



Annex 3

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 three 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 the project as an "FDFA project implemented 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 sub-contracting 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 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 works in favor of continuing good relations between Switzerland and the Partner Country.

4.3. 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. If an assignment with administered project funds is concerned, the contractor shall designate a project manager who shall maintain working relations with the FDFA and inform regularly about the progress of the assignment.

5.3. 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 conclude written contracts of employment with project personnel, 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.).

6.3. The contractor is solely responsible for the safety of his staff involved in this assignment and for setting up an appropriate security management system.

6.4. 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 in order to adapt the budget of the assignment accordingly.

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 total (Remuneration for Services + Administered Project Funds) amounts to 50'000 CHF 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 project material defined in the budget on behalf of and for the account of the FDFA or the Partner Country, pursuant to the provisions of this contract and the Project Agreement. Invoices must be addressed to the contractor.

9.2. Unless agreed otherwise in the contract or until a formal handover, the material shall remain the property of the FDFA. Before the end of the assignment, the FDFA shall decide on its further use. When returning or handing over the material, the contractor shall establish a hand-over report in due time.

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. Bank Accounts, Payments, Interests

10.1. The FDFA shall designate one of the following options:

- 1) The contractor shall open, at his head office location and in his own name, an account for the project into which the funds intended for the project shall be paid.
- 2) The FDFA may request the contractor to submit a bank guarantee once the latter has opened a bank account under the terms of Art. 10.1.1. Alternatively, the FDFA may request that a bank account be opened in the name of the FDFA, into which it shall pay the funds intended for the project. In this case, the contractor shall have power of attorney for the purpose of withdrawing funds.
- 3) The FDFA may, at the request of the contractor, authorize the latter to manage a single account in its own name covering several projects.

10.2. Whenever possible, the bank account opened for this assignment shall bear interest.

10.3. 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. The contractor shall keep a separate set of accounts for the assignment (assignment accounting). The accounts shall be fully conform to the contract and the Budget, and shall also display any interest as well as any other income and additional resources made available by third parties for the present assignment.

11.2. The contractor shall adhere to the following Finance and Accounting Principles:

- Principles of orderliness (financial regularity)
- Adequacy and effectiveness of the Internal Control System (ICS)
- Conformity with the assignment objectives and adherence to the contract
- Economical conduct of business
- Effective use of financial resources

11.3. On demand, time-control sheets or cards shall be attached to the statements of accounts.

In the case of sub-contracting, the sub-contractor's detailed invoices, including related original vouchers, shall be submitted to the FDFA.

11.4. If the contract provides for an external financial review, such review shall be carried out by an independent auditing firm external to the Contractor and approved by the FDFA. The auditing firm shall perform the external financial review in accordance with International Standards on Auditing (ISA) and in accordance with the auditing standards provided for by applicable law. It shall examine if the accounts are complete and in conformity with this contract. It shall certify the conformity of expenditure with assignment aims, that the accounts have been properly kept, and that the funds have been used effectively and economically. The provisions of the local audit mandate are applicable. The Review Report shall be in German, French, English or Spanish.

Upon request, the contractor shall submit to the FDFA original receipts.

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 applicable law. (S)he has the right to consult such evaluations according to the above-mentioned law.

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 the FDFA.

14. Intellectual Property - Copyright

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, reserving the obligation to maintain secrecy.
- 14.4. In case any information relating to this assignment has to be made public by the FDFA as a result of specific legal obligations (e.g. based on the Freedom of Information Act), the contractor explicitly agrees not to consider the publishing as a violation of any of her/his intellectual property rights.

15. Confidentiality/Disclosure of Information

- 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. In case any information relating to this assignment has to be made public by the FDFA as a result of specific legal obligations (e.g. based on the Freedom of Information Act), the contractor explicitly agrees not to consider the publishing as a violation of the agreed confidentiality (15.1 GC).
- 15.3. Any publication and/or communication relating to the project or contract 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.

16. Deadlines

- 16.1. Once the agreed deadlines are over, the contractor shall immediately be deemed to be in default.
- 16.2. In case of default, the FDFA may claim penalties. In the event of a penalty claim, for each day of delay, 1% of the contractor's total remuneration shall be deducted from the final payment.

17. Premature Termination of the Contract

- 17.1. 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).
- 17.2. In case of premature termination, the FDFA shall not be liable for any loss of profit of the contractor.

18. Final Provisions

- 18.1. 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.
- 18.2. 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.

18.3. 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.