**AKRSP**

**Standard Conditions of Tender (CoT)**

**For**

**Single-Stage**

**National/Regional Competitive Bidding (N/RCB)**

**For**

**Consulting Services**

**Name of Tender: *Excavator Services Required at Mastan Kerch Khyber***

**Serial No.: *AKRSP/-Excavator-0003***

***October/2024***

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# **General information and tender requirements**

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| 1.1 | Name of Tender(s) and Serial No(s).: | *Excavator Services Required at Mastan Kerch Khyber* |
| 1.2 | Multiple lots, meaning that Bidders may decide at their own discretion to submit any number of Proposals, but only one per lot under the following conditions:  | [x]  *no* |
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| 1.3 | Name of the Contracting Authority (CA) and the donor: 1.3.1 The CA is the Aga Khan Rural Support Programme (AKRSP), Pakistan.1.3.2 The Donor is the KfW Development Bank (KfW), Germany |
| 1.4 | Type of Tender: | Single-Stage [x]  *National* Competitive Bidding |
| 1.5 | Description of services / Specifications of procurement: Reference is made to the Terms of Reference (cf. Annex 2) |
|  | 1.5.1 Eligible Goods:Goods and services from countries under embargo from Germany, the European Union, and / or the United Nations are not eligible. In addition, Goods and services from countries which are legally barred in the country of the contracting agency are not eligible. |
| 1.6 |

