have the necessary know-how and knowledge in all the fields required it can increase its potential by cooperating with other firms or skilled personnel, and provide proof or evidence of their technical knowledge. The Consultant should present its project-specific expertise and experience concisely and back this up with project descriptions, where appropriate supplemented with a brief description of the qualifications of its own staff members<sup>16</sup> who were deployed for that purpose and remain available.

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

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

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

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<sup>14</sup> If the services cover several sectors the descriptions of the project must be grouped by sector; if a reference project is listed several times under different sectors only the services relevant to the sector in question and performed by the firm should be given. Not more than ten cases should be given as evidence per sector.

<sup>15</sup> The project page should be brief. It should give the following information: the firm (personnel as well in the case of young firms), country, name of project, client, Project Executing Agency, finance, brief outline of the project, services performed by the firm, brief description of the service(s), extent of the services (number of expert months and fee).

<sup>16</sup> Freelance personnel who do not hold a permanent position of employment with the consultant but have worked with him for many years can be counted as permanent staff if this is clearly proven.

This criterion is about assessing the bidder's capacity for project steering and quality assurance. The bidder is required at this stage not to present a team for the task, but to demonstrate that the firm has its own qualified staff who are able to guarantee leadership, coordination and steering of the works performed by a project team. If key monitoring and steering functions are not covered by the bidder's own staff, points will be deducted in the assessment; this may lead to the bidder being excluded if these resources are entirely lacking. Detailed CVs are not required for the prequalification. It is sufficient to submit a table showing an overview of the human resources available for these functions<sup>17</sup>.

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

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

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<sup>17</sup> Brief information consisting of: name, professional qualification, years of professional experience, with firm since, position in firm, technical field and area of specialisation, languages, experience abroad.



## Essential Components of the Request for Tenders

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

The request for tenders consists of the following documents in a language usual in international transactions<sup>18</sup>:

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

Formats<sup>19</sup> may also be prescribed for the presentation of the bid for services and the price quotation. If no formats are prescribed, the presentation of the bid for services and the price quotation should follow the presentation in the terms of reference and the information for bidders.

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

### 1. General items

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

<sup>18</sup> If national regulations require publication in a national language that is not customarily used internationally, the documents should be prepared in two languages (international language, national language), preferably formatted in two columns alongside each other. In national invitations to tender this can be waived, provided that the key documents are presented to KfW in a language used internationally. The costs of translation shall be met by the client.

<sup>19</sup> For example, formats for references, for comments by the bidder on the terms of reference and counterpart services provided by the client, for the personnel plan and the programme of work, for the CVs of the key personnel and to structure the price quotation.

## **2. Submission of bids**

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

## **3. Contents of the bid for services**

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

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

## **4. Contents of the price quotation**

- Structure of the price quotation (where appropriate, prescribed format)
- Currency to be used (foreign exchange costs in foreign currency, local costs in national currency)
- Fees (shown separately according to expert personnel monthly rates<sup>20</sup>, foreign allowance, subsistence and accommodation costs at place of service)
- Transport costs between the home country and the country of service
- Local transport costs
- Office costs in the country of service
- Acquisitions

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<sup>20</sup> For example, the rate for a skilled staff member in the head office: basic salary, social insurance, general costs, personnel administration, holidays and sick leave, office services, communications costs for commission, back-up services and monitoring, data processing, insurance taken out by the firm, profit and loss. This covers the general back-up and monitoring tasks performed by management staff in the head office. The services of management staff or other employees from the head office can be charged separately only if they are performing tasks that are distinguished by subject area and in time from the agreed list of individual services.

