

ЗАТВЕРДЖЕНО
Рішення міської ради
Додаток 1
№ _____

**Annex 2 to Letter / Додаток 2 до Листа
10.11.2023**

To

Ministry for Communities, Territories and
Infrastructure Development of Ukraine
14, Beresteysky Avenue,
Kyiv, 01135
Ukraine

Zaporizhzhia City Council
206 Sobornyi Ave.
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KfW Development Bank

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_____ 2023

**German Financial Cooperation with Ukraine
Energy Efficiency in Municipalities
EUR 12,750,000.00 (Loan)
EUR 500,000.00 (Grant)
BMZ-No.: 2017.6503.1 & 2017.7000.7**

Separate Agreement to the Loan and Grant Agreement dated 30.11.2021

Dear Sir or Madam

Reference is made to the aforementioned Loan and Grant Agreement between the Cabinet of Ministers of Ukraine ("Borrower") and KfW ("KfW") dated 30.11.2021 ("Loan and Grant Agreement") as well as the Financing Agreement between the Zaporizhzhia City Council and KfW dated 28.12.2020 ("SBF Grant Agreement"). The Loan and Grant Agreement as well as the SBF Grant Agreement is known to the Ministry for Communities, Territories and Infrastructure Development of Ukraine (the "Responsible Executive") and the Zaporizhzhia City Council (the "Project Executing Agency" or "PEA"). The Responsible Executive and the PEA herewith agree to the Loan and Grant Agreement and the SBF Grant Agreement and in particular acknowledge their roles in acting respectively as Responsible Executive and PEA in relation to the Project and the Expert Services and their rights and obligations under the Loan and Grant Agreement. In accordance with the Loan and Grant Agreement the following shall be determined by Separate Agreement:

Pursuant to Article 1.2:

the details of the Project and the Expert Services as well as the works, goods and

services to be financed from the Loan and Grant;

Pursuant to Article 3.1:

the disbursement procedure, in particular the evidence proving that the disbursed Loan amounts and amounts from the Grant are used for the stipulated purpose;

Pursuant to Article 8.2: the details pertaining to Article 8.1 (Project Implementation).

We propose that the following be agreed upon:

I. Project Design

1. Details of the Project

1.1. The project concerns the energy efficient modernisation of selected schools and kindergartens in two municipalities of Ukraine: Zhytomyr and Zaporizhzhia. Accordingly, the Loan and Grant Agreement refers to two Separate Agreements, each signed by one municipality. The present Separate Agreement concerns the Project and the Expert Services (hereinafter combined – the “Project”) preparation and implementation in the Municipality of Zaporizhzhia.

The Project aims to improve energy efficiency and user satisfaction in selected schools and kindergartens in Zaporizhzhia. This is to contribute to a significant reduction of Zaporizhzhia City budget expenditures on energy supply for selected public buildings. The criteria for reaching these objectives, the Project results and the required Project activities as well as the assumptions underlying the Project purpose and the Project results are contained in Annex 1.

1.2. The design of the Project is based upon the Option II of the Feasibility Study realized by Kommunalkredit Public Consulting GmbH, dated October 2018.

1.3. The Project activities concern the following components:

a. Investment Measures to be financed from Loan:

Holistic energy efficient modernisation (energy efficiency measures, necessary structural and selected comfort measures) of up to 40 buildings (public schools and kindergartens) in Zaporizhzhia, including but not limited to:

- ☐ the building envelopes: thermal insulation of external walls, replacing non energy-efficient windows by multi-glazed windows and replacing non energy-efficient entrance areas (in Annex 3 reflected in 1.1);
- ☐ modernisation of the ventilation and heating systems (in Annex 3 reflected in 1.1);

- ☐ modernisation of lighting systems (in Annex 3 reflected in 1.1);
- ☐ realisation of certain structural measures in the selected public institutions which are not directly related to energy efficiency, but which are imperative to achieve sustainable improvement of the energy efficiency of the buildings (in Annex 3 reflected in 1.2);
- ☐ refurbishment of sanitary and kitchen facilities and gyms in selected schools and kindergartens (in Annex 3 reflected in 1.2);
- ☐ procurement of hardware and software in order to support improvement of the existing energy monitoring systems for public buildings or their establishment in case such monitoring systems do not exist or are inoperative (in Annex 3 reflected in 1.3);
- ☐ trainings in favour of the facility management of public buildings in the operation and maintenance of the rehabilitated buildings as well as awareness campaigns for the building users and the public (in Annex 3 reflected in 1.2).

Changes to the list of selected buildings shall be kept to a minimum and shall become effective only upon KfW's written consent. Changes to the list of selected buildings may be proposed by the PEA and require confirmation by the Consultant. The proposal shall be accompanied with an explanation that takes into account the relevant criteria that formed the basis of the selection process during the preparation of the Feasibility Study mentioned in I.1.2.

- b. Implementation Consultancy services to assist the PEA and SED (see II.(1.1) and II.(1.2)) in planning and implementation of the measures mentioned under 1.3.a (provided by the Implementation Consultant, "IC") (in Annex 3 reflected in 2.1).
- c. Accompanying Measures in favour of the PEA to be financed from the Grant (provided by the Consultant for Accompanying Measures, "AC") (in Annex 3 reflected in 2.2):
 - ☐ in order to support the PEA in improving the existing energy monitoring and energy management systems for public buildings including support the establishment of a "Municipal Energy Agency" ("MEA");
 - ☐ in order to support the PEA in improving the existing operation, maintenance and repair concepts for public buildings, especially schools and kindergartens;

- ☐ for awareness-raising measures relating to the energy-efficient modernisation and respective use of schools and kindergartens.

2. Time Schedule

The underlying time schedule for the preparation, implementation and operation of the Project is contained in Annex 2 "Timeline".

3. Total Cost and Financing

3.1. The estimated total Project costs ("Total Costs") underlying the Project appraisal are 17,703,700.- EUR. The Project shall be co-financed through

- a. Investment Measures (see 1.3.a): Loan (up to 12,225,000.- EUR);
- b. Implementation Consultant (see 1.3.b):
 - ☐ For an amount of up to 1,300,000.- EUR (excluding VAT of an amount of up to 247,000.- EUR payable outside of Ukraine), additional grant funds shall be provided on the basis of the SBF Grant Agreement concluded between KfW and the PEA for this purpose.
 - ☐ For the amount going beyond the amount of the SBF Grant Agreement (approx., but not limited to 525,000.- EUR), the financing of the Implementation Consultant shall be effectuated from the Loan.

The funds under the SBF Grant Agreement shall be used first and only thereafter the remaining amount shall be financed from the Loan.

- c. Accompanying Measures: (see 1.3.c): Grant (500,000.- EUR);
- d. The PEA will contribute to the financing of the Project with a volume of up to 2,906,700.- EUR, consisting of the payment of VAT and customs duties (see 3.2).

The composition of Total Costs and the Financing Plan are contained in Annex 3.

3.2. Since no VAT payments and other public charges shall be financed from German Financial Cooperation, all necessary VAT, custom duties and other public charges have to be borne by the Ukrainian side. This does not only concern VAT payments for the investment measures but also the VAT payments for possible accompanying and technical assistance measures.

4. Changes in the Project Design

Any major changes in the Project design (as set out in this Separate Agreement) shall require KfW's prior consent. Prior to that the PEA shall obtain consent of the Responsible Executive and then shall inform KfW thereof immediately, stating the reasons, the planned

measures and the consequences of the change (including on Total Costs). Execution of such measures may commence only on the basis of revised planning and upon KfW's written consent.

II. Project Implementation

1. Responsibilities and Time, Cost and Financing Schedule

- 1.1. The PEA, under the supervision and guidance of the Responsible Executive, shall be responsible for the implementation and operation of the Project and shall empower the Department of Science and Education of the Zaporizhzhia City Council ("SED") to coordinate, manage, monitor and evaluate, on PEA's behalf, all aspects of Project implementation, including the procurement of goods, works and services for the Project, which in respect of the Accompanying Measures shall be undertaken by SED jointly with the Economic Development Department of the Zaporizhzhia City Council ("EDD"). The PEA shall procure that all obligations of the Loan and Grant Agreement and this Separate Agreement are correctly implemented by the SED and the municipal institutions mentioned under 1.4 to 1.6.
- 1.2. The SED, at all times, shall dispose of the adequate resources and suitably qualified personnel for timely and adequately implementation of the Project. The chief of the SED shall be empowered to deal responsibly with KfW and the Consultant (comprising both IC and AC; see 1.6 to 1.8). The SED shall increase its staff by at least four qualified full-time employees ("Team") in order to facilitate the project implementation as soon as this Separate Agreement enters into force and will maintain the mentioned minimum required staff and its qualification for the whole implementation period of the project. The Team shall include specialists with sound working experience in Project Management, in the field of energy efficiency in buildings, civil construction works and in procurement of goods, works and services contracts.
- 1.3. The tasks of the PEA, to be implemented by itself and/or through the SED, may be subsumed as follows:
 - a. Overall management:
 - i. Short and long term planning;
 - ii. Supervision of operational activities;
 - iii. Coordination and management of own resources and consultants;
 - iv. Contributing, together with Consultant, to establishing by the Responsible Executive of the Interaction Procedure (see II.(1.11)(b)) and the Steering Committee (see II.(1.11)(a));

- v. Operational communication with project stakeholders, including interacting via the Interaction Procedure (see II.(1.11)(b)) as well as participating in meetings of the Steering Committee (see II.(1.11)(a)), regular and timely informing the Steering Committee and applying in Project implementation and monitoring the agreements expressed in the minutes of such meetings.

b. Financial management:

- i. Preparation of withdrawal applications;
- ii. Preparation and verification of all documents/ payment certificates.

c. Procurement and contract management:

- i. Management of all procurement procedures;
- ii. Coordination of activities, preparation, validation and update of Procurement Plan;
- iii. Preparation and verification of the tender documents (technical specifications, drawings etc.);
- iv. Evaluation of tenders;
- v. Preparation of the contract documents;
- vi. Management of contracts as the Employer (including construction and site supervision) according to the FIDIC suites of contracts.

d. Monitoring, Evaluation and Reporting:

Monitoring, Evaluation and Reporting to relevant institutions in accordance with Section IV.1 of this Separate Agreement especially regarding implementation of the project and achievements of the project's success indicators and risks as well as environmental and social impacts of the Project and Occupational Health and Safety (OHS) and climate risks, etc.

1.4. The "individual Schools and Kindergartens", on PEA's behalf, shall be responsible for the operation of the modernised buildings and the respective equipment.

1.5. SED, on PEA's behalf, shall be responsible for the supervision of the individual schools and kindergartens especially with respect to operation and maintenance, including the timely provision of adequate budgetary funds for maintenance and repair of the buildings in order to assure long-term sustainable and energy efficient use of the modernised buildings.

1.6. The SED, on behalf of the PEA, shall engage one single consultant/consultancy to support the SED during the implementation of the Project (IC) and for supporting the Implementation of the Accompanying Measures (AC) (together the “Consultant”).

1.7. The Consultant, in its role as IC shall support the PEA and SED in

- a. elaboration of the details of the Project design;
- b. design and implementation of the Tender Process (as defined in the “Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partner Countries“ attached in Annex 4 (the “Procurement Guidelines”)) in compliance with (i) the Procurement Guidelines and (ii) the environmental and social standards as set out in II.2.2.
- c. execution of energy audits for selected public buildings where energy audits are not available;
- d. verification and, if deemed necessary, update existing energy audits for the selected public buildings;
- e. preparation of Final Design for up to 40 public buildings;
- f. monitoring of implementation, maintenance and operation of the Project;
- g. ensure that the Project has valid regulatory approvals and licenses throughout the life of the Project and that it fulfils all conditions and obligations under the relevant documents at all times;
- h. preparation, reviewing and updating of the entire Project Construction Plans, Budget and Disbursement Plans;
- i. supervision of public tendering procedures for goods, works and services;
- j. advice on all aspects of the works undertaken, especially regarding project supervision, measurement, contracts monitoring and quality control, including support during Defect Notification Period;
- k. transfer of knowledge and realising trainings of relevant staff of SED, PEA and the other concerned local institutions;
- l. preparation and submission of quarterly progress reports to PEA and assistance to the concerned institutions with respect to preparation of reports and documents requested by KfW;
- m. support PEA in implementing all provisions and permitting procedures regarding Environmental, Social and Health & Safety Compliance and labour conditions (see II.2) especially by ensuring that they are put forward into the contracts especially

works, supplies and other services contracts and by subsequent monitoring of their implementation. This includes the elaboration of an asbestos management plan and the support of its implementation;

- n. ensure proper programming, recording, measurement and accounting of the works by means of contemporary management and measurement techniques;
- o. participation to interim and final acceptance of works;
- p. management of the simplified direct disbursement procedure;
- q. elaboration, together with PEA and SED, of proposals regarding the content and wording of the regulations mentioned in II.(1.11)(a)(vi) and II.(1.11)(b)(vi);
- r. participation to the meetings of the Steering Committee (see II.(1.11)(a)).

1.8. The Consultant's task in its role as AC shall comprise, but shall not be limited to:

- a. support of the PEA and SED and EDD in improving the existing energy monitoring systems and operation including the establishment of MEA;
- b. support of the PEA and SED and EDD in improving maintenance and repair concepts for public buildings, especially schools and kindergartens;
- c. planning, support and realisation of awareness-raising measures relating to the energy-efficient modernisation of schools and kindergartens in the municipality;
- d. support to implementation of the Accompanying Measure concerning training of staff (1.7.k), reporting (1.7.l), quality assurance (1.7.o), management of the disbursement procedure (1.7.p).

1.9. The PEA shall ensure that the institutions mentioned under 1.1 to 1.5 cooperate closely during the preparation and implementation of the Project and shall determine by common agreement the aspects of the Project that are essential for its operation.

1.10. The detailed time, cost, and financing schedule, annually updated for the proper technical and financial implementation of the Project, shall be prepared as soon as possible by the PEA in cooperation with the Consultant and submitted to the Responsible Executive and KfW. Such schedule is to show, by deadlines and amounts, the intended chronological interrelation of the Project activities and the resulting financial requirements. If any deviation from such schedule becomes necessary during the implementation of the Project, KfW shall be furnished with a revised schedule and be subject to no-objection by KfW.

