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- » **German Financial Cooperation with Mongolia**  
**Programme on Biodiversity and Adaptation to Climate Change III, EUR 8.0 million**  
**No.: 2018 68 272**  
**Separate Agreement to the Financing and Project Agreement dated 26<sup>th</sup> June 2019**

Dear Sir or Madam

In accordance with the Financing and Project Agreement entered into between the State of Mongolia, represented by the Ministry of Finance (MOF) ("Recipient"), and KfW ("KfW") dated 26<sup>th</sup> June 2019 the following shall be determined by separate agreement:

**Pursuant to Article 1.2:**

the details of the Programme as well as the goods and services to be financed from the Financial Contribution;

**Pursuant to Article 2.1:**

the disbursement procedure, in particular the evidence proving that the disbursed Financial Contribution is used for the stipulated purpose;

**Pursuant to Article 6.2:** the details pertaining to Article 6.1 (Programme Implementation).

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We propose that the following be agreed upon:

## I. Programme Design

### 1. Details of the Programme

- 1.1 Phase III of the Programme on Biodiversity and Adaptation to Climate Change (BACCP III) concerns the further extension of support to the network of protected areas (PAs) in Mongolia. Designed as an open programme, it aims at further strengthening the sustainable and effective management of selected PAs and larger adjacent/connecting areas (incl. buffer zones and eco-corridors, here referred to as "clusters"), while also supporting sustainable and alternative livelihoods of local communities. For details of the intervention logic (including required activities and underlying assumptions), see the "Results Matrix" in Annex 1.
- 1.2 BACCP III will be implemented in parallel to Phase II of the programme (BMZ No. 2016 67 054). Conceptually, there is no difference between these two phases. Jointly, they complement the on-going Phase I of the Programme (BMZ No. 2012 65 511, under implementation since 2015) by extending support to the Western and South-Western parts of the country. Together with BACCP II, BACCP III intends to focus on promoting effective connectivity and sustainable conservation management of five selected clusters. This is to be achieved through the grouping of state and local PAs, with active partnership by local governments (aimag and soum level). Selection of these clusters is based on a set of pre-defined criteria. Annex 7 contains an overview of the location, characteristics and criteria-based ranking of the proposed clusters that will be funded under BACCP II and BACCP III, respectively (clusters 1 to 5 as per the map in Annex 7a).

In addition to funding investments into clusters and as in Phase II, up to seven individual PAs (including local PAs) can also become eligible for targeted support under component 3 of the Programme provided they meet the following two selection criteria:

- Outstanding ecological value of the proposed areas - documented by the occurrence of at least two species of fauna/ flora featured on the IUCN Red List with at least "Endangered" status and/or international recognition of the area's value, e.g. as Ramsar Site, International Bird Area or similar.
- The potential of the proposed support measures to serve as pilot schemes for subsequent "up-scaling" into the PA system - e.g. with innovative concepts on sustainable financing, improved pasture management, tourism management or similar.

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The same up to seven individual PAs that receive funding under component 3 of Phase II, will also receive funding under Phase III (i.e. no additional individual PAs will be added as part of Phase III).

- 1.3 In addition to the costs of the implementation consultant, the following Programme activities shall be financed from the Financial Contribution:

**Component 1:** Management planning and delivery of basic equipment for the entire PA network

Activities to be funded under Component 1 include but are not limited to: participatory development/updating of management plans for PA, buffer zones (BZ) and clusters, respectively; development of an M&E system; conducting relevant baseline studies, and procurement of basic equipment for PA administrations and BZ councils. Activities under this Component are expected to be of benefit for the entire PA system of Mongolia and may therefore be carried out on a country wide basis.

**Component 2:** Implementation of management and business plans in five clusters

Measures eligible for funding under this Component include but are not limited to: development/rehabilitation/upgrading of key PA infrastructure and procurement of related equipment; measures for fire and pest prevention and preparedness; promotion of sustainable land-use forms in restricted use zones and buffer zones; funding of social infrastructure in the BZ, promotion of alternative livelihoods, sustainable pasture, forest and tourism management as well as the promotion of a buffer zone fund to provide buffer zone communities with access to finance in support of alternative livelihoods and/or a reduction of pasture degradation.

Whereas it is expected that four clusters will receive funding under Component II of Phase II of the Programme, one additional cluster will be funded under Component II of Phase III of the Programme (5 clusters in total).

For the additional cluster to qualify for Programme support, a prior Memorandum of Understanding (MoU) will have to be concluded among the relevant stakeholders. To achieve this by virtue of a moderated consultative process, the contract of ECO Consult signed for the preparation of Phase II ("project preparation consultancy") has been extended to also cover this additional cluster (cluster 5).

Funding for Component 2 shall focus on the Western and South-Western regions of Mongolia.

**Component 3:** Implementation of management and business plans in up to 7 individual PAs selected on the basis of pre-defined criteria

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The same activities as those listed under Component 2 may be funded under Component 3. Individual PAs intending to qualify for Programme support under Component 3 will have to clearly and unequivocally demonstrate that their submission meets the eligibility criteria of outstanding ecological value and potential for system-wide replicability. Eligibility will be assessed by the Steering Committee. Also, the respective proposal will require KfW's non-objection. Selection of these individual PA is not geographically restricted. For efficiency purposes, funding under Component III of both Phase II and Phase III of the Programme will be restricted to the same PAs (funding will not be provided for more than 7 PAs in total for both Phases of the Programme).

**Component 4:** Capacity development and public awareness measures for the entire PA network.

Activities eligible for funding under this Component may include policy dialogue, capacity building for the different stakeholders of the PA system, public relations work, strategy development.

- 1.4. The main target group of the Programme is the rural population in the intervention areas (PAs, buffer zones, LPAs and corridor areas). These groups will participate in the planning and implementation of activities and directly benefit from the sustainably managed natural resources and job opportunities in the PA network and the emerging tourism sector.
- 1.5. The design of the Programme is based on the feasibility study carried out by Unique Consultants in May-June 2017 and made available to KfW, the Recipient and the PEA in July 2017 as well as on the agreements made between KfW and the Ministry of Environment and Tourism (MET, as the Programme Executing Agency, PEA) during the Programme appraisal in the Minutes of Meeting dated August 28, 2017, which form an integral part of this agreement (Annex 2). The results of the programme preparation consultancy for Phase II awarded to Eco Consult in November 2018 also feed into the design of the Programme.

## **2. Time Schedule**

- 2.1 For efficiency purposes, Phases II and III of the Programme will be implemented in parallel and hence start at the same time. Together, both phases are scheduled to be implemented within a timeframe of seven years (2019-2026). This will require the deployment of 7 supplementary staff compared to the composition of the PIU in March 2019 (7 staff contracted as per March 2019 plus an additional 7 staff to be hired. Total new PIU: 14 staff, see section II.1.2).

The implementation period for both Phases will be divided into three phases:

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- Start-up/inception phase of 6 months: e.g. establishing procedures, development of operational and management plans, carrying out needs assessments, launching of training programmes and preparing the update of PA management plans, as and where required.
- Implementation phase of 72 months.
- Consolidation phase of 6 months: completion of activities, evaluation of experiences, final accounting of expenditures, evaluation of achievements (planned vs. actual) in terms of physical outputs, costs and financing as well as of results indicators (cf. planning matrix).

### 3. Total Cost and Financing

The estimated total Programme cost ("Total Cost") for Phase III is 8 million EUR, all of which is provided by German Financial Contribution. The Mongolian side is expected to support Phase II of the Programme with counterpart funding in the amount of MNT 13,330 billion. This contribution is to be additional to the regular budget provided by the MET to the PAs. In light of continuous budgetary restrictions, MET will not provide any additional counterpart funding for Phase III in addition to the amount provided for Phase II (13,330 billion MNT). MET will make timely provisions to integrate the required contribution in the budget application process for the budget years 2019 to 2026 (or to the completion of the Programme if this takes longer than 2026). MoF and MET shall provide regular updates to KfW in conjunction with the Mongolian mid-term planning cycle (approx. March, June, September of each year) in order to ensure the full financing of the Programme.

Out of the Financial Cooperation (FC) Contribution the following shall be financed: local costs for measures for protection and conservation of biodiversity and the improvement of livelihoods in selected conservation areas as well as foreign exchange costs for consulting measures, incl. those related to the Environmental and Social Management Framework as well as for external mid-term/final reviews. Recurrent expenditures (e.g. salaries of PA staff/employees and other operating costs) will not be financed out of the FC contribution.

The composition of Total Costs and the Financing Plan are contained in Annex 3.

### 4. Changes in the Programme Design

Any major changes in the Programme design shall require KfW's prior consent, including any major change regarding the procurement and payment procedures. The PEA shall inform KfW thereof immediately, stating the reasons, the planned measures and the consequences of the change (including on Total Cost). Execution

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of such measures may commence only on the basis of revised planning and upon KfW's consent.

## **II. Programme Implementation**

### **1. Responsibilities and Time, Cost and Financing Schedule**

1.1 The Ministry of Environment and Tourism (MET) as the PEA shall be responsible for the implementation, supervision and monitoring of the Programme.

For efficiency purposes, Phases I, II and III of the Programme shall have the same National Programme Director. He/she will oversee the general implementation of the Programme on behalf of the Minister of Environment and Tourism and the Steering Committee. Specific tasks will remain as stipulated in the Separate Agreement agreed for BACCP I in November 2013 and include:

- Signing the agreements for the implementation of particular projects (e.g. preliminary agreement upon authorisation by the Steering Committee),
- Initiating the annual internal and external audits,
- Signing the disbursement requests to KfW,
- Submitting semi-annual technical and financial Progress Reports to the Minister and KfW,
- Signing cooperation agreements with other projects or organisations,
- Initiating appropriate measures in case of difficulties in Programme implementation, which cannot be handled at the operational level.

1.2 To the extent that they are implemented in parallel, all three phases of the Programme will be supported by the same PIU. At latest, once implementation of Phases II and III begins, the PIU of Phase I will be enlarged – compared to the composition of 7 contracted staff as per March 2019 – by 7 additional staff (enlarged PIU: 14 staff in total). The enlarged PIU will consist of one accounting/financial and two procurement management officers, one legal officer, one technical/buffer zone management officer, one PA liaison/monitoring officer to be permanently located in the Western/South-Western part of Mongolia plus one driver (also to be located in the Western/South-Western part of the country, together with the PA liaison/monitoring officer).

In line with the above, the enlarged PIU will be composed of the following staff:

- 1 Programme Coordinator (Head of PIU, conservation/NRM specialist, in charge of the daily operations), same as in Phase I
- 2 Financial Officers (one additional officer compared to Phase I)

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- 3 Procurement Officers (two additional officers compared to Phase I)
- 1 Technical/ buffer zone Officer to be located in the West/South West, e.g. in Khovd (1 new position, also to cover environmental and social safeguards issues)
- 1 Legal Officer (new position)
- 3 PA Liaison/Monitoring Officer to be located in the West/South-West, e.g. Khovd (1 new position to be based in the West/South West, e.g. in Khov)
- 1 Officer for Administration and Office Management (same as in Phase I)
- 2 Drivers (one additional driver, to work with the PA Liaison/Monitoring Officer)
- 14 in total.

The PIU will be responsible for the day to day work of Programme implementation. The full-time PIU staff shall be employed by the PEA and be paid out of Mongolian Funds. The functions of the PIU will be the same as those stipulated in Sections II.1.3. and II.1.4 of the Separate Agreement for BACCP Phase I and include:

- General management and implementation of the Programme
- Implementation and monitoring of the different management plans foreseen under components 2 and 3 of the Programme, incl. regular monitoring on-site of the delivery, proper use and maintenance of the delivered goods and infrastructure
- Administering the disposition fund, financial management and accounting
- Allocation and monitoring of Programme funds based on approved budget plans and the timely submission of financial reports to the recipient and the donor according to agreed schedules
- Preparation of annual work and procurement plans which shall comprise programme tasks and expected results, staff deployment, programme costs and financial forecasts
- Ensuring that by applying the ESMF potential negative environmental and social impacts are minimized, whilst striving to enhance benefits for local communities and the environment;
- Preparation of reports.

The PIU will ensure presence in Ulaanbaatar as well as in the focal region of Western and South-Western Mongolia by deploying two additional PIU staff plus a driver to the region (e.g. to Khovd), to be funded from Mongolian resources. MET will provide

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offices for the HQ based part of the PIU and the Programme's implementation consultant in close distance to the offices of the Ministry. Office space will also have to be provided by MET for the PIU staff to be located in the Western part of the country.

- 1.3 The Steering Committee shall continue to be charged with the orientation and supervision of Programme implementation, as stipulated in the Separate Agreement agreed for BACCP I. The Committee will decide on funding proposals related to Components 1, 2 and 3.
- 1.4 Thematic Working Groups shall continue to perform their functions as stipulated in the Separate Agreement agreed for BACCP Phase I.
- 1.5 The detailed time, cost, and financing schedule, regularly updated for the proper technical and financial implementation of the Programme, shall be prepared as soon as possible by the PEA in cooperation with the Consultant and submitted to KfW. Such schedule is to show, by deadlines and amounts, the intended chronological interrelation of the Programme activities and the resulting financial requirements. If any deviation from such schedule becomes necessary during the implementation of the Programme, KfW shall be furnished with a revised schedule.

## **2. Environmental, Social and Health & Safety Compliance**

- 2.1 The PEA shall at all times carry out its business and operations in compliance with all applicable national environmental, occupational health and safety and social laws and regulations.
- 2.2 The PEA shall be responsible for the preparation, implementation and operation of the Programme in compliance with the World Bank's Environmental and Social Standards (ESS, 2017) and the World Bank Group's General and sector-specific EHS Guidelines. In particular, the PEA shall:
  - a) ensure that, with support by the Consulting Team (cf. para II.3), an (Environmental and Social Management Framework (ESMF), a Stakeholder Engagement Framework (SEF), a Process Framework for Alternative Livelihoods (PFAL) and an Ethnic Minorities Process Framework (EMPF) are bindingly set up for the Programme – in line with the Programme's orientation and suited to its requirements – at the latest by October 2020 and submitted to KfW for No-Objection. For this purpose, the ESMF, SEF, PFAL and EMPF which were developed for Phase II will be updated and revised in order to fully cover both phases (II and III) of the Programme. The update and revision process aims to have one set of safeguard documents which will then be binding for both phases in order to ensure consistency.

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Until the completion of the update/revision, the ESMF for Phase II will be applied for Phase III.

- b) ensure that the measures and actions as set out above in the ESMF, the SEF, the PFAL and the EMPF are implemented diligently and completely;
- c) ensure that – after KfW's No-Objection – the agreed environmental and social documents (ESMF, SEF, PLAL, EMPF) are made publically available in a timely manner in the respective Programme areas. As a minimum, an easily understandable summary of the main environmental and social findings and mitigation measures (including the stakeholder engagement process - e.g. Non-Technical Summary) and relevant environmental and social information of the Programme components shall be published in an accessible and culturally appropriate manner. Such information shall be accessible to the affected stakeholders for an adequate time to allow Programme affected people to voice concerns and suggestions. If appropriate, respective documents will also be disclosed on the PEA's website.

2.3 The PEA shall comply with the Fundamental Conventions of the International Labour Organization (ILO).

2.4 The PEA shall ensure that occupational and public health and safety provisions (specifically the ESMPs to be established along the requirements of the ESMF) are consistent with national requirements and international good practice standards as well as with WB/IFC General EHS Guidelines and WB ESS 2, and put forward to contractors, subcontractors, and to suppliers, in particular those for major supply items.

2.5 The PEA shall develop and implement a grievance mechanism satisfactory to KfW, which is accessible to the general public and in particular to Programme affected persons, and to the workforce engaged in Programme implementation.

### 3. Assignment of a Consultant

3.1 The Implementation Consultant (IC) shall support the PEA with the execution and operation of the Programme. The IC team is expected to include:

- Chief Technical Advisor (CTA, international programme management and conservation/ NRM specialist, procurement expertise),
- Deputy Chief Technical Advisor (DCTA, buffer zone development / NRM specialist, long-term), to be based in Ulaanbaatar

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- Second Deputy/Junior Chief Technical Advisor (sDCTA) or Liaison Officer, equipped with the same skills as the DCTA, to be based in the Western/South-Western part of the country together with the PIU's liaison/monitoring officer,
- Buffer Zone Coordinator (long-term, national),
- ESMF Specialist to support MET/PIU in the revision and update of the ESMF and related documents as well as to support diligent implementation of all ESMF provisions and provisions of the entire set of safeguard documents (as laid out in para II.2)
- Interpreter and driver (both national, long-term),
- Short-term expertise and backstopping, national and international levels (including some unallocated expert months to respond to emerging needs during implementation).

The duties of the consultant shall be performed as stipulated in the Separate Agreement agreed for BACCP I in November 2013 and include:

- Supporting the PEA/PIU in Programme planning and implementation,
- Assisting the PEA/PIU in executing tender procedures (preparation of tender documents, assessment of proposals, preparation of contracts, participation in all relevant tender evaluation committees etc.) and procurement,
- Confirming proper delivery of goods and services,
- Supporting the administration of the disposition fund, financial management & accounting, co-signing the requests for disbursement to KfW,
- Supporting the evaluation of project proposals submitted by PAs, clusters and others,
- Providing technical consulting services on relevant topics,
- Supporting the monitoring & supervision of the implementation of selected management plans,
- Co-signing, together with the Head of the PIU (cf. para II.1.1), the contracts for implementation of particular projects,
- Providing support in preparing progress reports and implementation of training activities.

Details will be defined in the ToR of the Consultant.

The Consultant team will be located in the PIU Office in Ulaanbaatar, but will also ensure a continuous presence by designated team member(s), like the Buffer zone Expert or a Liaison Officer, in the Western/South-Western Region (e.g. Khovd).

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The Consultant shall support the PEA in designing and implementing the tender procedures and the award of contracts in conformity with KfW guidelines for tendering of goods and services and in compliance with the environmental and social standards as set out in Section II.2.

3.2 IC services for BACCP II and III are to be awarded on the basis of international competitive bidding to independent, qualified consultants. One and the same IC team will be responsible for supporting both Phase II and III of the Programme. The assignment of the IC will hence cover both these Phases of the Programme. As agreed in the Separate Agreement for BACCP II KfW will assist the PEA, free of charge, with selecting and contracting the IC and also during the performance of the IC's services. For this purpose, an Agency Contract between the PEA and KfW was agreed in the Separate Agreement of BACPP II (cf. II 3.2) which is also valid for BACPP III.

#### **4. Award of Contracts for Goods and other Services**

4.1 In general, all procurements will be awarded based on the Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partner Countries (Annex 4). Furthermore, all contracts shall be awarded in cooperation with the IC.

Key requirements for all procurements are summarized below:

a) Small scale contracts for Consulting Services, Works, Plant, Goods and Non-Consulting Services up to the equivalent of EUR 20,000 can be awarded by direct assignment / purchase provided that financial and technical adequacy of the contract is given. The procedure has to be documented by the PIU.

b) Contracts for Consulting Services, Works, Plant, Goods and Non-Consulting Services with an equivalent value between EUR 20,000 and EUR 100,000 shall be awarded by way of Limited Competitive Bidding (LCB) and inviting at least three quotes. The procedure had to be determined, justified and documented by the PIU. Exceptions from this regulation (e.g. direct award) require a special written explanatory statement by the Programme and prior No-Objection by KfW. The explanatory statements have to be archived together with the related tender documents for later evaluations until the conclusion of the FC Programme.

c) Contracts for Works and Plant with an equivalent value between EUR 100,000 and EUR 5.000,000 can be awarded by way of national competitive bidding (NCB). In case of NCB, the Tender Notice is published nationally, while international Persons shall not be excluded from participation. The tender procedure shall comply with the Guidelines contained in Annex 4 of this Agreement and requires prior approval by

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KfW. Exceptions from this regulation (e.g. direct award) require a special written explanatory statement by the Programme and prior No-Objection by KfW.

d) Contracts for Goods, Consulting Services and Non-Consulting Services with an equivalent value between EUR 100,000 and EUR 200,000 can be awarded by way of national competitive bidding (NCB). In case of NCB, the Tender Notice is published nationally, while international Persons shall not be excluded from participation. The tender procedure shall comply with the Guidelines contained in Annex 4 of this Agreement and requires prior approval by KfW. Exceptions from this regulation (e.g. direct award) require a special written explanatory statement by the Programme and prior No-Objection by KfW.

d) Contracts for Works and Plant exceeding a value of EUR 5.000.000 shall be awarded by way of international competitive bidding. The tender shall comply with the Guidelines contained in Annex 4 of this Agreement and requires prior approval by KfW.

e) Contracts for Goods, Consulting Services and Non-Consulting Services exceeding EUR 200,000 shall be awarded by way of international competitive bidding. The tender shall comply with the Guidelines contained in Annex 4 of this Agreement and requires prior approval by KfW.

KfW's rights of information and approval in the context of tenders for Consulting Services, Works, Plant, Goods and Non-Consulting Services are prescribed in Annex 4. Exceptions to the prescribed procedures for awarding contracts require a special explanatory statement by the Programme and prior No-Objection by KfW. Furthermore, additional information in the form of a checklist shall be documented by the PIU with support of the Implementation Consultant and presented to KfW. The checklist will be provided by KfW at the beginning of Programme implementation.

4.2 All contracts that will be awarded by way of ICB need to publish the respective Tender, PQ-Result, Contract Award and Cancellation Note. The respective minimum content hereby is defined in Appendix 3 of the applied KfW Procurement Guideline (Annex 4).

4.3 All contracts that will be awarded by way of ICB and NCB, shall use the respective standard tender documents from KfW which can be found on the following website: <https://www.kfw-entwicklungsbank.de/International-financing/KfW-Development-Bank/Publications-Videos/Publication-series/General-publications-guidelines/>

4.4 Tender documents and Tender Notices shall be submitted to KfW for comment in due course prior to publication of the invitation to tender. The respective minimum content hereby is defined in Appendix 3 and Appendix 5 of the KfW Procurement Guideline (Annex 4).

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- 4.5 All needed Evaluation Reports shall be submitted to KfW for comment and its No-Objection. The respective minimum content hereby is defined in Appendix 6 of the KfW Procurement Guideline (Annex 4).
- 4.4 The bidding period shall be fixed in a way that allows the bidders sufficient time to prepare their bids (i.e. 30 days for pre-qualification and 45 days for tender documents).
- 4.5 The remaining details concerning the awarding procedure and contractual provisions are explained in the "Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partner Countries" (Annex 4) which form an integral part of this Agreement.
- 4.6 In the pre-qualification notice or - if no pre-qualification is conducted - in the tender documents, the PEA shall obligate the bidders to submit together with the pre-qualification documents or together with the bid a declaration of undertaking (Annex 4).
- 4.7 When concluding contracts for goods and services to be financed from the Financial Contribution, the PEA shall also observe the following principles:
- a) As no import duties may be financed from the Financial Contribution pursuant to Article 1.3 of the Financing and Project Agreement, such import duties, if part of the contract value, shall be stated separately in the contracts for the goods and services and in the invoices.
  - b) If payments due under any contract are to be made from the Financial Contribution, said contracts shall include a provision stipulating that any reimbursements, guarantee or similar claimable payments and any insurance payments shall be made for account of the PEA to account at KfW, Frankfurt am Main, IBAN: DE53 5002 0400 3800 0000 00, BIC: KFWIDEFF, with KfW crediting such payments to the account of the PEA. If such payments are made in local currency they shall be remitted to a special account of the PEA in Mongolia, which may be drawn on only with the consent of KfW. Such funds may be re-utilised for the execution of the Programme with KfW's consent.
  - c) The PEA ensures that the respective partner to a supply and service contract provides the guarantees required according to the relevant guidelines (Annex 4) in the amount and at the time stipulated there, and that these guarantees remain in place until the complete fulfilment of all claims under the supply and service contracts secured by such guarantees.
- 4.8 Prior to the conclusion of a contract for Consulting Services, Works, Plant, Goods and Non-Consulting Services, KfW shall be furnished for comment with the draft contract as agreed upon, duly endorsed by the consultants. The same applies to any

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subsequent modifying or amending agreements. The respective minimum content for this document is defined in Appendix 7 of the KfW Procurement Guideline (Annex 4).

## **5. Special Implementation Agreements**

- 5.1 The Recipient, represented by MET, shall ensure that the PIU for Phases II and III shall be enlarged by 7 additional staff compared to the PIU's composition in Phase I as per March 2019 (7 staff), of which one additional accounting officer, two additional procurement managers, one PA liaison officer as well as one technical/buffer zone officer both to be located in the Western/South-Western part of Mongolia, one legal officer, plus one driver (also to be located in the Western/South-Western part of the country). The Recipient, represented MET, shall ensure that each of these seven additional staff has adequate and sufficient qualifications and will be assigned and ready to assume its tasks by the time the implementation consultant team for Phase II and Phase III begins its work in Mongolia.

## **6. Provisions for the Proper Operation of the Programme**

- 6.1 All activities implemented under Components 1-3 of the Programme shall be planned, implemented and evaluated with full stakeholder participation (incl. communities).
- 6.2 The cluster to be supported under Component 2 of BACCP III will be selected on the basis of a criteria-based prioritization (see Annex 7) and under the provision that an MoU has been signed by relevant stakeholders. PAs funded under Component 3 will have to meet pre-defined selection criteria as mentioned under I.1.2.
- 6.3 All project proposals as well as management plans developed/updated or implemented under this Programme shall include an operation and maintenance concept (O&M), outlining on a time schedule a) required measures for O&M, b) responsibilities, c) staff inputs and d) costs and financing sources to ensure the medium- and long-term sustainability of the proposed investments. The plans shall also be screened and handled along the provisions of the ESMF and associated frameworks. For all management plans the E&S documentation as required by the provisions of the ESMF and associated frameworks shall be submitted to KfW.

As part of monitoring, the PEA shall periodically update the cost and financing plan and ensure that any financing gaps shall be covered in due course. The PEA shall inform KfW about any risks related to the proper operation and maintenance of the protected areas without any delay.

- 6.4 The PEA will be responsible for supervising the occupational health and safety and environmental/social performance of contractors and sub-contractors as well as the labour conditions.

