**VOLUME 2**

**SECTION 3**

**SPECIAL CONDITIONS**

**APPLICABLE TO ‘DB’ (DESIGN AND BUILD) (WORKS) CONTRACTS**

**CONTENTS**

These conditions amplify and supplement the general conditions governing the contract. Unless the special conditions provide otherwise, the general conditions remain fully applicable. The numbering of the articles of the special conditions is not consecutive but follows the numbering of the general conditions. Other special conditions should be indicated afterwards.

**Article 2 Language of the contract**

2.1 The language used shall be English.

**Article 4 Communication**

4.1 The addresses for notices and written communications between the Contracting Authority, Supervisor, Supervisor's Representative and Contractor are as follows:

**The National Authorising Officer of the EDF**

**Ministry of Finance, Planning and Economic Development**

**Plot 2 – 12 Apollo Kaggwa Road**

**P.O. Box 8147, Kampala, Uganda**

**Room 1.28 Treasury side**

**Email: finance@finance.go.ug**

**For the Supervisor:**

The Permanent Secretary

Ministry of Agriculture, Animal Industry and Fisheries

(11th EDF Support to Promoting Environmentally Sustainable

Commercial Aquaculture in Uganda Project)

Plot 16 – 18, Lugard Avenue

P. O. Box 102

Entebbe – Uganda

ps@agriculture.go.ug

**For the Supervisor’s Representative:**

[*insert name and address*]

**For the Contractor:**

[*insert name and address*]

4.2 An electronic system will be used by the contracting authority and the contractor for all stages of implementation including, inter alia, management of the contract (amendments and administrative orders), reporting (including reporting on results) and payments. The contractor will be required to register in and use the appropriate electronic exchange system to allow for the e-management of the contract.

 The electronic management of the contract through the aforementioned system may commence on the date on which implementation of the contract starts, as described in Article 33 of the general conditions to the contract, or at a later date. In the latter case, the contracting authority will inform the contractor in writing that he will be required to use the electronic system for all communications within a maximum period of 3 months.

**Article 5 Contracting Authority’s representative**

5.1 For onward correspondences through email and letters the contracting authority’s representative shall be:

The National Authorising Officer of the EDF

Ministry of Finance, Planning and Economic Development

Plot 2 – 12 Apollo Kaggwa Road

P.O. Box 8147, Kampala, Uganda

Room 1.28 Treasury side

Email: finance@finance.go.ug

5.2 The contracting authority’s representative may bind the Client only to the extent of the authority delegated to them.

5.6 Communications between parties that are referred to in the Conditions shall be effective only

when in writing. A notice shall be effective only when it is delivered to the client.

**Article 7 Subcontracting**

7.2 The contractor shall request the authorisation to subcontract if the price is more than 10% of the contract price.

The contractor may not sub-contract the production part (the construction of the production ponds) of the aquaculture park.

7.3 In the selection of subcontractors, the contractor shall give preference to natural persons, companies or firms of ACP States capable of implementing the tasks required on similar terms.

**Article 8 Supply of documents**

8.1 List of documents to be provided by the contracting authority’s representative within 7 calendar days of the signing of the contract are:

|  |  |
| --- | --- |
| **ID** | **Document Name** |
| 1 | Final Preliminary Design and Detailed technical and feasibility study for the proposed Aquaculture Park Report |
| 2 | Environmental Impact Assessment report for the aquaculture park site |

**Article 9 Access to site**

9.1 The contractor is reminded that there is a head of delegation of the European Commission in the state of the contracting authority. The contractor is obliged to give the head of delegation free access to its sites, factories, workshops, etc., and generally assist the head of delegation, like the contracting authority’s representative, in the performance of his duties. The same provisions also apply to the appointed representatives of the head of delegation.

All correspondence between the contractor and the contracting authority or contracting authority’s representative must be copied, for information, to the head of delegation of the European Commission at the following official address:

The Head of Delegation

Delegation of the European Commission to Uganda

P. O. Box 5244

Kampala, Uganda

Crested Towers Building, 15th Floor, Plot 17-23, Hannington Road

Telephone no. +256-312-701000

E-mail: deluga@eeas.europa.eu

**Article 12 General obligations**

12.3 The maximum costs for operation and replacement if the works or facility is operated in accordance with the final Operation and Maintenance Manual shall be EUR 25,000 for a period of 12 months.

