**VOLUME 2**

**SECTION 3**

**SPECIAL CONDITIONS**

**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

|  |  |
| --- | --- |
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| Project Supervisor: Lot 1  Ms. Lillith J. Richards  Consortium of: Caribbean Architects & Planners Ltd, CS Consulting Engineers and Kelvin Swanton’s Company  Stewart Williams Drive, Braziers Est.  Charlestown  Nevis  Tel: 869-7644372/ 869-6698351  Email: [capskn@gmail.com](mailto:capskn@gmail.com) |
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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 Supervisor and supervisor’s representative**

5.2 The Contracting Authority shall appoint a Supervisor to supervise the works on behalf of the Contracting Authority. The responsibilities of the Supervisor shall be the same as Article 5.1 of the General Conditions.

5.3 Powers of the Supervisor

The powers of the Supervisor shall be the same as specified in the General Conditions. Notwithstanding this, the Supervisor shall obtain approval from the Contracting Authority prior to executing the following:

1. Approving of subcontractors, under Article 7.2 of the General Conditions;
2. Approval of measures for responding to exceptional risks as determined under the Article 21 of the General Conditions;
3. Approval of any extension to the period of implementation of tasks determined under the Article 35 of the General Conditions;
4. Approval of any amendments as per Article 37 of the General Conditions;
5. Determining any matter which may increase the Contract price under Article 55;
6. Proceeding with partial acceptance under Article 59 of the General Conditions.

The Supervisor’s powers shall **not** include the following:

1. Ordering a suspension of the works under Article 21.2 (d) and Article 38;
2. Termination of the contract under Article 21.2 (d) ;
3. Issuing a provisional acceptance certificate (PAC) under article 60;
4. Issuing a final acceptance certificate (FAC) under article 62.

Powers of the supervisor's representative:

The role of the Supervisor’s representative shall be to supervise and inspect works and to test and examine materials employed and the quality of workmanship. Under no circumstances will the Supervisor’s representative be empowered to relieve the Contractor of its obligations under the contract or – save where expressed instructions to that effect are given below or in the contract – order works resulting in an extension of the period of implementation of tasks or additional costs to be paid by the Contracting Authority of introduce variants in the nature or scale of the works.

5.4 Arrangements for administrative orders: All administrative orders shall be in written form and the project name and number should be referenced. Emails shall be considered formal communication.

**Article 7 Subcontracting**

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 Documents to be provided**

8.1 The Contracting Authority shall, within thirty (30) days after the signing of the Contract by both parties and not later than the commencement order notifying the contractor of the date on which the period of implementation of tasks must start as per Article 33.1 of the General Conditions, provide the Contractor free of charge, with one hard copy and one electronic copy of the drawings prepared for the performance of the Contract as well as the specifications and other contract documents. The Contractor may purchase additional copies of these drawings, specifications and other documents, insofar as they are available. Upon provisional acceptance, the Contractor shall hand over to the project beneficiary, all drawings, specifications, as built drawings, operational manuals and other contract documents.

**Article 9 Access to the 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 project Supervisor, 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 project supervisor must be copied, for information, to the head of delegation of the European Commission at the following official address: Not Applicable.

**Article 12 General obligations**

12.9 The contractor should follow the EU requirements and guidelines for communication and visibility available on the EU website at: <https://ec.europa.eu/europeaid/communication-and-visibility-manual-eu-external-actions_en>.

**Article 15 Performance guarantee**

15.1 The amount of the performance guarantee will be 5% (Lot 1), 10% (Lot 2), 5 % (Lot 3) of the amount of the contract and any addenda thereto.

**Article 16 Liabilities and insurance**

16.1 a) 16.1 a) “By way of derogation from Article 16.1, a) paragraph 2, of the general conditions, compensation for damage to the works resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to the contract value.”

16.1 b) “By way of derogation from Article 16.1(b), paragraph 2, of the general conditions, compensation for damage resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to the contract value.”