1.11. In order to establish and ensure effectiveness of supervision and guidance in respect of the Project the Responsible Executive shall:

- a. upon consulting with the PEA/SED supported by the Consultant, establish a Steering Committee ("SC") in line with the following requirements:
 - i. purpose of the SC shall be carrying out the general control over Project implementation/monitoring, particularly reviewing the Project implementation plans and Project implementation/monitoring reports prepared by the PEA supported by the Consultant, as well as providing proposals to the PEA on improving Project implementation/monitoring;
 - ii. composition of the SC shall be approved by the Responsible Executive and shall consist of officials delegated by the Responsible Executive, the PEA and SED, while the Consultant and KfW shall participate as observers and shall be offered to delegate their representatives;
 - iii. SC shall be chaired by the Responsible Executive's official ("SC Chairperson") authorised to sign documents related to Project implementation and to organize supervision and control over Project implementation/monitoring;
 - iv. the form of SC's work shall be meetings held at least twice a year;
 - v. minutes of the SC shall be put in writing, signed by SC Chairperson and passed to the PEA for consideration and applying in Project implementation/monitoring;
 - vi. the SC shall be introduced by the Responsible Executive's official decision-making document ("Steering Committee Regulation") that the Responsible Executive shall approve not later than 3 months since the date of coming into force of the contract with the Consultant and shall communicate to the PEA within two weeks since approval;
 - vii. approval of the Steering Committee Regulation as well as approval of changes to it shall be subject to no-objection by KfW.
- b. upon consulting with the PEA/SED supported by the Consultant, establish the Responsible Executive's procedure for interaction with the PEA in respect of the Project ("Interaction Procedure") in line with the following requirements:
 - i. purpose of the Interaction Procedure shall be setting for the PEA an effective and reasonably transparent framework of day-to-day interaction with the Responsible Executive in respect of selected aspects;
 - ii. in its communication aspect, the Interaction Procedure shall list the names, titles and communication details of the Responsible Executive's officials

designated for day-to-day interaction with the PEA (“Designated Officials”), including at least two Designated Officials (the primary one and the second one substituting the primary one in the case of the latter’s absence) personally responsible for receiving the withdrawal applications from PEA, timely handling them within the Responsible Executive, passing them further as foreseen by the applicable arrangements (Annex 5 “Disbursement Procedure” and the On-lending and Channelling Agreement) and controlling adherence of the use of funds to the loan and grant purpose;

- iii. in its disbursements process aspect, the Interaction Procedure shall set, in line with this Separate Agreement, especially Annex 5 “Disbursement Procedure” and the On-lending and Channelling Agreements, the minimum content of the package of documents needed to support a withdrawal application, as well as the workflow of processing the withdrawal applications by the Responsible Executive’s departments and the related deadlines of such processing;
- iv. in its monitoring aspect, the Interaction Procedure shall set the Responsible Executive’s exhaustive requirements with respect to the content of the package of documents needed to prove adherence of the use of funds to the loan and grant purpose, as well as set the frequency of providing such information by the PEA to the Responsible Executive;
- v. in its consent granting aspect, the Interaction Procedure shall set the minimum content of the package of documents needed to support an application in respect of Responsible Executive’s consents mentioned in articles I.(4) and II.(3.1) as well as define the form of providing such consent;
- vi. the Interaction Procedure shall be introduced by Responsible Executive’s official decision-making document (“Interaction Procedure Regulation”) that the Responsible Executive shall approve not later than 3 months since the date of coming into force of the contract with the Consultant and shall communicate to the PEA within two weeks since approval;
- vii. approval of the Interaction Procedure Regulation as well as approval of changes to it shall be subject to no-objection by KfW.

2. Environmental, Social and Health & Safety Compliance

2.1. The PEA shall at all times carry out its business and operations in compliance with all applicable national environmental, occupational health & safety and social laws and regulations.

2.2. The PEA supported by the Consultant shall be responsible for the preparation, implementation and operation of the Project in compliance with World Bank environmental and social standards and the World Bank Group General and sector-specific EHS Guidelines.

In particular, the PEA shall

- a) develop and implement an Environmental and Social Management Framework (ESMF) including a Stakeholder Engagement Framework (SEF) proportionate to the potential risks and impacts of the program and commensurate with its nature, size and locations according to World Bank environmental and social standards and World Bank Group General and sector-specific EHS Guidelines and contractually engage contractors to comply with the environmental and social requirements as set out under sections 2.1-2.5 and the provisions of the ESMF.
- b) ensure that the measures and actions as set out in the listed documents and plans under 2.2. are implemented diligently and completely.
- c) ensure that – after KfW's No-Objection – the agreed environmental and social documents (ESMF), but at least an easy to understand summary of the main environmental and social findings and mitigation measures including the stakeholder engagement process (e.g. Non-Technical Summary) and relevant environmental and social information of the program components are made publicly available in the respective Project areas along the implementation of the program, in an accessible and culturally appropriate manner, for an adequate time to allow Project affected people to voice concerns and suggestions, and if appropriate, are disclosed on the PEA's website.

2.3. The PEA shall comply with the Fundamental Conventions of the International Labour Organization (ILO).

2.4. The PEA shall ensure that occupational and public health and safety provisions are consistent with national requirements and international good practice standards, and put such provisions forward to contractors and subcontractors, and to suppliers, in particular those for major supply items.

2.5. The PEA shall develop and implement a grievance mechanism satisfactory to KfW, which is accessible to the general public and in particular to Project affected persons, and to workforce engaged in project implementation.

3. **Procurement & Contractual Provisions**

3.1. All Tender Processes (as defined in the "Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with

Partner Countries“) attached in Annex 4 (the “Procurement Guidelines”) to be conducted for any contract financed under the Loan and Grant Agreement shall at all times follow:

- a) the Procurement Guidelines; and
- b) the procurement plan attached in Annex 7 as amended or restated from time to time in agreement with KfW (the “Procurement Plan”),

unless otherwise agreed between KfW and the PEA in writing.

The Procurement Plan (Annex 7) shall (i) cover the entire lifetime of the Project and (ii) shall in its initial version provide details for at least the initial 18 months starting from the date of the Loan and Grant Agreement. The Procurement Plan shall be reviewed and, if necessary, revised thereafter annually and, in case of a revision, such revised version shall be submitted promptly to KfW for No-Objection.

- 3.2. The tender for the IC and the AC shall be combined in one tender and be contracted together.
- 3.3. Details concerning the tender of the Consultant as well as the details on disbursement for making payments to the Consultant are regulated in the Loan and Grant Agreement, the SBF Grant Agreement and this Separate Agreement.
- 3.4. The contracts for works, plant, goods and services shall be awarded by the PEA in cooperation with the Consultant by way of international competitive bidding. The supply, works and services shall be tendered in one tender procedure comprising one main contract with optional services. The main contract includes goods, works and services for the energy efficient modernization of 20 public buildings. The scope of works for the optional services comprises up to 20 additional public buildings if the performance of the contractor under the main contract has proven sufficient. The optional services will be activated by the PEA at earliest at the end of the first year of implementation of the main contract on the basis of the recommendation of the Consultant after No-Objection by KfW. In case of bad performance of the contractor during implementation of the main contract, the optional services will be tendered again via a restricted tender limited to the bidders of the previous Tender.
- 3.5. All services and works for the rehabilitation of public buildings shall be contracted according to FIDIC Pink Book or FIDIC Yellow Book provisions.
- 3.6. PEA shall provide KfW with the relevant documents and information necessary for KfW’s monitoring and review of the Tender Process as outlined in Chapter 1.6 of the Procurement Guidelines.

- 3.7. The contractual provisions as outlined in the Procurement Guidelines (see Chapter 2.4 and appendices 7 (Contractual Provisions) and 8 (Models for Guarantees and Securities) to the Procurement Guidelines) shall be incorporated into each contract financed under the Loan and Grant Agreement and, in addition thereto, the following principles shall be observed when concluding contracts financed under the Loan and the Grant: as no import duties may be financed from the Loan or the Grant pursuant to Article 1.3 of the Loan and Grant Agreement, such import duties, if part of the contract value, shall be stated separately in the contracts for the goods, works and services and in the invoices.
- 3.8. If payments due under the contracts for works, plant, goods and services are to be made from the Loan or the Grant, such contract shall include a provision stipulating that any reimbursements, guarantee or similar claimable payments and any insurance payments shall be made for account of the Project-Executing Agency to account at KfW, Frankfurt am Main, IBAN: DE53 5002 0400 3800 0000 00, BIC: KFWIDEFF, with KfW crediting such payments to the account of the Project-Executing Agency. If such payments are made in local currency such payments shall be made to a special account of the Project Executing Agency in the country of the Project-Executing Agency and may only be disbursed further with the prior written consent of KfW. Such funds may be re-utilized for the execution of the Project with KfW's prior written consent.

4. Special Implementation Agreements

- 4.1. The parties acknowledge the importance of taking measures against any corrupt practice. The Consultant will therefore be assigned to closely support the PEA and SED during all steps of all tendering, such as elaboration of Tender Documents, assistance during the tender evaluation and awarding. The tasks of the Consultant will include the nomination of one person (procurement expert) who will be member of the evaluation committee.
- 4.2. Different options for assuring a sustainable operation of the buildings were proposed in the Feasibility Study by Kommunalkredit Public Consulting GmbH. On the basis of the concept for sustainable operation of the modernized buildings described in the mentioned Feasibility Study a corresponding guideline taking into account the specific needs for the City of Zaporizhzhia shall be elaborated by the PEA with support of the Consultant. This guideline shall be approved by PEA and KfW before activating the optional services (see 3.4) under the Supply, Works and other Services contract.
- 4.3. Prior to the signature of a goods, plant, works and services contract, the PEA provides to KfW a detailed replacement plan which shows how and where school and kindergarten activities will take place in the event of temporary closure of the buildings due to construction work for the corresponding period.

4.4. Before carrying out the work, the PEA shall obtain all the permits, approvals etc. of a public and private nature required to carry out the project under Ukrainian law (e.g. in accordance with applicable building law, immission control, safety regulations, environmental standards, etc.) and proves their existence to KfW in an appropriate form.

5. **Provisions for the Proper Operation of the Project**

5.1. To secure the proper operation of the Project, the PEA shall submit to KfW for No Objection an operation and maintenance concept, including an operational Environmental and Social Management Plan elaborated in cooperation with the Consultant.

5.2. At the same time, the PEA shall submit to the Responsible Executive and KfW a financial forecast for operation, maintenance and repair in respect of the concerned buildings, drawn up in cooperation with the Consultant with due consideration of the “Sustainable Concept for Municipal Energy Management” as described under 5.3. The forecast is to show the expected expenses for operation of the buildings, the available operational budget for the first year of operation and respective estimations for the three following years. The PEA shall periodically update this forecast and ensure that any financing gaps shall be covered in due course. The PEA shall transmit such financial forecast and its revised versions to the Responsible Executive and KfW without any delay.

5.3. The PEA shall establish a Municipal Energy Agency with the following tasks:

- a. development of a Sustainable Concept for Municipal Energy Management with a specific focus on energy efficiency in public buildings based on existing approaches at municipal level;
- b. implementation of energy audits and definition of baselines for energy consumption of all individual public buildings of the City;
- c. definition of unified specifications for modernisation measures in public buildings of the City, in accordance with Ukrainian regulations and based on EU standards;
- d. support the PEA, including SED and EDD, in the field of Energy Efficiency;
- e. quality assurance concerning the commissioning of the modernised buildings including those modernised in the framework of the Project;
- f. implementation of capacity building measures in the field of municipal energy efficiency especially for facility managers, teachers, parents and pupils;
- g. the MEA shall act on PEA's behalf and can be created within any of PEA's departments/municipal entities selected by PEA.

III. Contracts for Works, Goods, Plant and Services, Reservations and Disbursement

1. Contracts and Reservations

- 1.1. KfW will either reserve the loan and financing amounts on the basis of the contracts concluded for works, goods, plant and services or in case of collective reimbursement on the basis of the estimated needs of the entirety of the contracts concluded. Accordingly, KfW shall be furnished with a copy of each of said contracts and of any amendment to any of such contracts.
- 1.2. If any Project measures are to be executed by PEA's own staff and not by any third party and, therefore, no contracts have been concluded, KfW shall receive, in lieu of the contracts, a schedule of the measures planned, broken down by main cost categories. Costs incurred for general administration in connection with the aforementioned Project measures must not be included in said schedule of measures.
- 1.3. KfW shall inform the PEA on request of the amounts of the Loan and the Grant that it has reserved for financing by providing a list of reservations (KfW-"LOGAS", KfW-List Of Goods And Services).

2. Disbursement Procedure

The disbursement of the Loan and the Grant is subject to the procedures as stipulated in Annex 5 (Disbursement Procedure), which forms an integral part of this Separate Agreement. This Disbursement Annex contains the legal provisions and standards concerning the procedures to be used, governing among others, obligations with regard to bank account details, liability in the payment process, exchange rates, specimen signatures, disbursement requests and the documentation to be provided for evidence of use of funds.

IV. Reporting and Other Provisions

1. Reporting

- 1.1. Until further notice, the PEA shall report to KfW quarterly on the progress of the Project (progress reports), including the fulfilment of the covenants stipulated in Article 10.1 of the Loan and Grant Agreement and implementation agreements stipulated in Section II.4. of this Separate Agreement as well as on the development of all other important general conditions including environmental and social performance, topics of occupational health and safety and labour conditions, community relations and grievances which may have occurred. The reporting requirements are further defined in Annex 6.

1.2. In addition to the requirements under paragraph 1.1, the PEA shall report on all circumstances that might jeopardize the achievement of the overall objective, the Project purpose and the results.

a. With regard to environmental and social matters, including occupational and community health & safety and labor issues as well as impacts on adjacent population, the PEA shall notify the Responsible Executive and KfW promptly of any event, incident or accident in relation to the Project execution regarding details of

- i. any incident of an
 - environmental nature;
 - occupational health and safety nature;
 - public health and safety nature

(in particular, but not limited to, any explosion, spill or workplace accident which results in death, serious or multiple injuries or material environmental contamination, accidents of members of the public/local communities, resulting in death or serious or multiple injuries, sexual harassment and -violence involving project workforce);

- ii. any incident of a social nature (including without limitation any violent labour unrest or dispute with local communities);
- iii. any other incident of an environmental or social nature occurring on or nearby any site, plant, equipment or facility of the PEA (the incidents mentioned in (i) to (iii), in the following the “Incidents”)

which

- has, or is likely to have a material adverse effect; or
- has attracted or is likely to arouse substantial adverse attention of outside parties or to create substantial adverse media/press reports; or
- gives, or is likely to give rise to material potential liabilities.

b) Notification will comprise, in each case, (i) a specification of the nature of the Incidents and the on-site and off-site effects of such Incidents and (ii) details of any action the Project-Executing Agency proposes to take in order to remedy the effects of these Incidents. The Project-Executing Agency shall keep the Responsible Executive and KfW informed about any progress in respect of such remedial action.

1.3. At the time of the physical completion and commissioning of the Project, but before the expiry of the contractor's guarantee period at the latest, the PEA shall submit a final report on the measures carried out. The first report on the state of affairs shall be submitted four weeks after the signature of the Consulting Contract. The reports must have been received by the Responsible Executive and KfW not later than 4 weeks after the end of the period under review. The reports shall be countersigned by the Consultant.

1.4. If the PEA has charged the Consultant to write the progress reports and/or the final report, the PEA shall comment on the reports or acknowledge its approval of the content by countersigning the reports.

1.5. After completion of the Project, the PEA shall report on its further development (see Annex 6 for details). KfW shall in due course inform the PEA about the end of the reporting period.

2. Other Provisions

2.1. The PEA shall send KfW all such documents as are necessary for KfW to give the comments and approvals mentioned above or in the enclosed guidelines early enough to allow reasonable time for examination.

2.2. The PEA shall set up Project sign boards that will contain at least the following message:

"A development project of the Zaporizhzhia City Council co-financed by the Federal Republic of Germany through KfW."

A project seal provided by the German Embassy shall be placed on the project sign board.

2.3. The above provisions may be amended or modified at any time by mutual consent if this should appear useful for the implementation of the Project or the execution of the Loan and Grant Agreement. In all other respects, the provisions of Articles 7.3, 9 and 10 of the Loan and Grant Agreement shall apply to this Separate Agreement accordingly.

2.4. The PEA and SED undertake to comply at all times with the obligations set out in Annex 1b of the Loan and Grant Agreement ("Compliance Covenants Project-Executing Agencies").

Please confirm your consent to the above Separate Agreement by signing in a legally binding form and returning the enclosed copies.

Please forward a copy of the present letter in due course to the Consultant.

Yours sincerely,

KfW

Jens Hagen

Head of Division
Urban and Regional Development
Eastern Europe, Caucasus, Central Asia

Anna Santa Cruz

Senior Portfolio Manager
Urban and Regional Development
Eastern Europe, Caucasus, Central Asia

Read and agreed:

Signed in Kyiv on _____ 2024

Oleksandr Kubrakov

for the Ministry for Communities, Territories and Infrastructure Development of Ukraine

Signed in Zaporizhzhia on _____ 2024

Regina Harchenko

for the Zaporizhzhia City Council

Annexes

- Annex 1: Results Matrix
- Annex 2: Time Schedule
- Annex 3: Total Cost and Financing
- Annex 4: Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partner Countries
- Annex 5: Disbursement Procedure
- Annex 6: Content and Form of Reporting to KfW
- Annex 7: Procurement Plan

Annex 1: Results matrix

Name of FC Project

Energy Efficiency in Municipalities

Zaporizhzhia

BMZ-No.

