

ANNEX II: TERMS OF REFERENCE

[How to complete these standard Terms of Reference: The elements within <> brackets must be completed with the information indicated, as appropriate for each tender procedure. The phrases within [] brackets should only be included if appropriate. All other text should only need to be amended in exceptional cases, depending on the requirements of particular tender procedures. In the final version of each set of Terms of Reference, please remember to delete this paragraph, any other text with yellow highlighting and all such brackets.]

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1. BACKGROUND INFORMATION

1.1. Beneficiary country

< Name >

1.2. Contracting Authority

< Name >

1.3. Relevant country background

< Provide an overview of the particular characteristics of the country which are relevant to the operation of the proposed project. This should include any global and national economic and social factors which may affect the proposed project. >

1.4. Current state of affairs in the relevant sector

< Describe the current situation in the sector or institutional area in which the proposed project will operate. This section should be no longer than half a page. Include:

- national/local policies and strategies and/or economic data for the sector or institutional area;
- the origin and immediate history of present organisational structures, institutions and operating systems in the sector or institutional area;

and, if appropriate and not covered elsewhere in these Terms of Reference,

- responsibilities and mandate of institutions;
- human resource capacity and constraints;
- infrastructure development;
- market development;
- information systems and flows;
- priority setting and decision making;
- access to identified, priority social groups;
- financial structures and flows. >

1.5. Related programmes and other donor activities:

< Identify and describe the link, if any, between the proposed contract and the activities and programmes of other sources of external assistance in the same sector >

2. OBJECTIVE, PURPOSE & EXPECTED RESULTS

2.1. Overall objective

The overall objective of the project of which this contract will be a part is as follows:

< objective >

2.2. Purpose

The purpose(s) of this contract] is/are as follows:

- < purpose 1 >
- < purpose 2, etc >

For larger/complex projects there can be more than one purpose (i.e one per project component)

2.3. Results to be achieved by the Consultant

< These may be presented either in order of importance or in chronological order, as appropriate >

- < result 1 >
- < result 2, etc >

3. ASSUMPTIONS & RISKS

3.1. Assumptions underlying the project intervention

< Insert elements from the Logical Framework prepared for the project as part of the Financing Proposal >

3.2. Risks

< Insert elements from the Logical Framework prepared for the project as part of the Financing Proposal >

4. SCOPE OF THE WORK

4.1. General

4.1.1. Project description

< As appropriate but with a recommended maximum of 2 pages >

4.1.2. Geographical area to be covered

< As appropriate >

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4.1.3. Target groups

< As appropriate >

4.2. Specific activities

< A clear and detailed list of tasks to be undertaken in order to achieve the contract objective and/or consultant's job description. The tasks should be listed either in order of importance or in chronological order. They should include any reports which the Consultant must prepare (in addition to the interim and final reports referred to in Section 7.1 of these Terms of Reference). Any tasks requiring specific expertise should be clearly identified. If appropriate, the time schedule for completion of the various activities should be stipulated here.

This section should contain only major managerial, economic, institutional, and technical requirements (+criteria) regarding this project's activities. It may address the question of phasing of the project, or its organisation into distinct components. It should not be too prescriptive. It is up to tenderers to prepare their own detailed organisation and methodology and technical proposals such that they fulfil the general requirements described in these Terms of Reference.

For contracts which include an element of supervision of progress of contractors on other contracts (eg, works or supplies), the tasks of the supervisor should include a description of the types of control which he/she must carry out. When the supervisor issues a certificate, he/she must be satisfied that relevant, reliable and sufficient evidence exists that:

- the tasks have been properly performed; and
- the amounts claimed by the contractor(s) have actually and necessarily been incurred

in accordance with the requirements of the contract he/she is supervising.

In preparing this section, particular attention should be given to ensuring the sustainability and dissemination of project results. The Consultant must also observe the latest visibility guidelines concerning acknowledgement of EC financing of the project. >

4.3. Project management

4.3.1. Responsible body

< Identity of the specific department of the Contracting Authority / beneficiary country (or its relevant agent, if appropriate) which will be responsible for managing the contract / project >

4.3.2. Management structure

< Describe the management structure of the Contracting Authority / beneficiary country administration, including all relevant decision-making processes which may be involved in managing this project. Include information on the basic management structure of the project (eg, Project Management Unit, Steering Group) and project planning. Identify those decisions which may be taken by the Project Manager alone (as identified in Article 8 of the Special Conditions) and those which he/she must refer, for example, to a more senior colleague or project steering committee >

4.3.3. Facilities to be provided by the Contracting Authority and/or other parties

< As appropriate >

5. LOGISTICS AND TIMING

5.1. Location

< Identify the location (ie, city/town) of the operational base for the project, any other location(s) where it may be appropriate for short-term inputs to be provided and/or where pilot projects may be established (eg, regions or neighbouring countries with which cross-border co-operation is encouraged) >

5.2. Commencement date & Period of execution

The intended commencement date is <date> and the period of execution of the contract will be < number > months from this date. Please refer to Articles 4 and 5 of the Special Conditions for the actual commencement date and period of execution.

