

GENERAL CONDITIONS OF THE FEDERAL DEPARTMENT OF FOREIGN AFFAIRS FOR LOCAL MANDATES

1. Phase Prior to Contract Conclusion

- 1.1 Up to the conclusion of the contract, withdrawal from the negotiations by either of the parties shall entail no financial obligation, each of the parties being responsible for its own expenses.
- 1.2. In case of tenders, the tender, including presentations, shall not be subject to payment, unless the call for tenders provides otherwise. The tender shall bind the contractor for the six months following the submittal.

2. General Provisions

- 2.1. The contractor may neither cede nor bond any claim arising from this contract to a third party.
- 2.2. Should the Federal Department of Foreign Affairs (hereinafter "the FDFA") conclude the contract with several mandatories (consortium), the contract must be signed by all parties.

Before signing the contract, the consortium shall designate in writing a person to represent the consortium vis-à-vis the FDFA. The representative is expressly authorised to conduct legal acts on behalf of the consortium.

The consortium members shall be jointly and severally liable.

- 2.3. The contractor must at all times clearly state that he or she is acting within the framework of Swiss international cooperation and humanitarian aid. All publications must refer to any such activities as "FDFA activities performed by the contractor" and comply with the FDFA's Corporate Design guidelines.

3. Subcontracting

- 3.1. The contractor shall inform the FDFA in advance regarding the conclusion of any subcontracting agreement that relates to the execution of the assignment as a whole or of significant parts of it. Every subcontracting agreement must comply with this contract, particularly with respect to the Budget and the rates.
- 3.2. On demand, the contractor shall provide the FDFA with a copy of the contracts and terms of reference agreed with the third parties (e.g. subcontractor(s)).
- 3.3. The FDFA is obligated only to the contractor. Agreements concluded by the contractor with third parties entail no obligations on the part of the FDFA.

4. Duties of the Contractor

- 4.1. The contractor shall undertake to carry out the present contract with due care and diligence and to fully safeguard the interests of the FDFA. (S)he observes the applicable law, rules and regulations.
- 4.2 The contractor shall comply with the environmental protection provisions applicable at



the place of performance, but at least with the agreements on the environment in accordance with Annex 2 to the PPO¹ that are relevant for the contractor's performance.

The contractor is obliged to contractually impose this requirement on third parties involved.

If the contractor itself or a third party engaged by it violates obligations arising from art. 4, it shall be liable to pay a contract penalty unless it proves that it is not at fault. The penalty shall amount to 10% of the agreed maximum total remuneration including optional goods/services, but at least CHF 3,000 per violation and no more than a total of CHF 100,000. Payment of the contract penalty shall not release the contractor from compliance with contractual obligations and shall be offset against any claims for damages.

- 4.3. The contractor works in favour of continuing good relations between Switzerland and the Partner Country.
- 4.4. The contractor and her/his personnel shall not engage, even without payment, in any accessory activities, which might be detrimental to the execution of the contract.

5. Collaboration between the FDFA and the Contractor

- 5.1. The FDFA alone shall be competent to issue directives to the contractor.
- 5.2. The contractor shall inform the FDFA immediately and in writing of any exceptional situation arising during the execution of the contract, which may endanger its realization and/or require substantial modification of its aims.

6. Personnel

- 6.1. The contractor shall be responsible for the recruitment of the personnel for this assignment.

Hereby, s/he shall apply the principles of transparency and fair competition, use objective criteria in decision making and engage only employees with appropriate qualifications.

- 6.2. The contractor shall comply with the working conditions and safety regulations applicable at the place of performance, but as a minimum with the core conventions of the International Labour Organisation in accordance with Annex 6 to the PPA².
- 6.3. The contractor shall conclude written contracts of employment with the personnel required to execute the contract, compliant with the applicable provisions of labour law. It shall guarantee gender equality, in particular with regard to equal wages, terms and conditions of employment, and workplace security conditions. The employment conditions must not be more favourable than those applying to the FDFA, and must provide for adequate social benefits (insurance, vacation, etc.).
- 6.4. The contractor shall contractually impose the obligations in art. 6.2 and 6.3 on the third parties involved.
- 6.5. **If the contractor itself or a third party engaged by it violates obligations in art. 6.2., 6.3. or 6.4, it shall be liable to pay a contract penalty unless it proves that it is not at fault. The penalty shall amount to 10% of the agreed maximum total remuneration including optional goods/services, but at least CHF 3,000 per**

¹ SR 172.056.11

² SR 172.056.1



violation and no more than a total of CHF 100,000. Payment of the contract penalty shall not release the contractor from compliance with contractual obligations and shall be offset against any claims for damages.

- 6.6. The contractor is solely responsible for the safety of his staff involved in this assignment and for setting up an appropriate security management system.
- 6.7. Any change to the scientific and managerial personnel listed in the Budget shall be approved by the FDFA in advance.

