

SPECIAL CONDITIONS

CONTENTS

These conditions amplify and supplement, if necessary, the General Conditions governing the Contract. Unless the Special Conditions provide otherwise, those General Conditions remain fully applicable. The numbering of the Articles of the Special Conditions is not consecutive but follows the numbering of the Articles of the General Conditions. In exceptional cases, and with the authorisation of the appropriate Commission departments, other clauses may be added to cover specific situations.

The present contract concerns on one side supply of equipment for the schools of Nablus, Jenin, Deir Dibwan and, on the other side, the EPC (engineering, procurement and construction) of a grid-connected photovoltaic system to Tulkarem School.

Regarding the installation of Tulkarem grid connected system, in compliance with a single EPC contract, the contractor is responsible of the confirmation of the solar energy resource, the development of the detailed design of the PV plant, the estimation of its energy yield, the procurement of the equipment according to the specifications agreed upon with the developer, the construction of the PV plant, the carrying out of the acceptance tests and the transfer of the plant for commercial operation to its owner.

Article 2 Language of the Contract

- 2.1 The language used shall be English.

Article 4 Communications

- 4.1 Mr Lorenzo Vecchi
VIS - VOLONTARIATO INTERNAZIONALE PER LO SVILUPPO
Occupied Palestinian Territories Coordination Office
c/o Cremisan Monastery
Cremisan Street
Jerusalem
Telephone: +972 (0)54 833 93 91, +972 (0)59 708 35 30
E-mail address: pm.palestina@volint.it

And

The Contractor:

Article 7 Supply of documents

All offers must include pictures of the supply, required documentation and technical design of the system. A possible choice is to include a CD-ROM including the above documents.

Article 9 General Obligations

- 9.9 By way of derogation from Article 9.9 of the General Conditions, the Article itself do not apply. The Contracting Authority will be the only one responsible for implementing the visibility to the financial contribution of the Donor(s): Italian Development Cooperation Agency; Directors Committee decision n. 185 dated 14/11/2013; annexe XI, article 6.

Article 10 Origin

10.1 All goods purchased must originate in a Member State of the European Union or a country covered by the programme. For these purposes, ‘origin’ means the place where the goods are mined, grown, produced or manufactured and/or from which services are provided. The origin of the goods must be determined according to the EU Customs Code or to the relevant international agreement applicable. In derogation of the origin of goods, please refer to Practical guide applicable as of 15 July 2015, article 2.3.2, Page 26, “Derogations may be granted on the grounds of”

Article 11 Performance guarantee and Warranty guarantee

11.1 The amount of the performance guarantee shall be 10% of the total Contract price, including any amounts stipulated in addenda to the Contract.

At the signing of the contract, the Contractor will procure a performance guarantee of value 10% of the contract price. The purpose of this is to guarantee funds for the Owner in case: a) delay liquidated damages are payable; b) Guaranteed Performance Ratio is not achieved at provisional acceptance; c) the Contractor has defaulted in its obligations under the contract.

The performance guarantee will be returned to the Contractor at the signing of the Provisional Acceptance Certificate

11.2 Upon signing of the Provisional Acceptance Certificate, the Contractor will provide a warranty guarantee with a value of 5% of the contract price.

The warranty guarantee will guarantee the Owner funds in case liquidated damages that are payable or the Contractor do not meet obligations during the Defect Warranty Period. The warranty guaranteed will be returned to the Contractor at the signing of the Final Acceptance Certificate.

Article 12 Liabilities and Insurance

12.2b), paragraph 2 The Contractor shall provide transport and unload insurance. Differently from the DDP – Delivery Duty Paid Incoterms rule¹, the transfer of risks and costs occurs after the signature of the Provisional acceptance. The delivery place is defined in Art. 1.1 of the file “c4c – Contract”.

The Contractor shall procure insurance policies as follows: a) Construction All Risk Insurance; b) Marine Transit Insurance; c) Third Party Liability Insurance; d) all other compulsory insurances according to the applicable law.

The contractor shall have all of his laborers and equipment insured, and he must own a third party insurance against accidents to the site visitors or nearby people and property.

Article 13 Programme of implementation of tasks

13.2 The programme of implementation of the Tasks shall be submitted the day of signing the contract

Article 14 Contractor’s drawings

¹See <http://www.iccwbo.org/products-and-services/trade-facilitation/incoterms-2010/the-incoterms-rules/> .

- 14.1 All documentation, drawings, procedures, manuals and samples required from the Contractor for approving are defined

Article 18 Commencement order

- 18.1 Implementation of the Tasks shall begin at the signature of the contract.