16.2 a) first paragraph:

By derogation from Article 16.2(a) first paragraph of the general conditions, seven (7) days after the commencement order has been issued, the contractor shall ensure that itself, its personnel, its subcontractors and any person for which the contractor is answerable, are adequately insured with insurance companies recognized on the international insurance market, unless the contracting authority has given its express written consent on a specific insurance company.

16.2 a) paragraph 2:

By derogation from Article 16.2(a) paragraph 2 of the general conditions it is seven (7) days after the commencement order has been issued that the contractor shall provide the contracting authority and the supervisor with all cover notes and/or insurance certificates showing that the contractor's obligations relating to insurance are fully respected.

**Article 17 Programme of implementation of tasks**

The contractor shall provide the supervisor with a simplified programme of implementation of the tasks. This programme shall include at least the order and time limits in which the contractor proposes to carry out the works, and shall be based on the tranches foreseen in Article 49.1 of the special conditions.

The supervisor shall return this document to the contractor with any relevant remarks within 10 days of receipt, save where the Supervisor, within those 10 days, notifies the contractor of its wish for a meeting in order to discuss the documents submitted.

**Article 19 Contractor’s drawings and execution studies**

19.1 Drawings, flow charts and other documentation deemed necessary by the Supervisor to provide clarity regarding the methodology to be employed in completing any of the activities under the contract must be prepared and submitted at least seven (7) days prior to undertaking the respective activity. The Contractor must await the approval of the Supervisor prior to undertaking the works. The supervisor must communicate approval or otherwise to the Contractor within seven (7) days of the receipt of the documentation.

The Contractor shall develop ‘as built drawings’ and other drawings and technical documentation, as required for successful project completion and under the local legislation in force, and submit it to the Supervisor for approval within forty-five (45) days of the end of project implementation.

19.7 Manuals and drawings shall be in the same language of the contract, i.e. English.

**Article 20 Sufficiency of tender prices**

The Contractor will calculate and present the amount for each item based on quantities of materials and works defined in the Bill of Quantities (BoQ). Any outside costs recognized throughout the implementation of the Project, such as site facilities maintenance, use of water and electricity, etc. shall be at the expenses of the Contractor.

**Article 21 Exceptional risks**

21.4 Tropical weather systems such as tropical depressions, tropical storms and hurricanes shall be considered exceptional weather conditions and shall be handled in the manner stipulated in Article 21 of the General Conditions.

**Article 24 Interference with traffic**

24.1 Where special permits regarding temporary interference with traffic are required, it shall be the responsibility of the Contractor to obtain such permits in due time. All expenses in connection with permits, temporary traffic arrangements, preliminary works including fencing, signboards, traffic signals etc. and provision of interim works to secure uninterrupted access to buildings and properties affected by the construction activities shall be at the cost of the Contractor, who shall also indemnify and hold the Contracting Authority harmless against any claims and expenses resulting from the Contractor’s disregard of by-laws and circulars or the Contractor’s otherwise unnecessary/unauthorised interference with traffic.

24.2 The Contractor shall plan the execution of the Works with due regard to avoidance of inconveniences to the public, to the extent reasonably possible. Where unavoidable the Contractor shall in due time inform the Supervisor of the extent of interference with traffic and inconveniences.

**Article 27 Demolished materials**

27.2 Demolished materials to be removed by the contractor and shall be handled in accordance with the provisions of Article 27 of the General Conditions. Should some of materials be of interest of the beneficiary, they will remain the beneficiary’s property and in this case the Contractor shall follow the Supervisor’s instruction.

27.4 Not applicable.

**Article 29 Temporary works**

29.2 All designs and costs related to any particular temporary works are responsibility of the Contractor and shall be carried out in accordance with the provisions of Article 29 of the General Conditions.

**Article 30 Soil studies**

30.1 The Contractor shall bear all costs related to any soil survey that may be necessary for the undisturbed project execution shall be carried out in accordance with the provisions of Article 30 of the General Conditions.

