

PROPOSED AGREEMENT WITH GERMAN DEVELOPMENT BANK KfW

Notice is hereby given in terms of Section 33 of the Local Government Municipal Finance Management Act, No. 56 of 2003 that the Nelson Mandela Bay Municipality (NMBM) intends entering into an agreement with the German development bank KfW.

During the Government negotiations between the Republic of South Africa (RSA) and the Federal Republic of Germany in November 2018, Germany committed grant funding in the amount of EUR 18 million (ZAR 288 million) (the Grant) for the Financial Co-operation Programme “Renewable Energy for South African Municipalities – Phase I: Nelson Mandela Bay Metropolitan Area”.

The Electricity and Energy Directorate of the NMBM will be responsible for preparing, implementing and maintaining the different project packages financed by the Grant. The estimated project time frame is four years. The estimated total Project cost is approximately EUR 20 million. The NMBM will co-finance at least 10% of the total Project cost (i.e. EUR 2 million) over the duration of the Project.

The proposed Project supports the NMBM in the modernisation of the urban network infrastructure and in piloting an innovative Renewable Energy (RE) component. After extensive investigation, the oldest parts of the network were considered for strengthening, as these would be most beneficial to the Nelson Mandela Bay Metropolitan Area, resulting in the greatest RE opportunities for the funding. These projects include the Mount Road 132 kV substation, the Diaz Road 6.6 kV network and the 5th Avenue 6.6 kV network.

Further to these projects is to implement RE initiatives, as alternative supply to formerly disadvantaged parts of the City. Approximately 10% of the project value has been assigned to achieve this objective. It has been agreed between the NMBM and KfW that the pilot projects will look at green and replicable approaches only and that the close involvement of the communities will be garnered and ensured.

Detailed project plans will be further elaborated during the design phase, with the support of the implementation consultant to be appointed.

NOTICE IS FURTHER GIVEN in accordance with Section 21A and Section 21 of the **Local Government Municipal Systems Act, No. 32 of 2000** that –

- a) The local community and other interested persons are invited to submit comments or representations to the NMBM in respect of the proposed draft contract(s). Such comments or representations must be received by no later than 25 OCTOBER 2021 via electronic mail to KFWfeedback@mandelametro.gov.za or to the Munelek Building, 46 Harrower Road, North End, Gqeberha (Port Elizabeth), 6001 marked “NMBM KfW Grant Funding – s33 process”.
- b) Copies of the draft agreement and information statement summarising the NMBM’s obligations in terms of the draft contract(s) are available for inspection at:

- NMBM Libraries (Kariega (Uitenhage), Despatch, North End, Newton Park, New Brighton, Walmer),
- City Hall, Govan Mbeki Avenue, Gqeberha,
- Munelek Building, 46 Harrower Road, North End, Gqeberha.
- Copies are also accessible on the official website of the NMBM (<https://www.nelsonmandelabay.gov.za/>) under Document Library: Agreements External, Documents titled “Draft Separate Agreement for Grant Funding between KFW and NMBM” (<https://www.nelsonmandelabay.gov.za/documentslist?catID=80>).

c) Further details and clarity may be requested via email to KFWfeedback@mandelametro.gov.za or 041-506 4206 and responses of a material nature will be made available on the above-mentioned website.

Persons who are physically disabled or unable to write, but who wish to submit comments or representations in respect of the draft contract(s), may present themselves during office hours (08h30 – 16h00, Mon - Fri) at Munelek Building, 46 Harrower Road, North End, Gqeberha, where the Secretary to the Senior Director for Electricity and Energy Projects sub-directorate (Ms Zandile Mpengesi), at 041-506 4206 will assist them in transcribing the relevant comments or representations.

Ref 130

Nelson Mandela Bay Municipality

KfW Development Bank



June 8th, 2021

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**German Financial Cooperation with South Africa
Renewable Energy for South African Municipalities (Phase I: Nelson Mandela
Bay)EUR 18 million
No.: 2018 67555
Separate Agreement to the Grant Agreement dated 23 of December of 2019**

Dear Sir or Madam

In accordance with the Grant Agreement entered into between Nelson Mandela Bay Municipality ("Recipient") and KfW ("KfW") dated 23 of December 2019 the following shall be determined by separate agreement:

Pursuant to Article 1.2:

the details of the Project as well as the services, works, plant and goods to be financed from the Grant;

Pursuant to Article 2.1:

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

Pursuant to Article 6.2:

the details pertaining to Article 6.1 (Project Implementation).

We propose that the following be agreed upon:

1. Project Design

1.1 Details of the Project

The Project supports the Recipient in the modernization of the urban network infrastructure and in piloting an innovative renewable energy component. The purpose of the Project is to improve the electricity supply situation, safety and the framework conditions for the integration of electricity generation from renewable energy sources into the Nelson Mandela Bay Municipal grid (Project objective). This is to contribute to the distribution and use of renewable energy sources and efficiency measures in order to sustainably improve the energy security of the country and to make economic growth climate-friendly. 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.

The design of the Project is based on the feasibility study dated 29th of April 2019, available to KfW and the Recipient and on the agreements made between KfW and the Recipient during the local Project appraisal and its results documented in the minutes of meeting dated 31st of May 2019. It is noted that the content of the feasibility study and the minutes is not contractually binding and is intended for reference purposes only. Accordingly, to the extent that any inconsistency may arise between the provisions of this Separate Agreement and that provided in the feasibility study and/or the minutes, the provisions of this Separate Agreement shall prevail.

The Project activities financed from the Grant include three network projects (component 1), a Renewable Energy (RE) component (component 2) and an Implementation Consultant (TA component). Component 1 includes three network projects namely Mount Road 132 kV substation, Diaz Road 6.6 kV network and Fifth Avenue 6.6 kV network. These three projects will be further supplemented by component 2, which includes a innovative RE component, for which 3 alternatives have been identified.

The Implementation Consultant will support the preparation of the three network projects, and will assess technical considerations and will provide an assessment of the environmental and social implications of all phases of the Project. Furthermore, the Implementation Consultant will support choosing the appropriate alternative for component 2. The financed activities will be fully commercially operational from 2025 onwards.

1.2 **Time Schedule**

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

1.3 **Total Cost and Financing**

The estimated total Project cost ("Total Cost") underlying the Project appraisal is approximately EUR 20 million. The Grant is EUR 18 million. EUR 2 million from the Grant will be reserved for the cost of the Implementation Consultant. The Recipient will finance at least 10% of the Total Cost (i.e. EUR 2 million). For the avoidance of any doubt, the financing of the Implementation Consultant (or TA component) shall be solely derived from the Grant and not from the Recipient's co-financed portion of the Total Cost. The composition of the estimated Total Cost and the financing is contained in Annex 3. It is recorded that once the details of the Project are fully defined by the Implementation Consultant the breakdown of the Project costs and financing will be defined in more detail and agreed upon between the Parties. To the extent necessary, the Recipient shall embark on a Budget Amendment process to reflect in the Recipient's budget the financial contribution of KfW (i.e. the Grant) and the Recipient's co-financed portion to be dedicated funding of the Project. The Recipient shall keep KfW informed on progress made in respect of this process.

1.4 **Changes in the Project Design**

Any major changes in the Project design after it has been determined by the Implementation Consultant and agreed upon by all parties shall require KfW's prior consent. The Recipient shall inform KfW thereof immediately, stating the reasons, the planned measures and the consequences of the change (including on Total Cost). Execution of such measures may commence only on the basis of revised planning and upon KfW's written consent.

2. **Project Implementation**

2.1 **Responsibilities and Time, Cost and Financing Schedule**

2.1.1 The Recipient shall be responsible for the implementation of the Project.

Within the Recipient, the Directorate Electricity and Energy (E&E) shall be in charge of preparing, implementing and maintaining the different components financed by the Grant. The E&E will cooperate closely during the preparation and implementation of the Project with other directorates of the Recipient and shall determine by common agreement between them the aspects of the Project that

are essential for its operation. Given the size of the programme, the Recipient will set up a Project Team consisting of project management resources of at least 7 (seven) members collectively from the E&E, procurement (supply chain management), financial, legal and environmental directorates for the implementation of the Project.

The Recipient shall establish a project steering committee consisting of management representatives of the relevant directorates within the Recipient to allow for the efficient monitoring of the programme and which committee will play an advisory role. The steering committee will convene quarterly meetings and to which meetings the Recipient shall invite KfW and GIZ to participate/attend. A separate Project implementation committee is to coordinate all Project implementation activities.

- 2.1.2 The Recipient and KfW, shall appoint a Tender Agent at the sole cost and expense of KfW which cost shall fall outside of the Grant. The Tender Agent shall support the Recipient in the procurement of the Implementation Consultant.
- 2.1.3 The Recipient shall appoint the Implementation Consultant through a competitive bidding process in compliance with the Recipient's internal procurement policies and applicable procurement legislation of the Republic of South Africa. As referred to in Art. 1.1 above, the Implementation Consultant will support the Recipient during the implementation of the Project by, *inter alia*,
- (i) elaborating the details of the Project design for component 1 and 2;
 - (ii) designing and implementing the Tender Process (as defined in Art. 2.3 below)
- 2.1.4 The detailed time, cost, and financing schedule for the proper technical and financial implementation of the Project shall be prepared by the Recipient without undue delay in cooperation with the Implementation Consultant and submitted to KfW. Such schedule shall contain, by deadlines and amounts, the intended chronological interrelation of the Project activities and the corresponding financial requirements and/or outlay. 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 KfW's consent to the extent required according to Art. 1.4.

2.2 **Environmental, Social and Health & Safety Compliance**

- 2.2.1 The Recipient shall at all times carry out its business and operations in compliance with all applicable national and local environmental, occupational

health & safety and social laws and regulations within the Republic of South Africa.

2.2.2 The Recipient shall be responsible for the preparation and implementation of the Project in compliance with applicable laws and regulations within the Republic of South Africa and the World Bank environmental and social standards and the World Bank Group General and sector-specific EHS Guidelines.

In particular, the Recipient shall:

- a) carry out an Environmental and Social Impact Assessment (ESIA) including a Stakeholder Engagement Plan (SEP) proportionate to the potential risks and impacts of the Project and commensurate with its nature, size and location according to World Bank environmental and social standards and World Bank Group General and sector-specific EHS Guidelines (or in terms of the South African legislative equivalent).
- b) develop and implement Environmental and Social Management Plans (ESMP) for the construction and for the operation phases of the Project in compliance with the above mentioned standards.
- c) ensure that the measures and actions as set out in the listed documents and plans under 2.2.2 are implemented diligently and completely.
- d) ensure that – after KfW's No-Objection – and in compliance with the requirements and the time periods therefor provided in applicable legislation of the Republic of South Africa, the agreed environmental and social documents comprising at least an easy to understand summary of the main environmental and social findings and mitigation measures as well as the stakeholder engagement process (e.g. Non-Technical Summary) are made publicly available in the area(s) where the Project or more specifically its constituent parts, will be implemented, and if appropriate on a publically accessible platform, at an adequate point in time during Project development, in an accessible and culturally appropriate manner, for an adequate time to allow Project affected people to voice concerns and suggestions.

2.2.3 The Recipient shall comply with the Fundamental Conventions of the International Labour Organization (ILO) to the extent that any provisions have not already been incorporated in South African Labour legislation.

2.2.4 The Recipient shall ensure that occupational and public health and safety provisions are consistent with South African national requirements and international good practice standards, and that such standards are put forward to contractors, subcontractors, and to suppliers, in particular those for major supply items to ensure such parties' compliance therewith.

- 2.2.5 The Recipient 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 the workforce engaged in Project implementation.
- 2.2.6 Prior to tendering the works, the Recipient (assisted by the Implementation Consultant) will establish and implement a communication strategy to include a sensitization campaign to inform the general public of the Project and a strategy dealing with small and medium sized enterprises (SME's) or emerging enterprises (EE's).