2017.6503.1 & 2017.7000.7

Country/Region

Ukraine

Results Matrix compiled on

25.02.2020

Objectives	Indicators	Sources	Assumption
DC-program objective: <i>Ukraine makes progress in increasing energy efficiency.</i>	2. Program objective indicator: The primary energy consumption of partner municipalities in selected areas of public service provision fell by 8,400 MWh/year. Underlying: 0 Target value: 8,400 MWh/year one year after completion of the modernization measures Actual value: 0 MWh/year 2018	<i>Analysis and evaluation of energy management (Consultant's reports, database) from partner municipalities</i>	<i>Do not fill!</i>

Objectives	Indicators	Sources	Assumption
<p>Objective of the Project</p> <p><i>Energy efficiency and user satisfaction are improved in selected schools and kindergartens in Zaporizhzhia.</i></p>	<p>Module target indicator 2:</p> <p>The average, specific annual energy requirement with an appropriate minimum comfort level in the selected schools and kindergartens in Zaporizhzhia was reduced by at least 20% per building.</p> <p>Average base value: $\geq XXX^1$ kWh/m² per/year in XXX per heated and cooled area of selected school/kindergarten</p> <p>Average target value: $\leq XXX$ kWh/m² per year per heated and cooled area of selected school/kindergarten one year after completion of the modernization work.</p> <p>Achievable during the implementation period: yes</p>	<p>Reporting by the executing agency and/or the consultant</p>	<p><i>The Ukrainian government and project municipalities continue to promote energy efficiency in buildings.</i></p> <p><i>The basic energy needs of the selected schools and kindergartens remain the same (no new energy-intensive activities are added).</i></p> <p><i>The budget for operation and maintenance of the buildings is sufficient.</i></p>
	<p>Module target indicator 4:</p> <p>The learning and working conditions in selected schools and kindergartens in Zaporizhzhia have been improved by the holistic refurbishment.</p> <p>Underlying: not necessary</p> <p>Target value: 80% of the respondents state a clear improvement compared to before.</p> <p>Achievable during the implementation</p>	<p><i>Survey results collected by the consultant</i></p>	<p><i>There are no other factors that worsen learning and working conditions.</i></p>

¹ The average base value and according average target value will be determined after the execution of the energy audits at the initial stage of the project.

Objectives	Indicators period: yes	Sources	Assumption
Outputs <i>Output 1 - The comprehensive refurbishment of up to 40 schools and kindergartens in Zaporizhzhia is completed under the present project and the buildings will be used.</i>	Indicator: Number of rehabilitated schools and kindergartens in Zaporizhzhia Underlying: 0 Target value: 40 Actual value: 0 Achievable during implementation period: yes		
	<i>Output 2 - Improved energy monitoring & energy management concepts for Zaporizhzhia were developed and implemented.</i>		
Activities in the module <i>Consulting by an implementation consultant</i>	<i>Do not fill!</i>	<i>Do not fill!</i>	<i>Assumptions regarding outputs</i> <i>Qualified construction companies are available.</i>
<i>Procurement of material for the refurbishment of buildings</i>			
<i>Expansion/dismantling and disposal of obsolete expanded facilities</i>			
<i>Installation and commissioning of new systems in the respective buildings</i>			

Objectives	Indicators	Sources	Assumption
<i>Training of the relevant personnel in handling the newly acquired equipment</i>			
<i>Consultancy by a consultant for the improvement of energy monitoring and energy management for public buildings in Zaporizhzhia (AC)</i>			
<i>Procurement of hardware and software to improve energy monitoring</i>			

Annex 2 - Timeline

Energy Efficiency in Municipalities - Zaporizhzhia 2017.6503.1 & 2017.7000.7						
		2021	2022	2023	2024	2025
1	Elaboration and & Signature of the Loan Agreement Signature of the Loan Agreement					
2	Implementation Tender Procedure for procurement of the Implementation and Accompanying Measures Consultant (IC&AM) Signature & Start of Work of the IC&AM Implementation Phase IC&AM Preparation Phase Tender of works and services contracts Zaporizhzhia Lot (Contract: Main part 20 buildings & Optional part up to 20 buildings) Implementation of the works and services contracts Zaporizhzhia - Main part of Contract Implementation of the works and services contracts Zaporizhzhia - Optional part of Contract					

Annex No. 3 - Cost and Financing
 Energy Efficiency in Municipalities - Zaporizhzhia
 BMZ no. 2017 65 031 & 2017 70 007

	COST					FINANCING							
Project activities	Local costs (VAT 20% + entrance duties on international supplies 3%) UAH in 1,000*	International Cost in EUR		Total cost		FC Loan (net cost for works, goods and services)	Portion Implementation consultant paid from FC Loan	Total FC Loan	FC Grant	Special Fund (Grant) excluding VAT	Special Fund (Grant) - VAT 19% in Germany	Municipality contribution, incl. VAT	Total Financing
		EUR		UAH in 1,000	EUR	EUR						EUR	
		in 1,000*)			in 1,000*)	in 1,000*)					in 1,000*)		
		net	VAT (19%)										
1. Energy Efficient Modernisation of up to 40 public buildings in Zaporizhzhia													
1.1. Investment in EE measures	79 394,36	10 701,00		424 587,22	13 162,23	10 701,00		10 701,00	0,00	0,00	0,00	2 461,23	13 162,23
1.2. Investment in structural, comfort and other investment measures	9 719,34	1 310,00		51 977,32	1 611,30	1 310,00		1 310,00	0,00	0,00	0,00	301,30	1 611,30
1.3. Hardware & Software for Energy Monitoring	1 586,00	213,77		8 481,63	262,93	213,77		213,77	0,00	0,00	0,00	49,17	262,93
Sub-Total Investment Cost Zaporizhzhia	90 699,69	12 224,77	0,00	485 046,16	15 036,46	12 224,77	0,00	12 224,77	0,00	0,00	0,00	2 811,70	15 036,46
2. Consultancy Services													
2.1. Implementation Consultant Zaporizhzhia		1 741,37	330,86	66 846,20	2 072,24	0,00	525,24	525,24	0,00	1 300,00	247,00	0,00	2 072,24
2.2. Consultant for Accompanying Measure Zaporizhzhia		500,00	95,00	19 193,51	595,00	0,00	0,00	0,00	500,00			95,00	595,00
Sub Total Consulting Cost Zaporizhzhia		2 241,37	425,86	86 039,71	2 667,24	0,00	525,24	525,24	500,00	1 300,00	247,00	95,00	2 667,24
Total Zaporizhzhia		14 466,14	425,86	571 085,86	17 703,70	12 224,77	525,24	12 750,00	500,00	1 300,00	247,00	2 906,70	17 703,70

base year of cost estimate: 2018

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

PREFACE

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

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

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

Version: January 2021

Revisions to previous Version (January 2019):

- Correction of typos, unclear or inconsistent formulations
- Clarification as to the application of simplified / post review (1.6.4, 1.6.5)
- Threshold for international competitive bidding for Goods increased to EUR 1 Mio. (2.1.1)
- Adaptation of the minimum submission period for price quotations (2.4.10)
- Clarification as to the exclusivity of Key Experts added (2.5.3)
- Cause for cancellation of a Tender Process added (2.5.15 (5))
- Wording as to weighted evaluation shortened (3.4.1) and defined more precisely (Annex 4)
- Need for definition of responsiveness added (4.4.3)
- Procurement Plan: exemplary contents of table deleted, and definitions provided in the footnotes adapted (Annex 2)
- Clarification as to the signing of evaluation reports (Appendix 6)

Feedback on or questions about this document should be in writing to the following address:

FZ-Vergabemanagement@kfw.de

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Definitions

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

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

ESHS	Environment, Social (incl. issues of sexual exploitation and abuse and gender-based violence), Health and Safety (incl. of security for personnel).
Fraudulent Practice	Any action or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial benefit or to avoid an obligation.
Funding Agreement	Agreement between (a) KfW and a borrower (in the case of a loan) or (b) KfW and a recipient (in the case of a grant), setting out the terms and conditions pursuant to which funding is made available by KfW.
Goods	Commodities, raw material, machinery, equipment, vehicles, and related services, e.g. transportation, insurance, installation, commissioning, training, and initial maintenance.
GTAI	Germany Trade and Investment GmbH ("GTAI"), the economic development agency of the Federal Republic of Germany which publishes diverse project and procurement related information on its website (www.gtai.de).
Guidelines	KfW's Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non Consulting Services in Financial Cooperation with Partner Countries.
Invitation to Bid ("ITB")	Set of documents inviting prequalified Applicants, interested or preselected Persons, as the case may be, to submit a Bid.
Joint Venture ("JV")	Joint Venture (JV) means an association with or without a legal personality distinct from that of its members, of more than one Person where one member has the authority to conduct all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the PEA for the performance of the Contract.
Key Expert	A single individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Contract and whose CV is taken into account during the evaluation.
Mandate	KfW may be given a Mandate to carry out project funding with financial means of a mandator (e.g. European Union) based on a mandate agreement.
Non-Consulting Services	Services which are not Consulting Services. Non-Consulting Services are normally bid and contracted on the basis of performance of measurable outputs, and for which performance standards can be clearly identified and consistently applied, e.g. topographical and geotechnical surveys, soil investigations, aerial surveys and remote sensing, drilling, aerial photography, satellite imagery, mapping and similar operations, transport and distribution of Goods.
No-Objection	KfW's written notice concerning PEA's documents and decisions in the preparation and execution of a Tender Process.
Obstructive Practice	Means (i) deliberately destroying, falsifying, altering or concealing evidence material to the investigation or the making of false statements to investigators, in order to materially impede an official investigation into allegations of a Corrupt Practice, Fraudulent

Practice, Coercive Practice or Collusive Practice, or threatening, harassing or intimidating any Person to prevent them from disclosing their knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) any act intended to materially impede the exercise of KfW's access to contractually required information in connection with an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice.

Offer	General term for Proposals and Bids.
Partner Country	Country of the PEA, in which the KfW financed project/programme is implemented.
Person	Any natural or legal person or an association of two or more of the foregoing.
Plant	Equipped facilities, executed on the basis of design, supply, installation, commissioning, maintenance, modification and protection (e.g. power plant, sewage plant or a production facility).
Prequalification	First stage of a Two-Stage Selection to identify a number of eligible and qualified Applicants, who will then be invited to submit an Offer.
Procurement Plan	Document defined in Article 1.6.2 and set up by the PEA listing all Tender Processes for Contracts financed by KfW including key procurement related information.
Project Executing Agency ("PEA")	Entity in charge of implementing a project, which directly or indirectly receives funds made available under the Funding Agreement.
Proposal	Set of documents submitted by Bidders in order to participate in a Tender Process for procurement of Consulting Services.
Public Procurement Regulation	Law or legal regulation established by the state of the PEA for the public procurement of Consulting Services, Works, Goods, Plant, or Non-Consulting Services in the Partner Country.
Request for Application ("RfA")	Set of documents inviting potential Applicants to submit their evidence of qualification to perform the Contract.
Request for Proposal ("RfP")	Set of documents inviting prequalified Applicants, interested or preselected Persons, as the case may be, to submit a Proposal.
Sanctionable Practice	Any Coercive Practice, Collusive Practice, Corrupt Practice, Fraudulent Practice or Obstructive Practice (as such terms are defined herein) which is unlawful under the Funding Agreement.
Single-Stage Selection	Tender Process in which Persons submit their evidence of qualification together with their technical and financial Offer.
Standard Tender Documents ("SDO")	Set of Tender Documents issued by KfW for procurement in KfW-financed Projects.
Subcontractor	Person to whom the Contractor subcontracts parts of the Contract while remaining responsible to the PEA during the Contract performance.

Tender Document(s)	RfA, ITB and RfP, including Draft Contract as well as any clarification or amendment thereof during the Tender Process.
Tender Procedure	Type of procedure (e.g. ICB, NCB, LCB Direct Award) undertaken to approach Persons for the procurement of Consulting Services, Works, Goods, Plant, or Non-Consulting Services.
Tender Process	Process carried out to procure Consulting Services, Works, Goods, Plant or Non-Consulting Services, starting with the publication of a tender notice/invitation to submit an Offer, as the case may be, and ending with Award of Contract or cancelation of a Tender Process.
Terms of Reference (“ToR”)	Description of the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the PEA and the Contractor, and expected results and deliverables of a Consulting Services Contract.
Two-Stage Selection	Tender Process which is divided into two consecutive stages with an upstream Prequalification.
Works	Construction, repair, rehabilitation, deconstruction, restoration and maintenance of civil work structures as well as related services, e.g. transportation, installation, commissioning and training.

1. Scope of Application and Procurement Framework

1.1 Scope of Application of the Guidelines

These Guidelines apply to the procurement of Consulting Services, Works, Goods, Plant and Non-Consulting Services by the PEA in projects and programmes financed in full or in part by KfW¹. The Guidelines are applicable as well if funding is made available as follows:

- (1) In the case of mandates, unless where otherwise agreed with the provider of the mandate funds;
- (2) in the case of co-financing by KfW and one or several other development partners. However, in such an event, the Guidelines may be, in all or in part, replaced by rules set out jointly with other development partners prior to any procurement procedure²;
- (3) in the case of advanced tendering as per Article 1.6.7;
- (4) in the case of Contracts prefinanced by the PEA as per Article 1.6.8
- (5) in the case of indirect financing (e.g. budget support, policy-based lending, result-based lending or joint programs and funds including multi donor trust funds) as per Article 1.6.9;
- (6) in certain cases of funding to financial intermediaries (e.g. regional or national development banks or funds or specialised financial institutions) for the financing of economic or social infrastructure by final beneficiaries or borrowers as per Article 5.2. The Guidelines do not apply if the financial intermediary on-lends the funding to private borrowers which bear the financial risk.

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

1.2 Fundamental Arrangements

1.2.1 Basic Principles

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

Competition

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

Fairness

1 The Guidelines apply analogically to KfW's procurement in its own name up to the applicable EU procurement thresholds.

2 In particular, KfW is party to a partnership agreement with Agence Francaise de Developement (AFD) and the European Investment Bank (EIB) in the context of the Mutual Reliance Initiative (MRI).

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

Transparency

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

Confidentiality

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

Economic Efficiency and Sustainability

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

Proportionality

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

1.2.2 Responsibility for Procurement and Contract Performance

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

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

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

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

1.2.3 Declaration of Undertaking

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

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

1.2.4 KfW's Standard Tender Documents

KfW provides a set of Standard Tender Documents (SDO) for use in Projects with financing from KfW and highly recommends the use thereof, especially in the case of ICB in order to ensure an efficient Tender Process in compliance with the Guidelines. If the PEA is obliged to use Tender Documents others than KfW's SDOs, the PEA has to ensure compliance with the provisions of the Guidelines in particular as per Article 1.5 and the general requirements included in Appendix 5.