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### III. List of Goods and Services and Disbursement Procedure

#### 1. List of Goods and Services

- 1.1 The list of the goods and services to be financed from the Financial Contribution shall be prepared on the basis of the contracts concluded for such goods and services. If the value of the contract exceeds EUR 100,000 KfW shall be furnished with an original or a copy of each of said contracts and of any pertinent amending contracts. For contracts not exceeding EUR 100,000 KfW shall be furnished with a list of all contracts concluded containing the following data: contract date and value, designation of good/service, contractor, reference number, amount to be financed from the financial contribution.
- 1.2 If any Programme measures are to be executed on force account and no contracts have been concluded, KfW shall receive, in lieu of the contracts, a schedule of the measures planned, broken down by main cost categories ("schedule of force-account measures"). Costs incurred for general administration in connection with force-account work must not be included in said schedule of force-account measures.
- 1.3 KfW shall inform the PEA on request of the amounts of the Financial Contribution that it has reserved for financing (list of goods and services).

#### 2. Disbursement Procedure

Disbursement under Phase III shall be governed by the same regulations as stipulated in Annex No. 6 (Disbursement Procedure) of the Separate Agreement signed for BACCP II. In order to be valid for both Phases, Annex 6 of the Separate Agreement for Phase II requires an amendment as per Annex 5 of this Separate Agreement.

### IV. Reporting and Other Provisions

#### 1. Reporting

- 1.1 Until further notice, the PEA shall report to KfW, supported by the Consultant, on the progress of the Programme (progress reports), as well as on the development of all other important general conditions, including environmental and social performance, topics of occupational health and safety and labour conditions, community relations and grievances which may have occurred. As Phases II and III shall be implemented concurrently, reporting on both Phases shall be covered within the same report. The reporting requirements are further defined in Annex 6. Reports shall be provided in English. The following reports shall be submitted to KfW:

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- a. Inception Report: The first report on the state of affairs shall be submitted six months after the start of the Programme. The Inception Report shall outline the nature and volume of the Programme's key components as well as the detailed plan of operations for the subsequent 24 months period. As and if applicable, it shall also include proposals for revising the Results Matrix (cf. Annex 1), the programme management manual (like procedures for Programme implementation, prescriptions for financial management and all kinds of procurements etc.) as well as the composition of the Steering Committee and its terms of reference/statutes.
- b. Progress Reports: Semi-annual reports on the progress of the Programme shall be submitted to KfW in digital form. Progress Reports shall include annual work/operational and procurement plans as appropriate, detailed information on the progress towards the achievement of outputs and outcomes (as per defined indicators, see Annex 1) and related challenges effecting their achievement as well as distribution lists of procurements per PA/cluster (for further reporting requirements see Annex 6). Progress reports shall regularly provide data on the size and socio-economic composition of the target groups, incl. the proportion of poor people among them, and demonstrate how the Programme benefits women and other vulnerable groups. Progress Reports shall be submitted by the 15<sup>th</sup> of July (for the period 1<sup>st</sup> of January – 30<sup>th</sup> of June) and the 15<sup>th</sup> of January (for the period 1<sup>st</sup> of July – 31<sup>st</sup> of December) for the duration of the contract period.
- c. Final Report: At the time of the physical completion of the Programme, a final report on the measures carried out shall be submitted in which the PEA shall report on the further development of the Programme. The structure of the final report will be agreed with KfW 3 months before Programme completion.
- d. Other reports: Other reports on special subjects or issues may be requested from MET by KfW on special occasions.
- e. Technical Reports, like Management plans and business plans for protected areas, thematic and topographic maps, climate and further environmental data shall be made available to all interested partners of the Programme.

1.2 In addition to the requirements under paragraph 1.1, the PEA shall report on all circumstances that might jeopardise the achievement of the overall objective, the Programme purpose and the results.

With regards to environmental and social matters, including occupational and community health & safety and labor issues as well as impacts on adjacent

*W/O*



population (cf. para II.2), the PEA shall notify KfW promptly of any event, incident or accident in relation to the execution of the Programme that

- (i) has, or is likely to have a direct or potentially material adverse effects
- (ii) has attracted or is likely to arouse substantial adverse attention of outside parties or to create substantial adverse media/press reports, or
- (iii) gives, or is likely to give rise to material potential liabilities.

The PEA shall also inform KfW of details of any measures taken to mitigate or remedy the effects or cause of such events.

- 1.3 If the PEA has charged the Consultant to write the progress reports and/or the final report, the PEA shall comment on the reports or acknowledge its approval of the content by countersigning the reports.
- 1.4 After completion of the Programme, the PEA shall report on its further development (see Annex 6 for details). KfW shall in due course inform the PEA about the end of the reporting period.
- 1.5 Auditing of Mongolian counterpart funds shall not be paid from the Financial Contribution.

## 2. Other Provisions

- 2.1 The PEA shall send KfW all such documents as are necessary for KfW to give the comments and approvals mentioned above or in the enclosed guidelines early enough to allow reasonable time for examination.
- 2.2 The PEA shall set up Project sign boards that will contain at least the following message:  

"A development project of the Mongolian Ministry of Environment and Tourism, co-financed by the Federal Republic of Germany through KfW."

A project seal provided by the German Embassy shall be placed on the project sign board.
- 2.3 The above provisions may be amended or modified in writing at any time by mutual consent if this should appear useful for the implementation of the Project or the execution of the Financing and Project Agreement. In all other respects, the provisions of Articles 5.2, 7 and 8 of the Financing and Project Agreement shall apply to this Agreement accordingly.

Please confirm your consent to the above Agreement by signing in a legally binding form and returning the enclosed copies.

*1/10/0*

Please forward a copy of the present letter in due course to the consultant.

Yours sincerely,

KfW



Annexes

- Annex 1: Results Matrix for BACCP II and III
- Annex 2: Minutes of Meeting of the Appraisal Mission, August 28, 2017
- Annex 3: Total Cost and Financing BACCP II and III
- Annex 4: Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partner Countries
- Annex 5: Amendment to the Disbursement Procedure of BACCP II
- Annex 6: Content and Form of Reporting to KfW
- Annex 7a-c: Overview of the location and characteristics of the proposed clusters

Read and agreed: 27<sup>th</sup> June 2013

Ulaanbaatar, 

Ministry of Finance

  
Ministry of Environment and Tourism

Annex 1: Logframe BACCP II und III\*

Summary	Success Indicators	Verification Sources	Assumptions/ Risks
<p><b>Programme Objective of the Mongolian-German cooperation in the sector (impact)</b></p> <p>Conservation of biodiversity and improvement of livelihoods, with special consideration of the effects of climate change</p>	<ol style="list-style-type: none"> <li>The forest area in Mongolia's PA and BZ remains constant Base value: 9,75 million ha (2018) Target value: TBD</li> <li>In supported intervention areas populations of threatened species (flora/ fauna) stabilise or increase Base value: TBD determined in the context of baseline studies in supported sites Target value: Maintain/ increase key species' populations (target value to be defined once baseline data is available)</li> <li>Living conditions of the local population of the supported sites improve / stabilize Base value: TBD determined on the basis of socio-economic surveys in supported sites Target value: Maintain/ improve <i>status quo ante</i> (target value to be defined once baseline data is available)</li> </ol>	<p>MET annual reports Government's Monitoring System Monitoring of key species <i>Soum</i> and <i>aimag</i> reports on socio-economic status of the population Household Surveys</p>	
<p><b>Module objective (outcome)</b></p> <p>Contributing to the effective and sustainable management of prioritized areas of the Mongolian PA-System (incl. buffer zones and eco corridors) by MET, PAA, local administrations and communities and targeted promotion of sustainable/ alternative livelihoods</p>	<p><b>Indicator 1: Management Effectiveness</b></p> <p>The evaluation of the management effectiveness (METT) of the protected areas incorporated in the monitoring system confirms a continuous improvement.</p> <p>Baseline Value: The average METT score is 65,1 across Mongolian PAs (2018) and 65,5 for selected PAs supported by Phase I of FC programme (2018)</p> <p>Target Value: +&gt; 10%, (by the end of programme implementation)</p> <p><b>Indicator 2: Forest and Pasture Area</b></p>	<p>Reports of supported PAs, yearly monitoring Specific forest and pasture assessments METT reports Project Progress Reports</p>	<ul style="list-style-type: none"> <li>Ecologically significant areas will be retained as PA and not subjected to mining activities etc.</li> <li>Mongolia stabilizes or increases the annual budget of the Ministry of Environment and to PAA</li> <li>The levels of forest exploitation are reduced to sustainable levels, applied forest management practices support natural regeneration of</li> </ul>

Summary	Success Indicators	Verification Sources	Assumptions/ Risks
	<p>In accordance with the PA and buffer zone management plans increase in the forest and pasture area that is better protected and sustainably managed</p> <p>Baseline Value: TBD as part of a baseline study for all supported sites (to the extent applicable, relevant data gathered in the context of Phase I will be made use of)</p> <p>Target Value (preliminary): according to respective management plans (average increase: &gt;15%)</p> <p><b>Indicator 3: Livelihood Support</b></p> <p>At least 75% of sustainable livelihood (S/L) initiatives supported through the programme meet/exceed their individual expected targets in terms of benefit generation and sustainable operations (to be illustrated in due course by case examples)</p> <p>Base Value: TBD</p> <p>Target Value: according to respective PA/BZ management plans</p>		<p>forests after logging</p> <ul style="list-style-type: none"> <li>- Natural disasters don't threaten the achievement of the Programs' objectives</li> <li>- Political unrest (risk for implementation and cooperation)</li> <li>- S/L initiatives provide sufficient incentive for sustainable NRM/ conservation support by neighbouring communities/ herders</li> </ul>

<p><b>Outputs</b></p>	<p><b>Output 1:</b> Management and business plans at the PA and cluster level (incl. buffer zones and eco corridors) are updated/elaborated according to relevant IUCN guidelines/standards and basic equipment is delivered throughout the PA network</p>	<p>Indicator 1: Management and business plans at the PA and cluster level take climate change adaptation requirements into account, are bindingly agreed upon by the respective stakeholders and are officially validated Baseline Value: all PAs have a management plan in place (as of Nov. 2017), a considerable no. of these are only valid until 2018. Management and business plans for clusters are not available yet. Target Value: Relevant plans in selected PA and participating clusters are updated/elaborated. Indicator 2: PA Administrations, Buffer Zone Councils and Local PA Management Bodies are sufficiently equipped (basic equipment) to ensure adequate execution of their duties Baseline value: equipment shortfalls TBD during planning phase Target value: gaps closed as per prioritised management planning</p>	<p>- Inception and progress reports, PA reports, PA dept.'s supervision reports - M&amp;E reports by MET</p>	<ul style="list-style-type: none"> <li>- The SPA Department's and SPA Administrations will maintain their efforts to establish and maintain a competent workforce</li> <li>- Recurrent costs of investments are secured (either from GoM budget or other sources)</li> <li>- Strict pasture management regulations are effective in the buffer zones and limited use zones</li> <li>- MET and PAA have the ability to cope with threats from illegal mining, logging and hunting</li> <li>- Adequate extension services available for successfully applying new S/L practices</li> </ul>
<p><b>Output 2:</b> Management and business plans in five larger intervention areas/clusters are implemented</p>	<p><b>Indicators:</b></p> <ul style="list-style-type: none"> <li>- Key investments in PAs, Buffer Zones and eco-corridors of the participating clusters are realised</li> <li>- Activities prescribed in the Management and Business plans of the participating cluster are implemented</li> <li>- Measures for protection and sustainable forest/ pasture management are</li> </ul>	<ul style="list-style-type: none"> <li>- Preparatory documents, management plans, operational records etc.</li> <li>- Programme progress reports, PA inventory registers</li> <li>- PA/BZ reports on activities and key indicators</li> </ul>		

	<p>implemented in the limited use zones</p> <ul style="list-style-type: none"> <li>- Prioritised measures to support sustainable livelihoods in the Buffer Zones are implemented</li> <li>- area of forests and wetland (measured in ha sustainably maintained as carbon sinks in the intervention area</li> </ul> <p>Base Value: TBD Target Value: TBD</p>		
<p><b>Output 3:</b> Individual management and business plans are updated/ elaborated and implemented in up to 7 PAs (selected on the basis of pre-defined criteria)</p>	<p><b>Indicator 1:</b> Outdated or missing management and business plans at the PA level are updated/prepared</p> <p>Baseline Value: all PA have a management plan in place (as of Nov. 2017), a considerable no. of these are only valid until 2018.</p> <p>Target Value: Relevant plans in selected PA are updated/elaborated.</p> <p><b>Indicator 2:</b> Measures for protection and sustainable forest/ pasture management are implemented in limited use zones</p> <p><b>Indicator 3:</b> Activities prescribed in the Management and Business plans of the participating PAs are implemented</p> <p><b>Indicator 4:</b> Prioritised measures to support sustainable livelihoods in the Buffer Zones are implemented</p> <p>Base Value: TBD Target Value: TBD</p>	<ul style="list-style-type: none"> <li>- Preparatory documents, Mgt. Plans, operational records etc</li> <li>- Programme progress reports, PA inventory registers</li> <li>- PA reports on activities and key indicators,</li> <li>- PA/BZ reports on activities</li> </ul>	
<p><b>Output 4:</b></p>	<p><b>Indicator:</b> Skills and capacities of se-</p>	<ul style="list-style-type: none"> <li>- Training reports</li> </ul>	

<p>Capacity building and public awareness measures for the entire PA network are implemented</p>	<p>lected staff have been upgraded according to needs and priorities identified by MET's prior gap assessment</p> <p>Baseline Value: gaps/ requirements as specified/ prioritized by MET</p> <p>Target Value:</p> <ul style="list-style-type: none"> <li>- The PA Department's training programme is implemented as per identified priorities</li> <li>- The Programme supports periodic round table meetings with critical stakeholders from conservation, politics, business, administration etc.; these may be linked with PR activities</li> <li>- Outreach and awareness campaigns (different media) are planned and implemented</li> <li>- Medium to high level conferences on conservation are supported on a need/ merit basis</li> </ul>	<ul style="list-style-type: none"> <li>- Meeting documents</li> <li>- Round-table documentation</li> <li>- Conference proceedings</li> <li>- Analysis of the media and awareness campaigns conducted</li> </ul>	
<p><b>(Key) Activities</b></p> <p><b>Activities for Output i:</b></p> <ul style="list-style-type: none"> <li>- Development/updating of management and business plans for PAs, BZ and clusters</li> <li>- Identify and prioritise sector-wide investment needs within the agreed budget limits, obtain PSC endorsement and implement as per agreed procedures (procurement rules etc.)</li> <li>- Delivery of basic equipment (for monitoring, offices, transportation etc.) to participating PA</li> </ul>			<ul style="list-style-type: none"> <li>- MET, MOF and PAA efficiently coordinate the implementation of the programme</li> <li>- All involved stakeholders are open to implement the new cluster concept</li> <li>- New PA cluster concept requires more time and efforts to be fully accepted by the local administration and population</li> </ul>

<p><b>Activities for Output II:</b></p> <ul style="list-style-type: none"> <li>- Implement prioritised activities/ investments as per agreed management plans</li> <li>- Facilitate the financing/ co-financing and implementation of measures for conservation and sustainable management of selected projects for PA and buffer zones</li> <li>- Facilitate the establishment of buffer zone funds and shared "trusts" – as and where applicable (if possible, including both a sinking and a revolving fund component); to be managed jointly by the BZ Council, local gvt. and the PAA</li> </ul>		
<p><b>Activities for Output III:</b></p> <ul style="list-style-type: none"> <li>- Development/ updating of management and business plans for up to 7 individual PAs</li> <li>- Implement prioritised activities/ investments as per agreed management plans</li> <li>- Facilitate the financing/ co-financing and implementation of measures for conservation and sustainable management of selected projects for PAs and buffer zones</li> </ul>		
<p><b>Activities for Output IV:</b></p> <ul style="list-style-type: none"> <li>- Support the PA department in developing/ updating and implementing a comprehensive concept for training in conservation and PA management, and recognized professional training of rangers</li> <li>- Support policy and cooperation meetings organized by the MET in close cooperation with other stakeholders;</li> </ul>		



<p>organize meetings of thematic working groups, workshops and conferences on biodiversity conservation and related topics; publish and distribute proceedings</p> <ul style="list-style-type: none"><li>- Support outreach and awareness campaigns as identified/ prioritized by SPA Department, selected PA Administrations and research institutions (as + if applicable)</li></ul>			
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\*Logframe is valid for both Phase II and Phase III of the Programme (2016 67 054 and 2018 68 272) as they will be implemented in parallel.

## **Mongolian-German Financial Cooperation**

### **Biodiversity and Adaptation to Climate Change - Phases I and II -**

#### **KfW Review and Appraisal Mission**

**August 18 – 29, 2017**

#### **Minutes of Meeting**

From 18<sup>th</sup> to 29<sup>th</sup> of August, 2017, a KfW Mission, comprising Ms Andrea Johnston (NRM Team Leader, Asia), Ms Nina Otto (Project Manager), Mr Matthias Bechtolsheim (Senior NRM Expert) and Ms Tseveg Enkhzul (Project Coordinator, KfW Office UB), accompanied by Dr. Christian Glass, First Secretary, German Embassy held discussions with responsible departments of the Ministry of Environment and Tourism (MET) and of the Ministry of Finance (MoF) concerning the Mongolian-German programme on “Biodiversity and Adaptation to Climate Change” (BACCP). The mission's purpose was twofold: firstly, to review progress and achievements of BACCP's on-going first phase (BACCP I, appraised in December 2012). Secondly, the mission conducted the appraisal of the second Phase of BACCP currently under preparation (BACCP II). Discussions were based on reports and background documents availed through MET and its Programme Implementing Unit (PIU) as well as the feasibility study (FS) for Phase II conducted by UNIQUE Consultants between June and August 2017.

The mission team intensively discussed its findings with the Minister of Environment and Tourism, Ms. Oyunkhorol, advisors and senior staff of MET, notably the Director-General of the Department for General Management and Administration, Mr Kh. Batjargal, as well as the Director General for Climate Change and Int. Cooperation, Mr. B. Yeruult, relevant staff of MoF, members of the PIU, the Implementation Consultant of Phase I and a member of the FS team. In addition, the mission also met with representatives of GIZ. Field visits covered Protected Areas (PA) that are implementing a sub-project under Phase I as well as PAs in the Western and Southern parts of the country potentially considered for Phase II.

The Mission expresses its appreciation for the excellent, highly efficient and productive working atmosphere during discussions and field visits as well as for the outstanding hospitality and support received by all officials and other persons met.

The Mission pointed out that all statements and remarks given represent the Mission's position only. All understandings reached are subject to approval by KfW management and by the German Government. Likewise, those understandings are also subject to approval by the Minister for Environment and Tourism.

The following sections contain the mission's results on the review of Phase I (section 1) as well the appraisal of Phase II (section 2).

## **1. Review of BACCP I**

### **1.1. Overall assessments**

The mission congratulates the MET, the PIU and the IC for the achievements made in implementing the programme so far. Following a preparatory phase, procurements mainly under component 1 and partially also under component 2 have taken up speed. The mission noted the high professionalism, efficiency and quality of work afforded by the PIU in implementing related procedures. It also expressed its appreciation for the more recent continuity of staff within the PIU, following an initial period of certain staff fluctuation. Staff continuity within the PIU will remain an important factor in successfully implementing the activities still foreseen under the programme. In light of tight budgetary restrictions, the Mongolian efforts to provide counterpart funds, notably for the operation of the PIU, are highly appreciated. Nevertheless, the mission stressed the need for MET to keep up efforts to provide programme funding equivalent to the amounts agreed upon for the FC programme in addition to MET's regular budget for the PA network.

### **1.2. Field visits and delivered goods**

As part of the review of Phase I, the delegation was afforded the opportunity to hold discussions with the Protected Area Administrations (PAA) of Hustai Nuru, Khugnu Tarna, Orkhon Valley, Khangai, Tarvagatai Nuruu and Gorkhi Terelj, all of which so far have received basic equipment, ranger uniforms and/ or firefighting trucks under components 1 and 2 of the programme. Spot-wise inspections during the field visits indicate that the provided goods are being put to proper use and that the equipment provided serves the relevant PAA and their rangers with important tools to carry out their daily work (GPS, binoculars, tents, sleeping bags, cameras, fire fighting trucks etc).

The delegation pointed out that all delivered goods will require regular maintenance in order to ensure the sustainability of their use. As previously agreed, the PAA shall set aside 5 percent of their annual budget so as to cover the maintenance of the FC goods. It was agreed that, with the support of the IC, the provision of such a maintenance budget will be regularly monitored.

### **1.3. Programme management**

#### **1.3.1. Planning, budget and disbursement issues**

Due to delays in the initial phase of the programme and despite all efforts on the side of the involved parties to ensure an efficient implementation it can be expected that the programme will not complete all foreseen activities by 2020. The PIU/IC will therefore submit a revised implementation schedule to KfW for approval after construction costs estimates have been finalised (approx. at the end of October 2017). This shall include a realistic timeframe for the remaining activities. It should

be noted that a possible extension of the programme duration will imply additional consulting services, which – to the extent possible – should be re-arranged in a cost-neutral way. It also implies that the PIU may have to be funded by MET beyond 2020.

The revised schedule shall take into account the PIU's lessons learnt regarding the duration of processes related to the procurement of goods as current operational and procurement plans in part have proven not to be realistic. This shall also to be taken into account when providing forecasts on the disbursements of funds both to MoF and KfW. In this regards, the mission also welcomes any suggestions that the PIU may have in order to speed up procedures with KfW who will then consult internally if there is room for any related revisions. Such a list of suggestions should be sent to KfW by October 15, 2017.

The revised implementation schedule shall also be accompanied by a revised budget proposal which indicated how funds currently uncommitted shall be distributed per component over the remaining programme duration.

### 1.3.2. Staffing of the PIU

The review of Phase I indicates that there are two areas where the composition and functionality of the PIU could be improved. Firstly, due to the large number of foreseen procurements, the procurement officer's work load within the PIU is very high. For the purpose of efficient programme implementation, MET may consider the employment of an additional procurement officer. Secondly, the division of labour between the IC and the PIU is currently such that the IC is responsible for technical aspects of programme implementation, whereas the PIU is in charge of administrative and procurement issues. From the mission's point of view, it would enhance the interaction between the PIU and the IC and also contribute to efficient programme implementation if the PIU also disposed of technical expertise (e.g. on buffer zone management). Funds for either of these two suggestions could be made available by MET if, for example, KfW provides funding for the equipment of the regional training centre (at programme start planned to be provided by the Mongolian counterpart contribution) and MET takes over salaries or running costs in the equivalent amount instead (cf. section 1.4.4.) In light of the above, MET is invited to propose adjustments to the PIU staffing and/or staffing at the regional level, preferably by December 15, 2017.

## 1.4. Programme Components

### 1.4.1. Component 1

Procurements under Component 1 are advancing well. As is the case for all components, the PIU will have to make a suggestion on what the funds that are currently not yet committed should be used for (cf. 1.3.1).

### 1.4.2. Component 2

While procurements for the proposed activities in the PAs have been initialized, one of the main challenges in the further implementation of the programme relates to the question of how to procure and structure the flow of funds for the activities planned in the buffer zones. Any solution found to address this challenge shall be in line both with MoF's as well as KfW's regulations. In terms of the income generating activities, it is suggested, to the extent possible, to make use of the already existing, but largely dormant Buffer Zone Revolving Funds (as currently being elaborated by short-term consultants). The centrally organized procurement of small-scale social infrastructure by the PIU is not recommended as it will overburden the PIU and is unlikely to lead to the participation of local, qualified bidders. To that end, the PIU will propose to KfW at the latest by October 15, how procedural arrangements should be revised to overcome the constraint of funding BZ activities. Shifting funds away from BZ activities to the PAs within component 2 is not an option.

Buffer zone sub-projects are to clearly demonstrate their contribution to the respective PA's conservation goals. At the same time, benefits from such measures should, to the extent possible, accrue to a wider part of the affected population (i.e. preferably beyond individuals, e.g. through employment creation or similar). Also, interventions of a commercial nature are expected to be based on a sufficiently well-founded business plan – thus ensuring long-term economic viability.

On all construction measures, KfW shall have the opportunity to provide technical comments at the preliminary design stage, i.e. before such projects are submitted to Ministry of Construction for their approval.

All interventions with potential environmental impact, notably road construction(s) or other transport interventions liable to open up ecologically sensitive areas, shall be subject to in-depth scrutiny by KfW.

### 1.4.3. Component 3

To the extent possible within the revised budget, local Protected Areas (LPAs) may also become eligible for funding under Component 3, provided they meet the following criteria:

- Outstanding ecological value of the proposed areas – documented by the occurrence of at least two species of fauna/ flora featuring on the IUCN Red List with at least "Endangered" status and/ or international recognition of the area's value, e.g. as Ramsar Site.
- The potential of the proposed support measures to serve as a pilot scheme for subsequent up-scaling into the PA system – e.g. with innovative concepts on sustainable financing, improved pasture management, tourism management, eco-corridors/connectivity or similar.

### 1.4.4. Component 4

For the construction of the Regional Training Centre in Tsetserleg, the Mission – in technical terms – has no objections to proceed with the tendering procedure. Care will have to be taken by MET to ensure adequate maintenance funding in order to prevent the occurrence of respective risks, as

highlighted in the KfW architect's remarks. Concerning the Training Centre's equipment, MET has indicated that they will not be able to provide funds for project related investments until 2019 due to budgetary restrictions. Therefore, funding for the equipment of the Regional Training Centre has so far not been secured. The mission offered that equipment related costs can be covered by KfW if MET in turn provides the equivalent amount for covering e.g. salaries (cf. section 1.3.2.).

With a view to the requirement of having research cooperation in the PAs to be tendered out, it is agreed that such bidding procedure shall allow for bidders for specific thematic fields to submit joint tenders – i.e. as associations, consortia or similar. This is expected to give specialized research institutions already working on site the opportunity to submit targeted bids only in their respective, particular field(s) of expertise – in association with other partners.