2.3 **Procurement and Contractual Provisions**

- 2.3.1 All Tender Processes to be conducted for any contract financed under the Grant Agreement shall at all times follow the relevant South African legislation (including but not limited to the Public Financial Management Act (PFMA) and the Preferential Procurement Policy Framework Act (PPPFA)) and the Recipient's own supply chain/procurement policies and procedures, taking into account certain minimum standards by KfW, as defined in the KfW Procurement Guidelines (Annex 5). In case of conflict, the Recipient shall promptly inform KfW of such conflict, and provide KfW with corresponding evidence justifying why the Recipient's supply chain policies and procedures should be followed.
- 2.3.2 In preparation of this Separate Agreement, a procurement comparison/gap analysis between the KfW Procurement Guidelines and the applicable South African legislation and/or the Recipient's supply chain/procurement policies and procedures has been conducted (see Annex 7). The formulated recommendations should be taken into account during all Tender Processes in the context of this Separate Agreement.
- 2.3.3 Article 1.6.2 of the KfW Procurement Guidelines requires the preparation of a procurement plan in the form of Appendix 2 of the Procurement Guidelines which identifies the respective Tender Processes (as defined in the Procurement Guidelines) for all contracts financed under the Grant Agreement.

After contracting a Implementation Consultant the Recipient will send KfW a detailed procurement plan (as per the draft attached in Annex 6), once such plan is prepared by the Implementation Consultant in consultation with the Recipient.

The Procurement Plan 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 as of the date of the conclusion and signing of this Separate 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 (as defined in the Procurement Guidelines).

- 2.3.4 The Recipient 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 and the comparison table in Annex 7.
- 2.3.5 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 Grant Agreement and, in addition thereto, the following principles shall be observed when concluding contracts financed under the Grant Agreement:
- a) As import duties shall not be financed from the Grant pursuant to Article 1.3 of the Grant Agreement, such import duties, if part of the contract value, shall be stated separately in the contracts for the works, plant, goods and services and in the invoices.
 - b) If payments due under a contract for works, plant, goods and services are to be made from 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 Recipient to the following account at KfW, Frankfurt am Main, IBAN: DE53 5002 0400 3800 0000 00, BIC: KFWIDEFF, with KfW then crediting such payments to the account of the Recipient. If such payments are made in local currency, such payments shall be made to a special account of the Recipient in the country of the Recipient 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.

2.4 **Provisions for the Proper Operation of the Project**

To secure the proper operation of the Project, the Recipient shall submit an operation and maintenance concept including an operational environmental and social management plan (ESMP) (referred to in Art. 2.2.2.(b) above) drawn up in cooperation with the Implementation Consultant at least 3 month before commissioning the project under component 1 and 2. The operational environmental and social management plan shall encompass an occupational health and safety and labour conditions management plan.

At the same time the Recipient shall submit to KfW the financial forecast referred to in Art. 2.1.4 above, drawn up in cooperation with the Implementation Consultant, for the area of operation in which the Project is located. This forecast is to show the expenses caused by the Project and the earnings to be expected for this particular area of operation at the time they occur. The Recipient shall periodically update this forecast and ensure that any financing gaps shall be covered in due course. The Recipient shall transmit such financial forecast and its revised versions to KfW without any delay.

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

3.1 Contracts and Reservations

- 3.1.1 KfW will either reserve the loan amounts on the basis of the contracts concluded for works, goods, plant and services or disburse of the Grant according to the procedures as stipulated in Annex 4 (Disbursement Procedure).

Accordingly, KfW shall be furnished with a list of all contracts concluded, which list shall be drawn up in cooperation with and signed by the Implementation Consultant, containing the following data: contract date and value, designation of good/service, contractor, reference number, amount to be financed from the Grant.

- 3.1.2 KfW shall inform the Recipient upon request of the amounts of the Grant that it has reserved for financing by providing a list of reservations (KfW- "LOGAS", KfW-List Of Goods And Services).

3.2 Disbursement Procedure

The disbursement of the Grant is subject to the procedures as stipulated in Annex 4 (Disbursement Procedure), which forms an integral part of this 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.

4. Reporting and Other Provisions

4.1 Reporting

- 4.1.1 Upon signing of the Separate Agreement, the Recipient shall report to KfW bi-annually on the progress of the Project (progress reports), 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 8.

4.1.2 In addition to the requirements under Art. 4.1.1, the Recipient 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 and safety and labour issues as well as impacts on adjacent population, the Recipient shall notify 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 Recipient (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 Recipient proposes to take in order to remedy the effects of these Incidents. The Recipient shall keep KfW informed about any progress in respect of such remedial action.

4.1.3 At the time of the physical completion and commissioning of the Project, or more specifically the completion of any contract of works forming part of the implementation of the Project, but before the expiry of the guarantee period

associated with that contract at the latest, the Recipient shall submit a final report on the measures carried out as to the completion of the Project, or particular contract (as the case may be). The date of the first report on the state of affairs will be determined once project design has been approved. The reports must have been received by KfW not later than 4 weeks after the end of the period under review. The reports shall be countersigned by the Implementation Consultant.

- 4.1.4 If the Recipient has charged the Implementation Consultant to write the progress reports and/or the final report, the Recipient shall comment on the reports or acknowledge its approval of the content by countersigning the reports.
- 4.1.5 After completion of the Project and for a minimum period of 5 years, the Recipient shall continue to report annually to KfW on the Project's further development. KfW shall inform the Recipient about the end of the reporting period and may extend the reporting period beyond the 5 year period referred to above.

4.2 **Other Provisions**

- 4.2.1 The Recipient shall send KfW all such documents as are necessary for KfW to give the comments and approvals mentioned above or in the enclosed Procurement Guidelines early enough to allow reasonable time for examination.
- 4.2.2 The Recipient shall set up Project sign boards that will contain at least the following message:
- "A development project of South Africa, 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.
- 4.2.3 The Recipient shall inform KfW on any progress made in restructuring the E&E and introducing a Sub-Directorate on Energy to the extent that the Recipient in fact proceeds with such process which is merely envisaged. It is intended that such Sub-Directorate (to the extent that it is formed) would oversee (a) the management, co-ordination and implementation of renewable energy, (b) the development and implementation of energy efficient projects and (c) the integration of alternative revenue (business model review) within the municipal area of the Recipient.

4.2.4 The provisions contained in this Separate Agreement 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 Grant Agreement Please confirm your consent to the above Agreement by signing in a legally binding form and returning the enclosed copies.

We enclose a copy of the present letter with the request to forward it in due course to DIRCO.

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

Yours sincerely,

KfW

Annexes

Annex 1: Results Matrix

Annex 2: Time Schedule

Annex 3: Total Cost and Financing

Annex 4: Disbursement Procedure

Annex 5: Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partner Countries (https://www.kfw-entwicklungsbank.de/PDF/Download-Center/PDF-Dokumente-Richtlinien/Vergaberichtlinien-2019-Englisch-Internet_2.pdf)

Annex 6: Procurement Plan

Annex 7: Procurement Comparison Table

Annex 8: Content and Form of Reporting to KfW

Read and agreed:

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Results Matrix

Name of the Project

Renewable Energy for South African Municipalities - Phase I: Nelson Mandela Bay Metropolitan Area

Project Number

2018 67 555

Country

South Africa

Impact Matrix created on

17 January 2020

Summary	Indicators of Success	Sources for Monitoring	Central Assumptions / Risks
<p>Overall Objective of the focal area “Green Economy”:</p> <p>Germany visibly contributes to achievements of South Africa in the promotion of renewable energy and energy efficiency as well as in the adaption to and the mitigation of the effects of climate change (For monitoring purposes of KfW)</p>	<p><u>Indicator 1:</u> Extension of renewable energy sources wind and solar: Supply contracts with IPPs are concluded.</p> <p><u>Indicator 2:</u> Improved rate of electrification.</p> <p><u>Indicator 3:</u> Supporting targets based on the “National Energy Efficiency Strategy”.</p> <p><u>Indicator 4:</u> Significant contribution of South Africa’s energy sector to archive their emission reduction targets.</p> <p><u>Indicator 5:</u> Implementation of the procedure to improve education for the area Green Technology.</p> <p><u>Indicator 6:</u> Procedures to support climate change mitigation and reducing its impacts (incl. RE) are shown in the strategic planning of the South African Municipalities.</p>	<p>Does not apply here</p>	<p>Does not apply here</p>

Project-specific Outcome – Phase I			
<p>The Programme's objective is to improve the electricity supply situation (connections) and safety (grid stability) and the framework conditions for the integration of electricity generation from renewable energy sources.</p>	<p><u>Indicator 1 - Improved reliability of power supply:</u> Reduction in the frequency and length of unplanned outages for customers.</p> <p><i>Initial Value:</i> to be presented during first quarterly report. <i>Targeted Value:</i> Based on first report, to be discussed and agreed upon between NMBM and KfW.</p> <p><u>Indicator 2 - Reduction of Grid Losses:</u> The losses in the project areas are reduced compared to the business as usual scenario.</p> <p><i>Initial Value:</i> Estimated 8.6 GWh/yr to be confirmed after the design phase report. <i>Targeted Value:</i> Reduction by 20%, to be confirmed as part of first report.</p> <p><u>Indicator 3 – Improved access:</u> Access to electricity from renewable energy resources to indigent households.</p> <p><i>Initial Value:</i> 0 <i>Targeted Value:</i> Based on the first report, to be discussed and agreed upon between NMBM and KfW.</p> <p><u>Indicator 4 – Reduced CO2 emissions:</u> Annual CO2 emissions are reduced compared to the business as usual scenario due to a) the reduction of losses and b) the connection of new renewable energy (PV) plant for the supply to indigent households.</p> <p><i>Initial Value:</i> 0 <i>Targeted Value:</i> To be agreed upon between NMBM and KfW after design phase.</p>	<ul style="list-style-type: none"> - NMBM quarterly reports - NMBM annual audits and statistics - NMBM simulations - NMBM/KfW progress mission every 6 months. 	<ul style="list-style-type: none"> - Project implementation in line with schedule referred to in Art, 2.1.4.

Project-specific Outputs – Phase I			
<p><u>Output 1:</u> The selected network is reinforced and operational.</p>	<p><u>Indicator 5 - Commercial Operation:</u> All network projects enter into commercial operation by 2025 <i>Initial Value:</i> 0 <i>Targeted Value:</i> 30 Dec 2025 to be confirmed after the design report.</p> <p><u>Indicator 6 - Kilometers of lines rehabilitated or reinforced:</u> Total km of overhead lines and underground cables to be installed or replaced. <i>Initial Value:</i> 0 km <i>Targeted Value:</i> XX km to be confirmed after the design report.</p> <p><u>Indicator 7 – rehabilitated or reinforced installed transformer capacity:</u> <i>Initial Value:</i> 0 MVA <i>Targeted Value:</i> XX MVA increased transformer capacity installed after rehabilitation, replacement or reinforcement of existing transformer configurations to be confirmed after the design report.</p>	<ul style="list-style-type: none"> - NMBM quarterly reports - NMBM/KfW progress mission 	<ul style="list-style-type: none"> - Provision of adequate financial and personal capacities by NMBM during implementation - No significant increases in costs for goods and services - Environmental and social approvals are received on time
<p><u>Output 2:</u> An innovative RE component in formerly disadvantaged peri-urban areas of NMBM has been designed and implemented.</p>	<p><u>Indicator 8 – Successful implementation of pilot project:</u> selection and design of RE component pilot project demonstrating community involvement and potential for replicating in formerly disadvantaged peri-urban areas.</p>	<ul style="list-style-type: none"> - NMBM quarterly reports - NMBM/KfW progress mission 	<ul style="list-style-type: none"> - Provision of adequate financial and personal capacities at NMBM during implementation - No significant increases in costs and services - Environmental and social approvals are received on time
Project Measures			
<p>To be defined during design phase</p>			