< If the intention is to award a contract for additional services depending on the outcome of the initial contract, such as for the second phase of a study or operation, this must be stated here. The possibility of additional services being procured by negotiated procedure and their estimated cost must be clearly indicated, if appropriate. >

6. REQUIREMENTS

6.1. Personnel

6.1.1. Key experts

All experts who have a crucial role in implementing the contract are referred to as key experts. The profiles of the key experts for this contract are as follows:

Identify the profiles sought for all key experts up to a recommended maximum of 6 key experts - otherwise the maximum scores will be negligible and evaluation will be difficult. The skills required may include professional technical skills, team management skills, communication skills, and/or language skills as appropriate. While it is not necessary to identify all key positions in detail, it is recommended to be as clear as possible to guarantee a fair technical evaluation. Remember to set the scores in the evaluation grid accordingly. It is recommended that the precise time inputs of the experts be left to the discretion of tenderers. However, it may be useful to identify some absolute minima for the contribution of key experts to be considered appropriate.

When deciding on the profiles, equal access must be guaranteed and that they do not create unjustified obstacles to competitive tendering. Furthermore, the profiles should be clear and non-discriminatory. Remember that participation in tendering procedures shall be open on equal terms to all eligible persons (see point 11 in PN). The minimum percentage of time which experts should work in the beneficiary country could be specified, eg 75%, to limit the possibility that experts spend a large proportion of their time outside the beneficiary country to which they are supposedly giving technical advice.

"The profile of the "ideal expert" should not be described as it sets the threshold for acceptance of the offer. Due consideration should be taken to the real minimum requirements and the existence of such experts on the market when choosing the criteria. The criteria should be as broad as possible. Quantifiable criteria should be drafted with vigilance. It is good practise to - where appropriate - add expressions such as "a University degree in Economics or equivalent" in order not to

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automatically disqualify offers with experts who have 40 years relevant experience but which lacks the formal university degree; or "preferably 10 years experience...but a minimum of 5 years required. It should be born in mind that in case an offer deviates from the technical award criteria the offer should be rejected."

Key expert 1: Team Leader

Qualifications and skills

< As appropriate >

General professional experience

< As appropriate >

Specific professional experience

< As appropriate >

Key expert 2: < eg Senior legal expert >

Qualifications and skills

< As appropriate >

General professional experience

< As appropriate >

Specific professional experience

< As appropriate >

Key expert 3: < etc >

Guidance notes on expert inputs

1) Working days: performance of the contract (and therefore payment) is based on working days only. The Consultant will only be paid for days actually worked on the basis of the daily fee rate contained in the budget breakdown (annex V). Tenderers must annex the 'Estimated number of working days' worksheet contained in the spreadsheet for Annex V to their Organisation and Methodology (Annex III) to demonstrate the correspondence between the proposed methodology and the expert inputs.

It is unnecessary to stipulate what the holiday provision for the experts will be. This is for the tenderer to decide. The annual leave entitlement for long-term experts is simply limited to a maximum of 60 days.

A fee-based/technical assistance contract is, by definition, one in which the actual days worked each month for each category of experts may differ from the number of working days estimated for each month in the organisation and methodology and the budget breakdown.

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The actual input required for the tasks specified in the Terms of Reference can only be determined in the course of the contract.

During the technical evaluation, the only aspect that should be considered for the non-key experts is whether the number of working days estimated for each month for each type of expert proposed in the Organisation and Methodology (Annex III) are sufficient for the requirements of the Terms of Reference to be achieved. This is judged on the basis of the profiles identified in the Terms of Reference and/or the Organisation and Methodology.