12.9 The visibility measures must **comply** with the rules laid down in the Communication and Visibility Manual for EU External Actions published by the European Commission: <http://ec.europa.eu/europeaid/work/visibility/index_en.htm>

**Article 15 Performance guarantee**

15.1 The amount of the performance guarantee will be 7.5% of the amount of the contract and any addenda thereto.

**Article 17 Programme of implementation of tasks**

17.3 Programmes

These will be the dates of submission for the following:

provisional works programme – two weeks after signature of the contract; and

final programme – 3 weeks after the signature of the contract.

**Article 19 Contractor design and execution studies**

19.2 These will be the dates of submission for the following:

Submission of draft final designs – one month after signature of the contract; and

Submission of the final designs – 2 months after signature of the contract.

As part of the project’s configuration management procedure, all such documentation submitted by the Contractor to the Client shall be approved within the first two (2) weeks.

Other design requirements shall include for:

Durability considerations: the expected functional service life of this Project is 50 years; service life spans of individual elements that differ from the overall project life span have to be defined in the appropriate design sections.

Operation and Maintenance considerations:

- Space efficiency: Minimize floor area required while providing specified spaces and space relationships, plus circulation and services areas required for functions.

- Energy efficiency: Minimize energy consumption while providing function, amenity, and comfort specified.

- Ease of operation: to minimize the need for specialized training in operation of specific equipment or systems; identify all equipment and systems for which the manufacturer recommends or provides training programs; and implement training programs for district personnel in the operation of the said equipment and systems.

- Ease of maintenance: provide an elements design ready to minimize need for maintenance; provide access to elements, which is working clearances for ease of maintenance throughout/ to facilitate maintenance while facility is in operation without undue disruption.

|  |  |  |
| --- | --- | --- |
| **Priority Ranking** | **Type of Drawing** | **Time Limits** |
| 1 | Working Drawing | 1 week after the approval of design calculations or equivalent |
| 2 | Shop Drawing | accepted in-lieu of design calculations |
| 3 | Submission Drawings | 1 week before the end of particular work task |
| 4 | Revision Drawings | 3-days after receiving of comments |
| 5 | As-built Drawings | produced within 1-month after the completion of particular activity; as part of the O&M manual. |

**Article 24 Interference with traffic**

24.1 CONTROL OF TRAFFIC

In the event of single way traffic becoming necessary on any particular section of the Works, or on the approaches to the Works, the Contractor shall, in maintaining through traffic routes, provide a width of at least 3 metres for single way traffic. Manually operated “Stop-Go” signs will only be permitted if approved by the Engineer, and shall be of the size, colour and type authorised. The Contractor shall be responsible for liaison with Police.

24.2 TEMPORARY DIVERSION OF TRAFFIC

Temporary diversion ways, shall be constructed whenever the site is intersected by existing public and private roads, footpaths, cycle tracks, farm accesses, temporary and accommodation roads.

Any diversion way shall be of such a standard of construction that it is suitable in all respects for the class or classes of traffic requiring to use it. It shall be constructed in advance of the taking up of the existing way and regularly maintained for so long as required in a satisfactory condition all to the approval of the Engineer.

TEMPORARY TRAFFIC SIGNS

The Contractor shall erect and maintain on the Works and at prescribed points on the approaches to the Works, all traffic signs necessary for the warning, direction and control of traffic and the size of all such signs and the lettering and wording thereon shall be reflectorised or adequately illuminated at night by approved means.

**Article 29 Temporary works**

29.2 The design of temporary works shall be the responsibility of the Contractor.

**Article 30 Complementary studies**

30.1 The Contractor, shall support the client in conducting operations studies such as environmental, geotechnical , hydrological and biological

**Article 34 Period of implementation of tasks**

34.1 The period of implementation shall be 24 months.

**Article 36 Delays in the implementation of tasks**

36.1 The rate of liquidated damages for delays in the completion of tasks shall be 0.1% of the contract price for every day or part thereof which elapses between the end of the period of implementation of tasks and the actual date of completion, up to a maximum amount of 10 % of the contract price or, if the contract is subdivided into phases, 10 % of the price of the phase concerned.