Renewable Energy for South African Municipalities (Phase I: Nelson Mandela Bay) Time Schedule for the Project

Phase	Item	Responsibility	Timeline	
Finalization of Separate Agreement	Finalization of Separate Agreement	NMBM, KfW	September 30, 2021	
Signing of contracts	Signature of Separate Agreement	NMBM, KfW	September 30, 2021	
Tender agent/ implementation consultant	recruitment of a <u>Tender Agent</u> to support procurement of Implementation Consultant (and training consultant, if approved).	NMB to send a signed support letter	done	
		Agree on ToR for Tender Agent	August 30, 2021	
	Procurement of <u>Implementation Consultant</u>	Start of Procurement	NMBM assisted by Tender Agent	November 2021
		Awarding of Contract(s) (Implementation and Training Consultant)	NMBM assisted by Tender Agent, KfW to provide No-Objection prior to signing of the Contract	June 2022
Implementation	Budget Amendment and Amendment of Procurement Plan	NMBM	March 2022	
	Kick-off Implementation and Training Consultant (2 Inception Workshops)	Implementation and Training Consultant, NMBM, KfW	July 2022	
	(Start of) Design Phase	NMBM, Implementation Consultant + KfW No-Objection for final design of network and RE project	November 2022	
	Procurement of Works and Services	NMBM, Implementation Consultant + KfW No-Objection	March 2023	

		on different procurement steps	
	Commencement of physical implementation	Contractors, NMBM/Implementation Consultant to supervise, quarterly reporting to KfW, annual supervision by KfW	July 2023
	Commencement of training programme	NMBM/Training Consultant, quarterly reporting to KfW, discussions during annual supervision by KfW	Tbd
	Closure of works	NMBM	January 2025
	Closure of training programme	NMBM	Tbd
	Final supervision mission	NMBM, KfW	January 2025
	Official Project End	NMBM, KfW	December 2025

Cost and Financing Schedule *

Component	Cost in EUR	Cost in ZAR
Grid modernisation (network projects)	15 million	240 million
Innovative RE component (works)	3 million	48 million
Implementation consultant (including communication and sensitization campaign)	2 million	32 million
Total cost	20 million	320 million
Financing KfW	18 million	288 million
Financing NMBM	2 million	32 million
Total	20 million	320 million

* A detailed breakdown of costs will be prepared once the Implementation Consultant is in place and final design has been approved.

Disbursement Procedure

NOT FOR SIGNATURE

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

NOT FOR SIGNATURE

Procurement Plan*

* The procurement plan will be prepared and updated on a regular basis once the Implementation Consultant is in place and final design has been approved.

NOT FOR SIGNATURE

Procurement Monitoring Table ¹

(Version No. ² ____, dated _____)

Procurement No ³	Type of tender ⁴	Short description of contract content ⁵	Related number of contracting activity plan	Budget line to SA ⁶	Estimated contract amount ⁷	Effective contract amount after tendering	Source of funds ⁸	Tender procedure ⁹	Stages ¹⁰	Selection method ¹¹	Tender documents ¹²	Review by KfW ¹³	ESHS risk level ¹⁴	Estimated specific procurement notice publication date	Estimated bid or proposal opening date	Estimated contract signing date	Estimated contract completion date	Contract type ¹⁵	Comments and further explanations ¹⁶
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User's Guidance Notes for the Preparation of a Procurement Plan

Article 1.6.2 of KfW Guidelines for the Procurement of Consulting Services, Works, Goods, Plant and Non-Consulting Services in Financial Cooperation with Partner Countries requires the PEA to prepare a Procurement Plan which identifies, amongst others, 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 standardized Tender Documents,
- type of review required by KfW (full or simplified review),

- estimated ESHS level (basic, elevated, high),
- estimated date of tender publication or, in case of limited competition inviting firms to submit proposals.

For serial Contracts with identical content and procedures one single contract might be included and explained in the comment column. For programs for which no individual Contracts can be identified in advance the agreed procedures per Contract type might be presented.

The Procurement Plan shall be initially created at least for the first 18 months as of the date of the Seperate Agreement 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 further 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 Procurement Guidelines (e.g. justification in case of LCB or Direct Award).

An amendment to the Grant Agreement due to an update, amendment or modification of the Procurement Plan is necessary only, if they have significant implications on the Grant 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 Seperate 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 of the Procurement Guidelines.

Procurement Comparison Table

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Content and Form of Reporting to KfW

The reporting requirements of the programme include (1) a programme inception report at the beginning of implementation, (2) quarterly progress reports during the entire implementation period and (3) the final programme report after the commissioning of the three projects. KfW reserves the right to request further reports during operation, should significant risks regarding a proper operation of projects (including environmental, social risks, occupational health and safety risks) arise during implementation. Reporting can be aligned as far as possible to the existing internal reporting mechanisms of the NMBM.

The NMBM may seek the support of the Implementation Consultant for their quarterly reporting to KfW. In doing so, the NMBM shall comment on the reports or acknowledge its approval of the content by countersigning the reports. The language of all reports should be in English.

The minimum information to be shared at each reporting stage is summarized below:

1. **Programme inception report** containing the detailed time, costs and financing schedule for the technical and financial implementation of all components of the project under the programme. Such schedule is to show, by deadlines and amounts the interrelation between the project activities and the resulting financial requirements. If any deviation from the detailed time, costs and financing schedule becomes necessary during the implementation of the project, KfW shall be furnished with a revised schedule.
2. **Quarterly progress reports** containing the following information on project progress during implementation delivered to KfW no later than 45 days after the end of the period under review:
 - (a) Update on the technical description of the projects, explaining the reasons for significant changes vs. the initial scope.
 - (b) Describe implementation of the project activities during the quarter, summarize the overall state of the implementation, provide information on the awarding of contracts for consultants (if applicable), awarding of contracts for goods and services, confirm the expected date of completion of each of the projects (components) and explain reasons for any possible delay and update of the project time schedule if applicable.
 - (c) Provide an updated cost and financing schedule of the project, explaining the reasons for any possible cost increases vs. initial budgeted costs and update of costs and financing table as well as disbursement schedule.
 - (d) Inform on implementation of actions under the Environmental Management Plans (EMPs), the Resettlement Action Plan (RAP) (if applicable) and the SEP (Stakeholder Engagement Plan) including any major issue with environmental and social impact including occupational health and safety issues as well as on adjacent populations.
 - (e) Any significant issue that has occurred and any significant risk that may affect the project's implementation or operation.

- (f) Any legal action concerning the project that may be ongoing, wherein the NMBM is cited as a party to the action, or legal action which may impact on the implementation of the project of which the NMBM becomes aware.
- (g) Inform on material market and regulatory changes that may affect positively or negatively the implementation or the sustainable operation of the projects.

3. Final programme report to be provided no later than 3 months after the commissioning of the three projects:

(a) Technical scope and characteristics:

- A final description of the technical characteristics of the three projects completed.

(b) Summary of project implementation:

- Date of start and completion of works for each project explaining the reasons for any possible delay in comparison to the original time schedule.
- The final cost and financing of the projects including an explanation on potential deviations to the originally budgeted costs and financing (if applicable).
- The achievement of the intended project results (as per the impact matrix provided in Annex 1).
- Provide a summary of the findings of the audit reports prepared by external auditors on the Project.
- Summary of major developments during the environmental and social implementation including a final confirmation that these matters have been addressed in line with the principles agreed upon in the Separate Agreement.
- Any legal action concerning the project wherein the NMBM is cited as a party to the action that has or may be on-going or is expected to be undertaken or legal action which may impact on the implementation of the project of which the NMBM becomes aware.

(c) Summary of operational issues encountered during implementation:

- Provision of projects' first year operational data explaining reasons for any deviation from original forecast as well as future outlook for operations.
- Provision of reliability indicators of the transmission line (number of line faults), outage time and frequency (planned and unplanned), compliance with Republic of South Africa grid code.
- Inform on planned operation expenditures.
- Inform on any significant issue that has occurred or any significant risk that may affect the project's operation (positively or negatively).

(d) Market and regulatory changes:

- Any relevant changes to the regulatory framework and tariff setting have occurred.
- Any relevant changes in the environmental legislation relevant for the project have occurred.
- Any political changes that may impact on the implementation of the project have occurred.

(e) Environmental and social aspects:

- Summary of the implementation of actions under the Environmental Management Plans (EMPs), the Resettlement Action Plan (RAP) and the SEP (Stakeholder Engagement Plan).
- Describe the main environmental and social impacts during implementation and residual impacts.
- Summary of changes of the environmental and social documentation for the three projects and explanation of the reasons therefore.
- Confirmation that the projects were implemented in line with the respective permits.
- Inform on any significant public acceptance issue related to the three projects or any issues raised by NGOs.

(f) Lessons learnt during implementation that may be carried over to possible next phases of the project.

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Officer in Charge: [REDACTED]
phone: [REDACTED]
email: [REDACTED]

Disbursement Procedure

German Financial Cooperation with South Africa
Loan/Grant Agreement of KfW for EUR 18,000,000.00
Project/Programme name: Renewable Energy for South African Municipalities (Phase I: Nelson Mandela Bay)
KfW-Reference Number (Project No./ BMZ No.): 2018 67 555

1 INTRODUCTION

This Annex stipulates the disbursement procedure for funds disbursed by KfW (the "**Funds**") under the above-mentioned Loan/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 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 Transactions Management department (TMa).

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 Authorized Party. 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 Authorized Party 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 2.1 of the Agreement, the authorized party shall be the Nelson Mandela Bay Municipality (the “**Authorized Party**”) represented by the Authorized Representative and duly appointed Authorized Signatories.

- 3.2 Procedure to be applied

The Funds assigned to goods and services specified as Consulting Services in the Separate Agreement Article 1.1 and 1.3 shall be disbursed according to the **Direct Disbursement Procedure (Consultant)**. .

The Funds assigned to all other goods and services specified in the Separate Agreement Article 1.1 and 1.3 shall be disbursed according to the **Tranches Procedure (Special Account)**.

- 3.3 **Direct Disbursement Procedure (Consultant)**

Using the model provided in **Attachment D** 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** 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 applied exchange rate.

Subject to the provisions set out below, after verifying and clearing the disbursement request, KfW will disburse the amount requested directly to the consultant's account.

KfW acknowledges that the Authorized Party is statutorily obliged in terms of section 65(2)(e) of the Local government: Municipal Finance Management Act, 2003 to make payment to a service provider (in this instance the consultant) within a period of 30 (thirty) calendar days of receiving the relevant invoice or statement from such service provider.

Accordingly, to ensure compliance with the aforesaid statutory obligation and as the financing of the consultant is to be solely derived from the Grant (and not the Authorized Party's co-financed portion) over which the Authorized Party has no control, KfW undertakes to verify and make payment of any disbursement request relative to the consultant's account as expeditiously as possible.

3.4 Tranches Procedure (Special Account)

Details concerning the Tranches are described in the "General Terms for Disbursements in Tranches" ("General Terms", **Attachment C**), which are fully applicable and binding, unless explicitly agreed otherwise herein. In case of discrepancies between the General Terms and these Special Provisions, the latter will take precedence.

By derogation from the General Terms, the following shall apply:

- Article 1.1: The Special Account shall be opened in ZAR
- Article 2.1.c: If the Local Special Account is the transactional account or source of origin in respect of monies to be credited, then the credit interest and other income shall be credited to the relevant Local Special Account and used in accordance with Article 2.1.d.
- Article 3.4: The audit costs shall be paid out of the Tranches.

Attachments

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

MODEL FOR LETTER DESIGNATING AUTHORIZED SIGNATORIES

[Please use official letterhead]

To:
KfW Bankengruppe



German Financial Cooperation with South Africa
Loan/Grant Agreement of KfW for EUR 18,000,000.00
Project/Programme name: Renewable Energy for South African Municipalities (Phase I: Nelson Mandela Bay)
KfW-Reference Number (Project No./ BMZ No.): 2018 67 555

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 Loan/ Financing 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



Fax No.: 

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 Loan/ Financing 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.