Article 19 Period of implementation of the tasks

19.1 Detailed Photovoltaic Design

The Contractor has **10** days from the Commencement order for delivering the detailed photovoltaic system for all relevant lots – in compliance with the c4f_annexiitechspeciitechoffer_en_ii-, energy yield prediction, the detailed project documentation, the project implementation schedule, the Quality Plan and the finalization of permitting process.

The PV design shall include a Gantt chart (detailed work plan and time schedule) construction schedule.

The construction programme should be sufficiently detailed to show:

- Tasks and durations.
- Restrictions placed on any task.
- Contingency of each task.
- Milestones and key dates.
- Interdependencies between tasks.
- Parties responsible for tasks.
- Project critical path.
- Actual progress against plan.

All tasks and the expected timescales for completion should be detailed along with any restrictions on a particular task. For example, if permits or weather constraints are predicted to potentially stop construction during particular months, this should be noted.

Interdependencies between tasks will allow the programme to clearly define the ordering of tasks. The project scheduling package will then indicate the start date of dependent tasks and highlight the critical path.

Critical path analysis will ensure that tasks that can affect the overall delivery date of the project are highlighted and prioritised. A comprehensive programme should also take into account resource availability.

The programme will detail the following main work areas:

- Final design works.
- Procurement and manufacture of equipment.
- Site access.
- Security.
- Foundation construction.
- Mounting frame construction.

- Module installation.
- Substation construction.
- Electrical site works.
- Grid interconnection works.
- Commissioning and testing.

The overall sequence of works is site access, site clearance, security, foundation construction, cable trenches and ducts, mounting frame construction, module installation, electrical site works, communications, site grid works and finally, testing and commissioning.

Contractor shall provide progress report updates on a weekly basis during construction.

Construction and Mechanical Completion

The Contractor has **30** days from the Commencement order for delivering the materials, construction and Mechanical Completion, and make them ready for the Commissioning and Provisional acceptance (Article 25).

Mechanical completion refers to the stage whereby all principal sub-components forming the final power plant have been installed and are mechanically and structurally complete.

Mechanical completion allows for commissioning activities to commence.

- Contractor warrants ability to complete the plant, the electrical infrastructure and connection infrastructure in accordance with the project schedule.
- Liquidated damages will apply if scheduled completion dates are not achieved.
- Contractor shall supply manuals, documents and records as per industry norms.
- Contractor to be responsible for storage and disposal of hazardous materials and rectification of any contamination caused by performance of the plant.
- Contractor to provide spare parts and consumables.
- Contractor to provide tools necessary for commissioning and testing and to make provision for commissioning and testing to be witnessed by the Owner's representative.

Provisional Acceptance / Completion Date (Article 31).

The Completion Date (date of signing the Provisional Acceptance Certificate) will be achieved within **30** days from the Commencement order.

Intermediate Acceptance (Article 32)

The Intermediate Acceptance Completion (date of signing the Intermediate Acceptance Certificate) will be achieved within 12 months from the Provisional Acceptance Certificate.

The warranty guarantee shall be then renewed for a further year

Final Acceptance (Article 32)

The Final Acceptance Completion (date of signing the Final Acceptance Certificate) will be achieved within 24 months from the Provisional Acceptance Certificate.

The warranty guarantee shall be terminated after this date.

Article 24 Quality of supplies

- 24.2 The Contractor shall provide a comprehensive Quality Standards document describing plant acceptance criteria. This shall be reviewed and approved by the Owner and will include a description of factory acceptance test procedures and site acceptance test procedures for major plant components, including transformers and inverters.

Article 25 Inspection and testing

- 25.2 Construction supervision carried out by the Contracting Authority include in accordance with Article 25 of the General Conditions:

a) Design reviews:

- Design basis statements.
- Studies/investigations.
- Design specifications.
- Design of structures.
- Drawings (all revisions).
- Calculations.
- Execution plans.
- Risk assessments and method statements.
- Quality plans.
- Safety plans/reports.
- Material and equipment selection.
- O&M manuals.
- Test reports.

b) Key stages and tests witnessing:

- Inspection of road construction.
- Inspection of foundations.
- Verification of cable routes.
- Inspection of cable tracks.
- Witnessing of delivery/off-load of solar modules, inverters and switchgear.
- Inspection of module, switchgear and inverter installation.
- Witnessing of site acceptance tests.
- Witnessing of completion tests.
- Monitoring and expediting defects.

The Contracting Authority and the owner need to be kept informed of developments during construction.

Article 26 General principles for payments

- 26.1 Payments shall be made in Euros.