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| Selection Procedure: |
| [ ]  1.5.3 Fixed Budget Selection (FBS): focus on quality, selection of the highest quality proposal whose price is within a pre-disclosed budget (for further details cf. art. 3.4). |
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| 1.7 | Date of publication: | 16 October, 2024 |
| 1.8 | Place/source of publication: | Newspaper  |
| 1.9 | Tender clarifications | Bidders are requested to submit their clarification requests in writing to |
|  | 1.9.1 Contact details  | Manager Procurement procurement\_akrsppk@akdn.org. |
|  | 1.9.2 Clarification deadline  | **and latest by *October 28, 2024,* time: 4:30 PM.** |
|  | 1.9.3 Any clarification requests received other than in writing to the email-address as per art. 1.9.1 shall be rejected. Any clarification requests received after the date as per art. 1.9.2 will be rejected.1.9.4 Clarifications will be provided by the CA latest 10 days before closing deadline and to all bidders in parallel. |
| 1.10 | Closing deadline: | Bidders are requested to submit their Proposals latest by **November 4 2024, time: 4:30 PM** to the address specified in art. 1.11. |
| Proposals received after the closing deadline will be rejected. |
| 1.11 | Place of submission: | AKRSP Regional Programme Office Jutial Gilgit.  |
|  | Proposals submitted to address(es) other than the one(s) given above willbe rejected. |
| 1.12 | Original Proposal and number of copies required:  | Bidders are requested to submit **one original Proposal** and *one* copies of the original Bid.  |
|  | 1.12.1 Bidders which fail to submit the original Proposal will be excluded from the tender. Any unopened Proposals will be returned the Bidder. 1.12.2 In case of discrepancies between the original and the copy, the original will prevail*.* |
| 1.13 | Two-envelope submission:The technical and financial Proposal shall be separately included in **two** **inner envelopes** – each of them clearly marked on the outside either as “**TECHNICAL PROPOSAL**” or as “**FINANCIAL PROPOSAL**”, which shall be closed and sealed individually. These two inner envelopes shall be placed into **one closed outer envelope**.All inner and outer envelopes shall clearlyindicate **“ORIGINAL PROPOSAL”** or **“COPY”** as the case may be.If envelopes are not sealed and marked as required, the CA will assume no responsibility for the misplacement or premature opening of the Proposal. |
| 1.14 | Withdrawal, Substitution, and Modification of Proposals:A Bidder may withdraw, substitute, or modify its Proposal after it has been submitted by sending a written notice, duly signed by an authorized representative of the Bidder to the address given in art. 1.11 **before** the closure of the deadline as specified in art. 1.10. Any such notice received by the CA after the closure of the deadline will be declared null and void and the originally submitted Proposal will be opened.In case of substitutions or modifications of Proposals the respective written notice must be accompanied by the revised original Proposal as well as the appropriate number of copies as per art. 1.12. In addition, the respective envelopes shall be clearly marked “SUBSTITUTION,” or “MODIFICATION” as the case may be.Proposals requested to be withdrawn before the closure of the deadline shall be returned unopened to the Bidders. Their accompanying Bid Securities (if applicable according to art. 2.4.3) may not be drawn by the CA.No Proposal may be withdrawn, substituted, or modified in the interval following the closing of the deadline for submission of Proposals as per art. 1.10 and the expiration of the period of Proposal validity as per art. 2.3. |
| 1.15 | Alternative Proposals shall be considered: | [x]  *no* |
| 1.16 | Grievance mechanism/complaint management: | Bidders have the right to appeal under the administrative review process by writing to procurement\_akrsppk@akdn.org and by adhering to the regulations set out in art. 1.16.1 – 1.16.4. |
|  | 1.16.1 Any party is entitled to file complaints against the eligibility and evaluation criteria or any other terms and conditions defined in this bidding document incl. annexes **before** the clarification deadline according to art. 1.9.2. 1.16.2 Bidders are entitled to file complaints against evaluation results within reasonable time after having received knowledge of such results and latest **before** contract signing.1.16.3 The CA has established a committee to address bidders’ complaints in a timely manner. Complaints received in accordance with art. 1.16.1 shall be fully addressed within the response time as laid out in art 1.16.4. Complaints received in accordance with art. 1.16.2 shall be fully addressed before contract signing. A contract cannot be signed if Bidders’ complaints are pending.1.16.4 When the grounds for any such complaints are deemed justified by the CA the bidding conditions and / or evaluation results may be adjusted. If bidding conditions are adjusted the CA will inform all parties on such changes in due course and – if reasonable – extend the closing deadline as per art. 1.10 to enable Bidders to properly address these changes in their Proposals. |
| 1.17 | CA’s cancellation/rejection rightThe CA has the right to cancel any tender procedure and to reject all Proposals at any time prior to the acceptance of a Proposal and shall upon request communicate to any Bidder, the grounds for its rejection of all Proposals, but is not required to justify those grounds. Such cancellation and/or rejection of any and/or all Proposals shall incur no liability for the CA towards Bidders. Notice of the rejection of all Proposals or proposals shall be given promptly to all Bidders. |