**GENERAL TERMS
for Disbursements in Tranches (Special Account)
("General Terms")**

Structure

<u>1</u>	<u>SPECIAL ACCOUNT/ LOCAL SPECIAL ACCOUNT(S)</u>	1
1.1	<u>Special Account</u>	1
1.2	<u>Local Special Account(s)</u>	2
<u>2</u>	<u>LIABILITIES</u>	2
2.1	<u>General Obligations</u>	2
2.2	<u>Special Obligation regarding the Special Account/ Local Special Account(s)</u>	2
<u>3</u>	<u>PROCEDURE / EXECUTION</u>	3
3.1	<u>Initial Disbursement</u>	3
3.2	<u>Replenishment and Evidence on the Use of Funds</u>	3
3.2.1	<u>Replenishment</u>	3
3.2.2	<u>Amount to be replenished</u>	3
3.2.3	<u>Special conditions for replenishment</u>	3
3.2.4	<u>Evidence on the use of Funds</u>	4
3.3	<u>Documentation</u>	4
3.4	<u>Audit arrangements</u>	4
3.5	<u>Suspension and repayment</u>	5

1 SPECIAL ACCOUNT/ LOCAL SPECIAL ACCOUNT(S)

The Authorized Party shall open one Special Account (as defined below) as well as, if required, one or more Local Special Account(s) (as defined below) with a renowned bank in the Authorized Party's own name. KfW shall have the right to object to the account-holding bank. The Authorized Party shall limit the number of bank accounts to the quantity indispensably required. If it intends to open more than three bank accounts the Authorized Party shall provide KfW with a written explanation regarding the necessity of more than three accounts. KfW shall have the right to object to more than three accounts after stating reasons.

1.1 Special Account

- **"Special Account"** refers to the bank account KfW remits Funds to directly.
- Generally, the currency of the Special Account shall be EURO.

1.2 Local Special Account(s)

- **“Local Special Account”** refers to any bank account held for project purposes in a currency other than the currency of the Special Account which is replenished by means of transfers from the latter.
- Transfers from the Special Account to the Local Special Account(s) shall not exceed the amount of expenditures planned for the period of one month.

The Special Account as well as all Local Special Account(s) shall bear interest. If this is not the case, the Authorized Party shall provide an adequate explanation in the fields provided for this purpose in **Attachment C1** to these General Terms.

2 LIABILITIES

2.1 General Obligations

- a. The Authorized Party shall ensure that at all times its employees or any other persons acting on its behalf comply with all obligations and liabilities under the Separate Agreement relating to the disbursement and the use of Funds. Failure to do so is a breach of the Agreement and may lead to the consequences set out therein.
- b. To the extent a consultant is involved in the financial administration or in a supervisory role, this consultant shall be entitled to receive information directly from KfW with regard to transactions related to the Special Account. This includes the LOGAS and disbursement advices.
- c. Any credit interest and other income (e.g. penalties, guarantee refunds, etc.) shall be credited to the Special Account and may only be used in accordance with Article 2.1.d
- d. Payments out of the bank account(s) shall be made only for the purposes agreed upon with KfW, notably in the Separate Agreement and in accordance with the “Total Cost and Financing Plan” included in the Separate Agreement or in any other contractual document agreed upon together with co-financing partners. At no point in time may the Funds on the bank account(s) be used to cover expenses which are ineligible for financing in the Agreement or Separate Agreement or have yet to be approved by KfW. In particular, this applies to taxes and other public charges to be borne by the Authorized Party.

2.2 Special Obligation regarding the Special Account/ Local Special Account(s)

With regard to the bank account(s) mentioned in Article 1 above, the Authorized Party shall ensure itself and shall ensure that third parties involved in the financial transaction if any, will:

- a. submit to KfW upon request information on the bank account(s) at any time;
- b. inform KfW promptly and without undue delay of any garnishments imposed on the bank account(s) by third parties;
- c. keep the bank account(s) exclusively for transactions under the Project/Programme and replenish them only with KfW Funds or funds of co-financing partners as agreed upon; and
- d. keep the bank account(s) on a credit balance basis.

The Authorized Party will inform the account-holding bank of these obligations and legitimize it to the extent legally possible to disclose information on the bank account(s) to KfW upon KfW’s request. The Authorized Party will confirm towards

KfW on the initial disbursement request (**Attachment C1**) or subsequently in a letter containing analogous information that it complied with this obligation with regard to the Special Account and every Local Special Account.

3 PROCEDURE / EXECUTION

3.1 Initial Disbursement

KfW shall make an initial disbursement to the Special Account upon fulfilment of the relevant conditions in the Agreement, the Separate Agreement and the following conditions:

- opening of a Special Account and Local Special Account(s) (if applicable) in conformity with Article 1 of these General Terms;
- presentation of a disbursement request (using **Attachment C1**) duly signed by the Authorized Signatory/ Signatories;
- presentation of a forecast of expenditures reflecting the individual budget positions for the first six-month accounting period using **Attachment C4** (columns 1, 2 & 7);
- presentation of a confirmation of bank account details by the account holding bank (copy is sufficient) including the BIC of a correspondent bank if the account holding bank is not located in the requested currency's currency area.

In case of Local Special Account(s), KfW may make the initial disbursement to the Special Account before the details of the Local Special Accounts and the corresponding declarations as foreseen by Attachment C1 have been submitted to KfW. However, no Funds may be transferred from the Special Account to the Local Special Account(s) until the submission of such information and declarations.

3.2 Replenishment and Evidence on the Use of Funds

3.2.1 Replenishment

To request replenishment of the Special Account, the Authorized Party shall submit the following documents to KfW:

- disbursement request (using **Attachment C2**) duly signed by the Authorized Signatory/ Signatories;
- "Summary of Bank Accounts" for the accounting period for which evidence on the use of Funds is being submitted (**Attachment C3**);
- copies of bank account statements for the Special Account and Local Special Account(s) (if applicable) for the entire accounting period;
- "Statement of Expenditures" (SOE) including forecast for the next six-month accounting period (**Attachment C4**).

3.2.2 Amount to be replenished

The maximum amount to be replenished is calculated by subtracting the total of the account balances on the Special Account and Local Special Account(s) at the end of the accounting period from the forecast for the next six-month accounting period. The forecast may, however include the amount necessary to bridge the time between the end of the period for which the evidence on the use of funds has been issued and the beginning of the subsequent accounting period.

3.2.3 Special conditions for replenishment

Replenishment may only be requested if at least 70% of the previous tranche paid by KfW or if applicable by all co-financiers contributing to the Special Account and 100%

of all tranches preceding the previous tranche have been used and evidenced in accordance with Article 3.2.4.

3.2.4 Evidence on the use of Funds

The Authorized Party is obligated to furnish evidence on the use of funds. This generally happens by means of a duly signed disbursement request accompanied by the documents referred to in Article 3.2.1, which is considered evidence on the use of Funds for the respective accounting period. These documents are subject to further review within the scope of the Audit set forth in Article 3.4.

KfW is entitled at its discretion to demand separate evidence of the use of Funds, if no replenishment is requested owing to delays in the Project/Programme. In that case the Authorized Party shall deliver the documents referred to in Article 3.2.1, but with the amount requested for replenishment equalling zero.

Furthermore, the Authorized Party shall ensure by the same means that all evidence on the use of Funds is made available to KfW within six months of conclusion of all measures or completion of the Project/ Programme.

For the final accounting period, the documentation submitted as evidence on the use of Funds shall include bank account statements for the Special Account and all Local Special Account(s) (if applicable) showing a balance of zero or the amount which will be repaid to KfW at the end of the accounting period.

3.3 Documentation

Original documents to be held available according to Article 2.5 of the General Provisions of the Annex stipulating the disbursement procedure shall include statements of bank accounts, bank confirmations of exchange rates applied, bank guarantees, any other bank vouchers and any other documents proving that supplies and services have been duly delivered and performed, i.e. commercial invoices, shipping documents, payment and acceptance certificates etc.

3.4 Audit arrangements

The Authorized Party shall assign an external auditor/ practitioner to examine annually, in compliance with the "Terms of Reference: Assurance Engagement for Funds Disbursed under the Disbursement in Tranches Procedure" (**Attachment C5**) whether or not the Funds have been managed properly. The annual audit reports (signed original documents including the corresponding "Statement on Internal Control", if any) shall be presented to KfW no later than three months after the end of the Authorized Party's financial year.

If the initial disbursement is effected during the first half of the financial year, the first audit shall be presented to KfW no later than three months after the end of that financial year.

If the initial disbursement is effected during the second half of the financial year, the first audit shall be presented to KfW not later than three months after the end of the following financial year. In this case, the period under review may cover up to 18 months.

The final audit report shall be presented no later than three months after the end of the financial year in which the final payment out of the Special Account or a Local Special Account is effected or six months after the final payment out of the Special Account or a Local Special Account, whichever occurs earlier.

The audit costs for the external auditor shall be borne by the Authorized Party.

3.5 Suspension and repayment

KfW is entitled to reduce the total amount of the tranche payments or cancel the procedure entirely (and replace it by a different disbursement procedure) at any time in its sole discretion.

Furthermore, KfW is entitled to suspend replenishments of the Special Account if an event occurs that leads to the right to suspend disbursements or to terminate the Agreement.

Nothing in this Annex shall restrict KfW's right under the Agreement to demand the immediate repayment of all Funds not adequately proven to have been used for the agreed purpose and the Authorized Party's and (if applicable) the Project-Executing Agency's obligation to inform KfW immediately and on their own initiative of its inability to prove the correct use of Funds.

If the total of the account balances on the Special Account and the Local Special Account(s) is greater than the amount of expenditures eligible for KfW financing forecasted for the next six-month accounting period, KfW may reclaim the excess Funds.

Unless KfW provides the Authorized Party with another account number, all repayments shall be made to:

KfW, Frankfurt am Main
[REDACTED]

quoting the KfW reference number.

Attachments

- C1) Model for Disbursement Request for Initial Disbursement
- C2) Model for Submission of Evidence on the Use of Funds & Subsequent Disbursement Requests
- C3) Model for Summary of Bank Accounts
- C4) Model for Statement of Expenditures
- C5) Terms of Reference: Assurance Engagement for Funds Disbursed in Tranches

PLEASE USE THIS MODEL FOR THE INITIAL REQUEST.

KfW Bankengruppe

German Financial Cooperation with South Africa
Loan/Grant Agreement of KfW for EUR 18,000,000.00
Project/Programme name: Renewable Energy for South African Municipalities (Phase I: Nelson Mandela Bay)
KfW-Reference Number (Project No./ BMZ No.): 2018 67 555

Project/Programme measure:
Special Account No./Currency:.....

Confirmation of Bank Account Details & (Initial) Disbursement Request No.
DISBURSEMENT IN TRANCHES

Dear Sir/ Madam,

This is to confirm the opening of the following bank account(s) for the purpose of maintaining a Special Account under the above-mentioned Project:

Special Account			
<i>Account No./ IBAN⁴</i>		<i>Account name</i>	
<i>Account currency</i>		<i>Account holder</i>	
<i>Account-holding bank/ BIC</i>		<i>Correspondent bank/ BIC⁵</i>	
The account ...	<input type="checkbox"/> bears interest. <input type="checkbox"/> does not bear interest, because:		

Local Special Account (if applicable) ⁶			
<i>Account No./ IBAN</i>		<i>Account name</i>	
<i>Account currency</i>		<i>Account holder</i>	
<i>Account-holding bank/ BIC</i>			
The account ...	<input type="checkbox"/> bears interest. <input type="checkbox"/> does not bear interest, because:		

The account-holding bank/s has/ have been informed that all accounts mentioned above are to be maintained exclusively on a credit balance basis and are to be used for payments to be made from purpose-tied Funds of the German Financial Cooperation or comparable programmes financed by KfW. Subject to applicable law, the

⁴ The use of an IBAN may be mandatory. Please check the respective country requirements.

