

CLARIFICATIONS

Contract title: Engineering design services to finalise design studies and prepare tendering documents prior to launching tendering procedures for the construction of sustainable waste treatment infrastructure projects in the municipalities of Nacala and Nampula

Reference: MOZ1302611-10012

N°	Issue / question raised	Response
1.	<p><u>Form of contract</u></p> <p>Having carefully examined the Request for Proposals (RFP) issued by Enabel, we remain unclear about the form of contract that will be used in respect of this tender.</p> <p>a. As such we would like to request a clarification on which form of contract will be used.</p> <p>b. Is the contract based on FIDIC rules?</p> <p>c. Could a sample of the form of contract be availed in order to allow the bidders to have a chance to examine the type of contract and assess inherent risks?</p>	<p>The full contract consists of a contract awarded by Enabel to the chosen tenderer in accordance with:</p> <ul style="list-style-type: none"> • These Tender Specifications and its annexes; • The approved Best and Final Offer (BAFO) of the contractor and all of its annexes; • The registered letter of notification of the award decision; • Any later documents that are accepted and signed by both parties, as appropriate.
2.	<p><u>Liability limitation</u></p> <p>The RFP offers some information regarding liability under item 4.12 (liability of the service provider). However, it remains unclear to us what the consultants' liability limits are.</p> <p>a. Is there a maximum limit to the consultants' liability under the envisaged contract?</p> <p>b. If the answer is yes, what is the consultants' maximum liability limit?</p> <p>c. Are the consultants' liability limits negotiable in accordance with international practice?</p>	<p>There is not a maximum limit per se.</p> <p>The service provider assumes full responsibility for any errors or shortcomings in the services provided, in particular in the studies, calculations, plans or any other documents produced by him in performance of the contract.</p> <p>Services which do not comply with the terms and conditions of the contract or which are not performed in accordance with the rules of the trade shall be repeated by the service provider at his own expense and risk. In addition, the service provider shall be liable to fines and penalties for failure to perform the terms and conditions of the contract.</p> <p>The Belgian Civil Code stipulates in its articles 1792/2270 that the contractor and the architect are liable for 10 years as from the date of reception of the construction works if serious defects or waterproof issues jeopardize the stability or solidity of the building or an important part of it.</p>

<p>3.</p>	<p><u>Contract termination</u></p> <p>We note that item 4.14.3 of the RFP (measures as of right), stipulates the conditions under which the client may terminate the contract, but it's silent on conditions under which the consultant may also do so, should it be necessary.</p> <p>a. Are there specific clauses in the envisaged contracts to cover such circumstances.</p> <p>b. If the answer is yes, can these conditions be made available to the bidders?</p> <p>c. If the envisaged contract does not anticipate such situations, is Enabel open to negotiate a reasonable accommodation in this regard?</p>	<p>According to Art. 38/9 and 38/11 of the Royal Decree of 14 January 2013 laying down the general rules for the implementation of public procurement, the contractor has the right to demand a contract revision:</p> <p>1. when the contractual balance of the contract is disrupted to the detriment of the contractor for any circumstances external to the procurer, if the revision has become necessary due to circumstances that were not reasonably foreseeable when he submitted his offer, that could not be avoided and whose consequences could not be remedied notwithstanding the fact that he has taken all necessary steps to do so, or</p> <p>2. when, as a result of omissions, delays or whatever facts that can be blamed on the other party, the contractor has suffered a delay or a disadvantage. These contract revisions may consist of a contract termination.</p>
<p>4.</p>	<p><u>Service suspension provisions</u></p> <p>While item 4.8.3 of the RFP (indemnities following suspensions ordered by the contracting authority during performance) stipulated the indemnities applicable in case of suspensions, we note that the RFP is silent about the conditions under which the consultant is entitled to suspend the provision of services.</p> <p>a. Are there specific clauses in the envisaged contracts to cover such circumstances.</p> <p>b. If the answer is yes, can these conditions be made available to the bidders?</p> <p>c. If the envisaged contract does not anticipate such situations, is Enabel open to negotiate a reasonable accommodation in this regard?</p>	<p>However, the same Art. 38/9 and 38/11 (see question 3) allows the contractor to demand an extension of the implementation period when one of these conditions apply (unforeseeable circumstances that could not be remedied or facts that can be blamed on the contracting authority). This can allow the contractor to suspend the services when this is absolutely necessary. The contractor must give written notice of the facts or circumstances relied upon within 30 days either of their occurrence or of the date on which they should normally have been known to the contractor or tenderer.</p>
<p>5.</p>	<p><u>Litigation</u></p> <p>We note that items 1.8 and 4.16 of the RFP stipulate that the envisaged contract is governed under Belgian Law, and that</p>	<p>Unfortunately, this is non-negotiable.</p>

	<p>any litigation can only be done in the Courts of Brussels, in French or Flemish languages. While we understand the principles considering the fact that Enabel is a Belgian organization, we would like to ask if:</p> <p>a. Would it be possible to consider / negotiate arrangements that are more accessible and equally favourable to both parties, such as the Uncitral arbitration rules?</p>	
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