**Article 32 Patents and licenses**

32.1 There is no derogation from Article 32 of the General Conditions

**Article 34 Period of implementation of tasks**

34.1 The period of implementation of tasks from the date indicated in the commencement order until provisional acceptance shall be:

Lot 1: 180 days

Lot 2: 180 days

Lot 3: 240 days

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

36.1 The rate of liquidated damages for delays in the completion of works 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 will be kept as per Article 39 of the GC.

39.2 The format and content of the statements shall be agreed between the Supervisor and the Contractor within thirty (30) days of the notification of the award of Contract and mutually amended as and when required at Site meetings.

**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 11th European Development Fund (EDF) programme.

However, the goods to be purchased may originate in any country, whenever the total price of the estimated quantity of those goods, as reflected in a separate item of the Bill of quantities (Volume 4.3.2) 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 bill of quantities (Volume 4.3.2).

## 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 requirements of the Technical Specifications in Volume 3 and the drawings in Volume 5 of the Tender Dossier.

40.3 Preliminary technical acceptance if necessary, shall be overseen by the Supervisor following provisions of contract and the local legislation in force.

**Article 41 Inspection and testing**

All materials and equipment utilized on the project will be inspected prior to installation and any item not considered suitable, of satisfactory quality or not compliant will be rejected and the Contractor shall be notified accordingly.

Testing and inspections shall be in accordance with the technical specifications.

Lot 1: Bendals, Antigua and Barbuda

Lot 2: Isles Bay, Montserrat

Lot 3: Bequia Fish Market, Bequia, Saint Vincent and the Grenadines

**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 shall 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 **<Not applicable>.**

44.3 Not applicable.

**Article 46 Pre-financing**

46.1 The only pre-financing granted to the contractor, is the lump sum advance referred to in Article 46.1(a).

46.2 Pre-financing which shall not exceed 10 % of the original contract price shall also be granted to the contractor for the purchase or order of: materials, plant, equipment, machines, tools and of any other substantial prior expenses such as the acquisition of patents or study costs, necessary for the execution of the contract. A proof of the conclusion of such purchase or order shall be provided by the contractor to obtain the pre-financing.

46.3(c) When (i) the pre-financing requested is equal or below EUR 300 000 **and** (ii) the contracting authority does not require a financial guarantee following a risk assessment, by derogation from Article 46.3(c) of the general conditions no pre-financing guarantee is required.

46.8 Repayment of the pre-financing shall take the form of deductions based on monthly claims.

1. 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.

1. 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 is 10 % of each instalment.

**Article 48 Price revision**

48.1 Prices contained in the contractor's tender must be deemed to have been established at the economic conditions in force 30 days prior the latest date fixed for the submission of the tenders If there is a variation in the economic conditions during the works, the monthly interim payment certificate will be adjusted by applying the revision formulas in accordance with Article 48.2. **Not applicable**

48.2 The revision of prices must be calculated by combining the application of (a) mono-material formula and (b) proportional formula as follows:

1. the mono-material formula will be applied to the following unit prices of the bill of quantities: **Not applicable**

The revision of the above listed unit price(s) will be calculated by revision of the price(s) of their respective material(s) or input(s) in the detailed breakdown of prices according to the following formula: **Not applicable**



Where :

 Material unit price (in the detailed breakdown of prices) at reference date

 Revised material unit price (in the detailed breakdown of prices) at month n

Mat0= official supply price or relevant index of the concerned material at the reference date

Matn= official supply price or relevant index of the concerned material at the month n

Tx0= exchange rate between the currency of the indicator MATo ‘C’ and the currency of contract payment ‘E’ (according to Article 44.1) at the reference date: 1 C = TXo E

The exchange rates shall be those published on the InforEuro website, currently at http://ec.europa.eu/budget/index\_en.cfm