1.3 Eligibility Criteria

1.3.1 Rules of Nationality and of Origin

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

1.3.2 Grounds for Exclusion

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

- (1) are bankrupt, being wound up or ceasing their activities, are having their activities administered by courts, have entered into receivership, or are in any analogous situation;
- (2) have been:
 - a) convicted by a final judgement or a final administrative decision or subject to financial sanctions by the United Nations, the European Union and/or Germany for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings; this criterion of exclusion is also applicable to legal Persons, whose majority of shares are held or factually controlled by natural or legal Persons which themselves are subject to such convictions or sanctions;
 - b) convicted by a final court decision or a final administrative decision by a court, the European Union or national authorities in the Partner Country or in Germany for Sanctionable Practise during any Tender Process or the performance of any Contract or for an irregularity affecting the EU's financial interests, unless they provide supporting information together with their DoU which shows that this conviction is not relevant in the context of the respective KfW financed Contract;
- (3) have been subject, within the last five years to a Contract termination fully settled against them for significant or persistent failure to comply with their contractual obligations during Contract performance, unless (i) this termination was challenged and (ii) dispute resolution is still pending or has not confirmed a full settlement against them;
- (4) have not fulfilled applicable fiscal obligations regarding payments of taxes either the country where they are constituted or the PEA's country;

- (5) are subject to an exclusion decision of the World Bank or any other multilateral development bank and are listed in the respective table with debarred and cross-debarred firms and individuals available on the World Bank's website or any other multilateral development bank, and cannot demonstrate with supporting information along with their DoU that the exclusion is not relevant in the context of the relevant KfW financed Contract;
- (6) have given a misrepresentation in supplying the information requested by the PEA as condition to participation in the Tender Process of the relevant Contract.

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

1.3.3 Conflict of Interest

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

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

are state-owned entities, which are not able to provide evidence that (a) they are legally and financially autonomous and (b) they do operate under commercial laws and regulations.

1.4 Sanctionable Practice

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

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

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

- (1) reject an Offer for Award of Contract if during the Tender Process the Bidder who is recommended for the Award of Contract has engaged in Sanctionable Practice, directly or by means of an agent in view of being awarded the Contract;
- (2) declare misprocurement and exercise its rights on the ground of the Financing Agreement with the PEA relating to suspension of disbursements, early repayment and termination if, at any time, the PEA, Contractors or their legal representatives or Subcontractors have engaged in Sanctionable Practice during the Tender Process or execution of the Contract without the PEA having taken appropriate action in due time satisfactory to KfW to remedy the situation, including by failing to inform KfW at the time they knew of such practices.

1.5 Social and Environmental Responsibility

Projects financed in whole or partly in the framework of Financial Cooperation have to ensure compliance with international Environmental, Social (including issues of sexual exploitation and abuse and gender based violence), Health and Safety (ESHS) standards. As such KfW has elaborated Sustainability Guidelines³, in line with relevant World Bank/IFC standards, defines a common binding framework to incorporate ESHS standards into the planning, appraisal, implementation, and monitoring of projects financed by KfW.

To assist the PEA during the Tender Process and the implementation of individual Contracts, KfW provides SDOs for ICB procedures which include the relevant ESHS requirements, which need to be adapted to the specific ESHS risks of the individual Contract. The relevant results of an environmental and social impact assessment (ESIA), an environmental and social management or commitment plan (ESMP/ESCP) or any other document dealing with ESHS risk mitigation in the respective project elaborated during project preparation, shall be taken into account in the preparation of the Tender Documents⁴.

3 For further details please see KfW's Sustainability Guidelines on https://www.kfw-entwicklungsbank.de/PDF/Download-Center/PDF-Dokumente-Richtlinien/Nachhaltigkeitsrichtlinie_EN.pdf

4 This applies to projects/programmes appraised after January, 1st 2019 only

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

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

- (1) comply with and ensure that all their Subcontractors and major suppliers, i.e. for major supply items for the Contract comply with international environmental and labour standards, consistent with applicable laws and regulations in the country of implementation of the respective Contract and the fundamental conventions of the International Labour Organization⁵ (ILO) and international environmental treaties; and
- (2) implement any environmental and social risk mitigation measures, as identified in the environmental and social impact assessment (ESIA) and further detailed in the environmental and social management plan/framework (ESMP/ESMF) as far as these measures are relevant to the Contract and implement measures for the prevention of sexual exploitation and abuse and gender-based violence.

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

1.6 Monitoring and Review by KfW

1.6.1 General

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

1.6.2 Procurement Plan

The PEA is required to establish as part of the Funding Agreement a Procurement Plan and implement it accordingly. The Procurement Plan shall identify as far as possible the respective Tender Processes for all KfW-financed Contracts. The initial Procurement Plan shall cover the whole project period and provide details for at least the first 18 months as of the Funding Agreement date. The Procurement Plan shall be reviewed and, if necessary, revised thereafter annually and shall be submitted timely to KfW for No-Objection of the revised version. The Procurement Plan template is enclosed in Appendix 2.

1.6.3 No-Objection - Prior Review

For Tender Processes above the ICB thresholds as per Article 2.1.1 prior review by KfW as outlined below is mandatory. Before publication or notification to third parties, and preferably before any communication for approval to a national regulatory or supervisory public procurement entity, the PEA shall submit to KfW the documents below as far as applicable in the respective Tender Process. KfW issues No-Objection notices if the proposed documents and decisions comply with the Guidelines:

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

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

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

1.6.4 No-Objection - Simplified Review

For Tender Processes below the ICB threshold KfW may agree on a simplified review instead of prior review as per Article 1.6.3 if KfW is satisfied with the applicable tender documents and modalities.

In a simplified review KfW provides No-Objection to the Tender Process upon submission of the draft Contract. In the case of serial procurement using the same Tender Documents and Contract specimen KfW may, after review and No-Objection to the first Tender Process, agree to replace the No-Objection by regular procurement audits or reviews.

1.6.5 No-Objection - Post Review

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

1.6.6 Renewed No-Objection

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

1.6.7 Advance Tendering

Advance tendering means that the PEA initiates the Tender Process prior to the finalisation of the underlying Funding Agreement. If KfW has agreed upon a written request to advance tendering, KfW will issue provisional No-Objections. The No-Objections shall become effective if and only when the respective Funding Agreement enters into force, it being understood that such

provisional No-Objection may under no circumstances be understood to constitute a commitment by KfW to finance the Contract, which remains strictly conditional upon the signing of the Funding Agreement.

1.6.8 Prefinanced Contracts

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

1.6.9 Indirect Financing

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

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

1.6.10 Sanctions by KfW for Misprocurement

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

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

2. General Provisions for the Tender Process

2.1 Tender Procedures

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

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

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

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

2.1.1 International Competitive Bidding

In the case of ICB, the Tender Notice is published internationally to attract international Persons to participate in the Tender Process. Contracts with an estimated value⁶ above the thresholds below (ICB thresholds) shall be subject to ICB:

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

2.1.2 National Competitive Bidding

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

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

2.1.3 Limited Competitive Bidding

In the case of LCB, the Tender Process is restricted to a limited number of preselected, qualified Persons, which are invited to submit an Offer.

Not less than three qualified Persons shall be requested to submit an Offer. To this end, the PEA will present to KfW a list of the proposed Persons from which Offers will be solicited plus a cost estimate and will demonstrate their qualification for the envisaged activity i.e. overall experience,

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

human resources, financial resources and expertise in relation to the subject of the Contract. Where insufficient information is available, Bidders shall be requested to submit such qualification details together with the Offers solicited.

LCB may be chosen

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

2.1.4 Price Quotation

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

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

2.1.5 Direct Award

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

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

Direct Award may be chosen in particular in the following cases:

- (1) Amendment of existing contracts, that means if
 - a) the total aggregate amount of the amendments is significantly lower than the initial Contract value (as a general rule less than 25 % of the initial Contract value), or the amendment does not justify a new competitive Tender Process, and
 - b) the nature and scope of the amendment does not result in a substantial modification of the initial Contract content;
- (2) In follow-on phases of a project, if all the following criteria are fulfilled
 - a) where attention was drawn to this potential follow-on phase in the precedent Tender Documents,
 - b) provided that the first Contract was awarded on a competitive basis,

- c) the Contractor's performance in the previous phase is satisfactory, and
- d) the specifications or the terms of reference are largely identical;
- (3) Following a cancellation of a Tender Process as per Article 2.5.15, provided
 - a) no fundamental changes have been made to the original terms and conditions of the Contract, and
 - b) a further competitive tender procedure is unlikely to produce appropriate results;
- (4) For reasons for extreme urgency,
 - a) brought about by unforeseeable events not attributable to the PEA (e.g. in the cases of natural disaster, crisis or conflict), and
 - b) where it is impossible to comply with the time limits set for the other procedures and laid down in Articles 2.4.10;
- (5) Unique selling point, that means, if due to a specific combination of expertise and experience required, technical reasons/features or the protection of exclusive rights (e.g. patent, copyright), the Contract can only be performed by a specific Person;
- (6) Contracts with an estimated Contract amount below 20,000 EUR (twenty thousand Euro).

2.2 Two-Stage and Single-Stage Selection

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

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

either in a single stage or in two stages.

Two-Stage Selection

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

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

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

Single-Stage Selection

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

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

Selection Methods in different Tender Procedures

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

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

2.3 One-/Two-Envelope Submission of Offers

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

The submission form depends on the evaluation method as described in Article 3.4 and 4.4. Generally, one-envelope submission is adequate, if the evaluation is based on the lowest price. Two-envelope submission is required, if the Bidder's technical Offer is evaluated on a point-system. In such case, the technical Offer is opened and evaluated first while the financial Offer remains unopened which allows for an unbiased evaluation of the technical Offer. Upon finalisation of the technical evaluation the financial Offers of those Bidders who fulfilled the technical requirements indicated in the Tender Documents will be opened and evaluated further.

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

2.4 Preparation of the Tender Process

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

2.4.1 Standard Tender Documents and Draft Contract

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

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

2.4.2 Standards and Technical Specifications, Brand Names

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

Specifications shall be based on relevant technical characteristics and/or performance requirements. References to brand names, catalogue numbers, or similar classifications shall be avoided. If it is justified to specify a brand name or catalogue number of a particular manufacturer to clarify an otherwise incomplete specification, the words 'or equivalent' shall be added after

such a reference to permit the acceptance of Offers for Goods that have similar characteristics and performance at least substantially equivalent to those specified.

2.4.3 Registration and other Administrative Requirements

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

2.4.4 Joint Ventures

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

2.4.5 Language

In the case of procurement under ICB Tender Documents and Offers shall be prepared in one of the following four international languages at the PEA's discretion: English, French, Spanish or Portuguese. If the national language is different from these international languages, the Tender Documents may also be published in the national language⁷ and Applicants/Bidders may be permitted to submit the documents in the national language in addition to the international language version. However, in the case of discrepancies, the text in the international language version of the documents shall prevail. The same applies to the Contract to be concluded and which shall be signed and binding in the international language only.

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

2.4.6 Currencies

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

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

⁷ The PEA bears responsibility for the translation and, if applicable, the respect of the copyright.

2.4.7 Taxes and Duties

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

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

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

2.4.8 Guarantees and Securities

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

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

2.4.9 Fees for Tender Documents

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

2.4.10 Submission Deadlines

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

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

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

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

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

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

2.4.11 Domestic Preference

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

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

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

2.5 Execution of the Tender Process

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

2.5.1 Publication of Tender Notice

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

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

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

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

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

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

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

Communications between the PEA and (potential) Applicants/Bidders during the different stages of the Tender Process shall be in writing⁸ and the PEA shall treat information relating the examination, clarification, and evaluation of Applications/Offer in such way as to avoid disclosure of their contents to any other (potential) Applicant/Bidder participating in the Tender Process, or any other party not authorised to have access to this type of information, until the PEA notifies the outcome of the evaluation of Applications/Offer, in accordance with the procedures in the applicable Tender Documents.

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

The PEA's response to a request for clarification shall not disclose information which might give an unfair advantage. Any modification to issued Tender Documents shall be introduced in the form of an addendum to the Tender Documents. All clarifications and addenda of Tender Documents shall be in writing. They shall be sent simultaneously to each recipient of the original Tender Documents or published in the same medium as the tender notice in sufficient time to enable potential Applicants/Bidders to take appropriate action, which means no later than ten (10) calendar days prior to the submission deadline as per Article 2.4.10.

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

2.5.3 One Application/Offer per Applicant/Bidder

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

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

Key Experts in Proposals for Consulting Services shall not participate in more than one Proposal, unless competition would be adversely affected, and this is reflected in the Tender Documents. In the case the same Key Expert⁹ appears in more than one Proposal, all Proposals concerned shall

⁸ The term "in writing" means communicated or recorded in written form. It includes, e.g. mail, e-mail, fax or communication through an electronic procurement system (provided that the electronic system is accessible, secure, ensures integrity and confidentiality, and has sufficient audit trail features).

⁹ An individual (natural Person) which is not part of the regular staff ("freelancer") but engaged temporarily as Key Expert for the relevant Contract shall not be considered as Subcontractor in this context.

be rejected unless a bidder can demonstrate to have obtained the exclusive right of the respective Key Expert to include its curricula vitae in the proposal before the submission deadline has passed.

2.5.4 Opening of Applications/Offers

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

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

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

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

- ☐ the name of the Applicant/Bidder and

at the public opening of the financial Offers

- ☐ the price of the Offer,
- ☐ including any alternative Offers or discounts.

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

2.5.5 Preliminary Examination of Applications/Offers

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

2.5.6 Evaluation of Evidence of Qualification

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

Qualification of Applicants/Bidders

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

presenting a legally binding letter of comfort of a financially sound parent company (to be demonstrated).

Qualification of Subcontractors

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

Modifications after Submission of Application

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

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

2.5.7 Information and Publication of Prequalified Applicants

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

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

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

2.5.8 Evaluation of Offers

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

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

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

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

Abnormally Low Bids

An abnormally low Bid is one in which the Offer price, in combination with other elements of the Offer, appears so low either in comparison with the PEA's estimate or with the average of competing Offer or in the case of Consulting Services with the estimated expert-month that it raises material concerns with the PEA as to the capability of the Bidder to perform the Contract

for the offered price. The PEA shall ask for written clarifications and shall require detailed price breakdown from the Bidder concerned

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

2.5.9 Clarification of Applications/Offers during Evaluation

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

2.5.10 Extension of Offer Validity

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

2.5.11 Evaluation Report

The PEA's evaluation committee shall prepare and sign a detailed report on the evaluation of Applications/Offers with the minimum content and in the format as described in Appendix 6.

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

2.5.12 Pre-Award Discussions

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

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

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

The pre-award discussions shall also determine the taxes and duties that shall be due locally (they may be estimated on a provisional basis in the financial Offer but are not to be evaluated) and decide the manner in which they will be paid for, taking into account the provisions set out in the RfP/ITB.

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

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

2.5.13 Information of Bidders and Award of Contract

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

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

2.5.14 Publication of the Result of the Tender Process

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

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

2.5.15 Cancellation of a Tender Process

A Tender Process may be cancelled when

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

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

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

If the rejection is due to non-compliance with the Tender Documents or technical requirements, the PEA should after thorough investigation adjust the Tender Documents or the technical

requirements. In such case, the PEA may request new Offers from all of the initially prequalified Applicants if a Prequalification had taken place or those that submitted an Offer in response to the initial RfP or ITB.

If the price of the first ranked and compliant Offer significantly exceeds the latest cost estimate or the available budget, the PEA shall investigate the reasons for such overrun and envisage increasing the budget, if the increased prices are justifiable or re-launching the RfP/ITB as per the provisions above. Alternatively, the PEA may, enter into negotiations with the first ranked Bidder to seek to obtain a satisfactory Contract on the basis of a reduction of the scope of the Contract and/or a modification to the sharing of risks and responsibilities in order to reduce the Contract price. This is only allowed when the modifications envisaged do not call into question the initial ranking of Offers following the evaluation.

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

2.5.16 Publication of Tender Process Cancellation

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

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

2.5.17 Debriefing

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

2.6 Procurement Related Complaints

Applicants/Bidders who consider that actions or decisions by the PEA in the course of the Tender Process result in an unfair disadvantage may file a procurement related complaint. Unless the complaints mechanism in the Public Procurement Regulation provides otherwise, such a complaint shall be addressed in writing to the PEA, with copy to KfW, detailing the grounds for the complaint with reference to the applicable provisions in the Tender Documents or other applicable regulations. Upon receipt of such a complaint the PEA shall promptly handle the complaint and respond to the complainant in writing detailing the result of the complaint's handling. Should the handling of the complaint by the PEA not be possible within three (3) working days after the receipt of the complaint the PEA should at least acknowledge its receipt and respond to the complainant with the results of the complaint's handling within ten (10) working days from the acknowledgment of the receipt.