# **Administrative conditions and tender requirements**

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| 2.1 | Eligibility: A Bidder may be a firm that is a private entity, a government-owned entity[[1]](#footnote-1) or any combination of such entities in the form of a joint venture (“JV”) either under an existing JV Agreement or with the intent to enter into such an agreement supported by a letter of intent to execute a JV Agreement. In the case of a JV, all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. The Bidder shall nominate an authorized representative who shall have the authority to conduct all business for and on behalf of the Bidder and all its members.  |
|  | 2.1.1 The number of JV members is limited: | [x]  *no* |
|  |  |  |
|  | **None of the following conditions may apply to a Bidder or member of a Bidder in case of a JV:** |
|  | 2.1.3 Conflict of Interest:A Bidder shall not have a conflict of interest. Any Bidder found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this bidding process, if the Bidder: (i) Directly (i.e. e.g. through the same legal representative(s)) or indirectly (i.e. e.g. through common third parties) controls, is controlled by or is under common control with another Bidder; or (ii) Receives or has received any direct or indirect subsidy from another Bidder; or(iii) Participates in more than one Proposal in this bidding process, both as an individual firm and as a JV member. Participation by a Bidder in more than one Proposal (per lot in case multiple lots are accepted according to 1.2.2) will result in the disqualification of all Proposals in which such Bidder is involved; or (iv) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the goods that are the subject of the Bid; or(v) Has directly or indirectly through its affiliates close business or family relationships with a professional staff of the CA who is directly or indirectly involved in the tender, Contracting and/or implementation process unless the conflict stemming from such relationship has been declared towards the CA and found unsubstantial. |
|  | 2.1.4 Declaration of Undertaking (DoU): As per any condition defined in the DoU (cf. Annex 1.1). Especially, Bidders that are included in the list of sanctions of the United Nations or of the EU or of the German Government are not eligible. |
|  | **If any of the conditions laid out as above are met by a Bidder or a member of such, the proposal will be excluded from further evaluation, rejected and the financial proposal returned unopened to the Bidder.** |
| 2.2 | Signatures: Bidders are requested to sign the tender where appropriate. Signatures must be borne by a legal representative of the Bidder or a duly authorized person on behalf of the Bidder; and in case of a JV a JV agreement entered into by all members or a letter of intent to execute a JV agreement in case of Contract award. Proof of such authorization shall be documented by the Bidder (e.g. by submission of company registration sheet, power of attorney etc.) |
| 2.3 | Bid validity period: | The Bid validity period expires***90*** days after the closing deadline as per art. 1.10. |
|  | In exceptional circumstances, prior to the expiration of the Bid validity period, the CA may request Bidders to extend the period of validity of their Proposals. The request detailing the exact extension period and the responses shall be made in writing. If a Bid Security is requested in accordance with art. 2.4.3, it shall also be extended for the number of days as detailed in art. 2.4.3 beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its bid. |
| 2.4 | Documents comprising the **Technical Proposal**: |
|  | 2.4.1 Company Registration Form | [x]  yesIn case of a national bidder, or an international bidder which is already registered in Pakistan, or a JV with a national and/or registered international member the omission of a company registration form or a deviation from the above requirement shall result in an immediate disqualification of the Proposal from the tender procedure.[x]  no, in case of an international bidder which is not yet registered in Pakistan. In case of contract award an international bidder not yet registered must seek registration immediately. |
|  | 2.4.2 JV Agreement or Letter of Intent to execute a JV agreement in case of contract award: | [x]  no, in case the bidder is no JV.[x]  yes, in case the Proposal is submitted by a JV;  |
|  | If yes, such document is to be signed by all JV members and placed into the technical envelope. The omission of such document shall result in an immediate disqualification of the Proposal from the tender procedure. |
|  | 2.4.3 Bid security: | [x]  *no* |
|  | 2.4.4 Declaration of Undertaking (Annex 1.1): | [x]  yes |
|  | The DoU must be printed on Bidder’s company letter head and signed by a legal representative of the Bidder or an authorized person on behalf of the Bidder.The DoU is to be placed into the technical envelope. The omission of the DoU, or an alteration of its wording, or any other deviation from the above requirements shall result in an immediate disqualification of the Proposal from the tender procedure. |
|  | 2.4.5 Written confirmation authorizing the signatory of the Proposal to commit the Bidder as per art. 2.1: | [x]  yes |
|  | Such confirmation is to be placed into the technical envelope. The omission of such written confirmation shall result in an immediate disqualification of the Proposal from the tender procedure. |
|  | 2.4.6 Bidder’s financial performance | [x]  *no* |
|  | To be demonstrated by audited balance sheets which must be placed into the technical envelope. The omission of such balance sheets or the failure to meet the minimum average annual turnover as defined above will result in an immediate disqualification of the Proposal from the tender procedure. |
|  | 2.4.7 Any documents specified under art. 3.1: | [x]  yes |
|  | Any documents missing will result in a loss of points of the Proposal during evaluation. |
|  |  |  |
| 2.5 | Documents comprising the **Financial Bid**: |
|  | 2.5.1 Completed price sheet: | [x]  yes, according to bidder’s own template |
| In case Proposals for multiple lots as accepted in accordance with art. 1.2. Bidders are requested to submit individual price sheets per lot. Bidders wishing to offer discounts for the award of more than one Contract shall specify in their Proposal the price reductions applicable to each package, or alternatively, to individual Contracts within the package. |
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# **Tender specific conditions and requirements**