### 1.5. Cooperation with GIZ

During their visit to Mongolia, the KfW team also held discussions with GIZ on the possible deployment of two development advisors as part of BACCP I to be funded by a special fund provided by BMZ. The deployment of such advisors was already discussed as part of the Mongolian-German intergovernmental negotiations in Nov. 2016. GIZ and KfW both suggest that the two proposed advisors support the achievement of objectives of BACCP I by working on tourism and buffer zone related issues one with a base in Ulaanbaatar and a focus on the in Gorkhi Terelj and Khan Khentee PAs and one with a base in Khar Khorin and a focus on the Orkhon Valley and neighbouring PAs. The mission has already recommended to GIZ that MET is closely consulted in the development of the TOR and further preparatory steps for deploying the two development advisors.

## 2. Appraisal of BACCP II

In order to review the suggestions contained in the FS for Phase II, the mission held discussions with PAA staff, members of buffer zone communities as well as representatives of local governments (*soums* and *aimags*) pertaining to the PAs of Uvs Lake, Mongol Altai Nuruu in the Western part of the country and Gobi Gurvan Saikhan in the South.

### 2.1. Programme Concept and Design

#### 2.1.1. Concept

Following the BACCP I philosophy, Phase II of the programme is intended to align with national structures and procedures in a highly participatory manner. In contrast and as highlighted in the FS, the approach used in Phase I for selecting PAs for sub-project implementation on a competitive basis will be revised, as it has produced mixed results. While well defined conceptually, the competitive approach was time-consuming in preparation and evaluation and often beyond the planning capacity of the participating PA. For that reasons, proposals were often prepared by re-

search institutions or NGOs which undermined the PAAs and other stakeholders from effectively participating in sub-project development. With a focus on PAs, the sub-project approach doesn't sufficiently take into consideration the value of LPAs and the importance of eco-corridors which, however, are important for the conservation of migratory species and climate change adaptation. Accordingly, BACCP II intends to focus on promoting effective connectivity and sustainable conservation management of selected larger geographic spaces. This is to be achieved through the grouping of state and local protected areas, with active partnership by local governments (*aimag* and *soum* level) to work towards agreed conservation goals. Functional and efficient coordination mechanisms to ensure active involvement by the relevant stakeholders will be essential. Investments into these larger geographic zones will not be based on a competitive approach but rather involve selection on the basis of pre-defined criteria. While the term for these larger geographic areas still needs to be defined (e.g. "clusters", "eco-zones", "regional eco-systems" or other) and the exact boundaries of these areas still need to be decided on, agreement was reached that BACCP II should focus on three intervention zones selected on the basis of pre-defined criteria in Western part of the country (see Annexes 1 and 2). Annex 3 contains the list of selection criteria prepared by the FS as well as the related ranking of the proposed clusters.

At the same time, care will have to be taken to avoid the creation of heavy institutional structures. Where available and suitable, the grouping of different PAs and buffer zones for the purposes of connectivity and the establishment of eco-corridors shall be based on already existing coordination structures.

Whilst in their majority programme measures will take place in the 3 intervention areas identified in the FS, individual PAs (including LPAs, as the case may be) can also become eligible for targeted support. For that purpose, a designated budget line of up to 3.18 million EUR (at maximum) shall be envisaged, whereby the key eligibility requirements are the following (cf. 1.4.3.):

- Outstanding ecological value of the proposed areas – documented by the occurrence of at least two species of fauna/ flora featuring on the IUCN Red List with at least "Endangered" status and/ or international recognition of the area's value, e.g. as Ramsar Site.
- The potential of the proposed support measures to serve as pilot scheme for subsequent "up-scaling" into the PA system – e.g. with innovative concepts on sustainable financing, improved pasture management, tourism management or similar.

As was the case for Component 1 of Phase I, quick-win measures like basic equipment etc. will be delivered country-wide for the entire network of PAs (Component/ Output 1 of Phase II – cf. para 2.1.1).

Should additional funding become available, the PIU (cf. para 2.4) will require additional staffing – to be funded from the Mongolian own contribution. In conceptual/ geographical terms, one additional "larger conservation space" (most likely the one numbered "6" in Annex 1) shall be foreseen for programme support – as well as the intensification in intervention zones already supported under Phases I and II.

### 2.1.2 Intervention Logic

The overall development objective of the Mongolian-German cooperation in the sector (intended "impact") is to contribute to the conservation of biodiversity as well as to the stabilisation and/or improvement of rural livelihoods in the respective intervention areas. Special consideration will be given to mitigate, to the extent possible, the effects of climate change. For assessing impact achievement, the following indicators shall apply:

- In supported intervention areas populations of threatened species (flora/ fauna), as specified in the respective management plans, stabilise or increase.
- The living conditions of the local population are improved through measures for sustainable management of natural resources (BZ management and business planning) and additional, supporting socio-economic measures.

The objective of the German Financial Cooperation Programme ("outcome") will be defined as the sustainable and effective management of prioritised zones in Mongolia's PA network by MET/PA-Department, State PA-Administrations, Local Administrations, and communities. This will be measured against the following indicators:

- **Management effectiveness** significantly improved (as measured through MoMFTT processes).
- **Increase in the area sustainably managed** in buffer zones and limited use zones (particularly pasture and forest management) in the Programme intervention areas – as per respective management plan targets and evidenced by gradually improved vegetation cover.
- **Mongolia stabilises or increases MET's annual budget** for PA management.

The main target group is the rural population in the intervention areas (PAs, buffer zones, LPAs and corridor areas – as the case may be). These groups will participate in the planning and implementation of activities and directly benefit from the sustainably managed natural resources and job opportunities in the PA-network and the emerging tourism sector.

The details of the intervention logic will be agreed upon as an integral element of and annexure to the Separate Agreement.

### 2.1.3. Components/ Outputs

The programme will focus on the following four components and main measures:

- Output/ Component 1: Preparation, organisation and basic equipment for the entire PA network.
- Output/ Component 2: Implementation of management and business plans in larger intervention areas. In order to timely mobilise the respective stakeholders and to moderate coherent action on a sufficiently binding basis in the selected 3 areas, consultancy ser-



vices will be deployed beforehand, i.e. prior to concluding the Financing and Separate Agreements. Funding for this assignment will originate from a separate financing facility available to KfW ("Study and Advisory Fund"), which will serve as "Project Preparation Facility". Specific demand-based activities for biodiversity conservation/ climate change adaptation and conservation-based improvement of livelihoods are implemented within the selected zones – on the basis of approved management plans/ concepts; equipment and strengthening of PA administrations, BZ councils and other relevant stakeholder to that respect.

- Output/ Component 3: Up to 6 individual protected areas are selected on the basis of pre-defined support criteria (cf. para 2.1.1), action plans are agreed upon and implemented.
- Output/ Component 4: Capacity building and public awareness measures for the entire PA network.

#### **2.1.4. Selection Process for Activities to be Supported**

For larger-space intervention zones (i.e. Components 1 and 2) to initially qualify for programme support, a Memorandum of Understanding (MoU) will have to be concluded among the relevant stakeholders beforehand. Such a MoU shall stipulate the key stakeholders' rights and duties with regard to conservation management of the respective areas – as well as the institutional arrangements necessary for that purpose. To achieve this by virtue of a moderated consultative process, consultancy services from the "Study and Advisory Fund" available to KfW shall be deployed beforehand (cf. para 2.1.3). For that assignment, MET will nominate a national expert who shall be part of the consultancy team (like a "nominated sub-contractor"). A sample MoU format, containing the essential key elements (in the sense of minimum requirements) is attached as Annex 4. If stakeholders in one intervention zone fail to achieve agreement as per the MoU requirements, respective programme support may be re-directed to other intervention zones – as prioritised in Annex 3.

Individual PAs (up to six at maximum) intending to qualify for programme support (i.e. Component 3) will have to demonstrate clearly and unequivocally that their submission meets the eligibility criteria of outstanding ecological value and potential for system-wide replicability as laid down in para 2.1.1. Eligibility will be assessed by the Steering Committee, and the respective proposal will require KfW's non-objection.

## **2.2. Time Schedule**

The programme is conceived for an implementation period of five years, which will require the deployment of supplementary PIU staff for procurement and accounting tasks. The implementation period will be divided into three phases:

- Start-up/inception phase of 6 months: Implementing procedures, launching of training programmes and organising for improvement of PA plans.

- Implementation phase of 48 months.
- Consolidation phase of 6 months: Completion of activities, evaluation of experiences, final accounting of expenditures.

Prior to beginning the implementation phase, socio-economic and ecological baseline surveys will be designed – and subsequently carried out – in all intervention areas.

A mid-term review is to be foreseen in the period between 24 and 36 months (i.e. during the third year) after the Consultancy Team's mobilisation.

### 2.3 Total Costs and Financing

The total costs of BACCP II are estimated at 18.3 million EUR / 51.240 billion MNT (at the current exchange rate). The German FC contribution amounts to 13.5 million EUR (37.800 billion MNT). Accordingly, the Mongolian side is expected to support the programme with counterpart funding equivalent to 25% of the funding provided to the programme through FC. At the current exchange rate this amounts to 13,33 billion MNT to be allocated over a period of five years. This contribution is to be additional to the regular budget provided by the MET to the PAs. As was the case in Phase I, a formal decision by the Cabinet of the Mongolian Government is required for this commitment. MET will timely integrate the required contribution in the budget application process for the budget years 2019 to 2024.

A summary of the tentative budget per component is presented below:

COMPONENT		Total Cost (in EUR)	KfW (in EUR)	GoM* (in MNT)
Component 1	Preparation, organization and basic equipment for the entire PA network	2,289,500	1,405,600	2,474,920,000
Component 2	Implementation of management & business plans in larger intervention zones	8,238,000	6,249,900	5,566,680,000
Component 3	Planning and investments in up to 6 individual PAs	3,181,500	2,545,200	1,781,640,000
Component 4	Capacity building and public awareness measures for the entire PA network.	1,000,000	900,000	100,000
<i>Subtotal Components 1 to 4</i>		<i>14,709,000</i>	<i>11,100,700</i>	<i>10,103,240,000</i>
	Project Implementation Unit (PIU)	1,050,000	150,000	2,520,000,000
	Implementation Consultancy (IC)	1,500,000	1,500,000	0

	Contingencies	1,028,930	776,069	708,010,800
<b>PROJECT TOTAL</b>		<b>18,287,930</b>	<b>13,526,769</b>	<b>13,331,250,800</b>

\*) GoM=Government of Mongolia

Exchange of 1 EUR equal to 2,800.00 Tugrig

A detailed cost and financing plan will be included in as an integral annex to the Separate Agreement.

## 2.4 Institutional Set-up and Responsibilities

### Ministry of Environment and Tourism

As agreed for Phase I (Appraisal MoM and Separate Agreement concluded in November 2013), the MET is the project executing agency (PEA). MET is responsible for the overall implementation, supervision and monitoring of the Programme.

### Programme Implementation Unit

Within MET's Department for Protected Area Management (PA Department), the existing Phase I PIU will be enlarged by one accounting/ financial and one procurement management officer each. A technical/ buffer zone mgt. officer will be in charge of monitoring and evaluation. PIU functions will be the same as stipulated in the Separate Agreement agreed for BACCP Phase I in November 2013. With regard to the PIU's overall composition, the following adjustments are agreed upon:

- Programme Coordinator (Head of the PIU, conservation/NRM specialist, in charge of the day-to-day operations) – same as Phase I
- Financial officer – 2 (1 new)
- Procurement Officer 2 (1 new)
- Technical/ buffer zone and M&E Mgt. Officer – 1 (new)
- Officer for Administration and Office Management – same as Phase I
- Driver– same as Phase I.

The PIU will ensure a presence in Ulaan Baatar as well as in the focal region of Western Mongolia. Whereas the KfW Mission proposed a sufficiently staffed PIU branch office in the West, MET was in favour of assigning additional personnel to the respective PA administrations – to be funded from Mongolian resources. As KfW will have to be clear on this issue in its appraisal report to the BMZ, MET shall communicate an elaborated proposal on PIU representation in the Western region/within the PAA to KfW (including, among others, sufficiently detailed job descriptions for the respective posts) at the latest by October 15, 2017.

### National Programme Director

As in BACCP I (revised arrangement), the Head of the Public Administration Department will serve as the National Programme Director.

He/she would oversee the general implementation of the Programme on behalf of the Minister and the Steering Committee. Specific tasks will remain as stipulated in the Separate Agreement agreed for BACCP I in November 2013.

As in Phase I, the co-signatures for implementing Particular Projects, disbursement requests and co-operation agreements with other partners shall require a complementary signature by the CTA.

### Steering Committee

The Steering Committee (SC) will continue to be charged with the orientation and supervision of Programme implementation, in compliance with the guidelines provided by the Ministry of Finance – and as stipulated in the Separate Agreement agreed for BACCP I in November 2013.

### Thematic Working Groups

The Thematic Working Groups will continue to perform their function(s) as stipulated in the Separate Agreement agreed for BACCP Phase I in November 2013.

## **2.5. Implementation Consultant**

An Implementation Consultant (IC) shall support the PIU in its operations. The IC team will include:

- Chief Technical Advisor (CTA, international programme management and conservation/ NRM specialist),
- Deputy Chief Technical Advisor (DCTA, buffer zone development / NRM specialist, long-term),
- Buffer zone Coordinator (long-term, national),
- Interpreter and driver (both national, long-term),
- Short-term expertise and backstopping, national and international levels (including some unallocated expert months to respond to emerging needs during implementation).

Apart from the areas of work mentioned above, the duties of the consultant shall be performed as stipulated in the Separate Agreement agreed for BACCP I in November 2013.

The Consultant team will be located in the PIU Office in Ulaanbaatar, but will also ensure a continuous presence by the Buffer zone Expert in the Western Region focal area.

In total, a consulting input of up to 60 expert months international expertise (40 months long-term and 20 months short-term) and up to 116 expert months of national expertise are required to pro-

vide these services. In addition the Consultant will provide the services of the driver and interpreter (up to 60 pm each).

Consulting services for BACCP II are to be awarded on the basis of competitive bidding to independent, qualified consultants. It is agreed that KfW will assist MET, free of charge, with selecting and contracting the consultants and also during the performance of the consulting services. For this purpose, MET and KfW will agree on an Agency Contract which is to become an integral part of the upcoming Separate Agreement for Phase II. According to that Agency Contract, KfW will be authorised by MET to

- conclude the Consulting Contract and its eventual amendments on its behalf and
- make down and interim payments to the Consultant in accordance with the agreed disbursement procedure and with the provisions set forth in the Consulting Contract.

In all other respects MET will be in charge of executing and supervising the Consulting Contract. If and as required, KfW will continue to advise and assist MET within the limits of its possibilities.

On behalf of MET, KfW will assign an expert (Tender Agent) to assist with the procedure for the selection of consultants. The costs incurred for the Tender Agent will be covered by a special fund that is provided for such a purpose by the German Federal Ministry for Economic Cooperation and Development (BMZ). Specifically, the Tender Agent will assist MET with the following services on the basis of the "Guidelines for the Assignment of Consultants in Financial Cooperation with Partner Countries"<sup>1</sup>:

- Drafting of the Terms of Reference for the consulting services including a draft consulting contract (standard KfW consulting contract)
- Conducting the prequalification and "short listing" of the qualified bidders
- Conducting the tender including a justified proposal for the contract award
- Submission of a draft consulting contract negotiated with the Consultant.

## 2.6. Procurement Issues

Awarding procedures for contracts for supplies, works and all other consulting services shall continue to follow the provisions as agreed in Section II.3 of the Separate Agreement concluded for Phase I in November 2013 as well as Amendment of the Separate Agreement for Phase I dated March 15, 2017. Adjustments may be made based on the revision of procedures as to be proposed by MET/ PIU for Phase I (cf. para 1.3.1.).

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<sup>1</sup> <https://www.kfw-entwicklungsbank.de/Download-Center/PDF-Dokumente-Richtlinien/Consulting-E.pdf>

## 2.7. Disbursement

Disbursement procedures shall be applied as laid down in Section III of the Separate Agreement concluded for Phase I in November 2013, whereby adjustments may be made based on the revision of procedures as to be proposed by MET/ PIU for Phase I (cf. para 1.3.1.).

## 2.8. Programme Implementation

The Plan of Operation, including detailed description of project activities, time, cost, and financing schedule, for the proper technical and financial implementation of the Programme, shall be prepared by the PIU in cooperation with the consultant during the inception phase and submitted to KfW for non-objection. Such schedule is to show, by deadlines and amounts, the intended chronological interrelation of the programme activities and the resulting financial requirements. If any deviation from such schedule becomes necessary during the implementation of the Programme, KfW shall be furnished with a revised schedule.

Any major changes in the project design shall require KfW's prior consent. The PIU shall inform KfW thereof immediately, stating the reasons, the planned measures and the consequences of the change (including on Total Cost). Execution of such measures may commence only on the basis of revised planning and upon KfW's consent.

## 2.9. Environmental and Social Management Framework

For all programme activities (measures), it will be important to ensure that potential negative environmental and social impacts are minimised, whilst striving to enhance benefits for local communities and the environment. The Environmental and Social Management Framework (ESMF) elaborated in the framework of the FS shall provide practical and comprehensive guidance on how to address potential adverse social and environmental impacts for activities implemented under BACPP II as well as to enhance potential benefits. Further work on the ESMF is likely to become necessary once programme implementation starts and the exact intervention areas and activities are defined. During the implementation of BACCP II, the following laws and regulations will have to be adhered to:

- all relevant national environmental, occupational health & safety and social laws and regulations in Mongolia
- international law including conventions and treaties adopted by Mongolia and applicable to the Project legislation and standards,
- Guidelines on incorporating Human Rights Standards and Principles, including gender, in Program Proposals for Bilateral German Technical and Financial Cooperation (German Federal Ministry for Economic Cooperation)
- International environmental and social safeguard standards, namely:
  - o WB Environmental and Social Safeguard Standards (here: specifically WB OP 4.01, WB 4.10 and WB 4.12)

- WB Group's General EHS Guidelines
- for labour and working conditions: IFC Performance Standard 2 and ILO Core Labour Principles
- for any resettlement aspects, the UN Basic Principles and Guidelines on Development-based Evictions and Displacement, namely §§ 42, 49, 52, 54 and 60, have to be complied with (in addition to national legislation and WB OP 4.12).

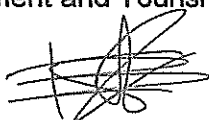
### 3. Next Steps

Following Programme approval by BMZ, KfW will submit to MET the draft Financing and Separate Agreement (planned for April 2018). It is suggested that MoF countersigns the Separate Agreement in order to facilitate smooth cooperation between the different parties involved. Parallel to the signing of the Financial and Separate Agreements, preparatory Consulting services for Component 2 will be sought by public bidding as soon as BMZ permission to use the "Study and Advisory Fund" is obtained (cf. paras 2.1.3. and 2.1.4.). The tendering of Implementation Consulting Services will be started upon the ratification of the financing agreement in the Mongolian parliament.

Signed in Ulaanbaatar on August 28, 2017

For Ministry Environment and Tourism

Mr Khanjav Batjargal  
Director-General



For the KfW Mission

Ms. Nina Otto  
Project Manager



#### Enclosures:

1. Map of "clusters" proposed by the FS
2. Characteristics of the three priority "clusters" proposed by the FS
3. List of criteria for the prioritization of "clusters"
4. Sample format for "Cluster MoU"

### Annex 3: Cost and Financing Plan, Phases II and III

The total costs are estimated at 32.25 million EUR / 90.320 billion MNT (at the exchange rate of 1 EUR equal to 2,800.00 MNT).

The German FC contribution amounts to 27.5 million EUR (77.000 billion MNT), 19.5 million EUR of which under Phase II and 8 million EUR of which under Phase III

COMPONENT	Total Cost (in EUR)	FC (in EUR)		GoM* (in Mio. MNT/EUR)
		Phase II	Phase III	
Component 1	3.70 Mio.	2.00 Mio.	0.80 Mio.	2,520/ 0.90
Component 2	13.40 Mio.	9.00 Mio.	3.20 Mio.	3,360/ 1.20
Component 3	4.70 Mio.	2.50 Mio.	1.20 Mio.	2,800/ 1.00
Component 4	2.20 Mio.	1.40 Mio.	0.60 Mio.	560/ 0.20
<i>Subtotal Components 1 to 4</i>	<i>24.00 Mio.</i>	<i>14.90 Mio.</i>	<i>5.80 Mio.</i>	<i>9,240/ 3.30</i>
Project Implementation Unit (PIU)	1.15 Mio.	0.15 Mio.	0.10 Mio.	2,520/ 0.90
Implementation Consultancy (IC)	2.60 Mio.	1.90 Mio.	0.70 Mio.	0
ESMF and related activities	2.30 Mio.	1.50 Mio.	0.50 Mio.	840/ 0.30
Contingencies	2.20 Mio.	1.05 Mio.	0.90 Mio.	700/ 0.25
<i>Subtotal per Phase</i>		<i>19.50 Mio.</i>	<i>8.00 Mio.</i>	
<b>PROJECT TOTAL</b>	<b>32.25 Mio.</b>	<b>27.50 Mio.</b>		<b>13,300/ 4.75</b>

GoM=Government of Mongolia



# **Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partner Countries**

## PREFACE

Financial Cooperation as part of German Development Cooperation is implemented by KfW Development Bank (KfW) as a public financial institution. Its function is to finance investments in economic and social infrastructure, poverty alleviation, environmental protection and the conservation of natural resources by providing loans on favourable terms and grants as well as complementary assistance and training measures. On behalf of the German Government and its Ministries (the Federal Ministry for Economic Cooperation and Development (BMZ), the Federal Foreign Office (AA) and others), KfW provides funding to its partners. In addition to full funding by KfW, projects may be financed in full or in part by a mandator, such as the European Union.

Sustainability with respect to economic, ecologic and social matters is an overarching objective in Financial Cooperation. KfW is committed to ensuring during preparation, design, implementation and operation of the underlying projects and programmes that this objective is met and that funding is used for the intended purpose. Therefore all parties involved shall comply with the principles of competition, fairness, transparency, confidentiality, economic efficiency and sustainability during the procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services (in each case as defined below).

The purpose of these Guidelines is to specify KfW's requirements for procurement and contracting and to set out in detail the scope of monitoring and reviews undertaken by KfW. These Guidelines are part of the Funding Agreement (as defined below) between KfW and its partners.

Feedback on or questions about this document should be in writing to the following address:  
[FZ-Vergabemanagement@kfw.de](mailto:FZ-Vergabemanagement@kfw.de)

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## Definitions

Capitalized terms used in the Guidelines have the meaning ascribed to them in this Section

<b>Appendix</b>	Appendix to these Guidelines.
<b>Applicant</b>	Person who submitted an Application in a Tender Process.
<b>Application</b>	Set of documents submitted by an Applicant in order to prove eligibility and qualification to perform the Contract.
<b>Award of Contract</b>	Legally binding signing of the Contract by the PEA and the Contractor or submission of a letter of formal acceptance of an Offer by the PEA, whichever is first.
<b>Bid</b>	Set of documents submitted by a Bidder in order to participate in a Tender Process for procurement of Non-Consulting Services, Works, Goods and Plant.
<b>Bidder</b>	Person who submitted an Offer in a Tender Process.
<b>Coercive Practice</b>	The impairing or harming, or threatening to impair or harm, directly or indirectly, any person or the property of the person with a view to influencing improperly the actions of a person.
<b>Collusive Practice</b>	An arrangement between two or more persons designed to achieve an improper purpose, including influencing improperly the actions of another person.
<b>Consulting Services</b>	Services of an advisory/professional nature, including in particular the provision of expert/strategic advice, management services, coaching, policy development, implementation and communication services as well as advisory and project-related services, e.g. feasibility studies, project management, engineering services, supervision of construction, finance and accounting services, as well as training and organisational development.
<b>Contract</b>	Legally binding written agreement signed between the PEA and the Contractor for Consulting Services, Works, Goods, Plant, or Non-Consulting Services which is awarded to a Bidder at the end of a Tender Process.
<b>Contractor</b>	Bidder to whom the Contract has been awarded at the end of a Tender Process (e.g. consultant, works contractor or a supplier).
<b>Corrupt Practice</b>	The promising, offering, giving, making, insisting on, receiving, accepting or soliciting, directly or indirectly, of any illegal payment or undue advantage of any nature, to or by any person, with the intention of influencing the actions of any person or causing any person to refrain from any action.
<b>Declaration of Undertaking ("DoU")</b>	Statement of integrity, eligibility and social and environmental responsibility in the format attached as Appendix 1.

<b>ESHS</b>	Environment, Social (incl. issues of sexual exploitation and abuse and gender-based violence), Health and Safety (incl. of security for personnel).
<b>Fraudulent Practice</b>	Any action or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial benefit or to avoid an obligation.
<b>Funding Agreement</b>	Agreement between (a) KfW and a borrower (in the case of a loan) or (b) KfW and a recipient (in the case of a grant), setting out the terms and conditions pursuant to which funding is made available by KfW.
<b>Goods</b>	Commodities, raw material, machinery, equipment, vehicles, and related services, e.g. transportation, insurance, installation, commissioning, training, and initial maintenance.
<b>GTAI</b>	Germany Trade and Investment GmbH ("GTAI"), the economic development agency of the Federal Republic of Germany which publishes diverse project and procurement related information on its website ( <a href="http://www.gtai.de">www.gtai.de</a> ).
<b>Guidelines</b>	KfW's Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non Consulting Services in Financial Cooperation with Partner Countries.
<b>Invitation to Bid ("ITB")</b>	Set of documents inviting prequalified Applicants, interested or preselected Persons, as the case may be, to submit a Bid.
<b>Joint Venture ("JV")</b>	Joint Venture (JV) means an association with or without a legal personality distinct from that of its members, of more than one Person where one member has the authority to conduct all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the PEA for the performance of the Contract.
<b>Key Expert</b>	A single individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Contract and whose CV is taken into account during the evaluation.
<b>Mandate</b>	KfW may be given a Mandate to carry out project funding with financial means of a mandator (e.g. European Union) based on a mandate agreement.
<b>Non-Consulting Services</b>	Services which are not Consulting Services. Non-Consulting Services are normally bid and contracted on the basis of performance of measurable outputs, and for which performance standards can be clearly identified and consistently applied, e.g. topographical and geotechnical surveys, soil investigations, aerial surveys and remote sensing, drilling, aerial photography, satellite imagery, mapping and similar operations, transport and distribution of Goods.
<b>No-Objection</b>	KfW's written notice concerning PEA's documents and decisions in the preparation and execution of a Tender Process.
<b>Obstructive Practice</b>	Means (i) deliberately destroying, falsifying, altering or concealing evidence material to the investigation or the making of false statements to investigators, in order to materially impede an official investigation into allegations of a Corrupt Practice, Fraudulent

Practice, Coercive Practice or Collusive Practice, or threatening, harassing or intimidating any Person to prevent them from disclosing their knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) any act intended to materially impede the exercise of KfW's access to contractually required information in connection with an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice.