2) The annual leave entitlement of the experts employed by a service provider is determined by their employment contract with the service provider and not by the service contract between the Contracting Authority and the Consultant. However, the Contracting Authority is able to determine when experts take their annual leave since this is subject to approval by the Project Manager, who will assess any such request according to the needs of the project while the contract is in progress. For obvious reasons, a day of annual leave is not considered to be a working day. All this is clearly stated in the General Conditions:

“Article 21 Working hours

The days and hours of work of the Consultant or the Consultant's personnel in the country of the Contracting Authority shall be fixed on the basis of the laws, regulations and customs of the country of Contracting Authority and the requirements of the services.

Article 22 Leave entitlement

22.1 Annual leave to be taken during the period of execution of the contract must be at a time approved by the Project Manager.

22.2 For a fee-based contract, the fee rates are deemed to take into account the annual leave of up to 2 months for the Consultant's personnel during the period of execution of the contract. Consequently, days taken as annual leave shall not be considered to be working days.

22.3 The Consultant's personnel shall not be entitled to either sick or casual leave provided, however, that the Project Manager may, at his sole discretion whether for compassionate reasons or otherwise, permit the Consultant to take unpaid leave during the period of execution of the contract.”

Everything is based on working days to avoid getting involved in identifying when working weeks, national holidays, etc are in the beneficiary country of a given contract.

The fee rates for all experts must include all the "administrative costs of employing the relevant experts, such as relocation and repatriation expenses [including flights to and from the beneficiary country upon mobilisation and demobilisation], accommodation, expatriation allowances, leave, medical insurance and other employment benefits accorded to the experts by the Consultant". This is why no further precision of annual leave entitlement must be mentioned in the service contract.

It is important, though, to establish how many times each short-term expert is to be mobilised (since travel is included in the fee rate, the number of flights will have an impact on that fee rate).

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3) The schedule of estimated numbers of working days which must be attached to Annex III provides a direct basis for calculating the maximum contract value. The Project Manager can use the updated cashflow monitoring spreadsheet submitted by the Consultant with its invoices to monitor the actual numbers of working days submitted in invoices and to check that the contract is progressing within budget. This is very useful from a financial management perspective.

Since the estimated working days are on a monthly basis, the spreadsheet can be used to provide an early indication of any problems during contract implementation, especially since it automatically calculates variances from the original estimates. Usually, the Project Manager should be able to see and explain why variations have occurred but, if not, he/she can investigate further. This is basic management accounting.

6.1.2. Other experts

CVs for experts other than the key experts are not examined prior to the signature of the contract. They should not have been included in tenders.

The Consultant shall select and hire other experts as required according to the profiles identified in the Organisation & Methodology <and/or these Terms of Reference>. These profiles must indicate whether they are to be regarded as long-term/short-term and senior/junior so that it is clear which fee rate in the budget breakdown will apply to each profile. All experts must be independent and free from conflicts of interest in the responsibilities accorded to them.

The selection procedures used by the Consultant to select these other experts shall be transparent, and shall be based on pre-defined criteria, including professional qualifications, language skills and work experience. The findings of the selection panel shall be recorded. The selection of experts shall be subject to approval by the Contracting Authority.

Note that civil servants and other staff of the public administration of the beneficiary country cannot be recruited as experts, unless prior written approval has been obtained from the European Commission.

6.1.3. Support staff & backstopping

< As appropriate >.

If the contract is a fee-based contract:

[Backstopping costs are considered to be included in the fee rates.]

If the contract is a fee-based contract and the support staff are to be provided by the Consultant:

[The costs of support staff must be included in the fee rates of the experts.]

6.2. Office accommodation

Office accommodation of a reasonable standard and of approximately 10 square metres for each expert working on the contract is to be provided by < the Consultant / the beneficiary country / the Contracting Authority >.

If the contract is a fee-based contract and the office accommodation is to be provided by the Consultant:

Option 1:

[The costs of the office accommodation are to be covered by the fee rates of the experts.]

Option 2:

[The costs of the office accommodation are to be covered by the provision for incidental expenditure. The cost per square metre must be in line with the prevailing local market rate for office accommodation of a reasonable standard.]

6.3. Facilities to be provided by the Consultant

The Consultant shall ensure that experts are adequately supported and equipped. In particular it shall ensure that there is sufficient administrative, secretarial and interpreting provision to enable experts to concentrate on their primary responsibilities. It must also transfer funds as necessary to support its activities under the contract and to ensure that its employees are paid regularly and in a timely fashion.