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

2.7 Electronic Procurement

The PEA may use an electronic system to distribute tender documents, provided that KfW is satisfied with its adequacy. If Tender Documents are distributed electronically, the electronic

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

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

3. Provisions for Procurement of Consulting Services

3.1 Tender Agents and Agency Contract

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

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

3.2 Two-Stage Selection for Consulting Services

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

3.3 Pre-Qualification for Consulting Services

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

- (1) Overall financial situation and minimum turn-over in relation to the estimated Contract value;
- (2) Experience in implementing similar projects in the subject matter, in the relevant sector,, function and role as per the requirements of the project (e.g. studies, surveys, design, tendering and contracting, technical/organisational/financial project management, ESHS,

maintenance and operation, specialised technical/legal/management expertise), generally within the last five years;

- (3) Geographical experience in similar countries or environments;
- (4) Access to expertise relevant for the assignment, possibly supplemented with external resources and available own human resources and capacities, including backstopping capacities.

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

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

For further details see Appendix 4 and KfW's SDOs¹⁰,

3.4 Evaluation Methods for Consulting Services

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

3.4.1 Quality and Cost-Based Selection (QCBS)

The two-envelope submission applies to QCBS.

Technical Evaluation

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

¹⁰ For further details about the evaluation of qualification criteria see KfW's SDOs available at <https://www.kfw-entwicklungsbank.de/International-financing/KfW-Development-Bank/Publications-Videos/Publication-series/Guidelines-and-contracts/>

Financial Evaluation

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

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

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

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

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

Weighting

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

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

3.4.2 Least Cost Based Selection (LCS)

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

3.4.3 Quality Based Selection (QBS)

The two-envelope submission applies to QBS.

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

The Contract is awarded to the highest scored technical Proposal.

3.4.4 Fixed Budget Based Selection (FBS)

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

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

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

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

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

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

4.1 Engagement of a Consultant

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

4.2 Single- and Two-Stage Selection

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

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

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

4.3 (Pre-)Qualification for Works and Plant Contracts

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

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

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

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

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

4.4.1 Lowest Price Evaluation

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

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

This method relies on the price as award criterion.

4.4.2 Bonus-Malus Adjusted Price Evaluation

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

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

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

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

4.4.3 Weighted Evaluation

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

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

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

4.4.4 Life Cycle Cost Evaluation (LCC)

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

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

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

4.5 Alternative Bids

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

4.6 Discounts

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

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

4.7 Transport and Insurance

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

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

4.8 Force Account

Recourse to force account, that is the implementation of Works using the PEA's own personnel and equipment, may in certain cases be envisaged if it is the only available method, namely, but not exclusively, in the case of Works which cannot be quantified in advance, small and scattered Works (routine maintenance on an infrastructure network) or emergency Works, and is subject to KfW's prior consent.

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

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

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

5.1 Procurement not subject to Public Procurement Regulations

Certain PEAs may, due to their legal status, not be bound to the Public Procurement Regulations in the Partner Country (e.g. private banks and firms, privatised entities, NGOs, UN organisations). Subject to prior approval of KfW, the PEA may use their own internal procurement regulations or, in the absence thereof shall rely on the provisions of the Guidelines.

PEAs not subject to Public Procurement Regulations and having no internal procurement regulations may elaborate a project specific procurement manual, which presents the procedures they intend to apply for procurement of Consulting Services, Works, Goods, Plant, or Non-Consulting Services.

If PEAs apply their existing or newly elaborated procurement regulations, they shall confirm that these comply with the basic principles of the Guidelines as outlined in Article 1.2.1 and reflect commercial state-of-the-art business practice in the relevant sector. In the case of a conflict between the Guidelines and the PEAs procurement regulations KfW and the PEA will agree on appropriate provisions prior to any procurement.

KfW reserves the right to request the PEA to publish tender notices as outlined in Article 2.5.1 especially for major Contracts above the ICB thresholds.

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

5.2 Financial Intermediaries

In certain cases, KfW's funding for infrastructure projects is provided via financial intermediaries to final beneficiaries who are subject to the Public Procurement Regulation due to their legal status (e.g. municipalities, state owned entities). In such cases KfW requires that the procurement procedures applied comply with the basic principles of the Guidelines as outlined in Article 1.2.1. Unless otherwise agreed in the Funding Agreement, the financial intermediary will monitor the procurement by the final beneficiaries and subsequently report on it as part of its regular reporting procedures to KfW.

For procurement undertaken by the financial intermediary for its own needs (e.g. Consulting Services, Goods) the provisions of the Guidelines apply.

5.3 Specific Case of Concessions and Output Based Contracts

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

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

Appendices

Declaration of Undertaking

Reference name of the Application/Offer/Contract: ("Contract")¹¹
To: ("Project Executing Agency")

1. We recognise and accept that KfW only finances projects of the Project Executing Agency ("PEA")¹² subject to its own conditions which are set out in the Funding Agreement it has entered into with the PEA. As a matter of consequence, no legal relationship exists between KfW and our company, our Joint Venture or our Subcontractors under the Contract. The PEA retains exclusive responsibility for the preparation and implementation of the Tender Process and the performance of the Contract.
2. We hereby certify that neither we nor any of our board members or legal representatives nor any other member of our Joint Venture including Subcontractors under the Contract are in any of the following situations:
 - 2.1) being bankrupt, wound up or ceasing our activities, having our activities administered by courts, having entered into receivership, reorganisation or being in any analogous situation;
 - 2.2) convicted by a final judgement or a final administrative decision or subject to financial sanctions by the United Nations, the European Union or Germany for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings; this criterion of exclusion is also applicable to legal Persons, whose majority of shares are held or factually controlled by natural or legal Persons which themselves are subject to such convictions or sanctions;
 - 2.3) having been convicted by a final court decision or a final administrative decision by a court, the European Union, national authorities in the Partner Country or in Germany for Sanctionable Practice in connection with a Tender Process or the performance of a Contract or for an irregularity affecting the EU's financial interests (*in the event of such a conviction, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this conviction is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*);
 - 2.4) having been subject within the past five years to a Contract termination fully settled against us for significant or persistent failure to comply with our contractual obligations during such Contract performance, unless this termination was challenged and dispute resolution is still pending or has not confirmed a full settlement against us;
 - 2.5) not having fulfilled applicable fiscal obligations regarding payments of taxes either in the country where we are constituted or the PEA's country;
 - 2.6) being subject to an exclusion decision of the World Bank or any other multilateral development bank and being listed on the website <http://www.worldbank.org/debarr> or respectively on the relevant list of any other multilateral development bank (*in the*

¹¹ Capitalised terms used, but not otherwise defined in this Declaration of Undertaking have the meaning given to such term in KfW's "Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partner Countries".

¹² The PEA means the purchaser, the employer, the client, as the case may be, for the procurement of Consulting Services, Works, Plant, Goods or Non-Consulting Services.

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event of such exclusion, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this exclusion is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction); or

- 2.7) being guilty of misrepresentation in supplying the information required as a condition of participation in the Tender.
3. We hereby certify that neither we, nor any of the members of our Joint Venture or any of our Subcontractors under the Contract are in any of the following situations of conflict of interest:
 - 3.1) being an affiliate controlled by the PEA or a shareholder controlling the PEA, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;
 - 3.2) having a business or family relationship with a PEA's staff involved in the Tender Process or the supervision of the resulting Contract, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;
 - 3.3) being controlled by or controlling another Applicant or Bidder, or being under common control with another Applicant or Bidder, or receiving from or granting subsidies directly or indirectly to another Applicant or Bidder, having the same legal representative as another Applicant or Bidder, maintaining direct or indirect contacts with another Applicant or Bidder which allows us to have or give access to information contained in the respective Applications or Offers, influencing them or influencing decisions of the PEA;
 - 3.4) being engaged in a Consulting Services activity, which, by its nature, may be in conflict with the assignments that we would carry out for the PEA;
 - 3.5) in the case of procurement of Works, Plant or Goods:
 - i. having prepared or having been associated with a Person who prepared specifications, drawings, calculations and other documentation to be used in the Tender Process of this Contract;
 - ii. having been recruited (or being proposed to be recruited) ourselves or any of our affiliates, to carry out works supervision or inspection for this Contract;
4. If we are a state-owned entity, and compete in a Tender Process, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.
5. We undertake to bring to the attention of the PEA, which will inform KfW, any change in situation with regard to points 2 to 4 here above.
6. In the context of the Tender Process and performance of the corresponding Contract:
 - 6.1) neither we nor any of the members of our Joint Venture nor any of our Subcontractors under the Contract have engaged or will engage in any Sanctionable Practice during the Tender Process and in the case of being awarded a Contract will engage in any Sanctionable Practice during the performance of the Contract;
 - 6.2) neither we nor any of the members of our Joint Venture or any of our Subcontractors under the Contract shall acquire or supply any equipment nor operate in any sectors under an embargo of the United Nations, the European Union or Germany; and
 - 6.3) we commit ourselves to complying with and ensuring that our Subcontractors and major suppliers under the Contract comply with international environmental and labour standards, consistent with laws and regulations applicable in the country of

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implementation of the Contract and the fundamental conventions of the International Labour Organisation¹³ (ILO) and international environmental treaties. Moreover, we shall implement environmental and social risks mitigation measures when specified in the relevant environmental and social management plans or other similar documents provided by the PEA and, in any case, implement measures to prevent sexual exploitation and abuse and gender based violence.

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

Name: _____ In the capacity of: _____

Duly empowered to sign in the name and on behalf of¹⁴: _____

Signature:

Dated:

¹³ In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant/Bidder/Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

¹⁴ In the case of a JV, insert the name of the JV. The person who will sign the application, bid or proposal on behalf of the Applicant/Bidder shall attach a power of attorney from the Applicant/Bidder.

Procurement Plan

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

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

- ✦ Contract type (Consulting Services, Goods, Works, Plant or Non-Consulting Services) and content,
- ✦ estimated Contract amount and the source(s) of funds,
- ✦ envisaged Tender Procedure and Single- or Two Stage Selection,
- ✦ envisaged standardised Tender Documents,
- ✦ type of review required by KfW (full or simplified review),
- ✦ estimated ESHS classification (low, medium, high risk) per Contract as provisional indication at the time of first establishment of the procurement plan
- ✦ estimated date of tender publication or, in the case of limited competition, date of inviting firms to submit proposals.

For serial Contracts with similar content and procedures one single Contract might be included and explained in the comment column. In the case of programs for which no individual Contracts can be identified in advance, the Procurement Plan may include the envisaged Tender Procedures and possibly thresholds for different types and values of Contracts as far as possible. The application of simplified review requires KfW consent as per Article 1.6.4

The Procurement Plan shall be initially created at least for the first 18 months as of the date of the Funding Agreement (Version 1) and shall be updated thereafter when necessary, but at least on an annual basis. Updates, amendments or modifications of the Procurement Plan are subject to KfW's renewed No-Objection.

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

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

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

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

Appendix 2

Procurement Plan
(Version No. _____, dated _____)

Serial No.	Procurement No. ¹⁵	Type ¹⁶	Short Description of Contract Content	Estimated Contract Amount ¹⁷	Source of Funds ¹⁸	Tender Procedure ¹⁹	Stages ²⁰	Tender Documents ²¹	Review by KfW ²²	ESHS risk level ²³	Estimated Tender Publication	Comments ²⁴
1												
2												
3												
4												
...												

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

¹⁵ KfW's Procurement No. for the respective Tender Process to be provided by KfW's procurement manager; "n/a" if not yet available.

¹⁶ "C" for Consulting Services, "W" for Works, "G" for Goods, "P" for Plant and "NC" for Non-Consulting Services. Incl. Contracts contracted beforehand, if any.

¹⁷ To be completed in the currency of the underlying Funding Agreement with KfW.

¹⁸ Share (in %) of the Contract financed by KfW, through the PEA's own funds and/or other financing institutions.

¹⁹ "ICB" for International Competitive Bidding, "NCB" for National Competitive Bidding, "LCB" for Limited Competitive Bidding, "Q" for Price Quotation and "DA" for Direct Award.

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

²¹ Institution whose standardized Tender Documents are used. It is recommended to use KfW's Standard Tender Documents.

²² "F" for full review or "S" for simplified review.

²³ Relevant for works and plant contracts and for goods contracts only if it contains significant construction works. "L" for low, "M" for medium, "H" for high ESHS risk classification or "n/a" if not applicable. The ESHS risk level of a specific Contract is not necessarily identical with the Environmental and Social risk category of the whole project/programme. The classification at project appraisal may be indicative and finalised when an ESMP is available, but latest when preparing the Tender Documents for the Contract. See also KfW's Standard Tender Documents for further guidance.

²⁴ Contract related explanation / procedural arrangements (e.g. justification for direct award, One-/two-envelope, evaluation method, thresholds for Tender Procedures in programs).

Minimum Content of a Tender, PQ-Result, Contract Award and Cancellation Notice

Tender Notice

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

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

Pregualification-Result Notice

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

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

Award Notice

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

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

Cancellation Notice

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

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

Addenda/Corrigenda to Initial Notices

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

Evaluation Criteria for Procurement of Consulting Services

1. Pre-Qualification

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

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

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

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

Appendix 4

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

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

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

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

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

2. Evaluation of Proposals

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

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

Appendix 4

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

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

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

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

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

$PT = WT * T$, with

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

WT = weight (factor) of the technical Proposal

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

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

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

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

WF = weight (factor) of the financial proposal

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

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

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

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

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

Minimum Content of Tender Documents

Request for Application

Requests for Application are to be used for Prequalification of Applicants in Tender Processes with Two-Stage Selection.

KfW provides SDOs for Prequalification for Consulting Services and for Works/Plant Contracts. If the PEA uses other Tender Documents for Prequalification, they shall not deviate in a substantive manner from the above mentioned documents and include the following minimum content:

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

Request for Proposal/Invitation to Bid

Requests for Proposal/Invitations to Bid are to be used for selection of Contractors in Tender Processes with Two-Stage or Single-Stage Selection.

KfW provides SDOs for the procurement of Consulting Services, Goods, Works, Small Works and Plant (design, supply installation). If the PEA uses other Tender Documents for selection of Contractors, they shall not deviate in a substantive manner from the above mentioned respective documents and include the following minimum content:

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

Minimum Content of Minutes of Application/Offer Opening and Evaluation Reports

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

These reports contain in general the following information and shall be provided for No-Objection in the format as requested by KfW:

Minutes of Application/Offer Opening

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

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

Prequalification and Offer Evaluation Reports

On completion of the Application/Offer evaluation KfW is furnished with a detailed report on the evaluation and comparison of the Applications/Offers and with a substantiated recommendation for the invitation of prequalified Applicants (RfP/ITB) or Award of Contract, as the case may be, that must be coordinated with any government agencies of the Partner Country whose involvement may be required.

- (1) Introduction
 - ✦ Short information on project and Contract content;
 - ✦ Tender Procedure (e.g. ICB, NCB), Single- or Two-Stage Selection, One- or Two-Envelope Submission undertaken;

Appendix 6

- ✦ What/which stage/envelope is being evaluated in the present report (e.g. Prequalification evaluation, technical Offer evaluation, financial Offer evaluation, combined evaluation);
- ✦ Names of persons in charge of Application/Offer evaluation (members of Application/Offer evaluation committee);
- ✦ Start and end of Application/Offer submission period, including any extensions thereof with reasoning and proof of its publication;
- ✦ Date and medium of publication of tender notice and in the case of Two-Stage Selection PQ-result notice, or when and how took the invitation to interested/preselected Persons place? (evidence of publication to be attached as annex to the report in the case of an ICB and an NCB);
- ✦ In the case of a pre-bid meeting: date, time and venue; participants and minutes of discussion (minutes of meeting to be attached as annex to the report);
- ✦ Clarifications/addenda to Tender Documents during the Application/Offer submission period (any clarifications with Applicants/Bidders during the Application/Offer submission period and during the evaluation phase to be attached as annex to the report).