<b>Offer</b>	General term for Proposals and Bids.
<b>Partner Country</b>	Country of the PEA, in which the KfW financed project/programme is implemented.
<b>Person</b>	Any natural or legal person or an association of two or more of the foregoing.
<b>Plant</b>	Equipped facilities, executed on the basis of design, supply, installation, commissioning, maintenance, modification and protection (e.g. power plant, sewage plant or a production facility).
<b>Prequalification</b>	First stage of a Two-Stage Selection to identify a number of eligible and qualified Applicants, who will then be invited to submit an Offer.
<b>Procurement Plan</b>	Document defined in Article 1.6.2 and set up by the PEA listing all Tender Processes for Contracts financed by KfW including key procurement related information.
<b>Project Executing Agency ("PEA")</b>	Entity in charge of implementing a project, which directly or indirectly receives funds made available under the Funding Agreement.
<b>Proposal</b>	Set of documents submitted by Bidders in order to participate in a Tender Process for procurement of Consulting Services.
<b>Public Procurement Regulation</b>	Law or legal regulation established by the state of the PEA for the public procurement of Consulting Services, Works, Goods, Plant, or Non-Consulting Services in the Partner Country.
<b>Request for Application ("RfA")</b>	Set of documents inviting potential Applicants to submit their evidence of qualification to perform the Contract.
<b>Request for Proposal ("RfP")</b>	Set of documents inviting prequalified Applicants, interested or preselected Persons, as the case may be, to submit a Proposal.
<b>Sanctionable Practice</b>	Any Coercive Practice, Collusive Practice, Corrupt Practice, Fraudulent Practice or Obstructive Practice (as such terms are defined herein) which is unlawful under the Funding Agreement.
<b>Single-Stage Selection</b>	Tender Process in which Persons submit their evidence of qualification together with their technical and financial Offer.
<b>Standard Tender Documents ("SDO")</b>	Set of Tender Documents issued by KfW for procurement in KfW-financed Projects.
<b>Subcontractor</b>	Person to whom the Contractor subcontracts parts of the Contract while remaining responsible to the PEA during the Contract performance.



<b>Tender Document(s)</b>	RfA, ITB and RfP, including Draft Contract as well as any clarification or amendment thereof during the Tender Process.
<b>Tender Procedure</b>	Type of procedure (e.g. ICB, NCB, LCB Direct Award) undertaken to approach Persons for the procurement of Consulting Services, Works, Goods, Plant, or Non-Consulting Services.
<b>Tender Process</b>	Process carried out to procure Consulting Services, Works, Goods, Plant or Non-Consulting Services, starting with the publication of a tender notice/invitation to submit an Offer, as the case may be, and ending with Award of Contract or cancelation of a Tender Process.
<b>Terms of Reference (“ToR”)</b>	Description of the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the PEA and the Contractor, and expected results and deliverables of a Consulting Services Contract.
<b>Two-Stage Selection</b>	Tender Process which is divided into two consecutive stages with an upstream Prequalification.
<b>Works</b>	Construction, repair, rehabilitation, deconstruction, restoration and maintenance of civil work structures as well as related services, e.g. transportation, installation, commissioning and training.

## 1. Scope of Application and Procurement Framework

### 1.1 Scope of Application of the Guidelines

These Guidelines apply to the procurement of Consulting Services, Works, Goods, Plant and Non-Consulting Services by the PEA in projects and programmes financed in full or in part by KfW<sup>1</sup>. The Guidelines are applicable as well if funding is made available as follows:

- (1) In the case of mandates, unless where otherwise agreed with the provider of the mandate funds;
- (2) in the case of co-financing by KfW and one or several other development partners. However, in such an event, the Guidelines may be, in all or in part, replaced by rules set out jointly with other development partners prior to any procurement procedure<sup>2</sup>;
- (3) in the case of advanced tendering as per Article 1.6.6;
- (4) in the case of Contracts prefinanced by the PEA as per Article 1.6.7
- (5) in the case of indirect financing (e.g. budget support, policy-based lending, result-based lending or joint programs and funds including multi donor trust funds) as per Article 1.6.8;
- (6) in certain cases of funding to financial intermediaries (e.g. regional or national development banks or funds or specialised financial institutions) for the financing of economic or social infrastructure by final beneficiaries or borrowers as per Article 5.2. The Guidelines do not apply if the financial intermediary on-lends the funding to private borrowers which bear the financial risk.

In accordance with the Funding Agreement the Guidelines are binding on the PEA and any other entity officially in charge of procurement. The Guidelines apply without prejudice to the Public Procurement Regulation or other applicable local laws and regulations. In the case of a conflict between the Guidelines and the Public Procurement Regulation or other applicable local laws and regulations the PEA undertakes to inform KfW of its own accord and without undue delay in order to agree on provisions prior to any procurement that best preserve the basic principles as outlined in Article 1.2.1.

### 1.2 Fundamental Arrangements

#### 1.2.1 Basic Principles

The Guidelines reflect the following basic principles which apply in KfW-financed procurement in accordance with internationally recognised practices:

##### **Competition**

Procurements must be carried out on the basis of competitive bidding. The procedures to be chosen for the procurement must address the maximum number of potential Applicants/Bidders.

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1 The Guidelines apply analogically to KfW's procurement in its own name up to the applicable EU procurement thresholds.

2 In particular, KfW is party to a partnership agreement with Agence Francaise de Developement (AFD) and the European Investment Bank (EIB) in the context of the Mutual Reliance Initiative (MRI).

### **Fairness**

Potential Applicants/Bidders must be given equal opportunity to participate in a Tender Process. Unequal treatment of (potential) Applicants/Bidders must be prevented.

### **Transparency**

The Tender Process must be thoroughly documented. Such information must be made available to all parties involved in accordance with their respective right to information.

### **Confidentiality**

All procurement-related information is confidential. Only the parties involved shall have access to the relevant information in accordance with their respective right to information.

### **Economic Efficiency and Sustainability**

In the interest of an efficient use of funds provided by KfW the aim of procurements is to award Contracts to Bidders with the best cost-performance-ratio. The Tender Process must take into account criteria that reflect not only the price, but also quality as well as technical and sustainability aspects.

### **Proportionality**

The basic principles set out above must be applied appropriately, taking into consideration all relevant circumstances and the balance of interests during the respective Tender Process.

#### **1.2.2 Responsibility for Procurement and Contract Performance**

The PEA is responsible for the preparation and implementation of the procurement and the administration and performance of the Contracts. The relationship between the PEA, Applicants/Bidders and Contractors is exclusively governed (i) by the Tender Documents, (ii) the respective Contract and (iii) applicable laws and regulations.

KfW provides financing pursuant to the terms and conditions as set out in the Funding Agreement. No contractual relationship shall be deemed to exist between KfW and any third party other than the PEA. Any communications which may be exchanged between any third party and KfW in the context of a project shall not constitute and shall not be interpreted as constituting any undertaking or a stipulation by KfW in favor of such a third party.

KfW may suspend or terminate a Funding Agreement without the Contractors being informed beforehand and without being entitled to claim from KfW any direct right to the amounts which, as the case may be, originate from such financing.

Unless otherwise agreed in the Funding Agreement, the PEA undertakes to retain and to make available to KfW (or an agent appointed by KfW) for a period of at least six (6) years from the date of fulfilment or termination of a Contracts records and documents relating to the Tender Process and the implementation of the Contract, in particular those documents which are subject to KfW's No-Objection as per Article 1.6.3.

#### **1.2.3 Declaration of Undertaking**

The PEA and the respective Contractor (including all JV partners and proposed or engaged Subcontractors under the Contract) shall observe the highest standard of ethics and respect social and environmental standards during the Tender Process and the implementation of a Contract. The PEA shall require Applicants/Bidders to provide a duly signed Declaration of Undertaking as part of any Application, Offer and Contract (see Appendix 1). In the case of co-

financing, the Declaration of Undertaking may be replaced by a specific statement approved by all co-financiers prior to any Tender Process.

Should the Declaration of Undertaking not be provided or should the declarations or commitments by Applicants, Bidders or Contractors included therein not be complied with, KfW is entitled to take further measures in accordance with Articles 1.3.2 and 1.3.3.

#### **1.2.4 KfW's Standard Tender Documents**

KfW provides a set of Standard Tender Documents (SDO) for use in Projects with financing from KfW and highly recommends the use thereof, especially in the case of ICB in order to ensure an efficient Tender Process in compliance with the Guidelines. If the PEA is obliged to use Tender Documents others than KfW's SDOs, the PEA has to ensure compliance with the provisions of the Guidelines in particular as per Article 1.5 and the general requirements included in Appendix 5.

### **1.3 Eligibility Criteria**

#### **1.3.1 Rules of Nationality and of Origin**

Consulting Services, Works, Goods, Plant and Non-Consulting Services are eligible for KfW financing regardless of the country of origin of the Contractors (including Subcontractors and suppliers for the execution of the Contract), except where an international embargo or sanction by the United Nations, the European Union or the German Government applies.

#### **1.3.2 Grounds for Exclusion**

Applicants/Bidders (including all members of a JV and proposed or engaged Subcontractors under the Contract) shall not be awarded a KfW-financed Contract if, on the date of submission of their Application/Offer or on the intended date of Award of Contract, they:

- (1) are bankrupt, being wound up or ceasing their activities, are having their activities administered by courts, have entered into receivership, or are in any analogous situation;
- (2) have been:
  - a) convicted by a final judgement or a final administrative decision or subject to financial sanctions by the United Nations, the European Union and/or Germany for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings; this criterion of exclusion is also applicable to legal Persons, whose majority of shares are held or factually controlled by natural or legal Persons which themselves are subject to such convictions or sanctions;
  - b) convicted by a final court decision or a final administrative decision by a court, the European Union or national authorities in the Partner Country or in Germany for Sanctionable Practise during any Tender Process or the performance of any Contract or for an irregularity affecting the EU's financial interests, unless they provide supporting information together with their DoU which shows that this conviction is not relevant in the context of the respective KfW financed Contract;
- (3) have been subject, within the last five years to a Contract termination fully settled against them for significant or persistent failure to comply with their contractual obligations during Contract performance, unless (i) this termination was challenged and (ii) dispute resolution is still pending or has not confirmed a full settlement against them;

- (4) have not fulfilled applicable fiscal obligations regarding payments of taxes either the country where they are constituted or the PEA's country;
- (5) are subject to an exclusion decision of the World Bank or any other multilateral development bank and are listed in the respective table with debarred and cross-debarred firms and individuals available on the World Bank's website or any other multilateral development bank, and cannot demonstrate with supporting information along with their DoU that the exclusion is not relevant in the context of the relevant KfW financed Contract;
- (6) have given a misrepresentation in supplying the information requested by the PEA as condition to participation in the Tender Process of the relevant Contract.

The Procurement Documents issued by the PEA shall include the above exclusion criteria.

### 1.3.3 Conflict of Interest

Applicants/Bidders (including all members of a JV and proposed or engaged Subcontractors under the Contract) shall be disqualified in a procurement process if they:

- (1) are an affiliate controlled by the PEA or a shareholder controlling the PEA, unless the stemming conflict of interest has been brought to the attention of KfW and has been fully resolved to the satisfaction of KfW;
- (2) have a business or a family relationship with a PEA's staff involved in the Procurement Process or the supervision of the resulting Contract, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;
- (3) are controlled by or control another Applicant or Bidder or are under common control with another Applicant or Bidder, receive from or grant subsidies directly or indirectly to another Applicant or Bidder, have the same legal representative as another Applicant or Bidder, maintain direct or indirect contacts with another Applicant or Bidder which allow them to have or give access to information contained in the respective applications or Offers, to influence them or influence the decisions of the PEA;
- (4) in the case of a Tender Process for Consulting Services:
  - a) are engaged in a Consulting Services activity which, by its nature, may be in conflict with the assignment that they would carry out for the PEA;
  - b) were directly involved in drawing up the ToR or other relevant information for the Tender Process. This shall not apply to consultants who have produced preparatory studies for the project or who were involved in a preceding project phase, insofar as the information they prepared, especially feasibility studies, was made available to all Bidders and the preparation of the ToR was not part of the activity.
  - c) were during the last 12 months prior to publication of the Tender Process indirectly or directly linked to the project in question through employment as a staff member or advisor to the PEA, and are or were able in this connection to influence the Award of Contract.
- (5) in the case of a Tender Processes for Goods, Works, Plant or Non-Consulting Services:
  - a) prepared or have been associated with a consultant who prepared specifications, drawings, calculations and other documentation for the Tender Process;
  - b) have been recruited or are proposed to be recruited, themselves or any of their affiliates, to carry out Works supervision or inspection for this Contract.

- (6) are state-owned entities, which are not able to provide evidence that (a) they are legally and financially autonomous and (b) they do operate under commercial laws and regulations.

#### 1.4 Sanctionable Practice

The PEA and the Contractors (including all members of a JV and proposed or engaged Subcontractors under the Contract) must observe the highest standard of ethics during the Tender Process and the implementation of the Contract. To such end the PEA undertakes to:

- (1) include provisions in all Tender Documents and Contracts financed in whole or in part by KfW whereby the Contractors declare that (i) they did not and will not engage in any Sanctionable Practice likely to influence the Tender Process and the corresponding Award of Contract to the PEA's detriment, and that in the case of being awarded a Contract they will not engage in any Sanctionable Practice;
- (2) include in the Contracts, a provision pursuant to which the Contractors must permit KfW and in the case of financing by the European Union also to European institutions having competence under European law, to inspect the respective accounts, records and documents, to permit on the spot checks and to ensure access to sites and the respective project relating to the Tender Process and the performance of the Contract and to have them audited by auditors appointed by KfW.

KfW reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

- (1) reject an Offer for Award of Contract if during the Tender Process the Bidder who is recommended for the Award of Contract has engaged in Sanctionable Practice, directly or by means of an agent in view of being awarded the Contract;
- (2) declare misprocurement and exercise its rights on the ground of the Financing Agreement with the PEA relating to suspension of disbursements, early repayment and termination if, at any time, the PEA, Contractors or their legal representatives or Subcontractors have engaged in Sanctionable Practice during the Tender Process or execution of the Contract without the PEA having taken appropriate action in due time satisfactory to KfW to remedy the situation, including by failing to inform KfW at the time they knew of such practices.

#### 1.5 Social and Environmental Responsibility

Projects financed in whole or partly in the framework of Financial Cooperation have to ensure compliance with international Environmental, Social (including issues of sexual exploitation and abuse and gender based violence), Health and Safety (ESHS) standards. As such KfW has elaborated Sustainability Guidelines<sup>3</sup>, in line with relevant World Bank/IFC standard, defines a common binding framework to incorporate ESHS standards into the planning, appraisal, implementation, and monitoring of projects financed by KfW.

To assist the PEA during the Tender Process and the implementation of individual Contracts, KfW provides SDOs for ICB procedures which include the relevant ESHS requirements, which need to be adapted to the specific ESHS risks of the individual Contract. The relevant results of an environmental and social impact assessment (ESIA), an environmental and social

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3 For further details please see KfW's Sustainability Guidelines on [https://www.kfw-entwicklungsbank.de/PDF/Download-Center/PDF-Dokumente-Richtlinien/Nachhaltigkeitsrichtlinie\\_EN.pdf](https://www.kfw-entwicklungsbank.de/PDF/Download-Center/PDF-Dokumente-Richtlinien/Nachhaltigkeitsrichtlinie_EN.pdf)

management or commitment plan (ESMP/ESCP) or any other document dealing with ESHS risk mitigation in the respective project elaborated during project preparation, shall be taken into account in the preparation of the Tender Documents<sup>4</sup>.

If the PEA is obliged to use other Tender Documents than the SDOs, the PEA has to ensure compliance with the ESHS requirements contained therein by integrating the respective ESHS requirements with project specific adaptations into its own Tender Documents.

The PEA ensures that Contractors undertake in the respective Contract to:

- (1) comply with and ensure that all their Subcontractors and major suppliers, i.e. for major supply items for the Contract comply with international environmental and labour standards, consistent with applicable laws and regulations in the country of implementation of the respective Contract and the fundamental conventions of the International Labour Organization<sup>5</sup> (ILO) and international environmental treaties; and
- (2) implement any environmental and social risk mitigation measures, as identified in the environmental and social impact assessment (ESIA) and further detailed in the environmental and social management plan/framework (ESMP/ESMF) as far as these measures are relevant to the Contract and implement measures for the prevention of sexual exploitation and abuse and gender-based violence.

The above-mentioned undertakings by Applicants, Bidders and Contractors are part of the Declaration of Undertaking as per Appendix 1.

## 1.6 Monitoring and Review by KfW

### 1.6.1 General

KfW monitors compliance of the Tender Processes with the provisions of the Guidelines and provides No-Objection as outlined below. A No-Objection by KfW shall not relieve the PEA from its contractual obligations under the Funding Agreement.

### 1.6.2 Procurement Plan

The PEA is required to establish as part of the Funding Agreement a Procurement Plan and implement it accordingly. The Procurement Plan shall identify as far as possible the respective Tender Processes for all KfW-financed Contracts. The initial Procurement Plan shall cover the whole project period and provide details for at least the first 18 months as of the Funding Agreement date. The Procurement Plan shall be reviewed and, if necessary, revised thereafter annually and shall be submitted timely to KfW for No-Objection of the revised version. The Procurement Plan template is enclosed in Appendix 2.

### 1.6.3 No-Objection - Prior Review

For Tender Processes above the ICB thresholds as per Article 2.1.1 prior review by KfW as outlined below is mandatory. Before publication or notification to third parties, and preferably

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4 This applies to projects/programmes appraised after January, 1st 2019 only

5 In the case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant/Bidder/Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

before any communication for approval to a national regulatory or supervisory public procurement entity, the PEA shall submit to KfW the documents below as far as applicable in the respective Tender Process. KfW issues No-Objection notices if the proposed documents and decisions comply with the Guidelines:

- (1) Tender Notice(s) (specimen see Appendix 2);
- (2) Request for Application, including evaluation details (specimen see Appendix 5);
- (3) evaluation report of Prequalification, including opening minutes (specimen see Appendix 6);
- (4) Request for Proposal or Invitation to Bid, including evaluation method and criteria (specimen see Appendix 5);
- (5) evaluation report of Offers, including opening minutes; in the case of separate evaluation of the technical and financial Offer, the technical evaluation report shall be sent to KfW for No-Objection before opening of the financial Offers (specimen see Appendix 6);
- (6) if applicable, request for pre-award discussions with the next ranked Bidder and for cancellation of the Tender Process with appropriate justification and proposal for further action (details see Article 2.5.15);
- (7) prior to Award of Contract, the draft Contract (including the Declaration of Undertaking); and
- (8) if applicable, prior to its signature, any subsequent Contract amendments.

If standardised Tender Documents are used for several similar Tender Processes throughout a project, KfW's individual No-Objections to the documents listed above under (1), (2) and (4) may be replaced by one common No-Objection to a standardised version of the respective Tender Documents.

#### **1.6.4 No-Objection - Simplified Review**

For Tender Processes below the ICB threshold KfW may agree on a simplified review instead of prior review as per Article 1.6.3.

In a simplified review KfW provides No-Objection to the Tender Process upon submission of the draft Contract. In the case of serial procurement using the same Tender Documents and Contract specimen KfW may, after review and No-Objection to the first Tender Process, agree to replace the No-Objection by regular procurement audits or reviews.

#### **1.6.5 No-Objection - Post Review**

In general, KfW does not issue an overall No-Objection to the documents listed in Article 1.6.3 based on a post review of the Tender Process after Award of Contract.

#### **1.6.6 Renewed No-Objection**

Amendments, modifications or clarifications to the documents or decisions as per Articles 1.6.2. to 1.6.5. taking place after KfW's No-Objection to it require KfW's renewed No-Objection if they have significant implications on the project budget, the cost estimate of the Contract, on competition, the agreed technical overall concept, the terms of an assignment or the time schedule of the Tender Process or the implementation of the Contract.



### **1.6.7 Advance Tendering**

Advance tendering means that the PEA initiates the Tender Process prior to the finalisation of the underlying Funding Agreement. If KfW has agreed upon a written request to advance tendering, KfW will issue provisional No-Objections. The No-Objections shall become effective if and only when the respective Funding Agreement enters into force, it being understood that such provisional No-Objection may under no circumstances be understood to constitute a commitment by KfW to finance the Contract, which remains strictly conditional upon the signing of the Funding Agreement.

### **1.6.8 Prefinanced Contracts**

In certain cases, the PEA may have awarded a Contract and financed it in whole or in part without any involvement by KfW beforehand. KfW may agree to finance or reimburse the PEA for payments made under such a Contract. In such a case the PEA is required to demonstrate to the satisfaction of KfW that the Contract to be financed or reimbursed has been procured in compliance with the basic principles as outlined in Article 1.2.1 of the Guidelines. The PEA shall further provide a formal statement on the absence of any cases of Sanctionable Practice during the Tender Process or the performance of the Contract as well as on the eligibility of the Contractor under the Guidelines. In the event that during the Tender Process complaints have been made or during Contract execution claims by the Contractor have been made, KfW's funding shall only be granted if the PEA provides written evidence that such complaints have been handled to the full satisfaction of KfW and that Contractor's claims are reasonable.

### **1.6.9 Indirect Financing**

In addition to the financing of direct investments in projects or programmes in which individual contractual content (e.g. Consulting Services, Works, Plant, Goods, Non-Consulting Services) is procured, KfW supports other forms of indirect funding for infrastructure and non-infrastructure programmes (e.g. budget support, policy-based lending, result-based lending or joint programs and funds including multi donor trust funds). Under these forms of funding the transfer of funds is linked to the achievement of pre-defined goals or disbursement-linked indicators. The funds thus transferred are managed in accordance with the budgetary procedures of the partner country and/or the PEA generally without monitoring of individual Tender Processes.

Unless otherwise agreed, a fiduciary review of the procedures including the procurement system of the partner country and/or, the procedures and the capacities of the PEA by KfW take place prior to the signing of the Funding Agreement on the basis of the basic principles as outlined in Article 1.2.1 of these Guidelines. An overall positive result of this review is a precondition for indirect financing. Depending on the nature of the operation and the outcome of the review KfW may request the PEA to implement remedial actions and/or may intensify its monitoring.

### **1.6.10 Sanctions by KfW for Misprocurement**

Without prejudice to sanctions set out in Article 1.4. above in the case of an act of Sanctionable Practice, should the KfW reviews reveal at any time the non-compliance with the provisions of the Guidelines by the PEA, KfW is entitled to declare misprocurement and to exercise any of its rights under the Funding Agreement. Where appropriate KfW is entitled to cancel the part of the funds allocated to contracts which have not been procured in compliance with the provisions and is entitled to reimbursement or early repayment in full or in part.

For the avoidance of doubt, if a Contract is awarded following a No Objection, KfW is still entitled to declare misprocurement and to take the measures set out herein if it subsequently turns out that KfW's No-Objection was issued on the basis of incomplete, inaccurate or misleading

information provided by the PEA, or that the terms and conditions of the Contract were modified without KfW's No-Objection.

## 2. General Provisions for the Tender Process

### 2.1 Tender Procedures

The following types of Tender Procedures - in descending order of their level of competition - are available:

- International Competitive Bidding (ICB)
- National Competitive Bidding (NCB)
- Limited Competitive Bidding (LCB)
- Price Quotation
- Direct Award

All Contracts with an estimated value above the thresholds as per Article 2.1.1. shall be subject to International Competitive Bidding as standard procedure unless exceptions as per Article 2.1.2 to 2.1.5 apply. In any case, a Tender Procedure with a higher level of competition than requested as per Article 2.1.2 until 2.1.5 may be applied at the PEA's discretion.

The choice of Tender Procedure shall be outlined in the Procurement Plan.

#### 2.1.1 International Competitive Bidding

In the case of ICB, the Tender Notice is published internationally to attract international Persons to participate in the Tender Process. Contracts with an estimated value<sup>6</sup> above the thresholds below (ICB thresholds) shall be subject to ICB:

- 5,000,000 EUR (five million Euro) for Procurement of Works or Plant; and
- 200,000 EUR (two hundred thousand Euro) for Procurement of Goods, Consulting and Non-Consulting Services.

#### 2.1.2 National Competitive Bidding

In the case of NCB, the Tender Notice is published nationally. However, international Persons shall not be excluded from participation. NCB may be chosen for estimated Contract values below the ICB thresholds and exceptionally in duly justified cases for estimated Contract values above the ICB thresholds, provided that

- (1) adequate competition in terms of quantity and quality on national level is expected and
- (2) the Contract is most likely not of interest on international level in view of the scope of the Contract and its implementation conditions (e.g. project size, logistical reasons, price level).

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<sup>6</sup> Amounts are inclusive of any options and net of value added taxes (VAT). KfW might exceptionally agree to increased ICB thresholds in duly justified cases.

### 2.1.3 Limited Competitive Bidding

In the case of LCB, the Tender Process is restricted to a limited number of preselected, qualified Persons, which are invited to submit an Offer.

In general, not less than three qualified Persons shall be requested to submit an Offer. To this end, the PEA will present to KfW a list of the proposed Persons from which Offers will be solicited plus a cost estimate, and will demonstrate their qualification for the envisaged activity i.e. overall experience, human resources, financial resources and expertise in relation to the subject of the Contract. Where insufficient information is available, Bidders shall be requested to submit such qualification details together with the Offers solicited.

LCB may be chosen

- (1) for Contract amounts below the ICB thresholds if a NCB Tender Procedure would be inappropriate in view of the Contract amount and this is permitted by the Public Procurement Regulation or,
- (2) for Contract amounts above the ICB thresholds if only a very limited number of Persons is capable of meeting the requirements of the Contract content and this can be demonstrated by extensive market knowledge or,
- (3) a fair competition is unlikely in view of the respective market situation (e.g. profit versus non-profit organisations) independent of the Contract amount.