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| 3.1 | Technical requirements and scoring:Technical Evaluation will be carried out by applying the following criteria and point system: |
|  | 3.1.1 Previous experience to be demonstrated through project references: | [ ]  *yes* **2**project references of contracts comparable in type and value that have been satisfactorily and substantially completed as service provider during past 5years.Each comparable project reference will receive a score of **25.**The total score to be achieved in this sub-category is***50***  |
|  | 3.1.2 Quality of the methodology proposed: | [ ]  *yes* The total score to be achieved in this sub-category is***50*** |
|  | 3.1.3 Qualifications of staff to be demonstrated by the submission of duly signed Curriculum Vitae (CV): | [ ]  *no* |
|  | 3.1.4 Participation of national experts as key staff (if required in the ToR) | [ ]  *no* |
|  | Maximum available total score: | **100** |
| 3.2 | Financial requirements:3.2.1 Currency: Currency of the Financial Proposal and Contract shall be PKR. |
|  | 3.2.2 Related costs:Prices shall be quoted including all costs related to the delivery of the requested services to the extent applicable as specified in the Terms of Reference: such as taxes, transport, accommodation, reporting, office, as well as overhead costs*.* |
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# **Bid opening, evaluation and contract award**

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| 4.1 | Bid Opening:  | Opening of the outer envelopes and envelopes bearing the Technical Proposals shall take place at AKRSP Regional Programme Office Jutial Gilgit on November 4, 2023, at 11:00 AM.Bid Opening will be carried out by the CA’s Procurement Committee composed of 4 committee members. Names and functions of these members will be disclosed latest upon Proposal opening.  |
|  | 4.1.1 Opening of Technical Proposals: | The Bid Opening is open to the public[x]  no |
|  | * + 1. Read-Out Information:

All Proposals which were received within the given closing deadline (art. 1.10.) and at the correct address (art. 1.11) shall be opened and the following information read out: 1. Name of the Bidder;
2. Modification or substitution submitted;
3. Presence/absence of one original Proposal and the respective number of copies according to art. 1.12);
4. Presence/absence of a separately sealed financial proposal according to art. 1.13;
5. Bid validity period complies with the one specified in art. 2.3;
6. Presence/absence of company registration form in accordance with art. 2.4.1;
7. Presence/absence of a JV agreement or Letter of Intent in accordance with art. 2.4.2;
8. Presence/absence of a Bid security (if required according to art. 2.4.3);
9. Presence/absence of a duly signed Declaration of Undertaking (DoU) in accordance with art. 2.4.4);
10. Presence/absence of a written confirmation in accordance with art. 2.4.5);
11. Presence/absence of audited balance sheets depicting the required average annual minimum turnover in accordance with art. 2.4.6.
12. Presence/absence of correctly signed Curriculum Vitae in accordance with art. 3.1.3;
13. Presence/absence of any other key documents deemed necessary to establish administrative compliance in accordance with art. 2.4.7 and 2.4.8).