7. Insurance, Social Security, VAT and other Taxes

- 7.1. The contractor shall insure her/himself as well as her/his staff against any risks arising from illness or accident. The respective insurance premiums shall be covered by the contractor.
- 7.2. The contractor shall be bound to deduct social security contributions, as stipulated by law in respect of her/himself and her/his associates or employees, as are due to the social insurance institutions according to applicable law and to pay such contributions to the respective institutions.
- 7.3. Generally, FDFA's assignments are tax exempted if there is a Framework and/or Project Agreements between Switzerland and the Partner Country which foresee this exemption.

Should competent authorities declare the present assignment as not tax exempted, the contractor immediately informs the FDFA. Any changes to the budget are subject to examination and approval by the FDFA.

The remuneration of the contractor is only subject to VAT under the conditions of the Swiss law on VAT.

- 7.4. If the present assignment is subject to taxes, the contractor shall be solely responsible for the payment of all taxes and fees provided for by applicable law, including VAT.
- 7.5. If the budget amounts to CHF 50,000 or more, the contractor shall, at his own cost, take out appropriate and adequate commercial liability insurance.

8. Procurement

In case of procurement of services or/and goods, the contractor shall apply the principles of transparency and fair competition, based on price and quality, as well as all respective legal provisions.

9. Material

- 9.1. The contractor shall be responsible for purchasing the material necessary to perform the mandate and defined in the budget in his/her name and for the account of the FDFA or the Partner Country, pursuant to the provisions of the present contract. Invoices must be addressed to the contractor.
- 9.2. The contractor is the owner of the material provided there are no other contractual provisions (e.g. rental of material). If there is a breach of contract, in particular an infringement of Art. 9.3 below or any other risk to the material, the contractor agrees to transfer upon written request from the FDFA any ownership. The contractor is obliged to make this transfer immediately and to draw up a handover protocol for the material.



- 9.3. The contractor shall treat the material in an appropriate and careful manner. (S)he shall keep an up-to-date inventory thereof.
- 9.4. Discounts and rebates on the procurement of material are considered as cost reductions. The utilization of revenues from the sale of material shall be decided in consultation with the FDFA. Such income has to be stated in the final statement of accounts.

10. Payments, Interests

In Principle, payments by the FDFA shall be made at average due date. If they are not made at average due date, any gross interest arising on the bank account shall be deemed income and accounted for in the same way as other payments made by the FDFA, and shall be deducted at the time of the final payment.

11. Statements of Accounts, External Financial Review

- 11.1. On the dates stipulated and in accordance with the terms of the Contract, the contractor shall present statements of accounts to FDFA.
- 11.2. The statements of accounts shall give a detailed list of expenditure. They shall provide information on the following points:
- a) the function of the payee in the assignment framework together with the classification in the appropriate category of remuneration;
 - b) an exact description of the time utilized and of the nature of the work done. The establishment's time-control sheets or cards should be attached;
 - c) in the case of subcontracting, the subcontractor's detailed invoice, including related vouchers.
- 11.3. According to the FDFA instructions, the contractor shall provide the receipts and vouchers (original or copy).
- 11.4. If the contract provides for an external financial audit / review (art. 3 of the contract), such an audit shall be carried out by an independent auditing firm and approved by the FDFA according to the standard terms of reference. The cost of the audit / review report is contained in the supplement paid for common costs. The final payment takes place after the final accounts and the audit / review report have been approved.

12. Assignment Evaluation

The contractor takes note that the FDFA may evaluate the quality of the services provided and agrees that this data will be treated within the FDFA in accordance with the Federal Law on Data Protection of 20 September 2020³.

13. Operational Reports

- 13.1. The operational reports must contain information on assignment progress, the extent to which the aims of the assignment have been achieved, the impact of the assignment, activity reports, and an account of the facts and proposals for the solution of unresolved problems.
- 13.2. The reports shall be drafted in terms understandable to non-scientific experts. They should be empirically verifiable and usable. Issues not suitable for a report to the Government of the Country of assignment should be dealt with in a separate report to

³ SR 235.1

the FDFA.

14. Property rights

- 14.1. Within the framework of the contract, the result of the work of the contractor, including rights of use and of exploitation as well as all intellectual property rights, including copyright and their dissemination, are the property of the FDFA. At the explicit request of the contractor, the latter's participation may be mentioned by the FDFA. In addition, the FDFA may, pursuant to a separate agreement, authorize the contractor to use and/or exploit such intellectual property rights either free of charge or against remuneration.
- 14.2. The contractor shall undertake to meet all demands by third parties concerning any breach of intellectual property rights and to pay any expenses arising from such violation, including any indemnification.
- 14.3. The FDFA shall undertake to inform the contractor immediately of any claim for indemnification, as well as to provide him/her with all necessary documents for her/his defense, unless otherwise stipulated in the law.