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

## **5. Payment terms**

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

## **6. Organisation of performance of services**

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

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

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

## **8. Assessing the bids for services and the price quotations**

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

## **9. Reports**

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

## Remarks on the Assessment of the Bids

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

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

## Notes on the criteria

### 1.1 *Clarity and completeness of the bid*

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

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

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

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

The bid for services must present the methodological approach and the programme of work in such a way that their suitability in regard to the terms of reference can be assessed and they can be compared with other qualified bids. This includes a statement of the work organisation planned and the logistics. If in the professional judgement of the assessors and of KfW there is an evident and considerable discrepancy between the terms of reference and the quantities given the bid will not be considered. The text should state clearly how the task is to be solved and the resources used, how the work is to be divided between the team members, how the coordination with those involved and those affected is to be organised and how the quality of the work is to be assured. It must be supplemented with diagrams, tables and, in the case of complex work, appropriate graphics<sup>21</sup>.

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<sup>21</sup> At least as follows:

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

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

The curricula vitae of the expert personnel - for lump sum contracts the key personnel - should have a cover sheet containing a summary<sup>22</sup> and include, here or in the text, a brief statement by the bidder on their suitability for the envisaged work and function under this particular project (in more detail for local experts). For lump sum contracts, the bidder must also state the composition of the entire project team – without listing any names – and the planned periods of assignment of the experts. These personal qualifications will not be assessed in absolute terms but in relation to the tasks to be performed, in accordance with the functions and technical fields required, and by comparison with the experience and requirements profile. The assessment of the formal criteria (training, professional experience, regional experience, language skills, management and training experience) will vary according to the terms of reference and the function.

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

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

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

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<sup>22</sup> The curricula vitae must be up to date and signed by the expert and an authorised representative of the bidder. The cover sheet (one page) should contain: name of the firm, name of the person, professional qualifications and year in which these were obtained, technical specialisation and experience, nature of the experience (e.g. studies, project implementation, industry, research, administration etc.), management experience (e.g. team leader, department manager, business manager etc.), regional experience (country, nature of the activity, duration), mother tongue, foreign languages, relationship to the bidder (since...), brief timeline of professional work and employers (time, employer, activity, country of service), remarks.

## **General Conditions of Contract / Essential Components of the Consulting Contract**

### **1 The contract**

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

### **2 Services to be provided by the Consultant**

#### **2.1 Description**

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

Generally the description of the services will include

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

#### **2.2 Timetable**

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

#### **2.3 Staffing schedule**

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



### **3 Services to be provided by the Project Executing Agency (as Client)<sup>23</sup>**

#### **3.1 Obligation to provide information**

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

#### **3.2 Counterpart services**

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

#### **3.3 General obligation to provide support**

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

### **4 Remuneration**

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

### **5 Payment terms**

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

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

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<sup>23</sup> If by way of exception the executing agency is not the client, the principles below shall apply analogously to the actual client.

## **5.1 Advance payment**

The advance payment is a preliminary service by the Client to cover the Consultant's mobilisation costs. It is made when the contract is signed or immediately thereafter against submission of an invoice. As a rule it should not exceed 15% of the total value of the contract or EUR 150,000 or the equivalent in other currency. The provision of an advance payment guarantee [Model Advance Payment Guarantee] is required if the advance payment exceeds 15 % of the Order Value, and in any case if it exceeds EUR 150,000 (or the equivalent value in another currency).<sup>24</sup>

## **5.2 Interim payments**

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

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

## **5.3 Final payment**

The final payment will be made after conclusion of the services and their acceptance by the Client and KfW. This will be at least 5% of the contracted fee (e.g. for final design and construction supervision). In the case of studies it is usually 10% (for work contracts 20%) of the contracted fee. In the case of final design and construction supervision the payment due on final acceptance can be disbursed already upon provisional acceptance against a bank guarantee for the appropriate amount that is valid until the date of final acceptance. This guarantee must be made payable to KfW<sup>25</sup>.

## **5.4 Price escalation clause**

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

## **6 Disbursement procedure**

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

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

## **7 Further provisions**

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<sup>24</sup> A model advance payment bond is given in Appendix 1.

<sup>25</sup> A model retention guarantee is given in Appendix 2.