Payments shall be authorised and made by:

VIS - VOLONTARIATO INTERNAZIONALE PER LO SVILUPPO

Via Appia Antica, 126

126, 00179 Roma

ITALY

In the person of: Ms. Emanuela Chiang

E-mail address: e.chiang@volint.it

26.5 By way of derogation from Article 26.5 of the General Conditions, in order to obtain payments, the Contractor must forward to the authority referred to in paragraph 26.1 above. The Owner will transfer a percentage of the Contract Price to the Contractor when milestones defined below are achieved in according with planning HQ Rome month's payments:

- a) for the 50% of the contract price, after the signing of the contract, but only after the delivery of all panels and mounting structures in the 2 sites, in accordance with planning HQ Rome month's payments against provision of the Performance Guarantee and against provision of the related invoice. The performance guarantee shall be provided to the Contracting Authority following the procedure foreseen for the performance guarantee, in accordance with Article 11, and in accordance with the format annexed to the contract.
- b) 50% (or the remaining price) after the Provisional Acceptance/Completion Date and the final commissioning of the PV System to the Electric Company and to VIS, in accordance with planning HQ Rome month's payments.
- c) Against the 5% Warranty Guarantee, while the down payment bond is returned after this commissioning.

26.9 **Liquidated Damages**

Failure to comply with any of the EPC contract requirements will result in the contractor having to pay financial compensation to the owner in the form of liquidated damages (LDs).

Delay Liquidated Damages: Delay liquidated damages of 0.25% of the EPC contract price will be provided per week of delay beyond the agreed completion date, up to a maximum cap of 10%.

Performance Liquidated Damages: A price adjustment will apply if the Contractor fails to meet the Guaranteed Performance Ratio during acceptance tests and does not rectify such under-performance. The liquidated damages will be agreed as 1.5% of the contract price for each 1% shortfall in the PR below the Guaranteed Performance Ratio. The cap on the performance liquidated damages will be 10% of the contract price.

Maximum Penalty Cap

The maximum aggregate liability of the Contractor for delay liquidated damages and performance liquidated damages will be 20% of Contract Price.

Termination

The Owner shall be entitled to terminate the contract if:

- The performance liquidated damages owed by the Contractor exceeds the agreed maximum cap.
- The delay liquidated damages owed by the Contractor for late delivery of the plant exceeds the agreed maximum cap.
- In case of justified refusal of issuance of the Provisional or Final Acceptance Certificates.

Article 29 Delivery

29.3 The packaging shall become the property of the recipient subject to environmental considerations.

29.5/6/7 Documents and certificates to accompany each delivery are defined in in *c4f_annexiitechspeciitechoffer_en_ii*.

Article 31 Provisional acceptance

Acceptance Tests

The Contractor will perform: a) tests required under the applicable law; b) commissioning tests according to IEC 62446; c) performance tests.

Performance tests will be carried out to determine whether the plant: a) has achieved the requirements for completion; b) is compliant with quality standards; c) is compliant with technical specifications; and d) to ascertain whether the guaranteed performance has been attained. The testing process shall be clearly described.

A test sample of modules shall be taken from the plant and sent to an independent testing institute for flash testing.

Provisional Acceptance

The Certificate of Provisional Acceptance must be issued using the template in Annex C11.

The Owner shall provide a Provisional Acceptance Certificate when all of the requirements for completion have been achieved and testing has been completed. A punch list of outstanding items will be prepared. To pass provisional acceptance, the value of outstanding items must be less than 1% of the Contract Price. Items on the punch list will be remedied within 15 days from signing of the Provisional Acceptance Certificate.

Signing of the Provisional Acceptance Certificate shall trigger the start of the Performance Warranty Period.

Provisional acceptance refers to the stage at which the contractor has complied with all of its construction-related obligations and the plant is ready to be handed over to the owner. The criteria for achieving provisional acceptance may include:

- Mechanical completion having taken place in accordance with the agreed technical specification and the plant being free from defects (other than noncritical punch list items)
- The aggregate value of the punch list items does not exceed a 2% percent of the contract price).
- Grid connection and energization of the plant have been achieved.
- All commissioning tests have been successfully completed.
- The provisional acceptance performance ratio (PR) test has been passed.
- All equipment and sub-contractor warranties have been assigned to the project company.
- All handover documentation is in place and hard and soft copies provided to the owner.
- Operation and maintenance training of the owner's personnel has taken place.
- Any delay or performance-related liquidated damages (LDs) incurred by the contractor during the construction phase have been paid to the owner.
- Any performance bond required during the EPC warranty period has been delivered to the owner.

Transfer of Title

The ownership of the plant, materials, equipment and warranties will transfer from the Contractor to the Owner at provisional acceptance. The Contractor shall be responsible for any materials or other items delivered by the Owner or by third parties up to provisional acceptance.