### 2.1.4 Price Quotation

In the case of Price Quotation, at least three preselected qualified Persons are requested to submit an Offer. The request for quotation shall specify the technical requirements, other relevant information and the evaluation method. The selection of the Contractor is generally based on the lowest price evaluation method.

Price Quotation may only be chosen for the procurement of highly standardised commercially obtainable off-the-shelf Goods and Non-Consulting Services, that do not require elaborated specifications/task descriptions by the PEA, nor elaborated technical Offers by the Bidders (e.g. standard vehicles, office supplies, standard computer hard- and software, transport and distribution of Goods, topographical survey, food supplies). The composition of the Bidders to be invited shall ensure a fair competition, i.e. preferably only local or only international Bidders.

### 2.1.5 Direct Award

In the case of Direct Award, only one preselected, qualified Person is invited to submit an Offer on the basis of a functional description, a specification or terms of reference, as the case may be, elaborated by the PEA.

The PEA shall verify the appropriateness and competitiveness of the Offer as well as the Contract to be concluded and demonstrate the qualification of the selected Bidder. The outcome of this verification procedure must be documented in writing.

Direct Award may be chosen in particular in the following cases:

- (1) Amendment of existing contracts, that means if
  - a) the total aggregate amount of the amendments is significantly lower than the initial Contract value (as a general rule less than 25 % of the initial Contract value), or the amendment does not justify a new competitive Tender Process, and
  - b) the nature and scope of the amendment does not result in a substantial modification

of the initial Contract content;

- (2) In follow-on phases of a project, if all the following criteria are fulfilled
  - a) where attention was drawn to this potential follow-on phase in the precedent Tender Documents,
  - b) provided that the first Contract was awarded on a competitive basis,
  - c) the Contractor's performance in the previous phase is satisfactory, and
  - d) the specifications or the terms of reference are largely identical;
- (3) Following a cancellation of a Tender Process as per Article 2.5.15, provided
  - a) no fundamental changes have been made to the original terms and conditions of the Contract, and
  - b) a further competitive tender procedure is unlikely to produce appropriate results;
- (4) For reasons for extreme urgency,
  - a) brought about by unforeseeable events not attributable to the PEA (e.g. in the cases of natural disaster, crisis or conflict), and
  - b) where it is impossible to comply with the time limits set for the other procedures and laid down in Articles 2.4.10;
- (5) Unique selling point, that means, if due to a specific combination of expertise and experience required, technical reasons/features or the protection of exclusive rights (e.g. patent, copyright), the Contract can only be performed by a specific Person;
- (6) Contracts with an estimated Contract amount below 20,000 EUR (twenty thousand Euro).

## 2.2 Two-Stage and Single-Stage Selection

During a Tender Procedure in general Bidders are required to submit the following documents

- (1) Evidence of qualification
- (2) Technical part of an Offer and
- (3) Financial part of an Offer

either in a single stage or in two stages.

### Two-Stage Selection

In a Two-Stage Selection the Tender Process is divided into two consecutive stages:

In the first stage, the Prequalification, Applicants are required on the basis of a Request for Application (RfA) to demonstrate their qualification in terms of experience, capacity and resources to perform the Contract. Applicants which fulfil the requirements as per RfA are considered prequalified.

In the second stage prequalified Applicants are invited to submit a technical and financial Offer.

### Single-Stage Selection

In a Single-Stage Selection the Tender Process is conducted in one stage, which means Bidders submit their evidence of qualification together with the technical and financial Offer.

Apart from that, the same criteria as laid down for the Two-Stage Selection apply.

### Selection Methods in different Tender Procedures

In the case of ICB and NCB both selection methods are applicable, and in the case of LCB, Price Quotation and Direct Award only the One-Stage Selection method applies.

For further details see Article 3.2 concerning selection methods for the procurement of Consulting Services, and Article 4.2 concerning selection methods for the procurement of Works, Goods, Plant and Non-Consulting Services.

## 2.3 One-/Two-Envelope Submission of Offers

The term one-/two-envelope submission refers to the way the technical and financial part of the Offer are submitted, either in one or in two separate envelopes. In a single stage selection without prior prequalification the technical part of the Offer includes the Bidder's evidence of qualification.

The submission form depends on the evaluation method as described in Article 3.4 and 4.4. Generally, one-envelope submission is adequate, if the evaluation is based on the lowest price. Two-envelope submission is required, if the Bidder's technical Offer is evaluated on a point-system. In such case, the technical Offer is opened and evaluated first while the financial Offer remains unopened which allows for an unbiased evaluation of the technical Offer. Upon finalisation of the technical evaluation the financial Offers of those Bidders who fulfilled the technical requirements indicated in the Tender Documents will be opened and evaluated further.

The financial Offers of the Bidders who did not fulfil the technical requirements remain unopened and shall be sent back to the Bidders or, if agreed upon, deleted in compliance with legal data protection requirements.

## 2.4 Preparation of the Tender Process

The following provisions shall be observed during the preparation of the Tender Process. The Tender Documents shall reflect the key information as of the latest version of the Procurement Plan.

### **2.4.1 Standard Tender Documents and Draft Contract**

The PEA is encouraged, especially in the case of an ICB, to use the SDOs (see Article 1.2.4 and 1.5). If the PEA is obliged to use other Tender Documents the RfA, RfP and ITB shall at least include the items as per Appendix 5.

Tender Documents shall include a draft Contract or at least inform on the major contractual and commercial conditions (e.g. payment terms, required guarantees, applicable law, provisions for price adjustment, if any, defects liability period, force majeure), which adhere to the contractual provisions as per Appendix 7.

### **2.4.2 Standards and Technical Specifications, Brand Names**

Standards and technical specifications shall be designed to ensure quality and performance of the contractual content while promoting the broadest possible competition. In the case of an ICB, the Tender Documents shall specify internationally accepted and widespread standards, e.g.

ISO/IEC or EN based standards. If such international standards do not exist or are inappropriate, national standards may be specified. In all cases, the Tender Documents shall state that equipment, material, or workmanship meeting other standards that are at least substantially equivalent to the specified standards will also be accepted.

Specifications shall be based on relevant technical characteristics and/or performance requirements. References to brand names, catalogue numbers, or similar classifications shall be avoided. If it is justified to specify a brand name or catalogue number of a particular manufacturer to clarify an otherwise incomplete specification, the words 'or equivalent' shall be added after such a reference to permit the acceptance of Offers for Goods that have similar characteristics and performance at least substantially equivalent to those specified.

#### **2.4.3 Registration and other Administrative Requirements**

In the case of ICB the Tender Documents shall provide for foreign participants in Tender Procedures the possibility of submitting documentary evidence of an equivalent nature to those required in the PEA's country. The registration of an Applicant/Bidder or the presentation of administrative documentary evidence in the country in which the Contract is implemented may be a condition precedent to the Award of Contract (in such case, this shall be stipulated in the Tender Documents), but the absence of documentary evidence at the stage of Prequalification or Submission of an Offer should not lead to an automatic rejection of the Application/Offer.

#### **2.4.4 Joint Ventures**

Applicants/Bidders may form JVs with domestic and/or foreign Persons to enhance their qualifications and capabilities. A JV may be for the long term (independent of any particular Contract) or for a specific Contract. Joint Ventures of Applicants/Bidders without joint and several liability of the partners are not acceptable. Applicants/Bidders shall be free to select their JV partners.

#### **2.4.5 Language**

In the case of procurement under ICB Tender Documents and Offers shall be prepared in one of the following four international languages at the PEA's discretion: English, French, Spanish or Portuguese. If the national language is different from these international languages, the Tender Documents may also be published in the national language<sup>7</sup> and Applicants/Bidders may be permitted to submit the documents in the national language in addition to the international language version. However, in the case of discrepancies, the text in the international language version of the documents shall prevail. The same applies to the Contract to be concluded and which shall be signed and binding in the international language only.

In the case of procurement under NCB, Tender Documents, Applications/Offer and the Contract to be concluded may be in the national language of the Partner Country only, if different from the four international languages. In such a case the PEA has the responsibility to furnish to KfW an accurate translation of documents subject to KfW's No-Objection in one of the four international languages, unless otherwise agreed.

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<sup>7</sup> The PEA bears responsibility for the translation and, if applicable, the respect of the copyright.

#### **2.4.6 Currencies**

The Tender Documents shall specify the currencies of the Offers, preferably EUR or the currency of the Funding Agreement. The PEA may specify in the Tender Documents that the part of the Offer reflecting local costs (to be incurred in the PEA's country) can be priced in local currency.

For the purpose of Offer evaluation and comparison, the Tender Documents shall indicate an official source for the exchange rates and a reference date (usually prior to the deadline for the submission of bids or proposals) which shall be used to convert all Offers into one currency.

#### **2.4.7 Taxes and Duties**

The PEA shall inform Bidders in the Tender Documents on relevant regulations on local taxes and public duties in the Partner Country or if Contractors and its staff are exempted from local taxation. Only identifiable local taxes and public duties directly attributable to a Contract shall be considered. Taxes and duties to be paid outside the Partner Country by the Contractor and its staff are considered to be included in the overhead cost calculation.

In general, Bidders shall indicate in their Offer separately the provisional sums for taxes and duties to be paid in the Partner Country and these provisional sums shall not be considered in the financial evaluation. .

The Contract concluded with the winning Bidder shall reflect the relevant provisions of the Tender Documents including the handling of taxes, the mode of payment and remuneration of local taxes and public duties as well as provisions for changes in the relevant national legislation after Contract Award (for details see Appendix 7).

#### **2.4.8 Guarantees and Securities**

Any advance payment by the PEA is conditional upon the Contractor submitting an advance payment guarantee for the same amount under terms accepted by the PEA and should not exceed twenty (20) percent of the Contract amount. The PEA may, however, in agreement with KfW, decide to waive this condition depending on the nature or the volume of the Contract and, subject to this being specified in the Tender Documents.

A bid security, a performance security and a retention money security in accordance with the usual business practice of the particular sector are generally required in the case of Works, Plant, Goods and Non-Consulting Services Contracts but generally not in the case of Consulting Services Contracts (details and specimen see Appendix 7 and 8).

#### **2.4.9 Fees for Tender Documents**

If a fee is charged for the Tender Documents it shall be reasonable and reflect only the effective cost of their printing and delivery to prospective Applicants/Bidders.

#### **2.4.10 Submission Deadlines**

In order to allow Applicants/Bidders to carefully prepare their Application/Offer and to arrange the shipment in time, especially for international Applicants/Bidders, the minimum time periods for the submission of Applications and Offers in ICB Tender Procedures shall be as follows:

- (1) preparation of an Application (from the date of the publication of the latest Tender Notice until the Application submission deadline): minimum **30 calendar days**; and

- (2) preparation of a technical and financial Offer (from the date of the publication of the Tender Notice or the sending of the RfP/ITB to the Bidders or prequalified Applicants until the deadline for submission of Offers): minimum **45 calendar days**.

In the case of complex Contracts, the minimum time for the preparation of a technical and financial Offer shall be increased appropriately. In duly justified cases (e.g. intensive clarifications or amendments to Tender Documents) a prolongation of the submission period may be granted, however such an extension should not take place later than 10 calendar days before the submission deadline. Tender Documents shall be made available during the entire submission period.

Any reduction of the above-mentioned minimum time periods for the submission of Applications and Offers require KfW's prior No-Objection.

In the case of an NCB the relevant provisions of the Public Procurement Regulation applies, in the case of LCB and Price Quotation the deadline for submission of Offers may be reduced appropriately, but should be no less than **20 calendar days**. Consequently, the deadline for clarification requests shall be adapted accordingly. For Direct Award the submission deadline shall be appropriate.

Applications/Offers received after the submission deadline shall be rejected, unless late submission was due to events of force majeure (e.g. natural disasters, war). Late submission due to courier services and/or custom clearance shall not be considered as events of force majeure.

#### **2.4.11 Domestic Preference**

If applicable laws require the PEA to revert to domestic preference, KfW may agree to it, on the condition that

- (1) it is conducted in a fully transparent manner by applying a margin of preference for Goods produced locally, or for contractors for Works from the PEA's country, and that it is expressly provided for in the Tender Documents, and
- (2) it shall not lead to a de facto exclusion of foreign competition.

In any case, the domestic preference margin shall not exceed 15 % of the import price excluding taxes in the case of procurement of Goods or 7.5 % of the price in the case of procurement of Works and shall not be applicable to Consulting Services.

## **2.5 Execution of the Tender Process**

The following provisions shall be observed during the execution of the Tender Process.

### **2.5.1 Publication of Tender Notice**

In the case of ICB and NCB the PEA shall arrange a public tender notice, inviting Persons to participate in a Tender Process. The tender notice shall contain at least a brief summary of the tender content and timelines (see Appendix 3). The tender notice is regarded as the official start of a Tender Process.

Tender notices for ICB procedures are mandatorily to be published on the GTAI website, [www.gtai.de](http://www.gtai.de), and on a national level in accordance with the applicable Public Procurement Regulations.

Tender notices for NCB procedures shall be published at national level in accordance with the applicable Public Procurement Regulations.



The publication of tender notices may be in electronic or printed form and be complemented by publication in specialised media. However, the publication of tender notices in different media shall be made at the same time and in no case prior to GTAI's publication.

LCB, Price Quotation and Direct Award procedures do not require the publication of a tender notice.

For the minimum content of a Tender Notice see Appendix 3.

### **2.5.2 Communications, Clarification of Tender Documents and Pre-Bid Meeting**

Communications between the PEA and (potential) Applicants/Bidders during the different stages of the Tender Process shall be in writing<sup>8</sup> and the PEA shall treat information relating the examination, clarification, and evaluation of Applications/Offers in such way as to avoid disclosure of their contents to any other (potential) Applicant/Bidder participating in the Tender Process, or any other party not authorised to have access to this type of information, until the PEA notifies the outcome of the evaluation of Applications/Offers, in accordance with the procedures in the applicable Tender Documents.

Potential Applicants/Bidders may request clarifications to the Tender Documents prior to the deadline for clarification requests stated in the Tender Document. Requests shall be sent in writing to the PEA's address indicated in the Tender Documents. Any other enquiries or interventions by Applicants/Bidders are prohibited and will lead to the exclusion of the Applicant/Bidder.

The PEA's response to a request for clarification shall not disclose information which might give an unfair advantage. Any modification to issued Tender Documents shall be introduced in the form of an addendum to the Tender Documents. All clarifications and addenda of Tender Documents shall be in writing. They shall be sent simultaneously to each recipient of the original Tender Documents or published in the same medium as the tender notice in sufficient time to enable potential Applicants/Bidders to take appropriate action, which means no later than ten (10) calendar days prior to the submission deadline as per Article 2.4.10.

The Tender Documents may state that a pre-bid meeting and/or site-visit for all potential Bidders will be organised by the PEA during the bid submission period in order to obtain on-site information or for the inspection of the available documents. These meetings are exclusively intended to familiarise potential Bidders with the site conditions and the available working documents and shall under no circumstances provide any competitive advantages. The PEA shall keep a written record of such meetings.

### **2.5.3 One Application/Offer per Applicant/Bidder**

Applicants/Bidders (including individual members of any JV) shall submit only one Application/Offer, either in their own name or as part of a JV in another Application/Offer. If an Applicant/Bidder, including any JV member, submits or participates in more than one Application/Offer, all Applications/Offers concerned shall be rejected.

Subcontractors may participate in the capacity as Subcontractor in more than one Application/Offer, unless competition would be adversely affected and this is reflected in the Tender Documents. However, if a Subcontractor's qualification has been taken into account for

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<sup>8</sup> The term "in writing" means communicated or recorded in written form. It includes, e.g. mail, e-mail, fax or communication through an electronic procurement system (provided that the electronic system is accessible, secure, ensures integrity and confidentiality, and has sufficient audit trail features).

the qualification of an Applicant this Subcontractor shall only participate in the respective Proposal. If a Subcontractor submits an Application/Offer in its own name, all Applications/Offers concerned shall be rejected.

Key Experts in Proposals for Consulting Services shall not participate in more than one Proposal, unless competition would be adversely affected and this is reflected in the Tender Documents. In the case the same Key Expert<sup>9</sup> appears in more than one Proposal, all Proposals concerned shall be rejected.

#### **2.5.4 Opening of Applications/Offers**

The opening of Applications/Offers shall in any case be conducted by a committee consisting of at least two independent members.

In the case of procurement of Works, Goods and Plant the opening of Applications/Offers shall be conducted in public in the presence of representatives of the Applicants/Bidders that wish to attend. Such a meeting shall be held very shortly after the deadline time for the submission of the Applications/Offers at the place and time specified in the Tender Documents. The opening shall take place regardless of the number of Applications/Offers received, provided that the Applications/Offers are received before end of the Application/Offer submission deadline.

When documents (evidence of qualification, technical and financial Offer) are to be submitted in separate envelopes with subsequent evaluation, an opening session shall take place for each envelope. The opening of the second envelope requires KfW's prior No-Objection to the evaluation result of the preceding envelope, unless otherwise agreed.

In the public opening session the following shall be read aloud:

- the name of the Applicant/Bidder and

at the public opening of the financial Offers

- the price of the Offer,
- including any alternative Offers or discounts.

For each (public or non-public) opening session minutes shall be prepared and signed by all members of the committee, and optionally by the representatives of the Bidders that wish to do so.

#### **2.5.5 Preliminary Examination of Applications/Offers**

The preliminary examination is to verify if the Applicants/Bidders are eligible and if the Applications/Offers received are substantially complete as required by the Tender Documents before proceeding to the detailed evaluation. Applications/Offers from non-eligible Applicants/Bidders or that are not substantially complete shall be rejected. Applications/Offers shall not be rejected for minor technical or administrative nonconformities.

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<sup>9</sup> An individual (natural Person) which is not part of the regular staff ("freelancer") but engaged temporarily as Key Expert for the relevant Contract shall not be considered as Subcontractor in this context.

## **2.5.6 Evaluation of Evidence of Qualification**

Following the preliminary examination, the next step in the evaluation of an Application/Offer is the Applicant's/Bidder's evidence of qualification. Depending on the nature of the Contract the evaluation of the qualification might be on a pass/fail basis and/or through a scoring system.

### Qualification of Applicants/Bidders

The evaluation of the evidence of qualification focuses solely on the respective Applicant/Bidder and shall not take into account any qualifications of its subsidiaries, parent entities, affiliates or any other Person different from the Applicant/Bidder, unless they are associated in the form of a JV with joint and several liability.

### Qualification of Subcontractors

The qualification of Subcontractors is usually not taken into account unless the Applicant explicitly requests for it. In such a case the Applicant is obliged to include the respective performance of the Subcontractor bindingly in the Offer as indicated in the Application.

### Modifications after Submission of Application

In the case of Two-Stage Selection, prequalified Bidders shall request PEA's approval for any modification in their legal status or in the composition of a JV. Such approval shall not be rejected by the PEA unless the proposed modification would result in a deterioration of the position of the Bidder with respect to the initial qualification.

For further details on qualification and evaluation see Article 3.3 for procurement of Consulting Services, and Article 4.3 for procurement of Works and Plant.

## **2.5.7 Information and Publication of Prequalified Applicants**

The Employer shall notify all Applicants in writing of the names of those Applicants who have been prequalified. In addition, those Applicants who have been disqualified will be informed separately.

In the case of an ICB and NCB the list of prequalified Applicants who will be invited to submit an Offer (prequalification-result notice), shall be published by the PEA after KfW's No-Objection to the prequalification evaluation report on GTAI's website, in the case of an ICB, and preferably in the same medium in which the original tender notice was published, in the case of an NCB.

For the minimum content of a Prequalification notice please see Appendix 3.

## **2.5.8 Evaluation of Offers**

The evaluation criteria and methodology shall be appropriate in view of the type, nature, market conditions, and complexity of the Contract content as detailed in Articles 3.4 and 4.4. The evaluation of the Offers shall strictly follow the methods and criteria as specified in detail in the Tender Documents.

In the case of Two-Stage Selection, criteria evaluated in the Prequalification shall not be evaluated a second time. However, the PEA may request Bidders to confirm that their qualification as of their Application remains unchanged.

The technical evaluation of Proposals/Bids is to verify if and to which extent the Offer fulfils the technical requirements stipulated in the Tender Documents. Depending on the evaluation methodology the technical evaluation is on a pass/fail basis or on a point system.

The financial evaluation is to correct arithmetical errors, to verify if the offered technical content and the financial Offer correspond and for price adjustments due to missing items or due to the evaluation method to the extent specified in the Tender Documents.

#### Abnormally Low Bids

An abnormally low Bid is one in which the Offer price, in combination with other elements of the Offer, appears so low either in comparison with the PEA's estimate or with the average of competing Offer or in the case of Consulting Services with the estimated expert-month that it raises material concerns with the PEA as to the capability of the Bidder to perform the Contract for the offered price. The PEA shall ask for written clarifications and shall require detailed price breakdown from the Bidder concerned

The Offer in question shall be rejected in the absence of satisfactory answers from the Bidder to those requests for clarification or if the detailed price breakdown evidences one or several inconsistencies between the technical Offer and the price offered and therefore reasonable doubts persist as to whether the required Contract content can be provided at the price offered and if this is reasonably expected to pose a considerable risk to the performance of the Contract.

#### **2.5.9 Clarification of Applications/Offers during Evaluation**

To assist in the examination, evaluation, and comparison of the Applications/Offers, the PEA may, at its discretion, ask Applicants/Bidders for a clarification, given a reasonable time for a response. Any clarification submitted by an Applicant/Bidder that is not in response to a request by the PEA shall not be considered. The PEA's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Offer shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the PEA during the evaluation of the Offers, in accordance with the Tender Document.

#### **2.5.10 Extension of Offer Validity**

If an extension of the Offer validity period is necessary, this shall not lead to changes in the Offer prices. The extension entitles the Bidders to withdraw their Offers upon expiry of the original binding period without allowing the bid bond to be drawn. KfW reserves the right to refrain from financing if the Tender Process is unduly delayed.

#### **2.5.11 Evaluation Report**

The PEA's evaluation committee shall prepare and sign a detailed report on the evaluation of Applications/Offers with the minimum content and in the format as described in Appendix 6.

The PEA shall submit to KfW the evaluation report and award recommendation in a timely manner to permit KfW's comment to be issued before expiry of the validity period. KfW reserves the right to refrain from financing if the report is not submitted in due time.

#### **2.5.12 Pre-Award Discussions**

The PEA shall award the Contract during the Offer validity period to the Bidder who's Offer has been evaluated as responsive, lowest evaluated Bid or highest ranked Offer.

In exceptional cases, the procurement can give rise to discussions with the first ranked Bidder after final Offer evaluation prior to Award of Contract.

The Bidder shall not be required as a result of the pre-award discussions to provide additional Consulting Services, Works, Goods, Plant or Non-Consulting Services that are not set out in the Tender Documents or to modify its initial Offer as a condition to the Award of Contract nor to modify unit prices except for the correction of arithmetical or computational errors.

The pre-award discussions shall also determine the taxes and duties that shall be due locally (they may be estimated on a provisional basis in the financial Offer but are not to be evaluated) and decide the manner in which they will be paid for, taking into account the provisions set out in the RfP/ITB.

The content of such pre-award discussions shall not be legally binding before the Award of Contract. It is highly recommended to integrate modifications resulting from such discussions to the relevant parts of the contractual documents (e.g. time schedule, terms of reference, specifications, price schedules, Contract) as far as possible, otherwise the signed minutes of pre-award discussions shall form part of the Contract.

In the case of failure, the PEA may enter into pre-award discussions with the next ranked Bidder, subject to prior No objection by KfW.

#### **2.5.13 Information of Bidders and Award of Contract**

Upon successful completion of the pre-award discussions, if any, the PEA shall inform all Bidders on the result of the Tender Process in writing and subsequently award the Contract to the successful Bidder.

The information sent to the Bidders shall contain the name and the Contract amount of the winning Bidder and, if relevant, the combined Offer scores of the winner and the respective Bidder.

#### **2.5.14 Publication of the Result of the Tender Process**

In the case of an ICB and NCB upon completion of the Tender Process the PEA shall publish the result of the Tender Process (award notice) on GTAI's website, in the case of an ICB, and preferably in the same medium in which the original tender notice was published, in the case of an NCB.

For the minimum content of the award notice please see Appendix 3.

#### **2.5.15 Cancellation of a Tender Process**

A Tender Process shall be considered unsuccessful when

- (1) there has been a lack of competition, or
- (2) all Offers received are not substantially compliant with the requirements of the Tender Documents, or
- (3) none of the technical Proposals meet the minimum requirements, or
- (4) all the offered prices are substantially higher than the latest updated cost estimate or the available budget.

A lack of competition shall not be determined solely on the basis of the number of Offers received. Even when only one Offer is submitted, the Tender Procedure may be considered valid, if (i) the procurement was satisfactorily published, (ii) the qualification criteria were not unduly restrictive and (iii) prices are reasonable in comparison to market values.

If the PEA rejects all Offers, the PEA shall analyse the causes that led to this situation (inadequate publication, prequalification requirements, conditions and scope of Contract, design and specifications, scope of services, etc.) and remedy this before relaunching the RfP/ITB. The PEA shall not reject all Offers and relaunch a RfP/ITB using the same unmodified Tender Documents solely for the purpose of seeking lower prices.

If the rejection is due to non-compliance with the Tender Documents or technical requirements, the PEA should after thorough investigation adjust the Tender Documents or the technical requirements. In such case, the PEA may request new Offers from all of the initially prequalified Applicants if a Prequalification had taken place or those that submitted an Offer in response to the initial RfP or ITB.

If the price of the lowest evaluated and compliant Offer significantly exceeds the latest cost estimate or the available budget, the PEA shall investigate the reasons for such overrun and envisage increasing the budget, if the increased prices are justifiable or re-launching the RfP/ITB as per the provisions above. Alternatively, the PEA may enter into negotiations with the lowest evaluated Bidder to seek to obtain a satisfactory Contract on the basis of a reduction of the scope of the Contract and/or a modification to the sharing of risks and responsibilities in order to reduce the Contract price. This is only allowed when the modifications envisaged do not call into question the initial ranking of Offers following the evaluation.