Proposals for which a withdrawal notification has been received by the CA within the submission period as per art. 1.10 shall not be opened but returned to the Bidder unopened.The CA will prepare a record of the opening session (minutes of meeting) which contains all above-mentioned information, and which will be signed by the CA’s representatives. Envelopes clearly marked by the Bidders as “FINANCIAL PROPOSAL” may not be opened before the technical evaluation has been completed altogether and must be safely stored away by the CA until financial opening. |
| 4.2 | Preliminary ExaminationAfter opening of the technical proposals the evaluation committee will examine the technical proposals for their compliance with the administrative conditions and tender requirements and establish if the technical proposals are complete and have been submitted in the correct format as per art. 4.1.1. Substantial deviations from the tender requirements shall result in a rejection of the respective proposal and exclusion from further evaluation.Furthermore, the preliminary evaluation will determine whether bidders are eligible and qualified. Bidders declared ineligible or unqualified will be disqualified and their proposals excluded from further evaluation.  |
| 4.3 | Technical Evaluation 4.3.1 Determination of Responsiveness:A substantially responsive Proposal is one that meets the requirements of the Bidding Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that if accepted, would (i) affect in any substantial way the scope, quality, or performance of the Services specified in the Contract; or (ii) limit in any substantial way, inconsistent with the Bidding Documents, the CA’s rights or the Bidder’s obligations under the proposed Contract; or (iii) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Proposals. |
|  | The CA shall examine the technical aspects of each Proposal that successfully passed the preliminary examination according to art. 4.2 to confirm that all requirements of the Terms of Reference (Annex 2) have been met without any material deviation, reservation, and/or omission. |
|  | 4.3.2 Technical responsiveness / Threshold for financial opening: | All evaluated Technical Proposals which have achieved a total score of **60** or higher are considered as substantially responsive and shall be further subject to financial opening.  |
|  | 4.3.3 Unresponsive Proposals:If a Proposal is not substantially responsive to the requirements of the Bidding Documents it shall be rejected by the CA and may not subsequently be made responsive by allowing the Bidder to make corrections of the material deviation, reservation, and/or omission.4.3.4 Nonmaterial nonconformities:Provided that a Proposal is substantially responsive, the CA may waive any nonmaterial nonconformities in the Proposal and request that the Bidder submits the necessary information to rectify nonmaterial nonconformities in the Proposal related to documentation requirements. Requesting information on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid. |
| 4.4 | Announcement of evaluation resultsIn due course after finalization of the technical evaluation the CA shall inform the successful Bidders in writing on their evaluation results. |
| 4.5 | Opening of Financial Proposals:All technical proposals which have achieved the minimum total score or a higher scoring according to art. 4.3.2 shall be further subject to financial opening.  |
|  | 4.5.1 The Proposal opening is open to the public | [x]  yesBidders’ representatives may attend the opening session and will receive a written invitation naming place and date/time of the opening of the financial Proposals in due course. |
|  | 4.5.2 Once opened the following information shall be read out: 1. Name of the Bidder
2. Presence/absence of one original Proposal and the respective number of copies according to art. 1.13)
3. Total Proposal prices (per lot if applicable according to art. 1.2)
4. Any discounts

The CA will prepare a record of the opening session (minutes of meeting) which contains all above-mentioned information, and which will be signed by the CA’s representatives and by the present Bidders’ representatives as well. The omission of a Bidder’s signature on the record shall not invalidate the contents and effect of the record. |
| 4.6 | Financial requirements and scoring:4.6.1 Currency:  | Financial Proposals denominated in currencies other than PKR shall be disqualified. |
|  | 4.6.2 Price Corrections During evaluation the Evaluation Committee will determine the evaluated price by  |
|  | 4.6.2.1 correcting any arithmetic and/or computational errors in case of any discrepancies between 1. partial amount (sub-total) and the total amount, or
2. the amount derived by multiplication of unit price with quantity and the total price, or
3. the Technical and the Financial Proposals in indicating quantities of input. In this case, the Technical Proposal prevails and the quantification in the Financial Proposal will be corrected so that it is consistent with the one indicated in the Technical Proposal.
 |
|  | 4.6.2.2 costing and adding any missing items in comparison with the tender requirements and the bidder’s Technical Proposal in case of any discrepancies 1. between the duration of the Contract according to the CA’s estimate and the Bidder’s Proposal according to art. 2.1 of the Contract Specimen (cf. Annex 3), or
2. between inputs determined in the tender conditions and the Bidder’s Proposal.
 |
|  | 4.6.2.3 In case of price corrections the CA will communicate these to the respective bidders and seek their confirmation before determining financial responsiveness as per art. 4.6.3. |
|  | 4.6.3 Determination of financial responsivenessIn case discrepancies according to art. 4.6.2.2 have been identified in a Financial Proposal the Evaluation Committee will assess whether the discrepancy is 1. a minor deviation and the Financial Proposal can still be considered substantially responsive, or
2. a major deviation rendering the Financial Proposal unresponsive which leads to its exclusion.