Article 32 Warranty obligations / Intermediate and Final Acceptance

32.6 Intermediate and Final Acceptance

The contractor will be required to deliver a number of guarantees in relation to their works in accordance with Article 11.2 and Article 45. These are described below.

- **Defects Warranty:** It would be normal for the contractor to provide a fully-wrapped plant defects warranty for a period of at least two years following the date of provisional acceptance. This makes the contractor responsible for the rectification of any defects that may be identified during this period.
- **Performance Warranty:** In addition to the short term PR test at provisional acceptance, it is industry standard for the contractor to provide a PR guarantee to be measured at one or two separate occasions within the defects warranty period. Industry best practice is for the PR to be tested annually over the first year and then over the second year of plant operation. Testing plant PR annually removes the risk of seasonable bias affecting the PR calculation and allows for a true appraisal of plant performance.

Given that an EPC warranty period lasts two years from the date the plant is accepted by the owner, PR testing over the first year of operation is commonly referred to as the intermediate acceptance test. PR testing during the second year of plant operation is commonly referred to as final acceptance testing. If these performance tests are passed (along with other contractual conditions) then an Intermediate Acceptance Certificate (IAC) and Final Acceptance Certificate (FAC) may be signed.

If the PR measured during the IAC or FAC tests were less than the guaranteed levels, then the contractor would be required to pay LDs to the owner to compensate for anticipated revenue losses over the project lifetime. To be enforceable in common law jurisdictions, LDs must be a genuine pre-estimate of the loss that the owner would suffer over the life of the project as a result of the plant not achieving the specified performance guarantees. LDs are usually a net present value (NPV) calculation based on the revenue forgone over the life of the project as a result of the shortfall in performance.

At the end of typically two years of plant operation (following the provisional acceptance date) and assuming successful IAC and FAC PR tests, rectification of any observed defects and payment of any incurred delay or performance-related LDs, the owner is obliged to sign the FAC. This has the effect of discharging the contractor's construction-related obligations and handing the plant over to the owner. At such a time, any performance bond that may have been in place to secure the contractor's obligations during the EPC warranty period would be returned to the contractor.

Intermediate Acceptance

The requirements for Intermediate Acceptance will include:

- The performance ratio test, averaged over one year of operation since provisional acceptance, taking into account the agreed rate of degradation of 1%.

Final Acceptance

The parties shall agree to requirements for final acceptance. These will include:

- A performance ratio test, averaged over the two years of operation since provisional acceptance, taking into account an agreed rate of annual degradation.

The Owner shall provide a Final Acceptance Certificate when all of the requirements for completion have been achieved

32.7 The warranty must remain valid for 2 years after provisional acceptance.

The Performance Warranty Period will be 2 years, starting from the signing of the Provisional Acceptance Certificate.

The Contractor shall transfer all the guarantees and warranties directly from suppliers and sub-suppliers in favour of the Owner. This shall include:

Module Power Performance Warranty: 25 years (90% until year 10, 80% until year 25, or linear power warranty according to the manufacturer's specifications).

Inverter Warranty: 10 years (extended, if required)

Support Structure Warranty: 2 years. Civil engineering accredited department report.

The Defect Warranty Period will have a duration of 2 years from issue of Provisional Acceptance Certificate.

During this period the Contractor will remedy defects and omissions at its own cost.

The period will be extended by a further period of 1 year for any defect that is remedied during the initial period.

Article 33 After-sales service

33.1 Operation and Maintenance

A two-years Warranty Period O&M for the Tulkarem system is included in the offered price, also Two years Replacement warranty is required of any Delivered Device, in the case that the manufacturer warranty is not voided.

Article 40 Settlement of disputes

40.4 Any disputes arising out of or relating to this Contract which cannot be settled amicably shall be referred to the exclusive jurisdiction of the Court of the 4 given municipalities

Article 45 Guaranteed Performance

A minimum Guaranteed Performance Ratio of 81% will be achieved at provisional acceptance. The Performance Ratio (PR) shall be measured at the export meter over a period of 15 days prior to issue of the Provisional Acceptance Certificate. The PR measurement shall be temperature compensated and irradiation measured using secondary standard thermal pyranometers. A minimum of 98% of test time shall be at a measured irradiance above [100]W/m².

A minimum Guaranteed Performance Ratio of 80% will be achieved during the Performance Warranty Period.

Liquidated damages for PR shortfalls will be provided by the Contractor, according to agreed formulae.

If the PR% is below the required, the expected lost energy shall be compensated for, during the first 2 years at the electric company or it shall be deducted from the warranty bond.