< State what will be required in terms of supplies, services, documentation, logistical support, etc for the success of the contract, indicating the source (ie, Consultant / beneficiary country / Contracting Authority / ...). The maximum detail should be provided, especially for those elements which are to be provided by the Consultant within the fee rates of its experts. >

If the Consultant is a consortium, the arrangements should allow for the maximum flexibility in project implementation. Arrangements offering each consortium member a fixed percentage of the work to be undertaken under the contract should be avoided.

6.4. Equipment

No equipment is to be purchased on behalf of the Contracting Authority / beneficiary country as part of this service contract or transferred to the Contracting Authority / beneficiary country at the end of this contract. Any equipment related to this contract which is to be acquired by the beneficiary country must be purchased by means of a separate supply tender procedure.

If the contract is a fee-based contract:

6.5. Incidental expenditure

The Provision for incidental expenditure covers the eligible incidental expenditure incurred under this contract. It cannot be used for costs which should be covered by the Consultant as part of its fee rates, as defined above. Its use is governed by the provisions in the General Conditions and the notes in Annex V of the contract. It covers:

- Travel costs and subsistence allowances for missions to be undertaken as part of this contract from the base of operations in the beneficiary country **Do not give any financial estimate**
- < Item 2, etc **Do not give any financial estimate** >

The Provision for incidental expenditure for this contract is EUR < amount >. This amount must be included without modification in the Budget breakdown.

Any subsistence allowances to be paid for missions undertaken as part of this contract from the base of operations in the beneficiary country must not exceed the per diem rates published on the Web site http://europa.eu.int/comm/europeaid/index_en.htm at the start of each such mission.]

Guidance notes on estimating the Provision for incidental expenditure:

All costs relating to the provision of experts (including travel to/from the beneficiary country and subsistence once there, apart from missions specified in these terms of reference) must be included in the fee rates. The explicit explanation in the notes to the budget breakdown is as follows:

- the provision for incidental expenditure does not cover travel to/from the beneficiary country for 1 experts (other than for missions within the contract)

These mobilisation and demobilisation costs are included in the fee rates. In this respect there is no distinction to be made between long-term and short-term experts. The only per diem rates and travel costs which should be covered by the provision for incidental expenditure are those relating to missions from the base of operations in the beneficiary country which are required by these Terms of Reference.

- the subsistence paid to experts on missions requiring an overnight stay away from the base of operations in the beneficiary country must not exceed the per diem rate published on the Web site http://europa.eu.int/comm/europeaid/index_en.htm for each night away from the base of operations

Remember that the amount determined in the Terms of Reference as the Provision for incidental expenditure is simply an upper limit on the incidental costs. It need not be estimated exactly and it does not matter that the actual costs are more or less than the estimated amounts of the components, provided that a reasonable margin of error has been allowed.

No detailed calculation of the provision for incidental expenditure must appear anywhere in the Terms of reference or in the tender dossier, otherwise the amounts identified become legally binding.

6.6. Expenditure verification

The Provision for expenditure verification relates to the fees of the auditor who has been charged with the expenditure verification of this contract in order to proceed with the payment of pre-financing instalments if any and/or interim payments if any.

The Provision for expenditure verification for this contract is EUR < amount >. This amount must be included without modification in the Budget breakdown.

This provision cannot be decreased but can be increased.

7. REPORTS

7.1. Reporting requirements

Please refer to Article 26 of the General Conditions. Interim reports must be prepared every six months during the period of execution of the contract. They must be provided along with the corresponding invoice, the financial report and an expenditure verification report defined in Article 28 of the General Conditions. There must be a final report, a final invoice and the financial report accompanied by an expenditure verification report at the end of the period of execution. The draft final report must be submitted at least one month before the end of the period of execution of the contract. Note that these interim and final reports are additional to any required in Section 4.2 of these Terms of Reference.

Each report shall consist of a narrative section and a financial section. The financial section must contain details of the time inputs of the experts, of the incidental expenditure and of the provision for expenditure verification. The final report must be accompanied by the final invoice, the financial report and an expenditure verification report.

7.2. Submission & approval of progress reports

< Number > copies of the progress reports referred to above must be submitted to the Project Manager identified in the contract. The progress reports must be written in English. The Project Manager is responsible for approving the progress reports.

8. MONITORING AND EVALUATION

8.1. Definition of indicators

< Specific performance measures chosen because they provide valid, useful, practical and comparable measures of progress towards achieving expected results. Can be quantitative: measures of quantity, including statistical statements; or qualitative: judgements and perception derived from subjective analysis >

8.2. Special requirements

< As appropriate >