(2) Results of Preliminary Examination

- ✦ Names of all Applicants/Bidders (minutes of Application/Offer opening to be attached as annex to the report);
- ✦ If the Application/Offer fails preliminary acceptance, the reasons must be clearly explained (Since rejection at this stage puts the Application/Offer out of any further considerations, it should be ensured that the decision to reject is justifiable.);
- ✦ Applications/Offers which have been considered for further evaluation.

(3) Application/Offer Evaluation Process

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

(4) Conclusion

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

Appendix 6

- ✦ Signature of all members of the Application/Offer evaluation committee. If required, the procuring entity / PEA shall demonstrate to KfW's satisfaction, that findings and conclusion of the evaluation report submitted represent the procuring entity / PEA's official opinion.

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

Contractual Provisions

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

1. Contract Models

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

In the case of using other Contract forms the provisions included therein shall adhere to the rules below for Contracts awarded under ICB and as far as applicable in Contracts under NCB. Unless otherwise agreed, the draft Contracts require KfW's No-Objection before signing.

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

2. Contractual Requirements

2.1 Performance Parameters

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

2.2. Liability

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

2.3 Defaults

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

2.4 Payment Terms

Payment terms shall be in accordance with the international commercial practices applicable to the type of Contract (Consulting Services, Works, Plant, Goods and Non-Consulting Services) and be designed for efficient disbursement procedures (e.g. minimum disbursement amounts,

especially if agreed in the Funding Agreement; avoidance of multiple recipients of payments, notably in the case of JVs; payments preferably in EUR or USD).

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

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

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

2.5 Guarantees and Securities

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

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

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

Both, the advance payment guarantee, and the performance security shall be abstract guarantees, valid until the secured performance has been affected. In the event of a

postponement of the completion date laid down in the initial Contract, the PEA needs to request an extension of the performance security and retention money security from the Guarantor. Such request shall be in writing and must be made prior to the expiration date established in the security.

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

For specimen of the various types of guarantees and securities see Appendix 8. Other forms of guarantees or securities require KfW's approval.

2.6 Price Adjustment

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

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

2.7 Taxes, Duties and Levies

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

- ☐ the Contractor and its staff are exempted from local taxes and public duties, in such cases a copy or at least a reference to the legal act testifying the tax exemption should be attached to the Contract,
- ☐ the Contractor and its staff are subject to local taxes and public duties directly attributable to the Contract and the PEA will either remunerate the Contractor or pay these taxes and duties on behalf of the Contractor to tax authorities. In such cases the Contract should specify the nature and amounts of taxes and the procedure of invoicing by the Contractor and the mode of payment by the PEA,
- ☐ the Contractor and its foreign staff are subject to local taxes and public duties directly attributable to the Contract which will be borne by the Contractor and its staff. In such cases offered prices are considered inclusive of local taxes and public duties, i.e. local taxes and

public duties shall be considered to be included in the overhead cost calculation and will not be subject to any separate payment.

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

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

2.8 Warranty/Defects Liability Period

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

2.9 Liquidated Damages

The time for the completion of Works/delivery of Goods or services shall be specified, generally in the form of a contractual time schedule. Provisions for liquidated damages or similar provisions shall be included in the Contract when delays in the delivery of Consulting Services, Goods, completion of Works, or failure of the Goods, Works, and Non-Consulting Services to meet performance requirements would result in extra cost or loss of revenue or other benefits to the PEA. The amount of the liquidated damages is usually a specific amount or a portion in relation to a time unit (e.g. an amount of money or percentage of the Contract price per week) with a ceiling (usually five to 10 per cent of the Contract price).

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

2.10 Insurance

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

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

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

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

2.11 Force Majeure

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

2.12 Applicable Law, Settlement of Disputes and Arbitration

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

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

2.13 Use of Results

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

2.14 Communication and Visibility

The Contractor shall be required to indicate the provider of the funds for the Contract (e.g. the German Government or European Union) according to the requirements of the respective institution²⁵. Depending on the nature of the Contract this may include an indication on the provider of the funds on documents, on publicity material or on reports as well as a logo on vehicles, major equipment and major supplies purchased with these funds and indications on the provider of the funds on temporary construction site display panels or an acknowledgment on permanent display panels.

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

2.15 Declaration of Undertaking

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

²⁵ Further details can be made available on request

Models for Guarantees and Securities

Advance Payment Guarantee

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

Date of Issue: *[insert date]*

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

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

We have been informed that *[insert name and address of Contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called “the Contractor”) has entered into Contract No. *[insert reference number of the Contract]* dated *[insert Contract date]* with the Beneficiary, for the execution of *[insert object of the Contract and brief description of the contractual content]* (hereinafter called “the Contract”). Furthermore we understand that, according to the conditions of the Contract, an advance payment in the sum of *[insert amount and currency in words and figures]*²⁶, representing *[insert percentage in words and figures]* percent of the Contract price is to be made against an advance payment guarantee.

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

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

[For guarantees issued in foreign currency insert the following:

In the event of any claim under this guarantee, payment shall be effected to KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00), for the account of *[Insert name of the Beneficiary and the Beneficiary’s country]*.

[For guarantees issued in local currency insert the following:

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

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

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

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

²⁶ This guarantee must be issued in the Contract currency only.

Appendix 8

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

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

Place, date

Guarantor's authorised signature(s)

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

Performance Security

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

Date of Issue: *[insert date]*

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

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

We have been informed that *[insert name and address of Contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called “the Contractor”) has entered into Contract No. *[insert reference number of the Contract]* dated *[insert Contract date]* with the Beneficiary, for the execution of *[insert object of the Contract and brief description of the contractual content]* (hereinafter called “the Contract”). Furthermore, we understand that, according to the conditions of the Contract, a performance security is required for *[insert percentage in words and figures]*²⁷ percent of the Contract price.

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

[For guarantees issued in foreign currency insert the following:

In the event of any claim under this guarantee, payment shall be effected to KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00), for the account of *[Insert name of the Beneficiary and the Beneficiary’s country]*.

[For guarantees issued in local currency insert the following:

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

This security shall expire not later than *[insert expiry date]*²⁸. By this date we must have received any claims for payment by letter or encoded telecommunication.

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

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

²⁷ This security must be issued in the Contract currency only.

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

Appendix 8

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

Place, date

Guarantor's authorised signature(s)

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

Retention Money Security²⁹

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

Date of Issue: *[insert date]*

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

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

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

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

Waiving all objections and defences, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert security amount and currency in words and figures]*³⁰ upon receipt by us of the Beneficiary’s first demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Contractor is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or show grounds for the demand or the sum specified therein.

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

[For securities issued in foreign currency insert the following:

In the event of any claim under this security, payment shall be effected to KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00), for the account of *[insert name of the Beneficiary and the Beneficiary’s country]*.

[For securities issued in local currency insert the following:

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

²⁹ This model is designed for Works, Plant and similar Contracts, if used exceptionally, for Consulting Services the text needs to be adapted

³⁰ The Guarantor shall insert an amount representing the amount of the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the taking-over certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and denominated in the Contract currency(ies) only.

This security shall expire not later than *[insert expiry date]*³¹.

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

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

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

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

Place, date

Guarantor's authorised signature(s)

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

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

Officer in Charge: Katharina Reuter
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Disbursement Procedure

German Financial Cooperation with Ukraine
Loan and Grant Agreement of KfW for EUR 13,250,000.00
Project/Programme name: Energy Efficiency in Municipalities
KfW-Reference Number (Project No./ BMZ No.): 2017.65.031 / 2017.70.007

1 INTRODUCTION

This Annex stipulates the disbursement procedure for funds disbursed by KfW (the “**Funds**”) under the above-mentioned Loan and Grant Agreement (the “**Agreement**”). The agreed disbursement procedure allows KfW to monitor the contractual use of Funds and ensures that disbursements are only made in accordance with the progress of the Project/Programme financed. As outlined in Article III.1.3 of the Separate Agreement, KfW shall prepare a List of Goods and Services (LOGAS), which can be made available to the **Authorized Party** (as defined in Article 3.1 below) upon request.

Please contact the KfW-official indicated above (quoting KfW’s reference number) if you have any questions about the disbursement procedure.

Subject to any express provision to the contrary in this Annex, terms used herein shall have the meaning as in the Agreement and the respective Separate Agreement.

2 GENERAL PROVISIONS

2.1 Disbursement requests

- shall be based on the models provided in this Annex,
- shall indicate the KfW reference number,
- shall be numbered consecutively throughout the Project/ Programme,
- shall be duly signed by the persons who have been authorized to do so by the formal representative of the Authorized Party (“**Authorized Representative**”) and of whom KfW has received specimen original signatures according to the model provided in Attachment A (the “**Authorized Signatory/Signatories**”),
- and shall be submitted in original to KfW’s FC Disbursement and Loan Management department (BKe).

In general, KfW will only accept originally signed disbursement requests. Exceptions shall be subject to KfW’s prior consent. In case of such exceptions, the Authorized Party releases KfW from all liability regarding any damage resulting from false transmission, due in particular to transmission errors, abuse, misunderstanding, or mistakes.

- 2.2 Except to the extent that the Agreement, the Separate Agreement or this Annex contain any provision to the contrary, disbursements shall be made in the currency indicated in the disbursement request to the bank account specified in the disbursement request.

Notwithstanding the foregoing, if (i) the currency indicated in the disbursement request is not readily available to KfW in the amount requested, or (ii) the disbursement in the currency indicated would contravene any law or regulation applicable to KfW, KfW shall give notice to the Authorized Party and, without incurring any liability (other than in the case of KfW's gross negligence or wilful misconduct), be entitled to disregard the disbursement request. The foregoing shall be without prejudice to the Authorized Party's right to submit another disbursement request for a disbursement in Euro or the currency committed in the Agreement

It is the obligation of the Authorized Party to supply KfW with complete and correct bank details for disbursements including correspondent bank details if relevant. KfW shall not be liable for any damage, loss, costs or liability caused by failed bank transfers including, without limitation, if the amount requested by the Authorized Party cannot be credited to the bank account specified in the disbursement request in the currency requested, or if the Authorized Party fails to indicate complete and correct bank account details in the respective disbursement request) unless such damage, loss, costs or liability was caused by KfW's gross negligence or wilful misconduct.

If KfW determines that the information provided in the disbursement request is incomplete or incorrect, KfW is, without incurring any liability (other than in the case of KfW's gross negligence or wilful misconduct), entitled to complete or replace the bank account details by using publicly available information (such as Bankers Almanac for determining the correspondent bank) and/or information set out in the underlying invoice. KfW is entitled to use said account details for all further disbursements, unless a subsequent disbursement request by the Authorized Party contains new complete and correct information.

If the Authorized Party requests a disbursement in a currency other than the currency committed in the Agreement (the "Foreign Currency"), KfW will debit the Project Account with the total equivalent in the currency committed of the amount expended by KfW for the procurement of the Foreign Currency (inclusive of incidental expenses). Notwithstanding the foregoing, KfW is entitled to request that the final disbursement request shall be for an amount in the currency committed in the Agreement.

If the Authorized Party requests a payment of the equivalent of an amount denominated in one currency (the "First Currency") in another currency (the "Second Currency") (e.g. equivalent of USD in EUR), KfW shall, unless a clear stipulation to the contrary exists either in the Agreement, the Separate Agreement, this Annex or the contract which forms the basis of the payment, be entitled to use a market-oriented exchange rate to convert the amount from the First Currency to the Second Currency.

- 2.3 KfW shall not be liable for delays caused by transferring banking institutions in the disbursement or remittance of Fund or if the Authorized Party fails to provide a duly executed disbursement request in accordance with Article 2.2 above. If, however,

KfW is responsible for any delay, its liability will, other than in cases of gross negligence or wilful misconduct, be limited to the payment of interest accrued.

- 2.4 Following each disbursement, KfW shall send a disbursement advice to the Borrower/Recipient. Provided that an e-mail address has been communicated to KfW using the model in Attachment B, this disbursement advice shall be sent via e-mail on the payment date. If no e-mail address is provided, KfW shall send a summary of disbursement advices to the Borrower/Recipient by regular mail on a monthly basis.
- 2.5 Without prejudice to provisions to the contrary in the Agreement, the Separate Agreement or this Annex, any original documentation evidencing the proper expenditure of Funds disbursed according to the provisions of this Annex (including, but not limited to invoices, certificates, etc.) shall be kept for a minimum of five years after completion of the Project/ Programme, and shall be accessible for inspection by KfW or any third party instructed by KfW (e.g. auditors) at all times. Upon request, KfW or any third party instructed by KfW shall be furnished with copies of any such documentation.

3 SPECIAL PROVISIONS

3.1 In accordance with Article 3.1 and 7 of the Agreement, the authorized parties (**acting jointly**) shall be in respect of the Loan **Ministry of Finance of Ukraine, Ministry for Communities, Territories and Infrastructure Development of Ukraine and Zaporizhzhia City Council** and in respect of the Grant **Ministry for Communities, Territories and Infrastructure Development of Ukraine and Zaporizhzhia City Council**, (each the “**Authorized Party**”) represented by the Authorized Representative and duly appointed Authorized Signatories.

3.2 Procedure to be applied

Disbursement Procedure	Measures / Contracts to be Financed	According to the Separate Agreement and/or Annex 3 “Cost & Financing” Article/Position
Simplified Direct Disbursement Procedure	Funds assigned to works, goods and services specified as Investment Measures	Separate Agreement Article I 1.3 a and Annex 3 Position 1.1. – 1.3.
Direct	Funds assigned to works, goods and services specified as Consultancy Services	Separate Agreement Article I 1.3 b and 1.3 c and Annex 3 Position 2.1. and 2.2.
Consultant		

3.3 Simplified Direct Disbursement Procedure

Using the model provided in **Attachment C**, the Authorized Party shall submit a disbursement request to KfW. This disbursement request shall be duly signed by the Authorized Signatory/ Signatories previously communicated to KfW by means of **Attachment A**. The Disbursement Request shall indicate the beneficiary’s (hence the supplier’s/ contractor’s) name as well as its full and correct bank details.

In accordance with the terms set forth in **Attachment C** which are to be included into the contract for consulting services, the Consultant shall certify the invoice(s) submitted by signing on the disbursement request (see **Attachment C**) and confirming that all obligations according to the underlying contract for works, goods and/ or services have been met and all documents presented (including bank guarantees) comply with the conditions of the underlying contract as well as KfW’s regulations/ standards.

Documents supporting the disbursement request (if applicable):

- copies of commercial invoice(s) for the works, goods and/ or services to be financed in accordance with the provisions of the underlying contract
- optionally: Consultants Checklist based on the model in **Attachment C** documenting essential verifications undertaken for the purposes of the Simplified Direct Disbursement Procedure.
- Non-objection by KfW in case expenses exceed the contractually agreed budget lines. After verifying the disbursement request, KfW will disburse the amount requested directly to the supplier’s/ contractor’s account.

3.4 Direct Disbursement Procedure (Consultant)

Within the framework of the **Direct Disbursement Procedure (Consultant)**, KfW pays the consultant directly based on the underlying consultant contract. Disbursements will be made upon receipt and after evaluation of a disbursement request submitted to KfW by the Authorized Party based on the model provided in **Attachment D**.

The disbursement request shall be duly signed by the Authorized Signatory/ Signatories previously communicated to KfW by means of **Attachment A** and shall indicate the beneficiary's (hence the consultant's) name as well as its full and correct bank details.