In case of minor deviations Bidders will be requested to determine whether the omitted price indication was included in other price items. If not, the relevant Financial Proposal will be corrected by applying the lowest rates for corresponding items of competing bids.The evaluated price including any corrections and adjustments will form the basis for further evaluation/weighting and for contract award if successful. |
|  | 4.6.5 **In case of QCBS** in accordance with art. 1.5.1: | The substantially responsive Bid with the lowest evaluated price will receive the highest score of 100 points. All other Bids shall receive a proportionately lower score.  |
|  | 4.6.6 **In case of FBS** in accordance with art. 1.5.3. | Proposals whose evaluated price exceeds the fixed budget as specified in art. 3.2.3 will be excluded from further evaluation. |
| 4.7. | Weight (= total marks) of technical and financial scores:4.7.1  **In case of QCBS** in accordance with art. 1.5.1: The weightage given to the technical proposal must exceed 50% while the weightage given to the financial proposal must be below 50%. When added up the weight of the technical score and the weight of the financial score shall be 100%. |
|  | 4.7.1.1 Weight given to the technical score (T): | 70%  |
|  | 4.7.1.2 Weight given to the financial score (F): | 30% |
|  | 4.7.1.3 Formular:The **weighted technical score** is calculated as follows:WTP = OTM \* TTM / HTM, withWTP = weighted technical points (score) of a Technical Proposal,OTM = obtained technical marks (score) obtained by bidder as per technical evaluationTTM = total technical marks (technical weighting as per art. 4.7.1.1)HTM = highest technical marks (score) obtained by any bidder as per technical evaluation.The **weighted financial score** is calculated as followsWFP = LEP / EP \* TFM, withWFP = weighted financial points (score) of a Financial Proposal,LEP = lowest evaluated price of all Financial Proposals,EP = Evaluated price of the Financial Proposal,TFM = total financial marks (financial weighting as per art. 4.7.1.2).The **overall score** is calculated as:P = WTP + WFP. |
|  | 4.7.2 **In case of QBS** in accordance with art. 1.5.2 **and FBS** in accordance with art. 1.5.3: The weightage given to the technical proposal is 100% while the weightage given to the financial proposal is 0%. |
|  | 4.7.3 **In case of LCS** in accordance with art. 1.5.4: The weightage given to the technical proposal is 0% while the weightage given to the financial proposal is 100%. |
| 4.8 | Contract award conditions:Prior to the expiration of the Bid validity period according to art. 2.3 the CA shall award the Contract to the Bidder |
|  | 4.8.1 **In case of QCBS** in accordance with art. 1.5.1 | whose Proposal has obtained the highest combined score by combining its technical and financial scores as per the calculation method outlined in art. 4.7. |
|  | 4.8.2 **In case of QBS** in accordance with art. 1.5.2 | whose Proposal has obtained the highest technical score. |
|  | 4.8.3 **In case of FBS** in accordance with art. 1.5.3 | whose Proposal has obtained the highest technical score and whose evaluated price according to art. 4.6.2 is within the available budget as per art. 3.2.3. |
|  | 4.8.4 **In case of LCS** in accordance with art. 1.5.4 | whose Proposal has been determined technically substantially responsive in accordance with art. 4.3 and who has offered the lowest evaluated price in accordance with art. 4.6.2. |
|  | In case of price corrections as per art. 4.6.2 the successful Bidder shall be informed on such and be entitled to assess these price corrections prior contract negotiations. The successful Bidder has to accept the evaluated price as contract price unless it can prove obvious miscalculations on side of the CA. |  |
|  | 4.8.5 Multiple lots:In case multiple Proposals per Bidder were accepted in accordance with art. 1.2. the following awarding conditions apply:  |
|  | 4.8.5.1 Only one Contract conditionIf applicable according to art. 1.2.1: If a Bidder has submitted Proposals for multiple lots, but can only be awarded one Contract as per art. 1.2.1 it will be awarded the Contract for which its Proposal has received the highest score relative to all other scores of competitors and those scores the Bidder has received for Proposals for other lots even if the scores for these other lots are highest relative to those of competitors. The above condition can only be waived if no other Proposals are available for contract award, in which case Bidders can be awarded multiple Contracts. If a Bidder has the highest score for a particular lot but already been awarded the Contract on another lot (with even a higher ranking), the second ranked Bidder will be awarded the Contract for such particular lot.  |
|  | 4.8.5.2 Packages conditionIf applicable according to art. 1.2.2:If a Bidder has submitted Proposals for multiple lots, it can be awarded any number of Contracts/lots (Packages), whenever its submitted Proposals are successful and highest-ranked per lot.  |