⁵ 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.

⁶ Concerning any Local Special Account(s), the provision of bank account details, the confirmations regarding the Authorized Party's obligation to inform the account-holding bank is not essentially required for the initial disbursement and may be submitted with subsequent disbursement requests. However, funds may not be transferred to a Local Special Account before all of the above have been provided to KfW.

account-holding bank/s has/have further been authorized to provide KfW with information regarding account balance and activity without having to obtain the account holder's consent in advance.

According to the attached forecast of expenditures for the first six-month accounting-period, we request an initial disbursement amounting to (Currency to be entered) to the Special Account indicated above.

Documents enclosed:

- Statement of Expenditures (SOE) pursuant to model provided in **Attachment C4**.
- Copy of or original confirmation of bank account details by account holding bank (including BIC of correspondent bank if applicable⁷).

.....
*Authorized Signatory/ Signatories of the
Authorized Party*

.....
Consultant (if applicable)

⁷ 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.

PLEASE USE THIS MODEL FOR ALL DISBURSEMENT REQUESTS
FOLLOWING THE INITIAL DISBURSEMENT.

KfW Bankengruppe

German Financial Cooperation with South Africa
Loan/Grant Agreement of KfW for EUR 18,000,000.00
Project/Programme name: Renewable Energy for South African Municipalities (Phase I: Nelson Mandela Bay)
KfW-Reference Number (Project No./ BMZ No.): 2018 67 555

Submission of Evidence on the Use of Funds & Disbursement Request No.
DISBURSEMENT IN TRANCHES

Dear Sir/Madam,

In accordance with the agreed Disbursement in Tranches Procedure, we hereby submit documentary evidence on the use of Funds, provide a forecast of expenditures for the next six-month accounting period and request replenishment of the Special Account as specified below:

We confirm that expenditures in the amount indicated to the right were made from the Special Account and the Local Special Account(s) in conformity with the provisions of the Disbursement in Tranches Procedure and were not financed from any other sources, except in case of agreed co-financing. The original documentary evidence is kept at our office in <i>Please enter city</i> , and is available for inspection by KfW or any third party instructed by KfW at any time.		Currency
A	Expenditures during the next six-month accounting period according to forecast:	Currency
B	Total balance on all bank accounts at the end of the accounting period according to Summary of Bank Accounts:	Currency
C	Total amount requested for replenishment of Special Account ² :	Currency
C1	Amount requested from KfW % of total	Currency
C2	Amount to be financed by % of total	Currency

Please remit the amount requested from KfW to our Special Account :

Account No./ IBAN ³	
Account holder	
Account name	
Account-holding bank/ BIC	

¹ Please ensure that the amount indicated to the right is consistent with the amount indicated as Declared use of funds of the Summary of Bank Accounts (Attachment C3, total of line 13)).

² C = A - B

³ The use of an IBAN may be mandatory. Please check the respective country requirements.

Correspondent bank ⁴	
Account currency	

We hereby confirm that there have been no changes with regard to the account details or correspondent bank(s) as compared to the information communicated in the Confirmation of Bank Account Details & (Initial) Disbursement Request.

Documents enclosed:

- Summary of Bank Accounts pursuant to model provided in **Attachment C3**
- bank statements for the entire accounting period for all bank accounts held within the framework of the Disbursement of Tranches Procedure
- Statement of Expenditures (SOE) pursuant to model provided in **Attachment C4**
- Forecast (as per column 7 of SOE, **Attachment C4**)

We confirm that the enclosed Attachment C3 (Summary of Accounts) and Attachment C4 (Statement of Expenditures) have been completed accurately and all figures indicated are true and correct.

We further confirm that 70% of the previous tranche and 100% of all tranches preceding the previous tranche have been used in accordance with the purposes of the Project/ Programme.

.....
 Authorized Signatory/ Signatories of the
 Authorized Party

.....
 Consultant (if applicable)

⁴ 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.

Instructions:

After the initial disbursement request, this Summary of Bank Accounts shall be an integral part of each disbursement request. Figures provided here shall reflect the actual cash flow during the entire accounting period and be consistent with the corresponding bank statements. Please ensure that all calculations are correct."

(1) Please enter the accounting period for which evidence on the use of Funds is currently being submitted. The documents submitted here should succeed those submitted last, there should be no gap between them. Generally, accounting periods under the Disbursement of Tranches Procedure cover six months.

(2) Please enter the requested information for all bank accounts held within the framework of the Disbursement of Tranches Procedure. "Special Account" refers to the bank account KfW remits Funds to directly. "Local Special Account" refers to any bank account held for project purposes in a currency other than the currency of the Special Account which is replenished by means of transfers from the latter.

(3) Please enter the balance held on each bank account in the respective currency at the beginning of the accounting period. The values shall be equal to the balance at end of accounting period as per last Evidence on the Use of Funds & Disbursement Request.

(4) Please enter the total amount of Funds which were credited from KfW or the acknowledged co-financing partners during the accounting period

(5) Please enter the total amount of funds debited from any account and transferred to other account during the accounting period (only within accounts indicated in this table).

(6) Please enter the total amount of funds credited into any account coming from any other account during the accounting period (only within accounts indicated in this table). Please note that the total of line 6 shall be consistent with total of line 5.

(7) Please enter the total amount of inflows coming from guarantee or insurance refunds which were credited at the respective bank account during the accounting period.

(8) Please enter the total amount of funds which were debited from the respective bank account during the accounting period, excluding bank charges. The result should be consistent with the total of Column 4 of the attached SOE (after adjustments)

(9) Please enter the total amount of bank charges which were debited from the respective bank account during the accounting period.

(10) Please enter the total amount of credit interest which was credited at the respective bank account during the accounting period.

(11) Please enter the balance held on each bank account in the respective currency at the end of the accounting period as per bank statements. Please convert the respective figures to EUR using reasonable market exchange rates at the date of the disbursement request

(12) Please indicate the reasonable market exchange rates at the date of the disbursement request applied for conversions of line 11.

(13) Declared use of funds shall be calculated only for the last column (Total) as sum of lines 8+9+10 (Expenditures Current Period as per SOE + Bank Charges - Credit Interest)

(14) Please note that the total of each line (3 until 11) shall be the sum of the columns in EUR of the respective line.

Statement of Expenditures (SOE)									
Accounting Period		Xxx		xxx					
KfW Project No./BMZ No.:		Xxx		Xxx					
1	2	3	4	4a	4b		5	6	7
Description of budget position according to contractual budget plan (e.g. Annex "Total Cost and Financing") – please specify	Amount budgeted	Expenditure in preceding accounting periods	4 (a+b) Expenditure in current accounting period	Breakdown of expenditures in current accounting period			Total expenditure to date (3+4)	Amount still available (2-5)	Forecast for next six-month accounting period (from ... to ...)
Currency	xxx	xxx	xxx	xxx	Foreign currency xxx	Foreign currency covered in xxx	xxx	xxx	Xxx
1. xxxx			0,00				0,00	0,00	
2. xxxx			0,00				0,00	0,00	
3. xxxx			0,00				0,00	0,00	
4. xxxx			0,00				0,00	0,00	
5. xxxx			0,00				0,00	0,00	
			0,00				0,00	0,00	
			0,00				0,00	0,00	
			0,00				0,00	0,00	
xxx			0,00				0,00	0,00	
TOTAL SOE	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00
+/- Other relevant adjustments to reflect real cash flow during the period*							0,00	0,00	
TOTAL Cash-Based SOE (before bank charges and credit interest, after adjustments)	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00

Note:

For the initial disbursement request, please only fill in columns 1, 2 & 7.

In all subsequent SOEs, please ensure that the total in column 4 is consistent with the total of line 8 reported on the Summary of Bank Accounts.

All figures shall be indicated in EUR, except for column 4b Foreign Currency.

*Please enter other relevant adjustments to reflect the real cash flow during the period (e.g. high volume of checks considered as expenditures in the SOE during the accounting period but still not debited from the account, advances already paid to contractors or project-partners which represented cash outflow but were not worked off/not considered as SOE, other country specifics). Please add an explanation below the table.

TERMS OF REFERENCE (“TOR”)
Assurance Engagement in accordance with ISAE 3000 – revised
for Funds disbursed in Tranches

Funds disbursed in Tranches (“Subject Matter”)

1. The present assurance engagement shall cover all payments disbursed in tranches by KfW (“Disbursement in Tranches”) in favour of [Name of the beneficiary entity concerned, i.e., Name of Authorized/Authorized Third Party, Project Executing Agency and/or other Project Implementation Unit concerned] (the “Entity”) under the financial conditions of KfW loan/grant no. ... [KfW reference no.] for financing of ... [(part of) name of project/programme] (the “Project”)
2. The preparation of the Project Financial Reports (“Financial Reports”), the disbursement requests presented to KfW and the Statements of Expenditures (“SOE”) (all together: “Subject Matter Information”) is the responsibility of Entity.
3. The financial information has to be established in accordance with consistently applied accounting standards and the underlying agreements governing the use of funds, notably the Loan/Financing Agreement(s) including the corresponding Separate Agreement as well as other agreements channelling Funds to third parties on a grant or loan basis (together the “Relevant Agreements”).

Scope

4. This engagement is a **reasonable assurance engagement** in accordance with International Standard on Assurance Engagements (ISAE 3000 – revised) as published by the International Auditing and Assurance Standards Board of the International Federation of Accountants. This standard requires that the auditor/practitioner will plan and perform procedures considered necessary to obtain reasonable assurance about the Subject Matter information (including – if necessary – on-site visits).
5. The assurance engagement
 - will be effected annually (“Reporting Period”).
 - shall cover in one single Report (“Report”) exclusively expenditures listed in the SOE of the Reporting Period.

Objective

6. The objective of the assurance engagement (“Objective”) is to permit the auditor/practitioner to express a conclusion on the Financial Reports, the disbursement requests and subsequent SOE as far as the Subject Matter is concerned and to obtain reasonable assurance about whether the Subject Matter Information is free from material misstatement regarding proper use of KfW funds according to the criteria mentioned below (paragraph 8).

7. The auditor/practitioner shall consider that mere account transfers, advances to any other accounts or to cash boxes as well as advances to service providers which have not been cleared until the end of the Reporting Period cannot be classified as “use of funds” and shall be shown separately.
8. In a form that conveys the auditor’s/practitioner’s position and based on the Subject Matter Information the auditor/practitioner shall express his conclusion with reasonable assurance on the following criteria (“Criteria”), and shall thus confirm whether in all material aspects:
- (a) The payments by the Entity to the final beneficiaries out of KfW Disbursement in Tranches have been made in accordance with the conditions of the Relevant Agreements. Where ineligible expenditures are identified, these should be noted separately in the Report.
 - (b) Expenditures are supported by relevant and reliable evidence. There were no indications that these expenditures had already been financed by other sources.

In addition, project receivables (such as advances, tax claims ...) paid in former Reporting Periods have been cleared and been used for project purposes, supported by relevant and reliable evidence.
 - (c) The SOE referred to in the Report can be relied upon to support the related disbursement requests. Clear linkage exists between the disbursement requests presented to KfW, the SOE of the Reporting Period and the accounting records of the Entity.
 - (d) The procurement process of goods and services financed was in accordance with the Relevant Agreements.

Report(s)

9. The **Report(s)** shall
- (a) be issued by a renowned auditor/practitioner in English language.
 - (b) be presented annually (signed original(s)) not later than three months after the end of the Reporting Period covered.