Documents supporting the disbursement request (if applicable according to the underlying contract):

- copy of **consultant's invoice**,
- in case of time-based remuneration the invoice shall be accompanied by a performance list stating contract value, previous cumulative expenses, current expenses, cumulative expenses and remaining budget as well as, if applicable, the deduction for recovery of the advance payment as well as retention money. A model which may be used is provided in **Attachment D**.
- in case of price escalation: evidence for the calculation of the contractually agreed index,
- list of expenditures for ancillary expenses/ reimbursable costs including date, description of expenditure, amount and exchange rate applied.

After verifying an invoice or disbursement request, KfW will disburse the amount requested directly to the consultant's account.

Attachments

- A) Model of a Letter Designating Authorized Signatories
- B) Model for a letter requesting emailing of disbursement advices
- C) Withdrawal Application Form Simplified Direct Disbursement Procedure
- D) Withdrawal Application Form Direct Disbursement Procedure Consultants

MODEL FOR LETTER DESIGNATING AUTHORIZED SIGNATORIES

[Please use official letterhead]

To:
KfW Bankengruppe
Attn. LEe3
Palmengartenstr. 5-9
60325 Frankfurt am Main
GERMANY

German Financial Cooperation with Ukraine
Loan and Grant Agreement of KfW for EUR 13,250,000.00
Project/Programme name: Energy Efficiency in Municipalities
KfW-Reference Number (Project No./ BMZ No.): 2017.65.031 / 2017.70.007

Dear Sir/ Madam,

With reference to the Agreement mentioned above, we would like to inform you that any one¹ of the persons whose authenticated specimen signature appears below is authorized to sign disbursement requests on behalf of the Borrower/ Recipient/Project-Executing Agency ("Authorized Signatory/ Signatories").

NAME	
FUNCTION	
SPECIMEN SIGNATURE	

NAME	
FUNCTION	
SPECIMEN SIGNATURE	

NAME	
FUNCTION	
SPECIMEN SIGNATURE	

Any previous designations of Authorized Signatories are hereby revoked. To comply with KfW's identification requirements, we hereby enclose legible and certified copies of the identification papers of a) each Authorized Signatory and b) the Authorized Representative. Their authenticity must either have been confirmed by an employee of KfW or the copies must be certified by a notary public or person equivalently empowered.

Yours sincerely,

 Date/ Signature/ Name/ Office of Authorized Representative as designated in the Agreement

¹ Please change wording if joint signatures are required.

MODEL FOR LETTER REQUESTING DISBURSEMENT ADVICES VIA E-MAIL

[Please use official letterhead]

KfW Bankengruppe
Attn. BKe
Palmengartenstr. 5-9
60325 Frankfurt am Main
GERMANY

Fax No.: +49 69 7431-3514

Dear Sir/ Madam,

In accordance with Art. 2.4 of the General Provisions of the Annex "Disbursement Procedure", we kindly request KfW to send disbursement advices to the following e-mail address on the payment date instead of sending a monthly summary of disbursement advices by regular mail.² We take note of the fact that this e-mail address will be used **for all Projects/ Programmes** in which we are Borrower/ Recipient/ Project-Executing Agency of KfW. Any e-mail address previously communicated to KfW for this purpose is hereby revoked.

(PLEASE ENTER ONE E-MAIL ADDRESS HERE)³

Yours sincerely,

Date/ Signature/ Name/ Office of Authorized Representative as designated in Agreement

² Please note that disbursement advices sent via e-mail are .pdf files.

³ To avoid difficulties in case of a change of responsibilities, KfW recommends entering an unvarying e-mail address such as a group e-mail address.

MODEL FOR DISBURSEMENT REQUEST (SIMPLIFIED DIRECT DISBURSEMENT)

Sender:

 Authorized Party according to Art. 3.1 of Annex
 "Disbursement Procedure" to Separate Agreement

 Date

KfW Bankengruppe
 Attn. BKe
 Palmengartenstr. 5-9
 60325 Frankfurt am Main
 GERMANY

German Financial Cooperation with Ukraine
Loan and Grant Agreement of KfW for EUR 13,250,000.00
Project/Programme name: Energy Efficiency in Municipalities
KfW-Reference Number (Project No./ BMZ No.): 2017.65.031 / 2017.70.007

Disbursement Request No.
SIMPLIFIED DIRECT DISBURSEMENT PROCEDURE (to be financed from Loan)

In conformity with the underlying contract(s) specified below, copies of which were forwarded to you, the following works/goods/ services were duly supplied/ rendered and are to be paid:

Underlying contract and date	Invoice number/ date	Amount invoiced	Amount financed by KfW	Amount financed by ... ⁴
TOTAL AMOUNT REQUESTED FOR DISBURSEMENT⁵:				

We kindly ask KfW to disburse the total amount requested for disbursement from the above-mentioned Agreement as follows:

Beneficiary (company name/ address)	
Account no./ IBAN (if applicable)	
Account-holding bank/ BIC	
Correspondent bank⁶/ BIC	

In accordance with Article 3.3 of the Annex "Disbursement Procedure" to the Separate Agreement, we enclose copies of the following documents as supporting evidence:

- ☐ commercial invoice(s) ☐ Consultants Checklist
- ☐ Non-Objection of KfW in case expenses exceed the contractually agreed budget lines

⁴ Only applicable in case of pari passu co-financing.

⁵ Please make sure to specify currency.

⁶ Only applicable if the account-holding bank is not located in the requested currency's currency area. In this case, please enter the account-holding bank's correspondent bank in the requested currency's currency area.

The Consultant hereby declares that

- the payment requested in this disbursement request has fallen due, the respective invoice(s) correspond(s) to the underlying contract(s) and all documents required have been presented and comply with the requirements stipulated by the Agreement, the Separate Agreement and the Disbursement Annex.
- the facts and - to our best knowledge - statements and representations contained in the disbursement request and any attachments thereto are true and correct.

*Consultant's company name/ Signature of
Representative*

We hereby confirm that

- The Authorized Signatory submitting the disbursement request on behalf of the Authorized Party is authorized to do so.
- The works, goods, and services to be financed have not already been financed from other grants or long-term loans.
- The facts, statements and representations contained in the disbursement request and any attachments thereto are true and correct.
- All disbursement conditions as stated in the Agreement are fulfilled.
- The Agreement is still in full force and effect and there is neither a reason for termination nor a potential reason for termination.

*Authorized Signatory/ Signatories
of the Authorized Party – Ministry of Finance
of Ukraine*

*Authorized Signatory/ Signatories
of the Authorized Party - Ministry for
Communities, Territories and Infrastructure
Development of Ukraine*

*Authorized Signatory/ Signatories
of the Authorized Party - Zaporizhzhia City
Council*

**Terms of Reference for Consultants
in Connection with KfW's Simplified Direct Disbursement Procedure and Simplified
Reimbursement Procedure**

The Consultant will

1. examine whether the invoice(s) and additional documents for the disbursement request are complete and whether contractual requirements to receive payments have been fulfilled.

In particular, the Consultant will:

- a) determine whether the supplies and services invoiced have been performed according to the respective contract.
- b) (in case of supply contracts) examine, based on random sampling, whether amounts and budget lines as stated in the invoice correspond to those as stipulated in the contract;

In case the contractor has submitted a Statement of Expenditure (SoE) or bill of quantities, the Consultant will examine whether cumulative expenditures do not exceed budget lines and whether cumulative expenditures are in coherence with the SoE or bill of quantities previously submitted.

- c) (in case of construction contracts) examine, whether main budget lines as presented in the invoice correspond to those as stipulated in the contract, whether cumulative expenditures do not exceed budget lines and whether cumulative expenditures are in coherence with previously submitted SoEs based on the bill of quantities.
 - d) If the SoE or bill of quantities submitted by the contractor does not fulfil the requirements as mentioned in 1.b) and 1.c), the Consultant will request a non-objection to the disbursement of the responsible project manager at KfW, and will attach related documentation to the invoice.
 - e) check whether advances have been cleared / worked off and retention money has been deducted according to contract.
 - f) examine whether price adjustments are applicable and are calculated in line with the contract.
 - g) examine whether further documentation, such as transport and/or delivery certificates, is required, whether such documentation meets the formal requirements as stipulated in the contract(s) and whether the items and amounts presented on the respective documents are correct.
2. examine whether guarantees have been presented by the contractor in accordance with contractual requirements.

If applicable, the Consultant will:

- a) ensure that the form and amount of all guarantees meet the requirements of the construction or supply contract(s).
 - b) monitor the validity of all guarantees and ensure, if required, that the guarantee period is being extended in due time.
3. examine whether the disbursement request meets the requirements as stated in the underlying agreement between KfW and the Employer, (such as the Separate Agreement, and particularly in the Annex "Disbursement Procedure", hereafter defined as the "Underlying Agreement").

In particular, the Consultant will ensure that:

- a) each disbursement request corresponds to the form provided in the Underlying Agreement.
 - b) the amount of the disbursement request only includes expenditures/costs to be financed by KfW, e.g. with regard to eligibility of financing taxes.
 - c) in case of joint financing of the respective programme, the financing share to be delivered by the Borrower/Recipient/Project Executing Agency has been considered.
 - d) bank details provided on the disbursement request and on the invoice are the same, and if applicable, correspond to those as stated in the contract.
4. in case the simplified reimbursement procedure is being applied, examine in addition to items 1. to 3. whether evidence on the use of funds has been presented in the form of an SoE as stipulated in the Underlying Agreement; whether cumulative expenditures do not exceed budget lines as stipulated in the contract and that cumulative expenditures are in coherence with previously submitted SoEs; and examine, whether expenditures as presented in the SoE correspond to invoices submitted by the contractors.

If the SoE submitted by the contractor does not fulfil the requirements mentioned above, the Consultant will request a non-objection to the disbursement of the responsible project manager at KfW, and will attach related documentation to the SoE.

In so far as the above mentioned conditions are met, the Consultant will

- confirm that the contractual obligations have been met and payment has fallen due by signing the disbursement request to be addressed to KfW.
- hand over all relevant documentation to the Employer/Authorised Party. However, as long as documents remain with the Consultant, KfW reserves the right to obtain originals and copies of such documents.

The Consultant may also refer to the Checklist attached to the ToR (cf. Annex “Consultant Checklist”), which can also be submitted with the request for disbursement in order to facilitate KfW's verification.

Annex: Consultant Checklist

	Checked / Comment (if necessary)
Works/Goods/Services as presented in the invoice have been performed	
The payment is in line with the payment conditions and the payment schedule	
If applicable: Financing Shares as stipulated in the Separate Agreement are correct	
Works/Goods/Services invoiced are in line with contractual bills of quantities/unit costs; cumulative expenditures are in line with contractual amounts - if not: Project manager approved the respective overrun(s)	
If applicable: price adjustment complies with the contract	
Amounts and calculations are correct	
Documents as required in the contractual payment conditions have been submitted	
Performance and Advance Payment Guarantees (if foreseen) are correct in form and amount as well as valid for at least 6 weeks.	

MODEL FOR DISBURSEMENT REQUEST (DIRECT DISBURSEMENT CONSULTANT)

Sender:

Authorized Party according to Art. 3.1 of Annex
"Disbursement Procedure" to Separate Agreement

Date

KfW Bankengruppe
Attn. BKe
Palmengartenstr. 5-9
60325 Frankfurt am Main
GERMANY

German Financial Cooperation with Ukraine
Loan and Grant Agreement of KfW for EUR 13,250,000.00
Project/Programme name: Energy Efficiency in Municipalities
KfW-Reference Number (Project No./ BMZ No.): 2017.65.031 / 2017.70.007

Disbursement Request No.
DIRECT DISBURSEMENT PROCEDURE (CONSULTANT)

To be financed from ☐ Loan ☐ Grant

In conformity with the underlying contract(s) specified below, copies of which were forwarded to you, the following services were rendered and are to be paid:

Underlying contract and date	Invoice number/ date	Amount invoiced	Amount financed by KfW	Amount financed by ... ⁷
TOTAL AMOUNT REQUESTED FOR DISBURSEMENT⁸:				

We kindly ask KfW to disburse the total amount requested for disbursement from the above-mentioned Agreement as follows:

Beneficiary (company name/ address)	
Account no./ IBAN (if applicable)	
Account-holding bank/ BIC	
Correspondent bank⁹/ BIC	

In accordance with Article 3.3 of the Annex "Disbursement Procedure" to the Separate Agreement, we enclose the following documents as supporting evidence:

⁷ In case of pari passu or pro rata co-financing .

⁸ Please make sure to specify currency.

⁹ Only applicable if the account-holding bank is not located in the requested currency's currency area. In this case, please enter the account-holding bank's correspondent bank in the requested currency's currency area.

- ☐ copy/ copies of consultant's invoice(s) ☐
if applicable: performance list
☐ in case of price escalation evidence for the calculation of the contractually agreed index, ☐
list of expenditures for reimbursable costs (if applicable)

We hereby confirm that

- The Authorized Signatory submitting the disbursement request on behalf of the Authorized Party is authorized to do so.
- The works, goods and/ or services to be financed have not already been financed from other grants or long-term loans.
- The facts, statements and representations contained in the disbursement request and any attachments thereto are true and correct.
- All disbursement conditions as stated in the Agreement are fulfilled
- The Agreement is still in full force and effect and there is neither a reason for termination nor a potential reason for termination.

*Authorized Signatory/ Signatories
of the Authorized Party – Ministry of Finance of
Ukraine*

*Authorized Signatory/ Signatories
of the Authorized Party - Ministry for
Communities, Territories and Infrastructure
Development of Ukraine*

*Authorized Signatory/ Signatories
of the Authorized Party - Zaporizhzhia City
Council*

Model for Performance List / Statement of Cost

Item No.	Description	Unit	Contractual Quantity	Unit Rate EUR	Contract Value EUR	Previous cumulative Expenses EUR	This Invoice EUR	Current cumulative Expenses EUR	Remaining Budget EUR
1	Remuneration								
1.1.									
1.1.1.									
...									
...									
	Subtotal: Remuneration								
2.	Reimbursables								
2.1.									
2.1.1.									
...									
...									
	Subtotal: Procurements								
3.	Contingencies								
	Total Costs at actual								
	Advance Payment (Recovery)								
	Contract Sum								
	Invoice No. (x)								

Annex 6: Content & Form of Reporting

I Common Requirements

A Report is to be understood as Documented Information being distributed to all relevant stakeholders. Its preparation shall follow basic documentation quality as stated in ISO 9001 Clause 7.5 Documented Information. All reports shall be prepared in a highly professional manner.

Reports shall contain at least a cover sheet, a table of content, a list of abbreviations and an executive summary.

A cover sheet shall contain all relevant information and key data as applicable including:

- ☐ Project No./ BMZ No.
- ☐ Beneficiary (name, contact person)
- ☐ PEA (name, contact person)
- ☐ Financier (name, contact person)
- ☐ Consultant (name, contact person)
- ☐ Company/ Supplier/ Subcontractor (name, contact person)
- ☐ Reporting number and reporting period
- ☐ Main contractual dates (date of Loan and Financing Agreement, disbursement period; date of order for the Consultant, start of construction works differentiated between the lots, completion date, [if applicable])
- ☐ Time elapsed/ remaining
- ☐ Overview on signed contracts, values and disbursement status/ pay-out level (in %)
- ☐ Header/Footer
- ☐ Revision Index, date of issuance, prepared/approved by

All subsequent pages including any annexes shall be provided with header/footer containing the following minimum information:

- ☐ Legal owner
- ☐ Document reference
- ☐ Revision index
- ☐ Page number
- ☐ Number of pages

A report shall be formatted in a neat and uniform manner. Any colours used for formatting shall give sufficient contrast for monochrome printing. Preferably the text shall have left-and-right justification together with hyphenation.

II Progress Report

The progress reports are prepared by the Consultant or the Project-Executing Agency (PEA) to document the implementation of a project from the time of effectiveness of the *Loan and Financing Agreement* until the final acceptance of all project measures. Reports shall be submitted monthly, quarterly, semi-annually or annually as specified in the *Separate Agreement*.