Txn = same exchange rate at the month n: 1 C = TXn E

For this contract the following index and reference values will be used: **Not applicable**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Material** | **Mat**  **(official supply price or**  **relevant index)** | **Currency of Mat** | **Mat0** | **Tx0** |
| <Material 1> | <Specify official supply price or relevant index and source of publication> | <currency of the contract/other currency> | <Specify Mat0> | <Specify Tx0 > |
| <Material 2> | <Specify official supply price or relevant index and source of publication> | <currency of the contract/other currency> | <Specify Mat0> | <Specify Tx0 > |
| … | … | … |  |  |
| <Material i> | <Specify official supply price or relevant index and source of publication> | <currency of the contract/other currency> | <Specify Mat0> | <Specify Tx0 > |

1. the proportional revision shall then be applied to the amount of each interim payment certificate after deduction of any amount due for repayment of pre-financing: **Not applicable**



Where:

 =amount of the interim payment certificate after deduction of any amount due for repayment of pre-financing after price revision

 =amount of the interim payment certificate after deduction of any amount due for repayment of pre-financing before application of proportional price revision

Tx0 = exchange rate between the currency of the selected indicator ‘C’ and the currency of contract payment ‘E’ at the reference date: 1 C = Txo E

The exchange rates shall be those published on the InforEuro website, currently at <http://ec.europa.eu/budget/index_en.cfm>

Txn = same exchange rate at the month n: 1 C = Txn E

The total of the coefficients must be equal to 1. **Not applicable**

The coefficients a, b, c and d will be calculated on the basis of the detailed breakdown of prices provided by the contractor in its submission. The contractor will have to provide clear arithmetical calculations for the proposed coefficients. **Not applicable**

In order to avoid a double price revision, coefficient a must include the weight of inputs or materials for which the mono-material formula is applied. **Not applicable**

1. there will be no revision threshold;
2. If the contractor modifies the country of origin of the source of its materials or other components to be used for the execution of works, it shall inform by writing within 30 days the supervisor, who will change the formula for the revision of prices by introducing the indices of the new country of origin.

**Article 49 Measurement**

49.1 This is a unit-price contract.

**Article 50 Interim payments**

50.1 Payments certificate shall be prepared as indicated in Article 50.7 of the General Conditions.

**Article 51 Final statement of account**

51.1 The contractor shall, submit to the supervisor a draft final statement of account when it applies for the final 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 final acceptance certificate referred to in Article 62, the supervisor shall prepare and signed the final statement of account.

51.6 There is no derogation from Article 51 of the General Conditions.

**Article 60 Provisional acceptance**

60.1 In complement to Article 60.1 of the general conditions a certificate of provisional acceptance shall be issued by the Contracting Authority.

**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 defect in, or damage to, any part of the work which may appear or occur during this period as notify by the supervisor or the contracting authority. The rights and obligations of the parties with regard to this defects liability period are laid down in Article 61 of the general conditions.

In complement to Article 61.1 of the general conditions

61.6 Defects liability work necessitated by normal wear and tear is not required by the contractor.

61.7 Not applicable.

**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, Annex A12 of the practical guide.)

**Article 72 Data protection**

1. Processing of personal data related to the implementation of the contract by the contracting authority takes place in accordance with the national legislation of the state of the contracting authority and with the provisions of the respective financing agreement.

2. To the extent that the contract covers an action financed by the European Union, the Contracting Authority may share communications related to the implementation of the contract, with the European Commission. These exchanges shall be made to the Commission, solely for the purpose of allowing the latter to exercise its rights and obligations under the applicable legislative framework and under the financing agreement with the Partner country – contracting authority. The exchanges may involve transfers of personal data (such as names, contact details, signatures and CVs) of natural persons involved in the implementation of the contract (such as contractors, personnel, experts, trainees, subcontractors, insurers, guarantors, auditors and legal counsel). In cases where the contractor is processing personal data in the context of the implementation of the contract, he/she shall accordingly inform the data subjects of the possible transmission of their data to the Commission. When personal data is transmitted to the Commission, the latter processes them in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC[[1]](#footnote-1) and as detailed in the specific privacy statement published at ePRAG.

**Article 73 Further additional clauses**

Not applicable

\* \* \*

1. OJ L 205 of 21.11.2018, p. 39 [↑](#footnote-ref-1)