**Article 39 Work register**

39.1 A Work Register is required. The format of the works register will be determined by the Supervisor after the Contractor’s submission of the detailed performance programme for the works. The Supervisor may revise the format from time to time. In addition to the provisions of Article 39.1 of the General Conditions, the Work Register shall record the following information: all contractual correspondence and data received; all work stoppages or delays; accidents on site; official visitors to site; all activities in progress at any time on site showing the start and end time and full details or the resources employed per activity. It shall also contain detailed records of the Works Contractor plant on site and its precise date of arrival or removal from site, its date of manufacture, working condition, the date commissioned to commence work, its availability and utilization. Plant availability figures for each category of plant shall be established and kept up to date.

39.2 The Work Register shall be kept up to date from the commencement date of the works until the final acceptance date of the works. It shall be signed daily by the authorized representatives of the Supervisor and Works Contractor until the date of provisional acceptance of the works, and as needed during the defect liability period of the works. The Work Register shall be kept in a secured manner at Site and shall be made available for inspection upon request to representatives of the Supervisor, Contracting Authority, European Union and Auditors. A scanned copy of each daily entry in the Work Register shall be stored electronically in an appropriate digital storage media which shall also be transmitted by e-mail on a daily basis to the Supervisor during the period of implementation of tasks. The technical rules for drawing up the statements shall be agreed between the supervisor’s representative and the contractor.

**Article 40 Origin and quality of works and materials**

## 40.1 All goods purchased under the contract must originate in any eligible source country as defined in the EDF programme. However, the goods to be purchased may originate from any country, whenever the total price of the estimated quantity of those goods, as reflected in a separate item of the Breakdown of the lump-sum price (Volume 4.2.3) is below EUR 100 000.

A category of similar goods to be purchased shall not be broken down over more than 1

item of the breakdown of the lump-sum price (Volume 4.2.3).

For these purposes, ‘origin’ means the place where the goods are mined, grown, produced or manufactured and/or from which services are provided. The origin of the goods must be determined according to the EU Customs Code or the applicable international agreement.

## Goods originating in the EU include goods originating in the Overseas Countries and Territories.

When importing goods, any change in the specified origin must be pointed out to the project supervisor and approved by him.

40.2 The works and the objects, appliances, equipment or materials used in their construction must comply with:

(\*) the following specifications – the Technical Specifications of the contract

(\*) the design requirement as calculated in the design documents, and included in the drawings for the contract

40.3 The requirement for preliminary technical acceptance and the conditions governing its implementation shall be at the discretion of the Supervisor.

**Article 41 Inspection and testing**

The testing shall be done at the work site or wherever the Supervisor representative determines. Reference shall be made to the required tests in Particular Specifications of the Project.

**Article 43 Ownership of plant and materials**

43.2 All equipment, temporary works, plant and materials on site owned by the Contractor or by any company in which the Contractor has a controlling interest shall, for the duration of the execution of the works, be vested in the Contracting Authority.

**Article 44: General principles for payments**

44.1 Payments shall be made in Euro.

44.2 If invoices are submitted to the contracting authority, the contractor shall inform the European Commission thereof by sending a copy to:

 The Head of Delegation

Delegation of the European Commission to Uganda

P. O. Box 5244

Kampala, Uganda

Crested Towers Building, 15th Floor, Plot 17-23, Hannington Road

Telephone no. +256-312-701000

E-mail: deluga@eeas.europa.eu

**Article 46 Pre-financing**

46.1 Pre-financing is possible.

46.2 The total amount of the pre-financing is EUR …….. The total amount of the pre-financing must not exceed 10 % of the original contract price for the lump-sum advance and 20 % for all other pre-financing.

46.8 Repayment of the pre-financing shall take the form of deductions based on claims included in the invoices for interim payment.

The flat‑rate pre-financing (maximum of 10 %) shall be repaid by means of deductions from instalments and, if necessary, the balance due to the contractor. This repayment shall begin with the first instalment and be completed, at the very latest, by the time 80 % of the amount of the contract has been paid.