15. Confidentiality

- 15.1. All verbal and written communication, and any excerpt from it, between the FDFA, other administrative bodies of Switzerland, and the contractor shall be confidential. All documents relating to the contract, information, and data resulting from the contract which are supplied to the contractor in connection with the contract or which the contractor may have elaborated, are confidential and must not, either in whole or in part, be made accessible to third parties unrelated to the contract or used for purposes other than those for which they were supplied or elaborated. The contractor shall draw the attention of her/his staff to the confidentiality.
- 15.2. The confidentiality obligation will not apply for the FDFA if it is obliged to publish any information relating to the contract, as well as the following facts and information: name and address of the contractor, item(s) procured and mandate value, award procedure carried out, date of contract conclusion and commencement, and timeframe of contract execution. This shall be without prejudice to the mandatory duties of disclosure under Swiss law (e.g. as per the FoIA⁴, PPA⁵, PPO⁶).
- 15.3. Any publication and/or communication relating to the mandate must be object of prior authorization in writing by the FDFA. If the FDFA authorizes the contractor to supply information on the contract, the contractor must provide such information accurately.
- 15.4. The provisions described above shall remain valid after the termination of the assignment.
- 15.5. The contractor shall impose the obligations regarding confidentiality contractually on third parties.
- 15.6. If one of the parties violates the confidentiality obligations above, it shall be liable to pay a contract penalty to the other party unless it proves that it is not at fault. Per violation, the penalty shall amount to 10% of the maximum total agreed remuneration including optional goods/services, but no more than CHF 50,000 in total per case. Payment of the contract penalty shall not imply release from**

⁴ SR 152.3

⁵ SR 172.056.1

⁶ SR 172.056.11



compliance with contractual obligations and shall be offset against any claims for damages.

- 15.7. Irrespective of these confidentiality agreements, the contractor and persons acting on its behalf may be deemed auxiliaries of an authority and thus be subject to official secrecy. A breach of official secrecy is punishable under Article 320 of the SCC⁷.

16. Data protection and data security

- 16.1. The parties undertake to comply with the provisions of Swiss data protection legislation and to effectively protect data arising in the framework of contract performance against unauthorised access by third parties.
- 16.2. If the contractor is provided with data of the FDFA within the scope of contract performance, the contractor shall be obliged to return such data after termination of the contract and to irrevocably delete or destroy it on both primary and secondary media (test or backup media, etc.). The deletion or destruction of the data shall be carried out in accordance with the currently recognised state of the art and shall be confirmed to FDFA in writing upon request. The return, deletion or destruction of the data must take place within 30 days after contract termination. If the data on backup media cannot be deleted, the backups must be protected in accordance with the recognised state of the art and must be deleted or destroyed within one year at the latest. If the contractor is subject to a legal obligation to retain data, the return, deletion or destruction of the data subject to this retention obligation must take place within 30 days after the end of the retention period.
- 16.3. Any right of FDFA to audit the contractor's security measures with regard to data protection and data security shall be the subject of a separate contractual agreement between the parties.
- 16.4. The contractor shall impose the obligations regarding data protection and data security on third parties.

17. Default

- 17.1. If the contractor fails to meet firmly agreed deadlines (expiry date transactions), it shall immediately be deemed to be in default, and in all other cases upon receiving a reminder.
- 17.2 If the contractor is in default, it shall be liable to pay a contract penalty unless it proves that it is not at fault. The penalty shall amount to 0,1% per commenced calendar day of delay, but no more than a total of 10% of the maximum total remuneration including optional goods/services per contract and case of default. It shall be owed even if the goods/services are accepted subject to a corresponding reservation. Payment of the contract penalty shall not imply release from compliance with contractual obligations and shall be offset against any claims for damages.**

18. Premature Termination of the Contract

- 18.1. In the event of premature termination, the Parties shall take all possible measures to reduce the costs of the termination of the contract. The contractor must draw up a final report and final statement of accounts detailing the project costs including the costs related to the premature termination of the project. If a lump sum is payable, it shall be calculated on the basis of the effective duration (including the costs of interruption).

⁷ SR 331.0



18.2. In case of premature termination, the FDFA shall not be liable for any loss of profit of the contractor.

19. Final Provisions

19.1. All relevant operational and financial documentation shall be kept by the contractor for a period of at least 10 years after the termination of the assignment, even if local legislation requires a shorter period.

19.2. Operational documentation includes the operational reports, the contract and its amendment(s), field visit reports and any other document established in connection with the execution and monitoring of the assignment.

19.3. Financial documentation consists of the books of accounts (general ledger, sub-ledger, journals, Project accounts, etc.), all accounting vouchers, audit reports, and any other document, including correspondence related to the assignment.