The final audit report shall be presented no later than three months after the end of the Reporting Period in which the final payment out of funds of the last Tranche Disbursement is effected or six months after the final payment out of funds of the last Tranche Disbursement, whichever occurs earlier.
 - (c) include at a minimum the following elements:
 - description of the Subject Matter
 - applied Criteria to evaluate the Subject Matter and to express the auditor’s/practitioner’s conclusion as defined under paragraph 8 above
 - identification of the level of assurance obtained
 - informative summary of work performed as to extent, locations, etc.
 - description of significant limitations

- (d) show in a separate paragraph any tax amounts or other contributions paid from the KfW funds and not refunded, if the Relevant Agreements prohibit financing of these costs.
- (e) comprise the auditor's/practitioner's statement on the seriousness of observations noted including the consequences of specific deficiencies, if any, also in connection with the internal control system.
- (f) contain the following Annexes:
 - Summary of the auditor's/practitioner's conclusions during the Reporting Period (see Annex A to these ToR)
 - Schedule showing receipts, transfers (if any) and disbursements of all accounts involved under this project - also from other donors, if applicable - (see Annex B to these ToR), in particular showing cumulated figures since project start.
 - Disbursement Requests and SOE of the Reporting Period
 - These Terms of Reference (ToR)

Management Letter / Statement on Internal Control

10. If considered pertinent, the auditor/ practitioner shall prepare a "Management Letter" or "Statement on Internal Control" in which he will
- (a) give comments, observations and recommendations on the accounting records systems and controls examined during the course of the engagement (with special focus on the handling of project receivables such as advances, tax claims, etc.).
 - (b) identify specific deficiencies and areas of weakness in relevant systems and controls that have come to the auditor's/practitioner's attention and make recommendations for their improvement.
 - (c) report on actions taken by the management to make improvements with respect to deficiencies and areas of weakness reported in the past;
 - (d) bring to the management's attention any other matters that the auditor/practitioner considers pertinent.

Liability

11. The amount of the professional liability insurance shall be based on local/regional standards for audit companies. When prompted to do so, the auditor/practitioner will provide KfW with evidence of his liability insurance.

Review

12. The auditor/practitioner shall keep documentation supporting his conclusion until at least five years after completion of the assurance engagement and shall have them accessible at all times for review by KfW or any third party commissioned by KfW.

Annex A
(to be attached to every Report)

SUMMARY [Issued on the auditor's/ practitioner's letterhead]

Name of Project / Programme:

KfW Ref. No.:

Subject Matter:

Reporting Period:

Within the scope of our reasonable assurance engagement under the above mentioned Project / Programme, performed in accordance with International Standard on Assurance Engagements (ISAE 3000 - revised), we express our conclusion on the following points:

Applied Criteria	CONCLUSION (YES/NO)**
a) The payments by the Entity to the final beneficiaries out of KfW Disbursement in Tranches have been made in accordance with the conditions of the Relevant Agreements. Where ineligible expenditures are identified, these should be noted separately in the Report.	
b) Expenditures are supported by relevant and reliable evidence (such as contracts, invoices, guarantees etc.). There were no indications that these expenditures had already been financed by other sources. In addition, project receivables (such as advances, tax claims etc.) paid in former Reporting Periods have been cleared and been used for project purposes, supported by relevant and reliable evidence	
c) The SOE referred to in the Report can be relied upon to support the related disbursement requests. Clear linkage exists between the disbursement requests presented to KfW, the SOE of the Reporting Period and the accounting records of the Entity. .	
d) The procurement process of goods and services financed was in accordance with the Relevant Agreements.	
e) No other important findings and observations have been disclosed during the engagement.	
f) All observations raised in former reports have been solved by now (for details please refer to page) – not applicable in case of first report hereunder.	

** Result "NO" requires a reference to a page/section of the Report.

Date:

Stamp/Signature Auditor / Practitioner:

[Issued on the auditor's/practitioner's letterhead]

**Annex B
(to be attached to every Report)**

KfW Ref. No.		Special account	account 1 **)	account 2 **)	...	Total/ Summary
Reporting Period from ... to ...	Unified Currency (preferably EUR) **) applicable only in case other accounts are used - for accounts in local currency, please add currency and exchange rate used -					
a) account balance at the beginning of the Reporting Period						
b) inflow of funds from KfW	plus					
c) inflow from other donors, credit interest, other receipts – if any	plus					
d) incoming transfers between accounts – if any (only from accounts named here)	plus					
e) outgoing transfers between accounts – if any (only in favour of accounts named here)	less					
f) expenditure (including advances) paid in Reporting Period	less					
g) account balance at the end of the reporting period						
Cumulated amounts from project start until end of Reporting Period - KfW funds only -	Unified Currency (preferably EUR)					
a) cumulated inflow of funds (special account)						
b) cumulated expenditure less advances not yet cleared						

Date: Stamp/Signature Auditor / Practitioner:

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



German Financial Cooperation with South Africa
Loan/Grant Agreement of KfW for EUR 18,000,000.00
Project/Programme name: Renewable Energy for South African Municipalities (Phase I: Nelson Mandela Bay)
KfW-Reference Number (Project No./ BMZ No.): 2018 67 555

Disbursement Request No.
DIRECT DISBURSEMENT PROCEDURE (CONSULTANT)

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 ... ¹²
TOTAL AMOUNT REQUESTED FOR DISBURSEMENT¹³:				

¹² In case of pari passu or pro rata co-financing .

¹³ Please make sure to specify currency.

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 bank¹⁴/ BIC	

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

- 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)

.....
*Authorized Signatory/ Signatories
of the Authorized Party*

¹⁴ 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.

Financial Cooperation

»» Guidelines for Procurement



January 2019

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

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Instruments and Procedures

**Please direct any queries concerning
these Guidelines to:**

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Financial-Risks
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Version January 2019

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.

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 1.6.6;
- (4) in the case of Contracts prefinanced by the PEA as per Article 1.6.7
- (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 1.6.8;
- (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.

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).

Fairness

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

Transparency

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.

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

1.4 Sanctionable Practice

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

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

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

- (1) reject an Offer for Award of Contract if during the Tender Process the Bidder who is recommended for the Award of Contract has engaged in Sanctionable Practice, 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 standard, 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

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

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.

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

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

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.

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:

- (1) Tender Notice(s) (specimen see Appendix 2);
- (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.

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

In general, KfW does not issue an overall No-Objection to the documents listed in Article 1.6.3 based on a post review of the Tender Process after Award of Contract.

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; and
- 200,000 EUR (two hundred thousand Euro) for Procurement of Goods, 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).

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.

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.

In general, 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, 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 Procedure 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 Procedures 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.

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

2.4.6 Currencies

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

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

2.4.7 Taxes and Duties

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

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

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

2.4.8 Guarantees and Securities

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

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

2.4.9 Fees for Tender Documents

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

2.4.10 Submission Deadlines

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

- (1) preparation of an Application (from the date of the publication of the latest Tender Notice until the Application submission deadline): minimum **30 calendar days**; and

- (2) preparation of a technical and financial Offer (from the date of the publication of the Tender Notice or the sending of the RfP/ITB to the Bidders or prequalified Applicants until the deadline for submission of Offers): minimum **45 calendar days**.

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

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

In the case of an NCB the relevant provisions of the Public Procurement Regulation applies, in the case of LCB and Price Quotation 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 Direct Award the submission deadline shall be appropriate.

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

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).

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/Offers 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 be rejected.

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.

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.

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.

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 Employer 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 shall be considered unsuccessful 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.

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 lowest evaluated 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 lowest evaluated 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 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 a technical score of at least 75 % of the total points for the technical Proposal. Non-responsive technical Proposals are rejected at this step.

Financial Evaluation

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

In the case of a discrepancy between the technical and financial Proposals in indicating quantities of input, the technical Proposal prevails and the evaluation committee shall correct the

¹⁰ For further details about the evaluation of qualification criteria see KfW's SDOs available at www.kfw-Entwicklungsbank.de

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 weighted technical score of a technical Proposal will be calculated by multiplying the technical score of the respective Proposal with the technical weight (in percent).

The weighted financial score of a financial Proposal will be calculated by multiplying the ratio of the evaluated price of the lowest financial Offer to the evaluated price of the respective financial Proposal with the financial weight (in percent).

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. The weightings should generally be 80% for the technical Proposal and 20% for the financial Proposal (for more Details see 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. 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 event of such exclusion, the Applicant or Bidder shall attach to this Declaration of*

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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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 implementation of the Contract and the fundamental conventions of the International

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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 level (basic, elevated, 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 identical content and procedures one single Contract might be included and explained in the comment column. In the case of programmes 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 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, as applicable. 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.

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	502530	C	Implementation Consultant	1.000.000 EUR	100% KfW	ICB	2	KfW	F	B	1.1.2019	
2	392015	C	ESHS Consultant	50.000 EUR	50% KfW 50% PEA	LCB	1	KfW	S	n/a	1.1.2019	
3	280912	W	Access Road	1.000.000 EUR	100 % PEA	NBC	1	PEA	F	E	1.10.2019	
4	n/a	W	2 Wind Turbines, 5MW each	10.000.000 EUR	100% KfW	ICB	2	KfW	F	NE	1.12.2019	
...												

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 standardised 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 "B" for basic, "E" for elevated, "H" for high ESHS risk level or "n/a" if not applicable and "NE", if an ESIA/ESMP is not yet available. 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 level at project appraisal may be indicative and finalised when preparing the Tender Documents for the Contract. If available, the ESIA/ESMP should be consulted and 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 programmes).

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

Tender Notice

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

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

Prequalification-Result Notice

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

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

Award Notice

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

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

Cancellation Notice

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

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

Addenda/Corrigenda to Initial Notices

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

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/project 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 75% of the total of the ESHS sub-criteria) shall be rejected, independent from the Total Technical Score.

Upon conclusion of the technical and financial evaluation the technical and financial Proposals will be weighted as follows in order to determine the overall score and ranking of the Proposals. First, the weighted technical score is calculated

$PT = WT * T$, with

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

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

WT = weight of the technical Proposal (in percent)

following the calculation of the weighted financial score

$PF = WF * Co/C$, with

PF = financial score (points) of a financial Proposal,

C = evaluated price of the financial Proposal,

Co = lowest evaluated price of all financial Proposals.

and finally the overall score is calculated

$P = PF + PT$.

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

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/Offer 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 (technical BER), or which Bidders have submitted a responsive financial offer (financial BER);
 - 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 (final/financial BER), which Offer is first ranked/has the lowest evaluated price and thus is proposed for Award of Contract;

- Signature of all members of the Application/Offer evaluation committee.

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 Contact 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).

[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."