## **7.1 Independence of the Consultant**

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

## **7.2 Liability**

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

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

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

## **7.3 Force majeure**

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

## **7.4 Termination of the contract**

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

If the contract is terminated through no fault of the Consultant, it shall be entitled to its fee up to the date of termination. The Consultant may demand reimbursement of all costs incurred up to that date and compensation for all losses and damage incurred through the termination. If the contract is terminated through the fault of the Consultant the Client shall be entitled to claim damages. After termination the consulting services must be concluded speedily and with due care and diligence. The reports, drafts and other documents completed by that date must be handed over to the Client without delay.

## **7.5 Prevailing law and settlement of disputes**

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

## **7.6 Contract language**

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

## **7.7 Insurance**

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

## **7.8 Taxation of consulting services**

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

## **7.9 Declaration of undertaking**

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

**Model Advance Payment Bond**

Address of guarantor bank: ...  
.....  
.....  
.....

Address of beneficiary (Client): ....  
.....  
.....  
.....

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

.....  
According to the provisions of the contract, the Contractor receives an advance  
payment in the amount of .....  
..... equalling ..... %  
of the contract value, as an advance payment.

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

.....  
(in words .....)

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

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

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

This guarantee shall expire not later than .....  
by which date we must have received any claims by letter or coded telecommunication.

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

.....  
Place, date

.....  
Guarantor

**Model Retention Guarantee**

Address of guarantor bank: ...  
.....  
.....  
.....

Address of beneficiary (Client): ....  
.....  
.....  
.....

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

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

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

.....  
(in words .....)

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

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

This guarantee shall expire not later than .....  
by which date we must have received any claims by letter or coded telecommunication.

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

.....  
Place, date ..... Guarantor

## Information on Lump Sum Contracts

### General items

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

### Advantages of lump sum remuneration

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

### Particularities regarding the preparation of lump sum contracts

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

## List of Acronyms and Abbreviations, and Glossary

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



<b>GTAI</b>	The Germany Government's agency to promote trade and investment. Address:  Germany Trade and Invest <sup>26</sup> Villemombler Strasse 76 53123 Bonn Germany  Phone: +49 (228) 24993 - 374 or 377 Fax: +49 (228) 24993 - 446 Email: <a href="mailto:kfw-tender@gtai.de">kfw-tender@gtai.de</a> Internet: <a href="http://www.gtai.de">www.gtai.de</a>
<b>Guidelines for Procurement of Goods, Works and associated Services</b>	Available in five languages at internet under Guidelines/Contracts: <a href="https://www.kfw-entwicklungsbank.de/International-financing/KfW-Development-Bank/Publications-Videos/Publication-series/">https://www.kfw-entwicklungsbank.de/International-financing/KfW-Development-Bank/Publications-Videos/Publication-series/</a>
<b>ICC</b>	International Chamber of Commerce website: <a href="http://www.icc-deutschland.de">http://www.icc-deutschland.de</a>
<b>IFIs</b>	International Financial Institutions, e.g. World Bank, Asian Development Bank, African Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, Caribbean Development Bank.
<b>Leaflet for the Disbursement of Funds of Financial Cooperation with Developing Countries</b>	Available in five languages at internet under Guidelines/Contracts: <a href="https://www.kfw-entwicklungsbank.de/International-financing/KfW-Development-Bank/Publications-Videos/Publication-series/">https://www.kfw-entwicklungsbank.de/International-financing/KfW-Development-Bank/Publications-Videos/Publication-series/</a>
<b>Partner country</b>	State that is the recipient of the FC loan or grant, or state in which the non-governmental partner is domiciled.
<b>Period of validity</b>	Period during which bids remain binding; this covers the same period as the performance bond.
<b>Project Executing Agency</b>	Organisation in the partner country that is responsible for implementing the project; this organisation is usually also the Client.
<b>Standard bidding documents</b>	Standard bidding documents of the IFIs for publication of invitation to tender, contracting procedures and contracts. To download the documents go to <a href="http://www.worldbank.org/">http://www.worldbank.org/</a> or <a href="http://www.adb.org/">http://www.adb.org/</a>

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<sup>26</sup> Full name: Germany Trade and Invest – Gesellschaft für Außenwirtschaft und Standortmarketing mbH.