# **Scope of contract negotiations**

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| 5.1. | Contract negotiations with the successful bidder are limited to 1. minor alterations to the ToR, methodology and staffing,
2. minor amendments to the Special Conditions of Contract,
3. mobilization arrangements, the work plan and completion schedule,
4. inputs required from the CA,
5. clarification of the Consultant’s tax liability.
 |
| 5.2. | Contract negotiations may not include1. any substantial changes to scope of works, quality and responsibilities of the Consultant,
2. any material alterations of the conditions of contract,
3. any reductions of unit rates or reimbursable costs, except where changes are required to reflect any agreed changes to the technical proposal.

Any substantial changes to deciding factors in the evaluation of the proposals.The results of the contract negotiations shall be written down in minutes of negotiations and signed by the CA and the Consultant. |
| 5.3 | The successful Bidder shall confirm availability of all key staff prior or during contract negotiations. If during the bid validity period key staff is not available, the Bidder shall be disqualified, and contract negotiations deemed failed.The successful Bidder may not substitute key staff during the bid validity period unless a substitution is rendered necessary due to circumstances beyond the control of the Bidder (e.g. severe sickness or death of any such key expert). After expiry of the bid validity period the Bidder may substitute key staff. Any substitution must be at least equally qualified and the Bidder has to bear prove of such to the full satisfaction of the CA.  |
| 5.4 | If contract negotiations fail with the successful Bidder, the CA shall carry out contract negotiations with the next-ranked bidder etc. until a contract is successfully concluded. |

# **Annexes**

# **Annex 1 - Bidding and contract forms**

# **Annex 1.1 - Form - Declaration of Undertaking**

Reference name of the Application/Offer/Contract: ("Contract")

To: ("Project Executing Agency")

* 1. We recognise and accept that KfW only finances projects of the Project Executing Agency (“PEA”) 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 the applicable fiscal obligations with regard to the payment of taxes at the respective tax residence and in the country of origin of the PEA (contractors based in Annex 1 countries (https://www.consilium.europa.eu/de/policies/eu-list-of-non-cooperative-jurisdictions/) must submit a fully completed and legally countersigned declaration of tax conformity (Appendix1 to the Declaration of Undertaking) in addition to the Declaration of Undertaking at the time of award of the contract/contract review. This shall become an integral part of the contract. Failure to submit may result in exclusion from the awarding procedure. For contractors based in countries not listed as Annex I countries, only the Declaration of Undertaking must be submitted, and not the declaration of tax conformity;

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 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 condition to participation in this Tender Procedure.

* 1. 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:

* 1. 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;
	2. 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;
	3. 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.
	4. 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.
	5. 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 Service Providers 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 Labour Organisation (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.