The cancellation of a Tender Process and the subsequent steps require KfW's prior No-objection.

#### **2.5.16 Publication of Tender Process Cancellation**

In the case of an ICB and NCB upon cancellation of a Tender Process the PEA shall publish corresponding information (cancellation notice) on GTAI's website, in the case of an ICB, and preferably in the same medium in which the original tender notice was published, in the case of an NCB.

For the minimum content of the cancellation notice please see Appendix 3.

#### **2.5.17 Debriefing**

Unsuccessful Applicants or Bidders may make a written request to the PEA for a debriefing. The PEA shall provide a timely and meaningful debriefing to the Applicant/Bidder informing on major shortcomings and weaknesses of the Application, respectively on the Offer in relation to the winning Bidder. No additional information shall be disclosed, the debriefing shall not include point-by-point comparisons with other Applications/Bidder's Offers and information that is confidential.

### **2.6 Procurement Related Complaints**

Applicants/Bidders who consider that actions or decisions by the PEA in the course of the Tender Process result in an unfair disadvantage may file a procurement related complaint. Unless the complaints mechanism in the Public Procurement Regulation provides otherwise, such a complaint shall be addressed in writing to the PEA, with copy to KfW, detailing the grounds for the complaint with reference to the applicable provisions in the Tender Documents or other applicable regulations. Upon receipt of such a complaint the PEA shall promptly handle the complaint and respond to the complainant in writing detailing the result of the complaint's handling. Should the handling of the complaint by the PEA not be possible within three (3) working days after the receipt of the complaint the PEA should at least acknowledge its receipt and respond to the complainant with the results of the complaint's handling within ten (10) working days from the acknowledgment of the receipt.

The PEA shall ensure that all complaints and its handling in a KfW financed Tender Process are brought to the knowledge of KfW for monitoring in due time. The award of a Contract shall not take place until all complaints have been handled adequately.

## 2.7 Electronic Procurement

The PEA may use an electronic system to distribute tender documents, provided that KfW is satisfied with its adequacy. If Tender Documents are distributed electronically, the electronic system shall be secure to avoid modifications to the Tender Documents and shall not restrict the access of Applicants and Bidders to the Tender Documents. The PEA may also use an electronic system permitting Applicants and Bidders to submit Applications and Offers by electronic means, provided KfW is satisfied with the adequacy of the system, including, inter alia, that the system is secure, maintains the confidentiality and integrity of Applications and Offers submitted, and employs acceptable management procedures to establish date and time of submission, and facilitate modification and withdrawal.

The use of e-reverse-auctions as part of an e-procurement system shall be limited to highly standardised and unambiguously specified Goods or Non-Consulting Services if there is adequate competition among Persons and the lowest price only is considered for award.

## 3. Provisions for Procurement of Consulting Services

### 3.1 Tender Agents and Agency Contract

At the PEA's discretion or upon KfW's recommendation assistance from a specialised consultant (so-called tender agent) may be obtained for certain steps of the Tender Process. With the exception of the Award of Contract, the assistance may range from individual support to a complete delegation of the PEA's respective tasks and shall be agreed upon in the Contract between PEA and Tender Agent. The No-Objection provisions as set out in Article 1.6 apply unchanged.

In exceptional cases, KfW may assist the PEA in the Tender Process upon express request and based on an agency contract between PEA and KfW. If not agreed otherwise, such an agency contract encompasses the delegation of the entire Tender Process to a tender agent with KfW signing the Contract on behalf of the PEA.

### 3.2 Two-Stage Selection for Consulting Services

In the case of an ICB and in the case of an NCB above the thresholds as per Article 2.1.1 the Two-Stage Selection with Prequalification of Applicants is the standard selection procedure for the procurement of Consulting Services. A Single-Stage Selection is not recommended in such cases as the latter may result in a reduced number of Bidders due to the fact that the elaboration of an Offer comprising the evidence of qualification, a technical and financial Proposal represents a significant effort without increasing the likelihood of Award of Contract.

### 3.3 Pre-Qualification for Consulting Services

In order to establish the qualification of eligible Applicants to perform the Contract the following criteria shall be taken into account:

- (1) Overall financial situation and minimum turn-over in relation to the estimated Contract value;

- (2) Experience in implementing similar projects in the subject matter, in the relevant sector,, function and role as per the requirements of the project (e.g. studies, surveys, design, tendering and contracting, technical/organisational/financial project management, ESHS, maintenance and operation, specialised technical/legal/management expertise), generally within the last five years;
- (3) Geographical experience in similar countries or environments;
- (4) Access to expertise relevant for the assignment, possibly supplemented with external resources and available own human resources and capacities, including backstopping capacities.

The qualification requirements shall be chosen in relation to the size and complexity of the Contract content.

Applications are considered responsive if they comply with all pass/fail-criteria and score at least 70 % of the total points. Only Applicants who submitted a responsive Application are considered as qualified to perform the Contract. A ranking of all qualified Applicants will be established based on their score and if not otherwise laid down in the Tender Documents, the five top ranked Applicants shall be invited to submit a Proposal in the second stage. Should the number of prequalified Applicants be below the predefined number as per Tender Documents the Tender Process may be continued with these prequalified Applicants.

For further details see Appendix 4 and KfW's SDOs<sup>10</sup>,

### 3.4 Evaluation Methods for Consulting Services

The following evaluation methods may be used for evaluation of Proposals, with Quality and Cost-Based Selection (QCBS) being the recommended standard method.

#### 3.4.1 Quality and Cost-Based Selection (QCBS)

The two-envelope submission applies to QCBS.

##### Technical Evaluation

The technical evaluation shall focus on the proposed concept and methodology as well as on the proposed staff for the execution of the Contract as detailed in Appendix 4 Technical Proposals are considered responsive if they achieve a technical score of at least 75 % of the total points for the technical Proposal. Non-responsive technical Proposals are rejected at this step.

##### Financial Evaluation

If payments are based on agreed hourly, daily, weekly, or monthly rates for staff and on reimbursable items using actual expenses and/or agreed unit prices (time-based Contract) as per RfP, the evaluation committee will (a) correct any computational or arithmetical errors and adjust the prices if they fail to reflect all inputs, which, in accordance with the RfP have to be indicated and priced separately, using the highest rates for the corresponding items indicated in the financial Proposals of competing Proposals.

In the case of a discrepancy between the technical and financial Proposals in indicating quantities of input, the technical Proposal prevails and the evaluation committee shall correct the

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<sup>10</sup> For further details about the evaluation of qualification criteria see KfW's SDOs available at [www.kfw-Entwicklungsbank.de](http://www.kfw-Entwicklungsbank.de)



quantification indicated in the financial Proposal so as to make it consistent with that indicated in the technical Proposal, apply the relevant unit price included in the financial Proposal to the corrected quantity, and correct the total Proposal cost.

If payments are linked to outputs/deliverables, such as studies, design services, elaboration of Tender Documents (lump-sum Contract) as per RfP, the Consultant is deemed to have included all prices in the financial Proposal and therefore no price adjustments shall be made. The total price, net of taxes shall be considered as the offered price.

If the Contract combines time based and lump sum services the evaluation shall apply these provisions accordingly.

Notwithstanding the above, the offered price may be adjusted for reimbursable items to allow for comparison, but only for such items explicitly requested to be offered in the RfP.

### Weighting

The weighted technical score of a technical Proposal will be calculated by multiplying the technical score of the respective Proposal with the technical weight (in percent).

The weighted financial score of a financial Proposal will be calculated by multiplying the ratio of the evaluated price of the lowest financial Offer to the evaluated price of the respective financial Proposal with the financial weight (in percent).

The overall score will be calculated by summing up the technical and financial score per Proposal and the Proposal selected for Award of Contract is the one that obtains the highest overall score. The weightings should generally be 80% for the technical Proposal and 20% for the financial Proposal (for more Details see Appendix 4).

#### **3.4.2 Least Cost Based Selection (LCS)**

The Contract is awarded to the lowest-priced, substantially responsive Proposal. A Proposal is considered responsive, if it complies with the minimum requirements as defined in the Tender Documents. This selection method may only be envisaged for standard, non-complex Consulting Services of limited cost (e.g. translation work).

#### **3.4.3 Quality Based Selection (QBS)**

The two-envelope submission applies to QBS.

The QBS method may be used on exceptional basis for the procurement of Consulting Services which cannot be functionally described, are not yet marketable and require significant creative input by Bidders. This method may be used for complex projects or projects with major technical impacts, but in this case, caution is required as it carries a risk of technical overpricing and requires an extremely good knowledge of market prices on the part of the PEA in order to conduct the financial evaluation properly. It may also be used for the short-term recruitment of individual consultants with limited size, if the rates for such services are well known.

The Contract is awarded to the highest scored technical Proposal.

#### **3.4.4 Fixed Budget Based Selection (FBS)**

A maximum budget is indicated in the RfP and the highest scored technical Proposal is selected, provided that the price Proposal is within the budget. The maximum budget must be determined appropriately (neither overestimated nor underestimated on the basis of a detailed assessment of

the expert-months/days required and of market prices). Subject to this important reservation, this method may be worthwhile, notably in the case of small studies and simple services

### 3.5 Availability and Replacement of Proposed Key Staff before Award of Contract

With the submission of the Proposal the Bidder confirms the unrestricted availability of the proposed Key Experts in accordance with the requirements defined in the Tender Documents in the case of Award of Contract. After finalisation of the evaluation and before Award of Contract or any pre-award discussions, whichever is first, the PEA shall request the consultant proposed for Award of Contract to confirm the availability of the proposed Key Experts.

Should any of the proposed Key Experts during the initial Proposal validity period become unavailable for duly justified reasons beyond the control of the consultant (e.g. sickness or accident), the consultant shall propose an alternative expert with an equal or better qualification. If the replacement Key Expert's qualification is not equal or better than the qualification of the initial candidate the Proposal shall be rejected.

If an extension of the Proposal validity period becomes necessary, Bidders shall be requested to confirm the availability of the Key Experts along with their response to the extension request by the PEA. At this stage Bidders shall be allowed to propose replacement Key Expert(s) without justification. The replacement Key Expert(s) shall have equal or better qualification otherwise the Proposal shall be rejected.

## 4. Provisions for Procurement of Works, Plant, Goods & Non-Consulting Services

### 4.1 Engagement of a Consultant

Planning, design, tendering, contracting and implementation supervision of Works, Plant and Goods Contracts requires considerable and frequently interdisciplinary expertise and absorbs significant resources. Therefore, KfW highly recommends the engagement of specialised and experienced consultants to assist the PEA during project preparation and implementation.

### 4.2 Single- and Two-Stage Selection

For Works and Plant Contracts, whether a Single or a Two-Stage Selection is applied depends on the nature and complexity of the assignment.

For Goods and Non-Consulting Service Contracts generally a Single-Stage Selection is appropriate.

In any case only Bidders with adequate qualification, experience and financial capacity in relation to the Contract content and volume shall be considered for the evaluation of Bids according to the provisions included in the Tender Documents.

### 4.3 (Pre-)Qualification for Works and Plant Contracts

In order to establish the qualification of eligible Applicants/Bidders to perform the Contract the following criteria shall be taken into account:

- (1) Overall financial situation and minimum turn-over in relation to the estimated Contract

value, including pending litigation,

- (2) General and specific construction experience in implementing similar projects, generally within the last five years, and
- (3) Experience, capacity and handling of environmental, health and safety (ESHS) issues, with special focus on occupational health and safety (OHS) on site. Depending on the ESHS risks the Tender Documents shall include a minimum score/level to be achieved by Applicants/Bidders.

The qualification requirements shall be chosen in relation to the size and complexity of the Contract and shall not unduly limit the competition.

All Applicants/Bidders considered qualified will be invited to submit a Bid in the case of Two-Stage Selection, or their Bids will be considered further in the case of Single-Stage Selection.

#### 4.4 Evaluation Methods for Works, Plant, Goods and Non-Consulting Services

##### 4.4.1 Lowest Price Evaluation

When applying the lowest price evaluation method, the Contract will be awarded to the Bidder who is qualified to perform the Contract and whose financial Bid has been determined to be the responsive, lowest evaluated Bid (after correction of arithmetical errors) and is substantially responsive to the requirements contained in the Tender Documents.

This evaluation method is appropriate for Works Contracts for which a detailed design (including drawings, itemised bill of quantity and technical specifications) is provided in the Tender Documents. The lowest price evaluation method is also suitable for highly standardised off-the-shelf Goods and Non-Consulting Services.

This method relies on the price as award criterion.

##### 4.4.2 Bonus-Malus Adjusted Price Evaluation

This evaluation method is partly identical with the lowest price evaluation method. However, once the lowest evaluated price is determined this figure may be adjusted either by a factor below or above 1.0 or by a positive or negative price mark-up. The adjustment factor or the price adjustment is derived by comparing the values of technical parameters of major technical components offered by Bidders to reference values and calculate the adjustment accordingly as indicated in the Tender Document.

Such a method allows to take into account during the evaluation certain features or parameters of individual items of the Bid or the whole of it by charging such aspects financially with a bonus or a malus. For example when purchasing power transformers or generators the Tender Documents may specify a target efficiency ratio and during Bid evaluation each percent above or below that value will be credited or charged by a certain fixed amount or a percentage of the Bid price.

The method of such a price adjustment and the reference values shall be clearly defined in the Tender Documents and should be limited to few important items whose features or parameters are easily verifiable and measurable.

The award criterion of this evaluation method is the lowest adjusted price.

#### 4.4.3 Weighted Evaluation

In a weighted evaluation scheme each of the technical and the financial Bids are evaluated separately and are attributed a score. The weighted score of both are added up to the combined score. The Bid with the highest evaluated combined score will be awarded the Contract.

The application of such an evaluation scheme is suitable in the cases where the PEA provides in the Tender Documents a functional description of the Contract content instead of a detailed design. Bidders elaborate and submit on this basis a technical Bid of their own which is evaluated strictly in accordance with the criteria published in the Tender Documents.

The evaluation procedure follows the steps as indicated for QCBS for consultants outlined in Article 3.4.1. The Tender Documents shall specify a minimum score for the technical Bid to be considered as technically responsive. The weighting of the technical Bid should not exceed the weighting of the financial Bid.

#### 4.4.4 Life Cycle Cost Evaluation (LCC)

The LCC evaluation method takes into account the cost occurring during the whole life-cycle of the Contract content (e.g. Works, Goods, etc.) such as:

- (1) Investment cost (e.g. the purchase price incl. all associated cost elements),
- (2) Operation and maintenance cost (e.g. energy, consumables, spare parts, repair),
- (3) End of life costs (e.g. for removal, disposal, recycling) and costs attributed to environmental externalities (e.g. emissions of greenhouse gases or pollutants), to be considered only in exceptional cases, if the local market provides reliable and verifiable cost figures (end of life cost) or if internationally recognised calculation methods are used (environmental cost).

This evaluation method may be used when the additional cost of (2) and, if applicable (3) over the specified life of the Contract content are estimated to be considerable in comparison with the initial investment cost (1) and may vary among different Bids due to different technical solutions proposed by Bidders. The Tender Documents shall clearly and in detail specify the calculation methods and parameters (e.g. calculation period, discount rate and other factors and parameters to be taken into account). The application of the LCC evaluation method requires highly qualified expertise for the elaboration of Tender Documents and Bid evaluation.

#### 4.5 Alternative Bids

The Tender Documents may allow Bidders to submit alternative Bids, in order to minimise costs or permit technically attractive solutions. The Tender Documents shall, in such case, indicate clearly the evaluation method of such alternative Bids.

#### 4.6 Discounts

A Bid may include an unconditional discount, which is always taken into account during the evaluation. The Bid shall indicate the manner in which the discount is to be applied.

If the Bid is divided into several lots, Bidders may also offer one or several conditional discounts in the case they would be awarded several lots. In such a case, this discount shall only be taken into consideration under the terms indicated in the Tender Documents and provided that all Bids, for all lots, are submitted and opened at the same time.

#### 4.7 Transport and Insurance

Bidders shall submit their Bid according to the international rules established by the International Chamber of Commerce for the interpretation of commercial terms used for international trade (Incoterms). The Bids shall preferably be requested on the basis of CIP (Carriage and Insurance Paid to a named place of destination) for Goods.

The Contract content shall be insured to an appropriate and customary extent against risks that may arise during transport and the implementation of the project. Its replacement or recovery by means of the insurance must be possible. The insurance policies should be established in the currency of the relevant Contract.

#### 4.8 Force Account

Recourse to force account, that is the implementation of Works using the PEA's own personnel and equipment, may in certain cases be envisaged if it is the only available method, namely, but not exclusively, in the case of Works which cannot be quantified in advance, small and scattered Works (routine maintenance on an infrastructure network) or emergency Works, and is subject to KfW's prior consent.

To obtain KfW's prior consent, the PEA shall provide KfW with:

- (1) information justifying the use of force account,
- (2) information evidencing its capacity of performing the said work, and
- (3) the implementation schedule along with a breakdown of the estimated cost.

### **5. Procurement not subject to Public Procurement Regulations, Financial Intermediaries and Special Cases**

#### 5.1 Procurement not subject to Public Procurement Regulations

Certain PEAs may, due to their legal status, not be bound to the Public Procurement Regulations in the Partner Country (e.g. private banks and firms, privatised entities, NGOs, UN organisations). Subject to prior approval of KfW, the PEA may use their own internal procurement regulations or, in the absence thereof shall rely on the provisions of the Guidelines.

PEAs not subject to Public Procurement Regulations and having no internal procurement regulations may elaborate a project specific procurement manual, which presents the procedures they intend to apply for procurement of Consulting Services, Works, Goods, Plant, or Non-Consulting Services.

If PEAs apply their existing or newly elaborated procurement regulations, they shall confirm that these comply with the basic principles of the Guidelines as outlined in Article 1.2.1 and reflect commercial state-of-the-art business practice in the relevant sector. In the case of a conflict between the Guidelines and the PEAs procurement regulations KfW and the PEA will agree on appropriate provisions prior to any procurement.

KfW reserves the right to request the PEA to publish tender notices as outlined in Article 2.5.1 especially for major Contracts above the ICB thresholds.

The No-Objection provisions as laid down in these Guidelines apply accordingly as agreed upon between PEA and KfW.

## 5.2 Financial Intermediaries

In certain cases KfW's funding for infrastructure projects is provided via financial intermediaries to final beneficiaries who are subject to the Public Procurement Regulation due to their legal status (e.g. municipalities, state owned entities). In such cases KfW requires that the procurement procedures applied comply with the basic principles of the Guidelines as outlined in Article 1.2.1. Unless otherwise agreed in the Funding Agreement, the financial intermediary will monitor the procurement by the final beneficiaries and subsequently report on it as part of its regular reporting procedures to KfW.

For procurement undertaken by the financial intermediary for its own needs (e.g. Consulting Services, Goods) the provisions of the Guidelines apply.

## 5.3 Specific Case of Concessions and Output Based Contracts

In the cases where KfW finances projects implemented under a public concession or in which the Contractor is paid for outputs (e.g. BOT models, auctions, least cost subsidy selection, supply of energy), the following applies:

- (1) If the concessionaire or Contractor has been selected following a fair and transparent competitive procedure which is acceptable to KfW the said concessionaire or Contractor may freely procure Works, Goods, Plant, No-Consulting Services or Consulting Services for the fulfillment of the Contract using its own procedures unless the Tender Documents for the Contract provide otherwise; or
- (2) If the selection of the concessionaire took place without competition the provisions of the Guidelines shall apply.

## Appendices

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## Declaration of Undertaking

Reference name of the Application/Offer/Contract: ("Contract")<sup>11</sup>

To: ("Project Executing Agency")

1. We recognise and accept that KfW only finances projects of the Project Executing Agency ("PEA")<sup>12</sup> subject to its own conditions which are set out in the Funding Agreement it has entered into with the PEA. As a matter of consequence, no legal relationship exists between KfW and our company, our Joint Venture or our Subcontractors under the Contract. The PEA retains exclusive responsibility for the preparation and implementation of the Tender Process and the performance of the Contract.
2. We hereby certify that neither we nor any of our board members or legal representatives nor any other member of our Joint Venture including Subcontractors under the Contract are in any of the following situations:
  - 2.1) being bankrupt, wound up or ceasing our activities, having our activities administered by courts, having entered into receivership, reorganisation or being in any analogous situation;
  - 2.2) convicted by a final judgement or a final administrative decision or subject to financial sanctions by the United Nations, the European Union or Germany for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings; this criterion of exclusion is also applicable to legal Persons, whose majority of shares are held or factually controlled by natural or legal Persons which themselves are subject to such convictions or sanctions;
  - 2.3) having been convicted by a final court decision or a final administrative decision by a court, the European Union, national authorities in the Partner Country or in Germany for Sanctionable Practice in connection with a Tender Process or the performance of a Contract or for an irregularity affecting the EU's financial interests (*in the event of such a conviction, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this conviction is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*);
  - 2.4) having been subject within the past five years to a Contract termination fully settled against us for significant or persistent failure to comply with our contractual obligations during such Contract performance, unless this termination was challenged and dispute resolution is still pending or has not confirmed a full settlement against us;
  - 2.5) not having fulfilled applicable fiscal obligations regarding payments of taxes either in the country where we are constituted or the PEA's country;
  - 2.6) being subject to an exclusion decision of the World Bank or any other multilateral development bank and being listed on the website <http://www.worldbank.org/debarr> or respectively on the relevant list of any other multilateral development bank (*in the event of such exclusion, the Applicant or Bidder shall attach to this Declaration of*

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<sup>11</sup> Capitalised terms used, but not otherwise defined in this Declaration of Undertaking have the meaning given to such term in KfW's "Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partner Countries".

<sup>12</sup> The PEA means the purchaser, the employer, the client, as the case may be, for the procurement of Consulting Services, Works, Plant, Goods or Non-Consulting Services.



## Appendix 1

*Undertaking supporting information showing that this exclusion is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction); or*

- 2.7) being guilty of misrepresentation in supplying the information required as a condition of participation in the Tender.
3. We hereby certify that neither we, nor any of the members of our Joint Venture or any of our Subcontractors under the Contract are in any of the following situations of conflict of interest:
  - 3.1) being an affiliate controlled by the PEA or a shareholder controlling the PEA, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;
  - 3.2) having a business or family relationship with a PEA's staff involved in the Tender Process or the supervision of the resulting Contract, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;
  - 3.3) being controlled by or controlling another Applicant or Bidder, or being under common control with another Applicant or Bidder, or receiving from or granting subsidies directly or indirectly to another Applicant or Bidder, having the same legal representative as another Applicant or Bidder, maintaining direct or indirect contacts with another Applicant or Bidder which allows us to have or give access to information contained in the respective Applications or Offers, influencing them or influencing decisions of the PEA;
  - 3.4) being engaged in a Consulting Services activity, which, by its nature, may be in conflict with the assignments that we would carry out for the PEA;
  - 3.5) in the case of procurement of Works, Plant or Goods:
    - i. having prepared or having been associated with a Person who prepared specifications, drawings, calculations and other documentation to be used in the Tender Process of this Contract;
    - ii. having been recruited (or being proposed to be recruited) ourselves or any of our affiliates, to carry out works supervision or inspection for this Contract;
4. If we are a state-owned entity, and compete in a Tender Process, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.
5. We undertake to bring to the attention of the PEA, which will inform KfW, any change in situation with regard to points 2 to 4 here above.
6. In the context of the Tender Process and performance of the corresponding Contract:
  - 6.1) neither we nor any of the members of our Joint Venture nor any of our Subcontractors under the Contract have engaged or will engage in any Sanctionable Practice during the Tender Process and in the case of being awarded a Contract will engage in any Sanctionable Practice during the performance of the Contract;
  - 6.2) neither we nor any of the members of our Joint Venture or any of our Subcontractors under the Contract shall acquire or supply any equipment nor operate in any sectors under an embargo of the United Nations, the European Union or Germany; and
  - 6.3) we commit ourselves to complying with and ensuring that our Subcontractors and major suppliers under the Contract comply with international environmental and labour standards, consistent with laws and regulations applicable in the country of implementation of the Contract and the fundamental conventions of the International

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Labour Organisation<sup>13</sup> (ILO) and international environmental treaties. Moreover, we shall implement environmental and social risks mitigation measures when specified in the relevant environmental and social management plans or other similar documents provided by the PEA and, in any case, implement measures to prevent sexual exploitation and abuse and gender based violence.

7. In the case of being awarded a Contract, we, as well as all members of our Joint Venture partners and Subcontractors under the Contract will, (i) upon request, provide information relating to the Tender Process and the performance of the Contract and (ii) permit the PEA and KfW or an agent appointed by either of them, and in the case of financing by the European Union also to European institutions having competence under European Union law, to inspect the respective accounts, records and documents, to permit on-the-spot checks and to ensure access to sites and the respective project.
8. In the case of being awarded a Contract, we, as well as all our Joint Venture partners and Subcontractors under the Contract undertake to preserve above mentioned records and documents in accordance with applicable law, but in any case for at least six years from the date of fulfillment or termination of the Contract. Our financial transactions and financial statements shall be subject to auditing procedures in accordance with applicable law. Furthermore, we accept that our data (including personal data) generated in connection with the preparation and implementation of the Tender Process and the performance of the Contract are stored and processed according to the applicable law by the PEA and KfW.

Name: \_\_\_\_\_ In the capacity of: \_\_\_\_\_

Duly empowered to sign in the name and on behalf of<sup>14</sup>: \_\_\_\_\_

Signature:

Dated:

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<sup>13</sup> In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant/Bidder/Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

<sup>14</sup> In the case of a JV, insert the name of the JV. The person who will sign the application, bid or proposal on behalf of the Applicant/Bidder shall attach a power of attorney from the Applicant/Bidder.

## Procurement Plan

### User's Guidance Notes for the Preparation of a Procurement Plan

Article 1.6.2 of the Guidelines requires the PEA to prepare a Procurement Plan which identifies for each Contract to be financed in whole or in part by KfW:

- Contract type (Consulting Services, Goods, Works, Plant or Non-Consulting Services) and content,
- estimated Contract amount and the source(s) of funds,
- envisaged Tender Procedure and Single- or Two Stage Selection,
- envisaged standardised Tender Documents,
- type of review required by KfW (full or simplified review),
- estimated ESHS level (basic, elevated, high risk) per Contract as provisional indication at the time of first establishment of the procurement plan
- estimated date of tender publication or, in the case of limited competition, date of inviting firms to submit proposals.