Repayment shall be made in the same currency as the pre-financing.

The amount to be deducted from each instalment shall be calculated using the following formula:



where:

R = the amount to be repaid

Va = the total amount of pre-financing

Vt = the initial contract amount

D = the amount of the instalment.

The result is rounded up to two decimal places.

The pre-financing for plant, machinery and tools — and the pre-financing for other major prior outlays (20 % maximum) — shall be repaid by means of deductions from instalments and, if necessary, the balance due to the contractor. Repayment shall begin with the first instalment and end, at the very latest, by the time 90 % of the amount of the contract has been paid.

The amount to be deducted from each instalment shall be calculated using the following formula:



where:

R = the amount to be repaid

Va = the total amount of pre-financing

Vt = the initial contract amount

D = the amount of the instalment.

**Article 47 Retention monies**

47.1 The sum to be retained from interim payments to guarantee implementation of the contractor’s obligations during the defects liability period shall be 10 % of each instalment.

**Article 48 Price revision**

There will be no revision threshold.

**Article 49 Measurement**

49.1 **(\*)** This is a lump‑sum contract.

The amounts due shall be calculated through the tranches specified in Article 50.7 below.

**Article 50 Interim payments**

50.1 The Contractor must present his request for payment in five copies to the Supervisor’s Representative. The request must be prepared in the format provided to the Contractor by the Contracting Authority.

50.7 There shall be a maximum of three (3) interim payments as follows:

|  |  |  |
| --- | --- | --- |
| **Interim payment no. Completed Works** | **% payment of Contracted Sum**  | **Milestone(s)** |
| 1 | 10 | Submission of provisional work programme; completion and approval of final designs. |
| 2 | 30 | Construction and installation of pond production system, feed store, hatchery and 80% complete. |
| 3 | 20 | All other built infrastructures, water and road works, power supply and installations, compound works; all equipment supplied and installed; 100% completion of pond production system. |

**Article 51 Final statement of account**

51.1 The contractor shall, submit to the contracting authority’s representative a draft final statement of account when it applies for the provisional acceptance certificate. In order to enable the supervisor to prepare the final statement of account, the draft final statement of account is submitted with supporting documents showing in detail the value of the work done in accordance with the contract and all further sums which the contractor considers to be due to it under the contract.

51.2 Within 30 days from issuing the certificate of final acceptance referred to in Article 62, the supervisor shall prepare and signed the final statement of account.

**Article 58 Tests on completion**

58.1 The tests on completion, excluding for those conducted on components eligible for partial acceptance, shall comprise first and foremost commissioning tests.

58.3 The contracting authority may elect to be compensated by liquidated damages or request the contractor to make good the failure if it is quantified to be equal to or above 5% of the contract price.

**Article 60 Provisional acceptance**

60.1 In complement to Article 60.1 of the general conditions, the certificate of provisional acceptance must be endorsed by the Contracting Authority and the Delegation of the European Union to Uganda.

**Article 61 Defects liability**

61.1 The defects liability period is defined as the period commencing on the date of provisional acceptance, during which the contractor is required to make good any effect in, or damage to, any part of the work which may appear or occur during this period as notify by the contracting authority or the contracting authority’s representative. The rights and obligations of the parties with regard to this defects liability period are laid down in Article 61 of the general conditions and subject to any applicable public order regulation.

**Article 68 Dispute settlement**

68.4 Any dispute arising out of or relating to this contract which cannot be settled otherwise shall

(a) in the case of a national contract, be settled in accordance with the national legislation of the state of the contracting authority; and

(b) in the case of a transnational contract, be settled either:

(i) if the parties to the contract so agree, in accordance with the national legislation of the state of the contracting authority or its established international practices; or

(ii) by arbitration in accordance with the procedural rules on conciliation and arbitration of contracts financed by the European Development Fund, adopted by Decision No 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 (Official Journal No L 382 of 31.12.1990 see Annex A12 of the practical guide.)

**Article 72 Data protection**

Not applicable.

**Article 73 Further additional clauses**

None.