* 1. 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 auditor 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.
	2. 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 :

Signature: Dated:

# **Appendix 1 of Annex 1.2**

# **Declaration of tax conformity – binding confirmation for legal persons**

Name of company

I hereby confirm with my signature that:

1. I am authorised to make this declaration on behalf of the above company;

2. the company properly pays all taxes in accordance with the tax laws of the country in which the company is domiciled;

3. the company is not currently nor has been in the past involved in any legal proceedings concerning the taxation of the company;

4. the company will duly pay taxes that may arise from the provision of contracted services;

5. all information and statements provided in advance are complete, accurate in terms of content and currently correct.

.............................. ................... .......................................................

(Place) (Date) (Name of the consultant)

 ....................................................... (Signature(s))

# **Appendix 1 of Annex 1.2**

# **Declaration of tax conformity – binding confirmation for natural persons**

I hereby confirm with my signature that:

1. I make this declaration in my name/on my own account;

2. I duly pay taxes that I am obliged to pay under the tax law of my country of residence;

3. I am not currently involved in tax law court proceedings, nor have I been in the past;

4. I will duly pay taxes that may arise from the provision of contracted

5. services;

I have filled in all the information and statements of this confirmation in full, accurately in terms of content and that they are up to date at this time.

.............................. ................... .......................................................

(Place) (Date) (Name of the person)

 ....................................................... (Signature)

# **Annex 1.2 - Form - Acceptance Letter**

*[Use letterhead paper of the CA]*

*[date]*

To: *[name and address of the Consultant]*

**Subject: Notification of Award Contract for** ***[name of tender* and *contract number]***

This is to notify you that your Proposal dated *[date]* for execution of the ***[name of tender* and *contract number]*** for the Accepted Contract Amount of ***[Contract price in numbers and words****]* ***PKR*** is hereby accepted by the undersigned Contracting Authority.

Authorized Signature:

Name and Title of Signatory:

Name of Institution: Aga Khan Rural Support Programme (AKRSP)

**Attachment: Contract Agreement[[2]](#footnote-2)**

# **Annex 2 – Terms of Reference**

# **Excavator Machine (140 HP) for Land Leveling and Terracing**

# **Project Location:** Mastan Kerch, Khyber**Machine Hours Required:** 253 hours**Project Duration:** 30 days**Reporting to:** Site Engineer, Aga Khan Rural Support Programme (AKRSP)

# **Background:**

# The Aga Khan Rural Support Programme (AKRSP) is implementing agricultural development projects in Mastan Kerch, Khyber, with a focus on leveling and terracing barren land. This activity is part of the Biodiversity Component under the HRE-II Project, aimed at improving land productivity and promoting sustainable agricultural practices.

# **Scope of Work:**

# The contractor is expected to deliver the following services:

# Provide a 140-horsepower excavator in good working condition.

# Ensure all necessary safety measures are in place for both the machine and the operator.

# Perform precise land leveling on uneven or sloping terrain.

# Construct agricultural terraces that enhance soil conservation and optimize water management.

# Clear debris, stones, and other unwanted materials to prepare the land for agriculture.

# Provide a qualified, experienced operator capable of efficiently operating the machine to meet the project’s land development goals.

# **Deliverables:**

# Complete 253 hours of land leveling and terracing to make the land suitable for agriculture.

# Ensure all work is carried out within the specified project timeline.

# Submit a comprehensive

# final report within 4 working days of project completion.

# **Timeline:**

# The work will commence on November 11, 2024, and is expected to be completed within 30 days.

# **Annex 3 – Contract specimen**

See separate document

1. Government-owned enterprises shall be eligible to participate in bidding only if they can establish that they are legally and financially autonomous, operate under commercial law, and are not a dependent agency of the Government. Furthermore, they will be subject to the same bid and performance security requirements as other Bidders. [↑](#footnote-ref-1)
2. If the CA cannot send the Contract agreement together with the letter of acceptance, it must be sent electronically to the Consultant within a reasonable period of time. [↑](#footnote-ref-2)