For serial Contracts with identical content and procedures one single Contract might be included and explained in the comment column. In the case of programmes for which no individual Contracts can be identified in advance, the Procurement Plan may include the envisaged Tender Procedures and possibly thresholds for different types and values of Contracts as far as possible.

The Procurement Plan shall be initially created at least for the first 18 months as of the date of the Funding Agreement (Version 1) and shall be updated thereafter when necessary, but at least on an annual basis. Updates, amendments or modifications of the Procurement Plan are subject to KfW's renewed No-Objection.

Along with the Procurement Plan the PEA shall provide KfW with the respective rational or explanations in order to document compliance with the Guidelines (e.g. justification in the case of a LCB or a Direct Award).

The Procurement Plan is an annex to a separate agreement to the Funding Agreement or directly to the Funding Agreement, as applicable. An amendment to the Funding Agreement due to an update, amendment or modification of the Procurement Plan is necessary only, if they have significant implications on the Funding Agreement or imply significant increases of agreed budget items.

For the sake of clarity, KfW's No-Objection to changes in the Procurement Plan does not imply acceptance by KfW of the financing of new Contracts or the increased cost of Contracts unless such financing has been agreed upon by KfW as part of the cost and financing schedule in the Funding Agreement.

The establishment of a Procurement Plan is generally not required for prefinanced Contracts as per Article 1.6.8, for indirect financing as per Article 1.6.9 and funding through financial intermediaries as per Article 5.2.

**Procurement Plan**  
(Version No. \_\_\_\_\_, dated \_\_\_\_\_)

Serial No.	Procurement No. <sup>15</sup>	Type <sup>16</sup>	Short Description of Contract Content	Estimated Contract Amount <sup>17</sup>	Source of Funds <sup>18</sup>	Tender Procedure <sup>19</sup>	Stages <sup>20</sup>	Tender Documents <sup>21</sup>	Review by KfW <sup>22</sup>	ESHS risk level <sup>23</sup>	Estimated Tender Publication	Comments <sup>24</sup>
1	502530	C	Implementation Consultant	1.000.000 EUR	100% KfW	ICB	2	KfW	F	B	1.1.2019	
2	392015	C	ESHS Consultant	50.000 EUR	50% KfW 50% PEA	LCB	1	KfW	S	n/a	1.1.2019	
3	280912	W	Access Road	1.000.000 EUR	100 % PEA	NBC	1	PEA	F	E	1.10.2019	
4	n/a	W	2 Wind Turbines, 5MW each	10.000.000 EUR	100% KfW	ICB	2	KfW	F	NE	1.12.2019	
...												

Additional agreement(s): .....List of other procurement related general arrangements or exceptions, if any.

<sup>15</sup> KfW's Procurement No. for the respective Tender Process to be provided by KfW's procurement manager; "n/a" if not yet available.

<sup>16</sup> "C" for Consulting Services, "W" for Works, "G" for Goods, "P" for Plant and "NC" for Non-Consulting Services. Incl. Contracts contracted beforehand, if any.

<sup>17</sup> To be completed in the currency of the underlying Funding Agreement with KfW.

<sup>18</sup> Share (in %) of the Contract financed by KfW, through the PEA's own funds and/or other financing institutions.

<sup>19</sup> "ICB" for International Competitive Bidding, "NCB" for National Competitive Bidding, "LCB" for Limited Competitive Bidding, "Q" for Price Quotation and "DA" for Direct Award.

<sup>20</sup> "1" for Single-Stage Selection or "2" for Two-Stage Selection

<sup>21</sup> Institution whose standardised Tender Documents are used. It is recommended to use KfW's Standard Tender Documents.

<sup>22</sup> "F" for full review or "S" for simplified review.

<sup>23</sup> "B" for basic, "E" for elevated, "H" for high ESHS risk level or "n/a" if not applicable and "NE", if an ESIA/ESMP is not yet available. The ESHS risk level of a specific Contract is not necessarily identical with the Environmental and Social risk category of the whole project/programme. The level at project appraisal may be indicative and finalised when preparing the Tender Documents for the Contract. If available, the ESIA/ESMP should be consulted and KfW's Standard Tender Documents for further guidance.

<sup>24</sup> Contract related explanation / procedural arrangements (e.g. justification for direct award, One-/two-envelope, evaluation method, thresholds for Tender Procedures in programmes).

## Minimum Content of a Tender, PQ-Result, Contract Award and Cancellation Notice

### **Tender Notice**

The PEA shall prepare a tender notice to be published as per Article 2.5.1 including at least the following information:

- Partner Country,
- name and address of the PEA,
- Application/Offer submission details (submission deadline, address, language, originals, copies, etc.),
- title of the project,
- title of the Contract/Lot being procured,
- KfW's procurement number of the Contract being procured,
- type of notice (Tender Notice, PQ-Result Notice, Award Notice, or Cancellation Notice),
- brief description of the project, the context, time schedule and further information,
- brief description of the Contract content to be procured, and
- address where the complete Tender Documents can be obtained.

### **Prequalification-Result Notice**

In the case of Two-Stage Selection, the PEA shall prepare a PQ-result notice to be published as per Article 2.5.7 including at least the following information:

- list with name and country of prequalified Applicants, and
- reference to initial tender notice (including corrigenda, addenda if any), e.g. electronic link to initial tender notice or copy of initial tender notice.

### **Award Notice**

The PEA shall prepare an award notice as per Article 2.5.14 including at least the following information:

- name and country of successful Contractor,
- start and end date of the Contract,
- Contract amount, and
- reference to initial tender notice, e.g. electronic link to initial notice or copy of initial notice.

### **Cancellation Notice**

The PEA shall prepare a cancellation notice as per Article 2.5.16 including at least the following information:

- information about cancellation of Tender Process, and
- reference to initial tender notice, e.g. electronic link to initial notice or copy of initial notice.

### **Addenda/Corrigenda to Initial Notices**

Any addenda/corrigenda to an initial notice shall be published in due time and in the same medium as the initial notice with a reference to the initial notice.

## Evaluation Criteria for Procurement of Consulting Services

### 1. Pre-Qualification

To be qualified for a Consulting Services Contract under an ICB procedure Applicants shall demonstrate their qualification in terms of financial capacity, experience and resources in relation to the requirements of the tasks and risks.

The verification of the financial capacity of Applicants shall be the basis of audited income statements and/or balance sheets and take into account the annual turn-over and the profitability of at least the last three years. The annual turn-over should be three times the estimated annual payments received out of the Contract amount; the ratio might be reduced for short term assignments or increased for long-term assignments. Profitability may be demonstrated through a positive cash-flow (in average) and (indirectly) the availability of a credit line. Applicants which do not fulfil the requirements of the Request for Applications shall be rejected.

For verification of adequate experience and resources the following criteria and scoring system should be applied with appropriate project relevant modifications.

Qualification criteria	Scoring Range
1. Applicant's Experience	40 - 60
1.1 Experience in implementing similar projects <i>Description of the key features, reference projects shall demonstrate in order to be considered similar to the assignment. If applicable separate sub-criteria for ESHS requirements should be added here.</i>	25 - 35
1.2 Experience with working-conditions in developing and/or transition countries/in particular regions.	15 – 25
2. Applicant's Capabilities	40 - 60
2.1 Qualitative assessment of the Applicant's available Expertise <i>Assessment of the quality of the expertise, to which the Applicant has access to, possibly completed with external expertise for the execution of the assignment in relation to the project team profiles described in the prequalification request. If applicable separate sub-criteria for ESHS requirements should be added.</i>	25 – 35
2.2 Quantitative assessment of the Applicant's Human Resources Capacity <i>Assessment of the Applicants own human resources in relation to the required expertise as described in the prequalification document. If applicable separate sub-criteria for ESHS requirements should be added.</i>	10 – 20
3. Is the Application concise and related to the project?	5
<b>Total Prequalification Score</b>	<b>100</b>

## Appendix 4

It is strongly recommended that sub-criteria descriptions be made as detailed and specific as possible. No other sub-criteria are allowed during evaluation than the ones indicated in the prequalification document.

If the Consulting Services are dedicated to project design, tendering and implementation supervision services for Works or Plant Contracts with ESHS risks and no specialised ESHS consultant is engaged, candidates shall be required to demonstrate the ability and capacity to specify and design relevant mitigation and protective measures and to monitor its implementation on site in addition to the above-mentioned requirements. However, ESHS requirements shall be carefully and adequately designed to reflect the ESHS risks associated to the individual Contract under consideration.

In such cases a percentage between 10% and 25% of the qualification criteria 1.1, 2.1 and 2.2 shall be applied to such ESHS experience and capability of the Applicant. The qualification criteria and scheme above shall be adapted accordingly.

Only Applications scoring 70% or more of the total points will be considered as qualified for the Contract. However, if the number of prequalified Applicants exceeds a predefined number as specified in the RfA Applicants will be invited as per their ranking. The number of Applicants to be invited shall be at least five (5) but not more than eight (8). Should the number of prequalified Applicants be below the predefined number the Tender Process may continue with a reduced number of candidates, if i) the Tender Notice has been published widely and ii) the prequalification criteria have not been too ambitious. Otherwise the Tender Process should be cancelled, followed by a new Tender Process more widely published and/or with amended qualification criteria.

For projects with significant ESHS risks during implementation the prequalification document may specify that Applications which do not meet the minimum ESHS score (usually 70% of the total of the ESHS sub-criteria) shall be rejected, independent from the total score.

## 2. Evaluation of Proposals

The technical evaluation shall be based on the following criteria and point system. No additional criteria or sub-criteria than those indicated in the RFP shall be used for the evaluation of the technical Proposals.

1.	Concept and methodology		35	
1.1	Clarity and completeness of the tender	5		
1.2	Critical analysis of the project objectives and the Terms of Reference (TOR)	10		
1.3	Proposed concepts and methods <i>[If applicable add separate sub-criteria for ESHS requirements]</i>	20		
2.	Qualifications of proposed staff <i>[If applicable add separate sub-criteria for ESHS requirements to the team or individual team members]</i>		65	
2.1	Team leader/project manager	30		
2.2	Other Key staff to be employed on the project	30		
2.3	Personnel in the home office who will monitor and control the team, and provide back-up services	5		
<b>Total Technical Score</b>			<b>100</b>	

## Appendix 4

The sub-criteria and point system indicated above are indicative. It is strongly recommended that sub-criteria descriptions be made as detailed and specific as possible. Depending on the nature of the assignment the distribution of points may vary from the one indicated above between 35 to 65 points for the staff proposal.

In the case the project structure does not foresee the assignment of a dedicated ESHS Consultant during execution of Works/Plant Contracts by contractor(s) the implementation Consultant will be required to oversee that ESHS requirements are adequately addressed and adhered to during project implementation. In line with the ESHS requirements during the prequalification phase, the evaluation of the Consultant's concept and the proposed team shall take into account ESHS aspects accordingly.

In such a case a percentage between 10% and 25% of the score for concept and methodology (1.3) and for the proposed team (2.) shall be dedicated to ESHS). The Consultant shall be required to demonstrate which of the team member(s) are responsible for such ESHS issues. The evaluation criteria and scheme above shall be adapted accordingly.

For projects with significant ESHS risks during implementation the RfP may specify that technical Proposals which do not meet the minimum ESHS score (usually 75% of the total of the ESHS sub-criteria) shall be rejected, independent from the Total Technical Score.

Upon conclusion of the technical and financial evaluation the technical and financial Proposals will be weighted as follows in order to determine the overall score and ranking of the Proposals. First, the weighted technical score is calculated

$PT = WT * T$ , with

PT = weighted technical score (points) of a technical Proposal,

T = technical score (points) as per technical evaluation,

WT = weight of the technical Proposal (in percent)

following the calculation of the weighted financial score

$PF = WF * Co/C$ , with

PF = financial score (points) of a financial Proposal,

C = evaluated price of the financial Proposal,

Co = lowest evaluated price of all financial Proposals.

and finally the overall score is calculated

$P = PF + PT$ .

The weightings should generally be 80% for the technical Proposal and 20% for the financial Proposal.



## Minimum Content of Tender Documents

### Request for Application

Requests for Application are to be used for Prequalification of Applicants in Tender Processes with Two-Stage Selection.

KfW provides SDOs for Prequalification for Consulting Services and for Works/Plant Contracts. If the PEA uses other Tender Documents for Prequalification, they shall not deviate in a substantive manner from the above mentioned documents and include the following minimum content:

- (1) General information about the PEA issuing the tender, source of funds and entity conducting the Tender Process including contact details;
- (2) description of the whole Prequalification process, including e.g. conditions of participation, format and list of documents to be submitted by Applicants, deadlines for clarification requests and Application submission, evaluation criteria and method;
- (3) short description of the Contract content
- (4) application forms, which reflect the eligibility and evaluation criteria and
- (5) KfW's Declaration of Undertaking.

### Request for Proposal/Invitation to Bid

Requests for Proposal/Invitations to Bid are to be used for selection of Contractors in Tender Processes with Two-Stage or Single-Stage Selection.

KfW provides SDOs for the procurement of Consulting Services, Goods, Works, Small Works and Plant (design, supply installation). If the PEA uses other Tender Documents for selection of Contractors, they shall not deviate in a substantive manner from the above mentioned respective documents and include the following minimum content:

- (1) General information about the PEA issuing the tender, source of funds and entity conducting the Tender Process including contact details;
- (2) description of the whole Offer process, including e.g. conditions of participation, format and list of documents to be submitted by Bidders, deadlines for clarification requests and Offer submission, evaluation criteria and method;
- (3) (continued) eligibility criteria, (continued) qualification criteria and – in the case of Single-Stage Selection - evaluation method of the latter.
- (4) detailed Terms of Reference/technical specifications, including e.g. context of the project and ESHS requirements, expected outcomes of the Contract, respective responsibilities of the contracting parties and duration of the Contract;
- (5) draft Contract;
- (6) Forms or requirements for the preparation of the technical and financial Offer, which reflecting the specifies requirements
- (7) KfW's Declaration of Undertaking.

## Minimum Content of Minutes of Application/Offer Opening and Evaluation Reports

The PEA shall provide KfW with a report of the opening (minutes of Application/Offer opening) and of the evaluation of Applications (Prequalification evaluation report) and Offers (Proposal/Bid evaluation report) as defined in the Guidelines.

These reports contain in general the following information and shall be provided for No-Objection in the format as requested by KfW:

### Minutes of Application/Offer Opening

- (1) Names of persons in charge of Application/Offer opening (Application/Offer opening committee);
- (2) Names of other participants (e.g. representatives of Applicants/Bidders);
- (3) Date, time and venue of Offer opening;
- (4) Statement on the status of the envelopes:
  - timely or delayed delivery,
  - number of Application/Offer originals/copies,
  - envelope(s) sealed properly;
- (5) Short description of opening procedure:
  - Which envelope has been opened? Outer/inner envelope? Envelope containing qualification documents, technical Offer and/or financial Offer?
  - Which envelopes remain closed?
  - For financial Offer opening: price as per price sheet to be stated;
- (6) Date of preparation of the report and signature of all members of the Application/Offer opening committee.

For paperless e-procurement Tender Processes equivalent evidence of Offer opening needs to be provided.

### Prequalification and Offer Evaluation Reports

On completion of the Application/Offer evaluation KfW is furnished with a detailed report on the evaluation and comparison of the Applications/Offer and with a substantiated recommendation for the invitation of prequalified Applicants (RfP/ITB) or Award of Contract, as the case may be, that must be coordinated with any government agencies of the Partner Country whose involvement may be required.

- (1) Introduction
  - Short information on project and Contract content;
  - Tender Procedure (e.g. ICB, NCB), Single- or Two-Stage Selection, One- or Two-Envelope Submission undertaken;

- What/which stage/envelope is being evaluated in the present report (e.g. Prequalification evaluation, technical Offer evaluation, financial Offer evaluation, combined evaluation);
- Names of persons in charge of Application/Offer evaluation (members of Application/Offer evaluation committee);
- Start and end of Application/Offer submission period, including any extensions thereof with reasoning and proof of its publication;
- Date and medium of publication of tender notice and in the case of Two-Stage Selection PQ-result notice, or when and how took the invitation to interested/preselected Persons place? (evidence of publication to be attached as annex to the report in the case of an ICB and an NCB);
- In the case of a pre-bid meeting: date, time and venue; participants and minutes of discussion (minutes of meeting to be attached as annex to the report);
- Clarifications/addenda to Tender Documents during the Application/Offer submission period (any clarifications with Applicants/Bidders during the Application/Offer submission period and during the evaluation phase to be attached as annex to the report).

(2) Results of Preliminary Examination

- Names of all Applicants/Bidders (minutes of Application/Offer opening to be attached as annex to the report);
- If the Application/Offer fails preliminary acceptance, the reasons must be clearly explained (Since rejection at this stage puts the Application/Offer out of any further considerations, it should be ensured that the decision to reject is justifiable.);
- Applications/Offers which have been considered for further evaluation.

(3) Application/Offer Evaluation Process

- Basis for evaluation (e.g. KfW's Guidelines, Tender Documents, Public Procurement Regulations);
- Results of evaluation (usually a summary is provided in the report and details are provided as annex to the report)
  - pass/fail criteria: have they been met or not?
  - scoring criteria: every score needs to be justified in accordance with the evaluation criteria and matrix.

(4) Conclusion

- List of Applicants proposed to be invited to submit an Offer (Prequalification evaluation report), or which Bidders have submitted a technically responsive Offer and can be considered for financial evaluation (technical BER), or which Bidders have submitted a responsive financial offer (financial BER);
- List of identified errors, omissions, deficiencies or other subject matter for each Offer substantially compliant with the requirements of the RfP/ITB and which will be subject to clarifications before Award of Contract;
- Which Applicants/Bidders are rejected and for what reason;
- Final ranking (final/financial BER), which Offer is first ranked/has the lowest evaluated price and thus is proposed for Award of Contract;

- Signature of all members of the Application/Offer evaluation committee.

In order to assess the provided reports KfW reserves the right to ask the PEA for further documents, e.g. complete Offers or extracts thereof.

## Contractual Provisions

Contracts between the PEA and its Contractors for Consulting Services, Works, Plant, Goods and Non-Consulting Services Contracts shall include appropriate terms and conditions with a fair distribution of risks between the contractual parties and shall adhere to the contractual provisions below.

### 1. Contract Models

Contracts shall be based on internationally recognised and accepted model Contracts such as those published by FIDIC (Fédération Internationale des Ingénieurs Conseils) for Works and Plant. For Consulting Services KfW makes available a model Contract reflecting international best practice. These Contract forms are integrated in KfW's standardised Tender Documents, which the PEA is encouraged to use. The original general conditions of Contract of these model Contracts shall remain unchanged. Any project specific adaptation shall be included in their special conditions without substantial modification of the general conditions of Contract.

In the case of using other Contract forms the provisions included therein shall adhere to the rules below for Contracts awarded under ICB and as far as applicable in Contracts under NCB. Unless otherwise agreed, the draft Contracts require KfW's No-Objection before signing.

The Tender Documents shall include a draft Contract model or at least inform on the major contractual and commercial conditions (e.g. payment terms, required guarantees, applicable law, provisions for price adjustment, if any, defects liability period, force majeure).

### 2. Contractual Requirements

#### 2.1 Performance Parameters

Performance parameters or characteristics which were taken into account during the evaluation of Offers for Work, Plant or Goods (e.g. efficiency ratio, cost of consumables, output performance, emissions) shall be reflected in the Contract as offered by the Bidder, or as finally agreed upon by the contractual parties. The Contract should also include provisions in the case of variations of such parameters over time and indemnification in the case of underachievement.

#### 2.2. Liability

Provisions regarding liability between the contractual parties shall be formulated in such a manner as to prevent any gaps in liability. Whenever a JV is awarded a Contract the JV partners shall be jointly and severally liable.

#### 2.3 Defaults

The Contract shall include provisions such as suspension and termination, addressing contractual defaults by either party.

#### 2.4 Payment Terms

Payment terms shall be in accordance with the international commercial practices applicable to the type of Contract (Consulting Services, Works, Plant, Goods and Non-Consulting Services) and be designed for efficient disbursement procedures (e.g. minimum disbursement amounts,

especially if agreed in the Funding Agreement; avoidance of multiple recipients of payments, notably in the case of JVs; payments preferably in EUR or USD).

Contracts for Goods usually provide for full payment on the delivery and inspection (if required) of the contracted Goods, except for Contracts involving installation and commissioning; for such contracts, a portion of the payment may be made as advance payment and final payment after the Contractor has complied with all its obligations under the Contract.

Contracts for Works, Plant and Non-Consulting Services may be either ad measurement Contracts or lump sum Contracts. Typically ad measurement Contracts are most suited when the PEA provided the design for the contractual content and/or the nature of the contractual content is not suitable for lump sum remuneration due to high unforeseen risks (e.g. rehabilitation of a power plant). Ad measurement Contracts usually include an advance payment of up to twenty (20) percent, regular interim payments depending on the progress and a final payment of up to ten (10) percent, payable upon taking over or the issuance of the preliminary acceptance. Lump sum remuneration is applied mostly to Contracts under which the Contractor is responsible for the design of the Works or Plant to be delivered (e.g. turn-key Contracts, design-build-operate Contracts). Payment terms usually include either regular percentage based instalments or instalments against the achievement of predefined milestones.

Contracts for Consulting Services may include remuneration on a lump sum or on a time based basis or a combination of both. Typically feasibility studies, expert opinions, short term advise, construction design and elaboration of Tender Documents are most suited for lump sum remuneration. Payment terms usually include either regular percentage based instalments or instalments against the delivery of documents or services. Implementation supervision services and long term technical assistance or training services are usually remunerated on a time based basis. Such Contracts foresee an advance payment of up to twenty (20) percent, regular interim payments, preferably on a quarterly basis and a final payment generally between five (5) and ten (10) percent, payable upon acceptance of the services.

## 2.5 Guarantees and Securities

The presentation of an advance payment guarantee in the same amount as the advance payment is generally conditional for the payment of the advance payment. The advance payment guarantee ensures that in the case Contracts are not performed the PEA will be refunded. Depending on the volume and the associated risk, KfW may agree to waive this requirement.

A performance security in accordance with the usual business practice in the particular sector is generally required to guarantee that all contractual obligations will be duly fulfilled by the Contractor throughout the whole Contract period for Contracts for Works, Goods, Plant and major Non-Consulting Services Contracts. The performance security amounts up to ten (10) percent of the Contract value until preliminary acceptance and a portion of it, usually half of the initial amount, shall be extended to cover the defects liability period or the maintenance period.

A retention money security is required if after preliminary acceptance the terms of payment foresee the payment of retention money withheld on interim payments. The retention money security usually is half the amount of the performance security and is to guarantee that Contractors fulfill the remaining obligations after preliminary acceptance during the defects liability or the maintenance period.

Both, the advance payment guarantee and the performance security shall be abstract guarantees, valid until the secured performance has been affected. In the event of a

postponement of the completion date laid down in the initial Contract, the PEA needs to request an extension of the performance security and retention money security from the Guarantor. Such request shall be in writing and must be made prior to the expiration date established in the security.

Contractors shall be allowed to submit guarantees or securities by a reputable bank of their choice. However, if the guarantor is located outside the PEA's country, if it is not enforceable, the guarantor shall have a correspondent financial institution located in the PEA's country to make it enforceable. In exceptional cases and upon prior approval, KfW may accept guarantees and securities from insurances.

For specimen of the various types of guarantees and securities see Appendix 8. Other forms of guarantees or securities require KfW's approval.

## **2.6 Price Adjustment**

The Contract shall state either a) that Contract prices shall be fixed or b) that Contract price adjustments will be made to reflect any changes in major cost components of the Contract, such as labour and materials. The Contract may include the possibility of either a general price adjustment applicable after a predefined number of month (generally between 18 to 24) from a defined date (generally Offer submission or Offer expiry date) for all contractual items or an index-based price adjustment for price sensitive items (e.g. steel, cooper, aluminum or fuel) applicable at the time of purchase or billing.

The formula, the applicable price indices, and the base date for application shall be clearly defined in the Contract. The Contract shall also have appropriate provisions for treatment of the impact changes in laws and regulations on the Contract, including taxes and duties in the PEA's country, if after 28 days prior to the date of Offer submission, that subsequently affects the Contract completion period/delivery date and/or the Contract price.

## **2.7 Taxes, Duties and Levies**

Contracts shall have provisions on the treatment of taxes and public duties, payable by the Contractor in the Partner Country and reflect the tax provisions in the Tender Documents. Generally only identifiable local taxes and public duties directly attributable to the Contact shall be considered in this context (e.g. VAT or withholding tax on revenue or income generated through the Contract). Depending on the legal situation governing the Contract the following general cases may occur:

- the Contractor and its staff are exempted from local taxes and public duties, in such cases a copy or at least a reference to the legal act testifying the tax exemption should be attached to the Contract,
- the Contractor and its staff are subject to local taxes and public duties directly attributable to the Contract and the PEA will either remunerate the Contractor or pay these taxes and duties on behalf of the Contractor to tax authorities. In such cases the Contract should specify the nature and amounts of taxes and the procedure of invoicing by the Contractor and the mode of payment by the PEA,
- the Contractor and its foreign staff are subject to local taxes and public duties directly attributable to the Contract which will be borne by the Contractor and its staff. In such cases offered prices are considered inclusive of local taxes and public duties, i.e. local taxes and

public duties shall be considered to be included in the overhead cost calculation and will not be subject to any separate payment.

The Contract shall include a provision for the handling of any changes in local tax law after Award of Contract which has an effect on the cost incurred by the Contractor or its foreign staff and should include the mode of remuneration of an increase or decrease in costs.

For the sake of clarity, other local taxes not directly attributable to the Contract (e.g. profit tax, corporate tax, income tax) as well as tax liabilities of the Contractor and its staff outside the Partner Country shall be included in the overhead cost calculation and will not be subject to any separate remuneration.