Comparison SA procurement legislation - KfW procurement guidelines

Summary of key findings: differences and topics to be discussed between NMBM and KfW

	Topic	Conflict/ difference between SA and KfW regulation	NMBM specifics	KfW specifics	Procedure as discussed and agreed
1	Preferential procurement	The KfW Procurement Guideline calls for all bidders to have a fair opportunity to participate in the Tender Process and for the prevention of unequal treatment of bidders. This principle is inconsistent with South African laws giving effect to the concept of preferential procurement. There are a number of clauses in the KfW Procurement Guideline, typically relating to the evaluation of bids, which are inconsistent with the South African evaluation methodology which requires an evaluation of functionality, followed (for all bids which meet or exceed a stated minimum threshold for functionality) by an evaluation of price and B-BBEE (based on the preference points regime provided for in the Preferential Procurement Regulations).			Procurement process has to follow SA regulation in line with the PPPFA. KfW generally acknowledges and understands the application according to PPPFA. <i>KfW will seek internal and BMZ approvals to accept SA preferential procurement mechanisms.</i>
2	Additional "pre-qualification criteria" in line with PPPFA	South African laws permit institutions to impose pre-qualification criteria in tenders which restrict eligibility to bidders with a specified minimum B-BBEE contributor status level or with status as an EME or QSE, which may have the effect of excluding potential bidders, especially non-South African bidders, from the tender process. In SA, pre-qualification criteria can be used to further support enterprise and supplier development commitments of an institution.			The preference system should only be applied where it is mandatory according to SA law. The use of pre-qualification criteria is not mandatory; however, it is mandatory that, <i>where feasible</i> , an institution requires that 30% of the value of a contract (for contracts with a value in excess of R30 million) be sub-contracted to black persons, EMEs or QSEs (see point 3). South African organs of state are required to identify procurement opportunities for developing designated groups (Refer to Preferential Procurement Regulations (PPR) 2017 - 4) <i>NMB will include pre-qualification criteria and subcontracting requirements whenever required by South African regulation, providing a short explanation to KfW</i>
3	Subcontracting	Under SA law: the PPPFA permits a PEA to impose a requirement of 30% subcontracting to EMEs, QSEs or black-owned businesses, and provides that such a subcontracting requirement MUST be imposed <i>where its implementation is feasible</i> .			<i>In case the 30% subcontracting is required, NMB shall provide a short explanation to KfW.</i>
4	"Objective criteria" in line with the PPPFA	South African law permits a procuring institution to award a tender to someone other than the highest scoring bidder, where "objective criteria" unrelated to preferential procurement justify such an award.	NMBM can not waive the objective criteria as it will be contrary to the sustainable developmental goals of SA government . In terms of section 7 of the Preferential Procurement Regulations, a contract may be awarded to a tenderer that did not score the highest total number of points, only in accordance with section 2 (1) (f) of the Preferential Procurement Policy Framework Act No. 5 of 2000. In the application of section 2(1)(f) of the aforesaid Act, the Accounting Officer may explicitly determine in any bid specification that a tenderer shall be required to attain a specific goal or goals other than and excluding the goals of contracting with historically disadvantaged persons and implementing Reconstruction and Development Programmes in order to qualify for the award of a contract.		Objective criteria should only be included with the agreement of KfW and only in cases where they are necessary and measurable. <i>To be specified on a case-by-case basis once the procurement plan is available.</i>
5	Eligibility and grounds for exclusion	The KfW Procurement Guidelines set out certain grounds for the exclusion of a bidder from the tender process, several of which are not provided for in South African law (e.g. exclusion of state-owned enterprises in certain cases). In particular, KfW-funds may not be used to finance contractors that figure on the UN, EU or German lists of sanctions.		1.3. of the Procurement Guideline	KfW eligibility criteria are summarized in KfW's " Declaration of Undertaking " (DOU). <i>The DOU should be added to the tender documents as a mandatory returnable document. If this self-declaration is not countersigned and submitted, this will lead to the exclusion of a bidder. To be specified in the tender documents.</i>
6	Confidentiality and access to procurement-related information	KfW requires access to bidder information and documentation in order to conduct a review of the tender process undertaken by the PEA (i.e. the no-objection process). This process is undertaken by KfW in order to ensure that the PEA has complied with the KfW Procurement Guideline and/or its Tender Documents. In South Africa, bidder information and documentation would, in the normal course, be confidential to an institution. The entitlement of KfW to access confidential and/or personal information of bidders is limited by the provisions of POPI and constitutional privacy law.		1.2.1. KfW treats all procurement-related information as confidential. Only the parties involved shall have access to the relevant information in accordance with their respective right to information.	In order to ensure that KfW has access to procurement-related information and documentation, any undertaking of confidentiality on the part of NMB in the Tender Documents must explicitly exclude disclosure to KfW. NMB should include in the Tender Documents a condition that bidders consent to disclosure of their procurement-related information to KfW. It is advisable that the Tender Documents include an explanation of the role of KfW in the procurement process and/or resulting project. <i>NMB to add short explanation of KfW's role and provide for bidders to consent to disclosure to KfW as a condition in the tender documents.</i>
7	Standard Bidding Documents (SBD) and General Conditions of Contract (GCC)	KfW provides a set of Standard Tender Documents (SDO) for use in Projects with financing from KfW, and highly recommends the use thereof. If the PEA is obliged to use others than KfW's SDOs, the PEA has to ensure compliance with the provisions of the KfW Guidelines, in particular ESHS requirements. In SA, most public institutions and entities are bound to use SBD and GCC in line with NT/CIDB regulation		1.2.4.	KfW accepts SA SBD and GCC provided that these are amended or supplemented to meet KfW minimum requirements. A " KfW checklist " should be filled in and submitted to KfW for no-objection together with the tender documents and draft contract. <i>KfW will provide a Checklist template to NMB; NMB will fill in the checklist to identify areas where KfW requirements are additional to the SA SBD and GCC, for inclusion in the tender documents; NMB to amend or supplement SBD and GCC to meet KfW minimum requirements (provided that these are in line with the constitutional procurement principles)</i>
8	ESHS requirements	KfW needs to ensure compliance with international ESHS requirements (as reflected in KfW's sustainability guideline), which may in some areas differ from SA ESHS standards.			An ESHS gap analysis will identify differences in ESHS requirements which shall then be taken into account during the tender process. <i>NMBM to adjust tender documents whenever applicable, to include project-specific adaptations in line with the ESHS gap analysis.</i>
9	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/procurement mechanisms 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.		1.6.2. Procurement Plan required to provide an overview of different procurements and procurement mechanisms that will be applied under the funding agreement	A Procurement Plan template is included in the Annex to the Separate agreement. <i>NMB submits draft procurement plan to KfW as soon as possible</i>
10	Procurement mechanisms/ tender procedures	The thresholds provided for in the KfW procurement guideline are not the same as those provided for in the SCM policy or MSCM Regulation 12. Accounting officers and accounting authorities are free to apply lower (but not higher) thresholds for each category of the procurement process than those provided for in the applicable South African regulatory instrument. In general, the SA thresholds are significantly lower than those of KfW.	NMBM Demand Management section is responsible for: (i) analysing the goods, works or services required; (ii) conducting an analysis of the past expenditure (where applicable); (iii) compiling a procurement plan and (iv) advising on an appropriate procurement strategy.	2.1	A tender procedure with a higher level of competition than requested by the KfW Procurement Guideline may be applied at NMB's discretion. Appropriate procurement method to be agreed between NMB and KfW having regard to contract value and SA legal requirements. <i>The choice of the tender procedure shall be outlined in the Procurement Plan</i>
11	Usage of pre-established shortlists	SA accounting officers may keep a list of accredited prospective providers of goods and services approved by National Treasury that must be used for the public entity's procurement requirements through written or verbal quotations			If applicable under the Funding Agreement, the establishment and usage of these lists of accredited providers shall be clarified. <i>Contracts to be awarded via such pre-established shortlists shall be clearly highlighted in the Procurement Plan.</i>
12	Tender advertisement	There is no requirement under South African law to advertise tenders internationally. KfW requires compulsory publication on the "Germany Trade and Invest" (GTAI) platform - www.gtai.de - for international tenders. Tender Notices are to be published internationally for contracts with an estimated value of - 5,000,000 EUR for procurement of works or plant - 200,000 EUR for procurement of goods, consulting and non-consulting services	NMBM invites prospective bidders in a form of news papers, NMBM website, National Treasury E-Tender publication portal and in any other appropriate manner which may include International publication thus NMBM will provide necessary advert to Tender Agent. However, the international tender invitation needs to conform to tender conditions as approved by NMBM Bid Specification Committee NMBM does not encourage electronic bids, hence all bids needs to be submitted on sealed envelop in a form of hard copy.	2.1.1.	International publication requirements to be included in the Separate Agreement (of the Funding Agreement) between KfW and NMBM. <i>If applicable, International publication on GTAI to be administered by NMBM in line with the Procurement Plan.</i>
13	Bidding period	The minimum time periods for the submission of Applications and Offers differ.	NMBM SCM policy states that tender closure date for the submission of bids may not be less than 30 days in the case of transactions over R10 million (VAT included) or which are of a long-term nature.	KfW standard for <u>international</u> tenders: - minimum 30 days in case of a separate pre-qualification phase; - minimum of 45 days for the submission of a technical and financial proposal; In case of <u>National Competitive Bidding (NCB)</u> the relevant provisions of the Public Procurement Regulation applies. In case of <u>Limited Competitive Bidding (LCB)</u> and <u>Price Quotations</u> , the deadline for submission of offers may be reduced, but should be no less than 20 calendar days .	In case of International Competitive Bidding (ICB), the bidding period shall be fixed to a minimum of 45 calendar days; in case of a separate pre-qualification phase, the application period shall be a minimum of 30 calendar days. For all other (national) tenders/quotations, the SA regulation shall apply. <i>To be discussed on a case-by-case basis. To be specified in the tender documents.</i>