A progress report shall replace the respective progress report of the shorter reporting period (e.g. quarterly report replaces last monthly report of that period). The last report shall be replaced by the completion report.

The frequency of reporting should be adapted to the needs of the partners and co-financing institutions. Thus, not all of the reports presented in the table below will be required. The requirements for reporting should be generally also in line with the stipulations of the *Separate Agreement* defining the needs of information for KfW.

The volume of the reports, if not otherwise stated, should be as follows: in general monthly reports should be limited to 1-2 pages, quarterly reports 20 pages and annual reports 50 pages. Additional and more detailed information is to be presented in annexes. The main text should not be a copy and paste of the previous report with some amendments, but a concise report on the key information required.

III Content of Reports

The progress reports ought to cover the following topics:

Chapters to be included in report	Quarterly	Semi-Annually	Annually
1. EXECUTIVE SUMMARY	x	x	x
2. PROJECT BACKGROUND	x	x	x
3. FUNDAMENTALS & GENERAL PROJECT ENVIRONMENT		From the signing of the Loan & Financing Agreement (first on 31 Dec./30 Jun)	From one year after the commissioning
4. STATE OF ADVANCEMENT & TIME SCHEDULE	x	x	x
5. TOTAL COST & FINANCING	x	x	x
6. PROJECT OPERATION & PROJECT PERFORMANCE	From the signing of the Loan & Financing Agreement	From one year after the start of operation	x
7. OUTLOOK / RECOMMENDATIONS	x	x	x

Monthly progress reports are to be presented by the Consultant according to the template provided in Attachment A.

The following sections provide a list of issues to be included in the respective chapters. They are to be regarded as a general, non-concluding guidance and shall be adapted according to the needs of the Project and the recipients of the reporting.

1. Executive Summary

to be written in a simple language understandable also to Non-Experts

- ☐ Maximum 2-3 pages
- ☐ Planning and (if applicable) construction progress
- ☐ Listing of important concluded project milestones, compliance with time schedules and planned completion date, state of costs/current costs and expected costs at completion
- ☐ Major changes to project concept or main components
- ☐ Major changes in the project environment, such as regulations to be applied or with respect to institutions concerned by the project.
- ☐ Specific problems/ highlights

2. Project background

to be a copy and paste chapter for all time quick project reference with a short description of:

- ☐ objectives
- ☐ main measures
- ☐ construction site description with e.g. map, coordinates, layout, ... (if applicable)
- ☐ target group
- ☐ involved parties (Financing institute, PEA, Consultant, Contractor, Main Subcontractor, ...) with
 - ☐ contact person
 - ☐ organization chart
- ☐ short description on the OH&S Organisation, Institutional set up of the Environmental, Social, Health and Safety Implementation Organisation

3. Fundamentals & General Project Environment

Provide answers to the following questions:

- ☐ Has the PEA /EDD and the relevant municipal institutions remained a capable operator?
 - ☐ Budget of PEA & EDD and MEA (if applicable) and budget planning for the following three years.
 - ☐ Is there always sufficient liquidity especially at the level of EDD and MEA?
 - ☐ Have any new fields of operation for EDD been entered into since the project appraisal?
 - ☐ Further data depending on the individual case: in particular, sector-specific or project type-related data (e.g. sales figures, capacity utilization, cost recovery rate, distribution losses, production cost, tariff development, outstanding accounts)
- ☐ Have general economic and sectoral conditions and the market developed as expected?
 - ☐ Role of competition and project-relevant service providers (quality, price development, reliability, market access); state of implementation of EU-Energy Efficiency Standards;
 - ☐ Further data depending on the individual case: sector-specific or project-type related data (e.g. regional population development, market share,

development of world market price, changes in regulations of the sector, changes in national sector strategy)

- ☐ Have the environmental impacts of the project remained acceptable?
 - Have there been any changes in the environmental legislation relevant for the project?
 - Have the approvals required by environmental legislation been given on a reliable basis?
 - Are the environmental standards of authorization, detailed engineering documents, operating concept, environmental management plan and covenants being met?
 - Have there been any complaints or suits regarding environmental impacts?
 - Are the intended controls being ensured?
 - What other measures of environmental protection are planned?
- ☐ Have local and international occupational health and safety standards been met and have social management plans and sub-plans been adhered?
 - Occupational Health and Safety during Construction (Contractors incl. contractual and daily wage laborers) and ongoing/extended Operation and Maintenance
 - Grievances (workforce, project affected persons) and conflict resolution activities
 - Progress on stakeholder engagement activities
 - Progress on CSR / Community Development Activities: brief summary of activities (as applicable)

4. State of Advancement & Time Schedule

Provide answers to the following questions:

- ☐ What is the state of advancement of the project as such and of the individual project activities (details may be given in tables to be enclosed with the reports)?
 - Consultant assignment: contract award, deadlines, type of service rendered, manpower employed locally and at back-office
 - Award of contracts for goods and services: deadlines, agreement on specifications, publication, result and evaluation of bids, proposal for contract award, consultation on contracts for goods and services
 - Supply of goods and rendering of services (broken down according to list of project components or supply contracts):
 - Goods: type and volume, delivery times, guarantees given, final inspection by manufacturer, acceptance
 - Transports: type and volume, duration, insurance, storage on construction site
 - Construction work: type and volume, machinery used, manpower employed; acceptance of construction work
 - Installation work: type and volume, machinery used, manpower employed, personnel of suppliers

- Staff instruction: type and scope, number, qualification of operating staff, advanced training at the supplier's
 - Commissioning: final acceptance, test runs, operating results, rectifications, guarantee events (type and scope, consequences)
 - Other activities: preliminary studies, awarding, type and scope, deadlines, personnel, material, external training, acceptance
- ☐ Can the project be put into operation at the intended time?
 - Updating of Time Schedule (Annex 2 to the *Separate Agreement*)
 - Target-performance comparison
 - Reasons for deviations and measures to rectify them
 - Assessment of the impact of deviations on the start of operation
 - Assessment of the effectiveness of the intended rectifying measures
 - Financial and developmental consequences
 - ☐ Can the project organizations PEA/EDD/MEA perform their tasks, in particular its coordinating functions?
 - Target-performance comparison of the project organization
 - Reasons for and assessment of deviations
 - What rectifying measures, if any, are necessary?

5. Total Cost and Financing

Provide answers to the following questions:

- ☐ Is the financing of the project ensured throughout its duration?
- ☐ How much of the total project funds have been utilized, accounted for and disbursed by the end of the period under review?
- ☐ Forecast of disbursements for the next reporting period(s), with estimated time and amount of disbursement requests, as well as an overview of the payment schedule until the end of the project
- ☐ In what amount have interest differential funds accrued, and how have they been used?

This includes the updating of Annex 3 ("Total Cost and Financing") to the *Separate Agreement*; the provision of a target-performance comparison as well as the reasons for deviations and rectifying measures, unless already explained under 4. Further, explain consequences of the deviation on the total cost and the financing of the project and its commercial viability.

6. Project Operation and Project Performance

Provide answers to the following questions:

- ☐ Are the assumptions on the achievement of the output(s), the module objective(s) and corresponding indicators as well as the programme objective(s) being fulfilled?

- Comparison between the actual situation and the starting situation as described in Annex 1 of the *Separate Agreement* with regard to the assumptions.
 - Provide reasons for any deviations and assess the consequences of the deviations on the sustainable project success.
 - Which activities should be carried out for the assumptions to be fulfilled? Assess their effectiveness and financial implications.
- ☐ Can the output(s), the module objective(s) and the programme objective(s) be achieved? By when?
 - Comparison between the actual situation and the starting situation as described in Annex 1 of the *Separate Agreement* with regard to the output(s) and objective(s)
 - Provide reasons for any deviations and assess the consequences of the deviations on the sustainable project success.
 - Which measures should be taken for the targets to be met? Assess their effectiveness and financial implications.
- ☐ Have any developments set in or can any be expected which jeopardize the sustainable success of the project (incl. the quality of the relation between the borrower/Beneficiary/PEA/EDD on the one hand and the target group and any cooperating institutions or firms on the other hand)?
- ☐ Have any additional activities become necessary that should be included in the project design? Have any planned project activities become superfluous?
 - Name state activities, indicating, as far as possible: nature, content, duration, beginning/end, agency in charge, possibly procurement procedure, cost and financing

7. Outlook / Recommendations

- ☐ Outlook for the next reporting period (planned activities and results)
- ☐ Recommendations and need for action to be taken by project participants

IV List of Annexes

(examples, not necessarily required for each kind of report)

a) Tool for financial monitoring

- Financial details
- Details of execution
- Status of indicators
- Visualization of actual operating time compared to planned

b) Time Schedule

- For consulting and construction/delivery
- Contractual/actual

c) Milestone List

- For each contractual component
- Planned/expected/actual date of completion
- Delays

d) Contracts

- List of construction and supply contracts
- Short description of deliveries and services
- Contract volume
- Contractual dates: start of works, planned/actual overall completion

e) Cost Control/Cash Flow

- List of main components/contracts
- Estimated costs
- Contract value
- Forecasted billing sum (incl. expected addenda)
- State of disbursement and forecast
- Short reason for deviations

f) ESHS instruction and site inspection protocols

g) Minutes of Meeting

h) Important Correspondence

i) Photo Documentation

About 10 photos resp. 5 photos per construction site

j) Photo Accident / Incident Reports

V Incident Report

An Incident Report shall be promptly provided to KfW, but in any case within three working days of the occurrence of any of the events as set out in the *Separate Agreement*.

A template for an Immediate Incident Notification is attached hereto as well as a particular guidance (Attachments B and C).

ATTACHMENTS

Attachment A: Template for Monthly Report

One to two pages, sent by email

<u>Month / Year</u>			
Project Name		Client	
Financing Agreement No.		Financing	
Project Region		Reporting Period	
Consultant			

Personnel in the field			
Principal activities	<ul style="list-style-type: none"> • • 		
Funds disbursed (approx.)	Principal items	Reporting Period €	<u>Total €</u>
Problems encountered	a) b)		
Suggested solutions	a) b)		
Status of previous problems	a) b)		
Activities planned	<ul style="list-style-type: none"> • • 		
Schedule			
Other			

Attachment B: Guidance for Accidents and Incidents Reporting

Guidance for Accidents and Incidents Reporting

1. Basic Information

- ☐ date, time, weather / lighting / conditions
- ☐ statement of facts
- ☐ details of deaths, injuries, damage, immediate losses
- ☐ details of witnesses
- ☐ details of whether scene was secured / photographed
- ☐ details of any item tested / sampling / sent for testing / removed from scene
- ☐ details of person leading investigation
- ☐ time lapse between accident and investigation

Basic data should be clear, unambiguous, and factual (i.e. free from interpretation). Any gaps in the data should be highlighted and addressed in the investigation.

2. Investigation

- ☐ reconstructed timeline of events, with the incident/accident in the mid-point, and linked events streamed either side, with clear identification of individuals/teams/third parties (e.g. contractors) that are linked and therefore require interviewing
- ☐ robust but sensitive questioning of witnesses and linked individuals/third parties to
- ☐ clarify facts, assist with timeline reconstruction and advance the investigation. Statements/ notes of interviews to be included.

The investigation must follow the facts, witnesses and linked individuals/third parties and the timeline, and not be constrained by the incident/accident event in isolation.

In case publications on the event are available, these should be attached to the report (e.g. press articles, online articles, radio and TV- spots).

3. Analysis

- ☐ using basic data, interview outcomes and reconstructed timeline, identification of:
 - immediate causes
 - underlying causes (actions in the past that have allowed or caused undetected unsafe conditions/acts)
 - root causes (generally organisational/management failings, sometimes not directly/obviously in relation to accident/incident regarding location/time)
 - identification of absent/inadequate/failed/unused risk identification, management and control measures, reference/gap analysis against relevant national legislation and against the international standards as applicable and agreed upon for the Project
- ☐ conclusions and summary of root causes and underlying causes for the accident/incident.

Analysis must be sufficiently rigorous to go wherever the investigation has led. Identification of root, underlying and immediate causes must be sufficiently credible and robust to withstand third-party scrutiny.

4. Way forward

- for EACH root cause, underlying and immediate cause, a corrective/preventive action is required (these may be numerous and interlinked)

- for EACH action, a named person with sufficient resource to deliver upon it and a clear timeline (action plan) is required. In addition, a named person should have overall responsibility for monitoring / reporting on progress (with timelines).
- demonstration, that all actions together will prevent recurrence; evidence that current risk assessments/procedures have been revised to reflect this
- details of communications to stakeholders, to include a concise summary of the investigation, including the action plan, and lessons learned.
- ☐ details of ongoing support and assistance to those impacted directly or indirectly by the accident.

Attachment C: Immediate Incident Notification Template

IMMEDIATE INCIDENT NOTIFICATION					
1. Incident Details					
Project Company		Date of incident			
		Time of Incident			
Location of incident		Type of Incident	Environmental	<input type="checkbox"/>	
			Injury	Workforce	<input type="checkbox"/>
				Public/Local community	<input type="checkbox"/>
		Social incident (e.g. violent labor unrest)	<input type="checkbox"/>		

2. WHAT HAPPENED
<i>Brief description of incident</i>

3. INJURED WORKERS						
Employee / Contractor	Sex	Age	Job Title / Description	Time with company	Cause	Injury Type (Major / Fatal)

4. INJURED MEMBERS OF PUBLIC						
Name	Sex	Age	Community	Place of Residence	Cause	Injury Type (Major / Fatal)

5. ENVIRONMENTAL INCIDENT			
Type (Spill / Gas Release)	Total Loss (Litres /KGs)	Cause	Damage

5. WITNESSES TO INCIDENT			
Name	Sex	Place of Residence	Description of incident

6. OTHER RELEVANT INFORMATION				
Have the authorities been informed?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
What has been done about the incident?				
<i>Please provide further information here</i>				
Media attention?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
<i>Please provide further information here</i>				
Any effects off- site?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
<i>Please provide further information here</i>				
Photographs taken? (please include them in this report)	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Name of person completing form				
Position				
Contact details	Phone		Email	

Annex 7 - Procurement Plan
Energy Efficiency in Municipalities - Zaporizhzhia
2017.6503.1 & 2017.7000.7

No.	Procurement No.	Type	Contract Content	Estimated Contract Amount (Mio. EUR)	Source of Funds (EUR)	Tender Procedure	Stages	Tender Documents	Tender Agent	KfW review	ESHS Risk level	Estimated Date of Tender Publication	Status	Comments
1	tbd	Consulting Services (Zaporizhzhia)	City of Zaporizhzhia: Actualisation of Energy Audits, Implementation Consultant (Preparation and Support to Procurement of Supplies and Works, Supervision of Works) and Accompanying Measures Consultant: Support to improvement of Energy-Monitoring, Building-Maintenance and Sensibilisation Measures	2,667	KfW-Special Fund (SBF)	International Competitive Bidding (with PQ)	2	KfW-Standard Bidding Documents	yes	Full review	tbd	March 2021	preparation	
					KfW-Loan									
					KfW-Grant Accompanying Measure									
2	tbd	Goods, Works and Services	City of Zaporizhzhia: Energy Efficient Modernisation of 20 Buildings (Zaporizhzhia Main part of Contract)	6,11	100% KfW-Loan (except VAT)	International Competitive Bidding (with PQ)	2	KfW-Standard Bidding Documents	Implementation Consultant	Full review	tbd	PQ: March 2022	preparation	
				1,41	VAT and customs duties - Municipality of Zaporizhzhia									
			City of Zaporizhzhia: Energy Efficient Modernisation of up to 20 Buildings (Zaporizhzhia Optional part of Contract)	6,11	100% KfW-Loan (except VAT)							Option to be validated: March 2024		
				1,41	VAT and customs duties - Municipality of Zaporizhzhia									

Секретар міської ради

Регіна ХАРЧЕНКО