## **2.8 Warranty/Defects Liability Period**

The Contractor's warranty or defects liability period shall be defined in accordance with international industry practice, generally 12 to 24 months. The Contract should further include provisions if the Contractor fails to remedy defects after a given time for reasons attributable to him.

## **2.9 Liquidated Damages**

The time for the completion of Works/delivery of Goods or services shall be specified, generally in the form of a contractual time schedule. Provisions for liquidated damages or similar provisions shall be included in the Contract when delays in the delivery of Consulting Services, Goods, completion of Works, or failure of the Goods, Works, and Non-Consulting Services to meet performance requirements would result in extra cost or loss of revenue or other benefits to the PEA. The amount of the liquidated damages is usually a specific amount or a portion in relation to a time unit (e.g. an amount of money or percentage of the Contract price per week) with a ceiling (usually five to 10 per cent of the Contract price).

In exceptional cases provision may also be made for a bonus to be paid to Contractors for completion of Works or delivery of Goods ahead of the times specified in the Contract, when an earlier completion or delivery would be of benefit to the PEA.

## **2.10 Insurance**

Contracts shall include types and terms of insurance to be provided by Contractors. Normally Works, Plant and complex Goods contracts shall include an 'all risk' type of insurance policy shall be specified to ensure replacement in the event of damage or loss and injury to any person and Contractor's personnel and damage to property.

Transport insurance for Goods shall be at least 110% (one hundred and ten) of the CIP price of the Goods on an "all risks" basis and should include war risks and strike clauses.

Contracts for Consulting Services should include insurance cover for professional and personal liabilities and, if relevant, insurance for loss or damage for equipment or for motor vehicle third party liability for vehicles if such equipment or vehicles are paid by the PEA and used by Consultant, in the context of the Contract.

In the case of Contracts in foreign currency payments due from the insurer shall be made in the same currency of the Contract or in a freely convertible currency on an account to be provided by the PEA after consultation with KfW.



### **2.11 Force Majeure**

The Contract shall include provisions for events of force majeure that prevent the parties to perform their contractual obligations. Such events are beyond the control of any of the parties to the Contract, such as natural disasters, war, or disruption of public order. The provisions shall include stipulations for adequate adaptation of the contractual time schedule, extraordinary measures by a Contractor to prevent or reduce damage, reimbursement of the Contractor for such measures and a termination clause, in the case force majeure persists including the mode of compensation of the Contractor.

### **2.12 Applicable Law, Settlement of Disputes and Arbitration**

The applicable law shall be specified in the Contract as well as the procedure for the settlement of disputes and arbitration. The provisions should foresee an amicable settlement of disputes between the parties as the first option. In complex infrastructure projects the nomination of one or more dispute adjudicators should be foreseen as well as the rules for the arbitration procedure. The last and final instance for the settlement of disputes should be international commercial arbitration, preferably by recourse to the International Chamber of Commerce (ICC). Instead or in addition to dispute adjudication a mediation procedure might also be taken into account, especially for Contracts with a small Contract values.

KfW shall not be appointed as an arbitrator, nor be requested to appoint one.

### **2.13 Use of Results**

The Contractor shall grant the PEA and KfW and, if required the provider of the funds (e.g. German Government or European Union) the right to use, to share, to publish, to duplicate, to quote free of charge the results of the project, including reports and documents relating to it.

### **2.14 Communication and Visibility**

The Contractor shall be required to indicate the provider of the funds for the Contract (e.g. the German Government or European Union) according to the requirements of the respective institution<sup>25</sup>. Depending on the nature of the Contract this may include an indication on the provider of the funds on documents, on publicity material or on reports as well as a logo on vehicles, major equipment and major supplies purchased with these funds and indications on the provider of the funds on temporary construction site display panels or an acknowledgment on permanent display panels.

The Contractor shall grant KfW the right to publish, on an annual basis on its internet site, the following information: title of the Contract/Project, nature and purpose of the Contract/Project, name and locality of the Contractor and amount of the Contract/Project in accordance with the applicable data protection laws.

### **2.15 Declaration of Undertaking**

A Declaration of Undertaking as per Appendix 1 duly signed by the Contractor shall be attached to the Contract as an integral part of it.

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<sup>25</sup> Further details can be made available on request

## Models for Guarantees and Securities

### Advance Payment Guarantee

**Beneficiary:** *[insert name and address of PEA]*

**Date of Issue:** *[insert date]*

**ADVANCE PAYMENT GUARANTEE No.:** *[insert guarantee reference number]*

**Guarantor:** *[insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[insert name and address of Contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called "the Contractor") has entered into Contract No. *[insert reference number of the Contract]* dated *[insert Contract date]* with the Beneficiary, for the execution of *[insert object of the Contract and brief description of the contractual content]* (hereinafter called "the Contract"). Furthermore we understand that, according to the conditions of the Contract, an advance payment in the sum of *[insert amount and currency in words and figures]<sup>26</sup>*, representing *[insert percentage in words and figures]* percent of the Contract price is to be made against an advance payment guarantee.

Waiving all objections and defences, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary, any sum or sums not exceeding in total an amount of *[insert guarantee amount and currency in words and figures]* upon receipt by us of the Beneficiary's first demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that the Contractor is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for the demand or the sum specified therein.

The advance payment guarantee shall come into force and effect as soon as the advance payment has been credited to the Contractor on its account. Minor deductions of the above mentioned amount notably due to bank fees shall have no effect on the entry into force.

*[For guarantees issued in foreign currency insert the following:*

In the event of any claim under this guarantee, payment shall be effected to KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00), for the account of *[Insert name of the Beneficiary and the Beneficiary's country]*.

*[For guarantees issued in local currency insert the following:*

In the event of any claim under this guarantee, payment shall be effected to *[Insert the account of the Beneficiary on which payments are to be made]*, for the account of *[Insert name of the Beneficiary and the Beneficiary's country]*.

This guarantee shall be automatically reduced pro rata in accordance with the payments performed and expire not later than *[insert expiry date]*.

Any demand for payment must be received by us at this office on or before that date by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

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<sup>26</sup> This guarantee must be issued in the Contract currency only.

*[As preferred option regarding guarantee rules insert: This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.]*

*[In the case the issuing bank will not add the preferred option, insert: This guarantee is governed by the law of [insert country of jurisdiction where the bank's branch issuing the guarantee is physically located].*

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Place, date

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Guarantor's authorised signature(s)

*Note: All italicised text (including footnotes) is for use in preparing this form and shall be deleted from the final version.*

### Performance Security

**Beneficiary:** *[insert name and address of PEA]*

**Date of Issue:** *[insert date]*

**PERFORMANCE SECURITY No.:** *[insert security reference number]*

**Guarantor:** *[insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[insert name and address of Contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called "the Contractor") has entered into Contract No. *[insert reference number of the Contract]* dated *[insert Contract date]* with the Beneficiary, for the execution of *[insert object of the Contract and brief description of the contractual content]* (hereinafter called "the Contract"). Furthermore we understand that, according to the conditions of the Contract, a performance security is required for *[insert percentage in words and figures]*<sup>27</sup> percent of the Contract price.

Waiving all objections and defences, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary, any sum or sums not exceeding in total an amount of *[insert security amount and currency in words and figures]* upon receipt by us of the Beneficiary's first demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that the Contractor is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for the demand or the sum specified therein.

*[For guarantees issued in foreign currency insert the following:*

In the event of any claim under this guarantee, payment shall be effected to KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00), for the account of *[Insert name of the Beneficiary and the Beneficiary's country]*.

*[For guarantees issued in local currency insert the following:*

In the event of any claim under this guarantee, payment shall be effected to *[insert the account of the Beneficiary on which payments are to be made]*, for the account of *[insert name of the Beneficiary and the Beneficiary's country]*.

This security shall expire not later than *[insert expiry date]*<sup>28</sup>. By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

*[As preferred option regarding guarantee rules insert: This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.]*

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<sup>27</sup> This security must be issued in the Contract currency only.

<sup>28</sup> This security shall be valid for at least 28 calendar days as of the completion date laid down in the Contract (including warranty obligations).

*[In the case the issuing bank will not add the preferred option, insert: This guarantee is governed by the law of [Insert country of jurisdiction where the bank's branch issuing the guarantee is physically located].*

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Place, date

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Guarantor's authorised signature(s)

*Note: All italicised text (including footnotes) is for use in preparing this form and shall be deleted from the final version*

### Retention Money Security<sup>29</sup>

**Beneficiary:** *[insert name and address of PEA]*  
**Date of Issue:** *[insert date]*  
**RETENTION MONEY SECURITY No.:** *[insert guarantee reference number]*  
**Guarantor:** *[insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[insert name and address of Contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called "the Contractor") has entered into Contract No. *[insert reference number of the Contract]* dated *[Insert Contract date]* with the Beneficiary, for the execution of *[insert object of the Contract and brief description of the contractual content]* (hereinafter called "the Contract").

Furthermore we understand that, according to the conditions of the Contract, the Beneficiary retains moneys up to the limit set forth in the Contract ("the Retention Money"), and that when the taking-over certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, payment of *[insert the second half of the Retention Money amount and currency in words and figures or if the amount guaranteed under the Performance Security when the taking-over certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security]* is to be made against a Retention Money security.

Waiving all objections and defences, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert security amount and currency in words and figures]*<sup>30</sup> upon receipt by us of the Beneficiary's first demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Contractor is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or show grounds for the demand or the sum specified therein.

The retention money security shall come into force and effect as soon as the second half of the Retention Money has been credited to the Contractor on its account. Minor deductions of the above mentioned amount notably due to bank fees shall have no effect on the entry into force.

*[For securities issued in foreign currency insert the following:*

In the event of any claim under this security, payment shall be effected to KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00), for the account of *[insert name of the Beneficiary and the Beneficiary's country]*.

*[For securities issued in local currency insert the following:*

In the event of any claim under this security, payment shall be effected to *[insert the account on which payments are to be made]*, for the account of *[insert name of the Beneficiary and the Beneficiary's country]*.

---

<sup>29</sup> This model is designed for Works, Plant and similar Contracts, if used exceptionally, for Consulting Services the text needs to be adapted

<sup>30</sup> The Guarantor shall insert an amount representing the amount of the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the taking-over certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and denominated in the Contract currency(ies) only.

This security shall expire not later than *[insert expiry date]*<sup>31</sup>.

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

*[As preferred option regarding guarantee rules insert: This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.]*

*[In the case the issuing bank will not add the preferred option, insert: This guarantee is governed by the law of [insert country of jurisdiction where the bank's branch issuing the guarantee is physically located].*

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Place, date

---

Guarantor's authorised signature(s)

*Note: All italicised text (including footnotes) is for use in preparing this form and shall be deleted from the final version.*

---

<sup>31</sup> Insert the same expiry date as set forth in the performance security, representing the date twenty-eight days after the completion date described in the Contract. The Beneficiary should note that in the event of an extension of this date for completion of the Contract, the Beneficiary would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Beneficiary might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months][one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."





KfW Bankengruppe, Postfach 111141, 60046 Frankfurt am Main

## Annex 5

To:

**Ministry of Environment and Tourism (MET)**

Government Building 2  
United Nations Street 5/2  
Ulaanbataar 15160  
Mongolia

**Ministry of Finance (MoF)**

United Nations Street 5/1  
Ulaanbataar 15160  
Mongolia

Our ref.: Nina Otto, NiO  
Phone: +49 69 7431-3985  
Fax: +49 69 7431-2738  
E-mail: nina.otto@kfw.de  
Date: \_\_\_\_\_ 2019

**LEc4 - Mongolian-German Financial Cooperation  
Biodiversity and Adaptation to Climate Change Project (BACCP),  
Phases II and III  
BMZ ID 2016 67 054 and 2018 68 272  
Here: Amendment No. 1 of the Separate Agreement for Phase II  
with regards to the Disbursement Procedure as contained in  
Annex 6**

Dear Madam, dear Sir,

Reference is made to Annex 6 (Disbursement Procedure) to the Separate Agreement for BACCP II dated June 22, 2018. Since Phase II and Phase III will be implemented in parallel, Annex 6 of BACCP II will be amended as follows:

**“German Financial Cooperation with Mongolia  
Loan/Financing/Project/Programme Agreement of KfW  
EUR 19,5 million and EUR 8 million  
Project/Programme name: Biodiversity and Adaptation to Climate Change II/III  
KfW-Reference No.: 2016 67 054 and 2018 68 272**

### **Art. 3.3 Direct Disbursement Procedure (Consultant)**

For down and interim payments under the Consulting Contract (in the respective applicable version) the Consultant will present his invoices to KfW quoting its Reference No. and send a copy to the Authorized Party.

For the final payment, the Authorized Party will receive the original invoice and send a copy together with a duly signed Withdrawal Application to KfW using KfW's standard form (see Attachment F).

### Art. 3.4 Operation of the Disposition Fund (Special Account/s)

In deviation from the General Conditions the following shall apply:

Art.3.4 The audit costs for the German Financial Contribution will be financed under the disposition fund. The audit costs for the Mongolian counterpart contribution will be financed by local funds.

All Attachments of 6 Annex on the Disbursement Procedure shall apply to phases II and III, respectively.

All other stipulations of Annex 6 on the Disbursement Procedure remain unchanged."

Please confirm your consent to the above amendment by signing it in a legally binding form.

Yours sincerely,  
KfW



Andrea Johnston  
Head of Division  
Natural Resources and Climate, Asia



Nina Otto  
Sr. Project Manager  
Natural Resources and Climate, Asia

Read and agreed:

*27<sup>th</sup> June 2013*

Ulaanbaatar,



Ministry of Finance



Ministry of Environment and Tourism

## Content and Form of Reporting

### Reporting: Programme "Biodiversity and Adaptation to Climate Change"

Done by: PIU; semi-annually

Where possible, show development by statistical time series. Explain any particular developments.

Assess impacts on the sustainable success of the project

#### A. General Programme Environment

##### 1. Sectoral information: Protected Area Network and Biodiversity

Please report on changes and new developments in the sector concerning:

- Policies and strategies
- institutional environment
- legal environment
- rangeland and forest management
- Protected Area Network (newly designated PA, changes in classification and boundaries)
- mining operations in protected areas
- donor activities and cooperation with other institutions; coordination activities; synergies created

##### 2. Information concerning the Programme Executing Agency

- Institutional changes within MET
- Changes in the cooperation between MoF and MET
- Changes with the PA Administrations and the Department of PA Management
- Update on staffing and budget development

	2019	2020	2021	2022	2023	2024
Staff in the Department of PA Management						
Staff in the PA Administrations (No of Rangers)						
MET annual budget (in billion MNT)						
Annual Budget of the PA-Department (in billion MNT)						

##### 3. Information concerning the Target Group

- Population development and trends in the protected areas
- Poverty ratio/status/trends among the target group
- Size and socio-economic characteristics of the target group over time
- Share of women and other vulnerable groups among the target population
- Other developments

#### B. Programme development in the reporting period

##### 1. Progress and achievements

- progress towards a) the outputs, b) the outcomes and c) the impacts of the Programme as defined in the Programme's results matrix and as measured by the indicators for each of these three levels, comparing the current status with the baseline and target values. Description of the activities carried out per component/output including the results that were achieved)

##### 2. Challenges and proposed solutions

- Discussion of the challenges with which programme implementation is confronted incl. the proposal of suitable solutions

**3. Cost & Financing; disbursements and counterpart contributions**

- Update on the cost and financing table (Annex 3 of the Separate Agreement) if and as necessary, reasons for deviations
- Indication of the amount of funds that have been committed and/or spent per component and/or in total during the reporting period
- Overview of the contracts signed with consultants and suppliers per component (incl. type of bidding procedure, contract amount, timeframe for delivery, expected outputs)

**4. Time schedule**

- Indicating whether programme is being implemented on time incl. an overview of the internal/external reasons for possible delays and measures taken to address delays and challenges
- Measures taken to get the programme back on track or to ensure that delays are kept at a minimum
- Financial or other consequences caused by the delays that have occurred?

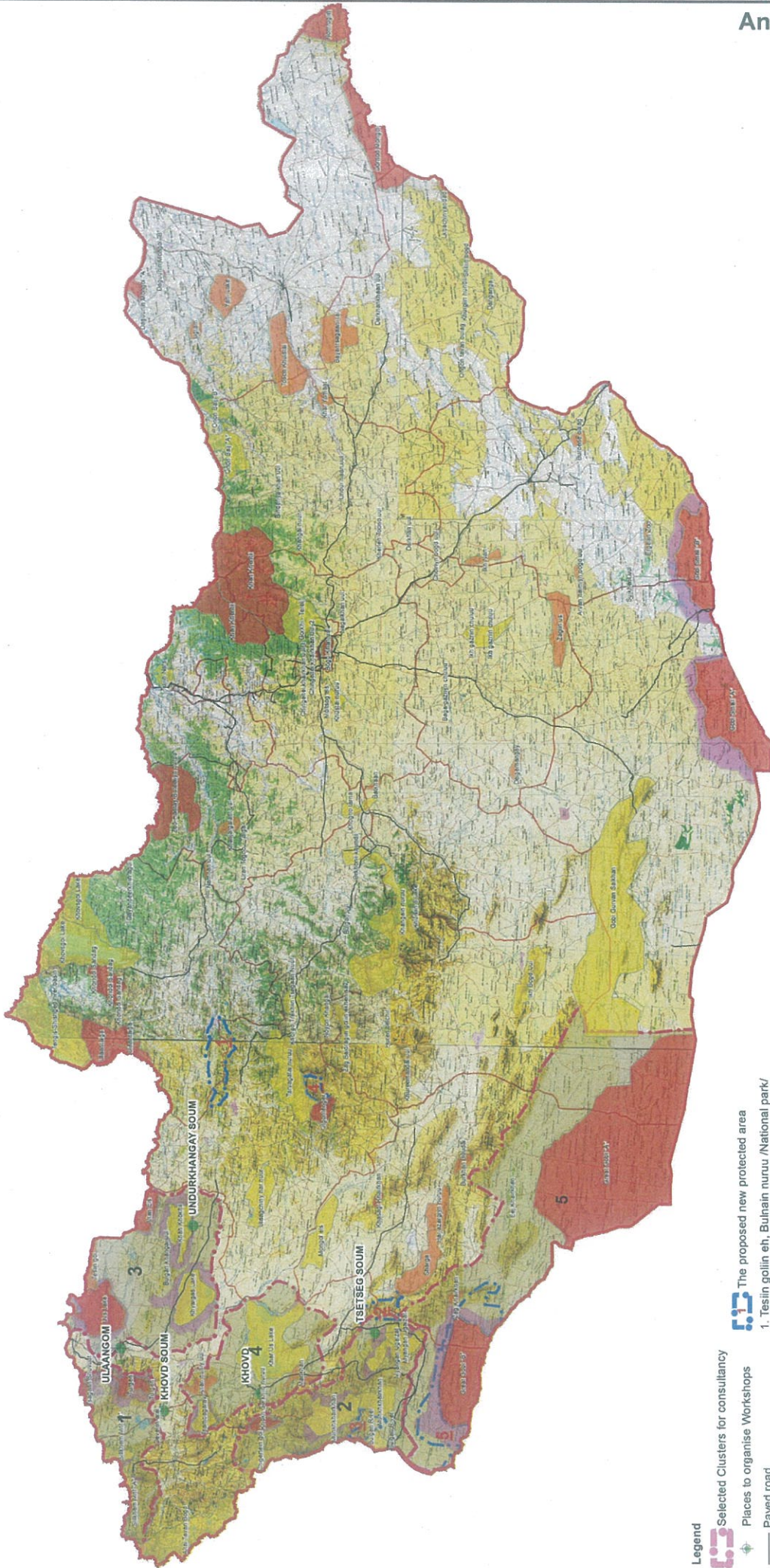
**C. ESMF**

- timely provision of any actual or anticipated environmental and social risks arising from or affecting the implementation of the Programme



CLUSTER (LGA) BACCP II:1-3+4  
BACCP III:5

1:1 000 000



Legend

Selected Clusters for consultancy

Places to organise Workshops

Paved road

Protected area

Strictly protected area

National park

Nature Reserve

Natural Monuments

Buffer zones



The proposed new protected area

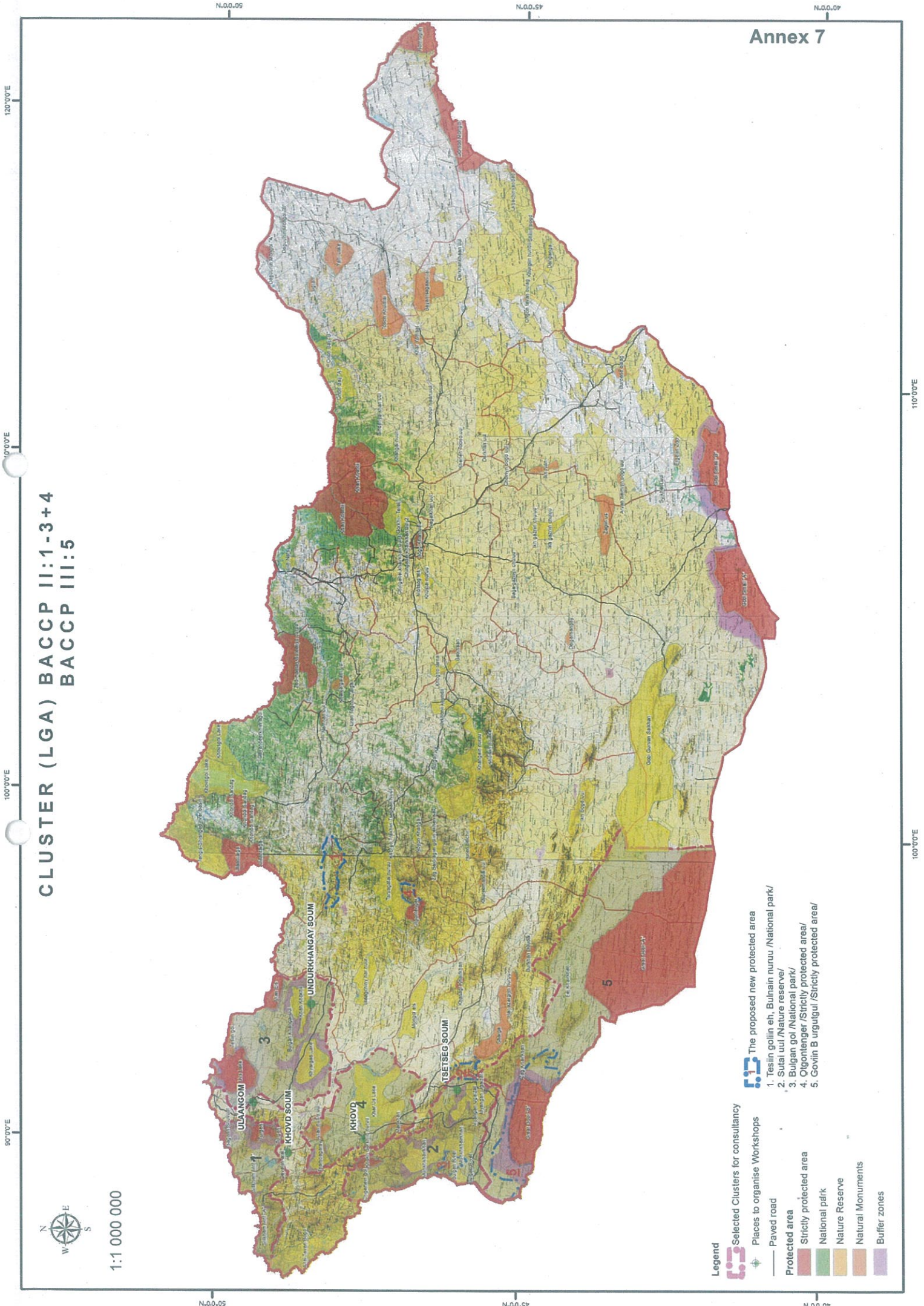
1. Tesin golin eh, Bulhain nuru /National park/

2. SutaI uul /Nature reserve/

3. Bulgan gol /National park/

4. Oigontenger /Strictly protected area/

5. Govin B urgutui /Strictly protected area/





Annex 7 b-c: Criteria-based ranking and key characteristics of the 5 clusters to be supported under BACCP II and III

Criteria	Cluster 1	Cluster 2	Cluster 3	Cluster 4	Cluster 5
<b>International recognition:</b>					
Internationally important area (RAMSAR, World heritage site, MAB)	3	1	3	1	2
Transboundary PA	3	2	3	1	3
<b>Environmental:</b>					
Biodiversity hotspots based on Mongolian Redlist	3	3	3	3	3
Potential to adaptation to climate change (desertification, degradation, disappearance of water sources)	3	3	3	2	3
Connectivity for key endangered species	3	3	3	2	2
Highly threatened ecosystem by human activities (livestock, poaching, mining, illegal use of natural resources)	2	3	3	3	1
Possibility to include / integrate different categories of PAs	2	2	3	2	3
<b>Institutional:</b>					
Local initiatives and commitment exist	3	3	3	3	3
Existing institutional structures	1	2	2	1	2
<b>Socio-economic / cultural:</b>					
Important for tourism	3	3	3	3	3
Potential for alternative income generation	3	3	3	3	1
Sustaining cultural and historical important heritage	2	3	2	1	2
	31	31	34	25	28



Annex 7 b-c: Criteria-based ranking and key characteristics of the 5 clusters to be supported under BACCP II and III

Characteristics	Cluster 1	Cluster 2	Cluster 3	Cluster 4	Cluster 5
Ecoregion	1 Argali, Snow Leopard	1 Argali, Snow Leopard	1 and 2 Ibex, Deer, Argali	1 Saiga, Wild Horse, Black tailed gazelle, Water birds	1 and 3 Argali, Ibex, Black Tailed Gazelle, Wild ass, Wild Bactrian camels, Gobi bears and Snow leopards
Biodiversity (key species)					
World heritage site	0	0	1	0	0
World cultural heritage	0	0	0	0	0
MAB	0	0	1	0	0
Transboundary PA	X	X	X	--	--
RAMSAR site	0	0	2	1	0
SPA	2	1	2	1	2
NP	1	4	2	1	0
NR	0	2	2	2	1
NM	0	0	1	0	1
LPA	1	3	0	0	2
Number of Aimags	2	2	1	3	3
Number of Soums	8	10	14	13	10