14	Monitoring and review by KfW	As a public bank, KfW is obliged to monitor compliance of tender processes with the provisions of the KfW Procurement Guideline and provides "No-Objections" (written notices concerning the PEA's documents and decisions in the preparation and execution of a Tender Process) for all contracts to be financed under the funding agreement. The Procurement Guideline provides for KfW's review and No-Objection at several stages of the tender process. In SA, bidder information would, in the normal course, be confidential to an institution (see point 6 "Confidentiality and access to procurement-related information"). In addition, an organ of state may not delegate its decision-making authority to a third party outside the institution; therefore it can permit KfW to give its views, and take them into account, but cannot be bound by KfW's views.		According to 1.6.3., in case of ICB, KfW ex-ante review and no-objections are mandatory. Below the ICB threshold KfW may in certain cases agree to a "simplified review" (1.6.4).	IMPORTANT: The PEA is fully responsible for the tender processes. A no-objection by KfW shall not relieve the PEA from its constitutional, statutory and contractual obligations. KfW will monitor and review the tender process to make sure the contracts to be awarded are eligible for financing under the funding agreement. <i>KfW can make recommendations and may (in case of an objection) withdraw funding, but it cannot and will not exercise any decision-making powers in respect of the tender process.</i> In case of ex-ante review, KfW will provide no-objections at least to: (a) the tender documents (including GTAI publication notice (if applicable), request for proposal (RfP), specimen contract, KfW's checklist) before the tender is issued by the PEA, (b) if applicable, after the PEA's technical/functional evaluation (technical/functional evaluation report), (c) after the PEA's Tender Committee approval of the tender evaluation results and recommendation for contract award (final evaluation report) and (d) before the signature of a contract with the successful bidder (draft final contract). <i>To be specified in the procurement plan, for which tenders an ex-ante review will be required.</i>
15	Local production and content/ domestic preference	The KfW Procurement Guideline only permits the PEA to revert to domestic preference if it will not (<i>inter alia</i>) lead to a de facto exclusion of foreign competition. Under South African law, an institution is required to apply any local content designations issued by the Department of Trade and Industry in respect of certain sectors or sub-sectors. The effect of a designation is that every bidder must meet the specified percentage threshold for their bid to be considered. Local content designations may have an exclusionary effect vis-à-vis non-South African bidders.	NMBM reserves the rights to enforce its supply development strategy.	2.4.11 - 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 South Africa, 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.	KfW accepts local content requirements only where specifically designated by DTI. <i>NMBM should not add any additional local content requirements, if not specifically designated by DTI.</i>
16	Local registration requirements	In the context of construction procurement, the KfW Procurement Guideline does not take into account the need to assess whether bidders are registered on the Register for Contractors established by the CIDB. In terms of the CIDB Act, it is required that an institution only awards construction procurements to bidders that are registered on the Register for Contractors.		2.4.3.	Local registration acceptable as a requirement if the registration process per se is open to any bidders (and does not preclude international competition) <i>Include in the Tender Documents the CIDB requirements regarding registration of contractors. Where international bidders are likely to need to be registered in order to participate, NMBM to ensure that sufficient time for bidding is provided, by stipulating a minimum bidding period of 45 calendar days, so as to afford foreign bidders an opportunity to timeously register with the CIDB.</i> <i>NMBM to add short reference to KfW funding and requirements to avoid negative repercussions for future tenders (that are not linked to KfW funding)</i>
17	Tender process - Two-Stage Bidding	The terminology relating to "2-stage bidding" is different according to SA and KfW procurement regulation. The KfW Procurement Guideline uses the term "pre-qualification" to refer to the first stage of a 2-stage bidding process. In South African procurement law, the term "pre-qualification [criteria]" is used in the Preferential Procurement Regulations to refer to mandatory conditions which may be imposed by an institution, to limit eligibility to bid based on B-BBEE related requirements permitted by those Regulations. Pre-qualification criteria can be imposed whether the institution follows a one-stage or a 2-stage bidding process (see item 2 (Additional "pre-qualification criteria" in line with PPPFA) above). According to KfW Guidelines, a 2-stage bidding process shall be applied in case of an expected high number of applicants. The "pre-qualification phase" (stage one) allows the PEA to establish a shortlist of qualified bidders. The second stage is then a closed tender, where only pre-qualified bidders (usually 5) are allowed to participate. This approach is aligned with 2-stage bidding under South African law.	MSCM Regulation 25(1) provides that a municipality' or municipal entity's supply chain management policy should allow a two-stage bidding process for: (i) large complex projects; (ii) projects where it may be undesirable to prepare complete detailed technical specifications; or (iii) long term projects with a duration period exceeding three years. In the <u>first stage</u> technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments (see SCM Regulation 25(2)). In the <u>second stage</u> final technical proposals and priced bids should be invited (See MSCM Regulation 25(3)).	2.2. - In the <u>first stage</u> , 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 (general ability and eligibility). Applicants which fulfil the requirements as per RfA are considered prequalified. In the <u>second stage</u> prequalified Applicants are invited to submit a technical and financial Offer.	Agreed (2-Stage bidding process is an acceptable Sourcing strategy). <i>To be specified in the Procurement Plan where a two-stage bidding process is applicable (to be decided on a case-by-case basis).</i>
18	Tender process - Two-envelope submission of offers	According to the KfW Procurement Guideline, a 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. In SA, to make use of a two-envelope system is permitted, but not usual practice		2.3.	A two-envelope procedure shall be applied in all tenders with a separate technical/functional evaluation. KfW shall be asked for No Objection to the functional evaluation result prior to the opening of the financial envelopes. As a consequence, in case of public bid openings, bid prices shall not be read out loud on the day of bid opening. <i>Make provision in the Funding Agreement and tender documents for 2-envelope system to be applied where appropriate and agreed with KfW</i>
19	Joint ventures	According to the KfW Procurement Guideline, 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. This aspect is not specifically regulated in South African procurement law. The South African law requirements pertaining to proof of B-BBEE contributor status level in the case of a joint venture are not clear under current regulation, and therefore need to be stipulated in the Tender Documents.	Joint Ventures of Applicants/Bidders without joint and several liability of the partners are not acceptable.		Include the KfW requirement of joint and several liability of joint venture partners in the Tender Documents NMBM to ensure that the Tender Documents contain clear instructions on how the B-BBEE status of joint ventures will be assessed for purposes of points allocation under the preferential procurement regime. Agreed. The JV agreement is one of the mandatory returnable documents
20	Taxes and duties	According to the PPPFA, price should always include all applicable taxes. KfW recommends to differentiate between net and total price during evaluation. Import duties and public charges (customs) cannot be financed by KfW if payable directly by the PEA.	Import duties are part of the tendered price. The whole contract price would include it as part of total contract price tendered and awarded.	Import duties and public charges (customs) not financed by KfW as per the Separate Agreement <i>if payable directly by the PEA.</i>	In case of the recruitment of contractors, applicable import duties may form part of the tendered price. In such event, such costs are to be paid by the NMBM through its co-financed portion and not financed from the Grant. However, VAT should be stated separately.
21	Evaluation process - price quotations	The KfW Procurement Guideline permits price quotation for certain categories of goods. Under South African law, a price quotation process may only be used where the contract value is less than a specified amount (as opposed to being used for certain categories of goods irrespective of contract value).		2.1.4.	To be decided on a case-by-case basis, whether a "price quotation" method may be applicable. If on an adhoc basis additional work is required due to unforeseen circumstances and it has not been included in the procurement plan and if it is outside of the scope of the main contractor, the three quotation system may be used. <i>To be specified in the procurement plan, and discussed on a case-by-case basis</i>
22	Evaluation process - methodology	Under South African law the evaluation process must be aligned with the methodology provided for in the PPPFA read with PPPFA Regulations (compliance; followed by functionality assessment relative to a threshold score which must be met in order to go through to price and preferential procurement scoring and ranking stage). It does not permit the weighting of technical (functional) scores and price scores, to get to a total score - as foreseen by KfW Guideline, where Quality and Cost-Based Selection (QCBS) is the recommended standard method for consulting tenders.		3.4 and 4.4	South African evaluation process acceptable for KfW. It is understood that the procurement process has to follow SA regulation in line with the PPPFA. KfW generally acknowledges and understands the application according to PPPFA. NMBM is mandated to comply with SA legislation. KfW to seek internal and BMZ approvals to accept SA preferential procurement mechanisms. Process followed is the minimum requirements, technical requirements/ functionality and then pricing. However, whenever feasible, NMBM shall apply a two-envelope procedure, and submit a separate functional evaluation report to KfW for no-objection, prior to opening the financial offers. KfW will seek internal and BMZ approvals to accept SA preferential procurement mechanisms.

23	Guarantees and Securities	<p>KfW has own guarantee templates/bond forms to be used in any KfW-financed projects.</p> <p>KfW only accepts bank guarantees.</p>	<p>The municipality uses bank guarantees to regulate and ensure appropriate level of quality and standard of work / service delivered with its service providers. In major construction projects the service provider provides Bonds or bank guarantee up to a value of 10% to 20% of the project value.</p>	<p>KfW's guarantee/bond templates should generally be used due to the "reimbursement clause" in case of direct payments to the contractor.</p> <p>Advance payments shall not exceed 20%.</p> <p>KfW only accepts bank guarantees.</p>	<p>The Tender Documents shall specify that only bank guarantees are acceptable. Guarantees should always be abstract, unconditional guarantees, payable on first demand and include an account to which financial returns should be transferred. The use of KfW bond/guarantee formats is preferred, however not a requirement provided that any guarantee complies with the provisions above and below. In cases other than when KfW bond/guarantee formats are being used, this requires KfW's approval. In the event of a "direct disbursement procedure" KfW's reimbursement clause should be included in any form of Guarantee (see in this regard Art 2.3.5 b) of the Separate Agreement).</p>
24	Compulsory clarification meetings	<p>Compulsory briefing and/or clarification sessions to be attended by all bidders may prejudice international bidders.</p>			<p>SA requirements regarding briefing and clarification meetings should not be used in a manner which prejudices non-South African bidders. In clarification hereof, this does not mean that the NMBM is not entitled to make a clarification meeting compulsory. A meeting protocol/minute shall be established, clearly documenting the contents of the meeting, and be submitted to KfW for information purposes together with the evaluation report .</p> <p>The nature of the project will inform if a compulsory clarification meeting will be required. The NMBM's Bid Specification Committee in terms of the SCMP is tasked with determining whether attendance at a clarification meeting is compulsory or not.</p> <p>NMBM's requirements regarding briefing and clarification meetings, if any, to be advised to KfW for no-objection.</p>
25	Site inspections	<p>NMBM SCM Policy provides for an entitlement on the part of NMBM to inspect the physical place of business of a bidder - TO BE CLARIFIED</p>			<p>This entitlement should not be used in a manner which prejudices non-South African bidders. The tender documents shall clearly indicate if a site visit is foreseen, and how this shall be evaluated. The visit shall be clearly documented in the evaluation report. The nature of the project will determine if a site meeting will be required.</p> <p>NMBM requirements regarding site visits, if any, to be determined by agreement with KfW.</p>
26	Clarification requests	<p>SA regulation permits bidders to submit clarifications up to 7 days prior to closing date. This timeframe is inconsistent with the 10 day period set out in the Procurement Guideline and could prove prejudicial to international bidders.</p>	<p>Agree, the Communication process in line with NMBM Standard Operating Procedure (SOP).</p>	2.5.2.	<p>All communications between the PEA and (potential) applicants/bidders during the different stages of the tender process shall be in writing. Clarifications shall be sent simultaneously to all bidders and give the potential bidders sufficient time to take appropriate action.</p> <p>In case of ICB, any clarifications shall be submitted by the latest 10 working days before the tender deadline and responses to any clarification and/or clarifications sent out by the NMBM by no later than 7 working days prior to the submission deadline.</p> <p><i>To be specified in the tender documents.</i></p>
27	Currency	<p>According to KfW guidelines, the currency of an offer should preferably be in EUR or the currency of the Funding Agreement. Where municipalities and municipal entities are concerned, their authority to procure goods and services in foreign currencies is limited by section 163 of the MFMA.</p>	<p>Contracts to be concluded by municipalities and municipal entities must be priced in local currency ZAR.</p>		<p>Contracts to be concluded by municipalities and municipal entities must be priced in local currency. Acceptable for KfW.</p>
28	Price negotiations	<p>The KfW Procurement Guideline permits the PEA to enter into pre-award discussions with the highest scoring bidder in circumstances falling outside the ambit provided for in the PPPFA Regulations (namely where the preferred bidder's price is not market-related). However, the KfW Procurement Guideline limits the PEA's entitlement to negotiate on price. In terms of PPPFA Regulations 6 and 7, an organ of state may not award a contract to a bidder whose price is not market-related, and the organ of state has a discretion to negotiate with the highest scoring bidder prior to award, if that bidder's price is not market-related. The sole purpose of such negotiations is to reach agreement on a market-related price for the successful bid.</p>	<p>NMBM will not accept any inflated offers in terms of section 217 of SA constitution which deals with the value for money.</p>	2.5.12 (Pre-Award Discussions)	<p>In case (price) negotiations with the highest ranked bidder should become necessary within an ongoing bidding process (because prices are not in line with the market-related prices identified before), KfW should be informed immediately and be asked for no-objection prior to entering into negotiations.</p> <p>In the event that NMBM negotiates with the highest scoring bidder in contravention of KfW's requirements in terms of the Funding Agreement, or fails to do so when required by KfW, KfW may withhold or withdraw funding in accordance with the provisions of the Funding Agreement.</p>
29	Negotiations with the second-ranked bidder	<p>The KfW Procurement Guideline permits the Project Execution Agency, in the case of failure to reach agreement in pre-award discussions with the highest ranked bidder, to enter into pre-award discussions with the next ranked Bidder, subject to prior No objection by KfW. The PPPFA Regulations contemplate negotiations with the second ranked bidder only in circumstances where the PEA cannot reach agreement with the highest ranked bidder on a market-related price.</p>	<p>BEC identifies if price not market related, item presented to BAC and CM gives authority to PM to negotiate with SP. Accounting officer will notify KfW of the intention to negotiate with the 2nd ranked bidder.</p>		<p>In case negotiations with the second-ranked bidder shall be required within an ongoing bidding process, KfW should be informed immediately and be asked for no-objection prior to entering into any negotiations.</p> <p><i>In the event that NMBM negotiates with the second-ranked bidder in contravention of KfW's requirements in terms of the Funding Agreement, or fails to do so when required by KfW, KfW may withhold or withdraw funding in accordance with the provisions of the Funding Agreement.</i></p>
30	Procurement-related complaints	<p>Under SA law a tender complaint mechanism is provided for in the Municipal SCM Regulations, but it doesn't necessarily suspend a Contract award.</p> <p>According to the KfW Procurement Guideline, the award of a Contract shall not take place until all complaints have been handled adequately.</p>	<p>It is standard operating procedure for NMBM not to award a contract until objections have been adequately dealt with.</p>		<p>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. Provided that any complaint is received pre-award of the tender or contract, the award of a Contract shall not take place until all complaints have been handled adequately in terms of the NMBM's SCM processes.</p> <p><i>Include provisions regarding the dispute resolution mechanism, and the impact of dispute resolution processes on Contract award, in the Tender Documents.</i></p>