Major Contract Conditions

For outsourcing SCA Construction works
(To be used for bidders information only)

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1. INTRODUCTION

In order to clarify the way forward for a selected bidder under the SCA procurement process, the following conditions, duties and responsibilities of both the contractor and SCA will be part of the contract at minimum. The full contract text will be shared only with the selected bidders and the below text is only putted down for the information and considerations of all bidders and does not carry any legal binding on the contracting authority (SCA);

1.1 Subcontracting

1.1.1 None of the parts of the contracts is allowed for subcontracting to third party (ies)

1.2 Works to be furnished by the contractor

The contractor shall submit to the contractor authority for its approval the overall schedule which shall contain the order in which the contractor proposes to carry out the works and the times for drawings which needs to be furnished by SCA. The contractor is responsible to provide the road to the site for materials and labor for transportation and pay all its costs.

1.3 Alteration to Works

No material alteration to the works shall be made without the approval of the contracting authority.

1.4 Contractor’s Representative

The Contractor shall employ one or more competent representatives (site engineer) to superintend the carrying out of the works at site. They shall be fluent in the local language for day to day communications. Their CVs and names shall be communicated in writing to the SCA engineer for approval before work on site begins.

1.5 Safety Precautions

The Contractor shall observe all necessary applicable regulations regarding safety on the Site well according to the best practices. The Contractor shall, from the commencement of work at Site until taking over, provide fencing, lighting, guarding and watching of the Works, and temporary roadways, footways, guards and fences which may be necessary for the accommodation and protection of owners and occupiers of adjacent property, the public and others. The Contractor shall at its own cost provide any apparatus necessary for such use.

1.6 Clearance of Site

On completion of the works the Contractor shall remove all its equipment and leave the whole of the site and the Works clean and in a proper condition, to the satisfaction of the contracting authority.
1.7 Compliance with Statutes, Regulations

The Contractor shall, in all matters arising in the performance of the Contract, comply in all respects with, give all notices, and pay all fees, required by the provisions of any national statute, ordinance or other law or any regulation or bye-law of any duly constituted authority.

2. WORKMANSHIP AND MATERIALS

2.1 Completion

2.1.1 Extension on Time of Completion

The Contractor may claim an extension on the Time of Completion if the works got delayed in completing due to one of the following causes:

a) Extra or additional work ordered in writing by the appropriate authority in SCA;

b) Physical obstructions or conditions which could not reasonably have been foreseen by the contractor and confirmed by appropriate authority in SCA;

c) The failure of SCA to fulfill any of its obligations under the Contract; and

d) The event of force majeure as defined in this document.

2.1.2 Delay in Completion

If the Contractor fails to complete the Works within the stated time of completion, SCA shall be entitled to deduct 0.1% from the total project cost as penalty passing of each working day, if the penalty cost reaches 3% of total project cost the contract will be terminated and contractor will not be paid for its last completed construction process.

2.1.3 Tests on Progress and Completion

2.1.3.1 Material and activities

The designated team comprising SCA engineers might test the material and works on regular bases, material shall be tested before use and the works would be checked and tested during progress and after completion. The testing process for each activity might be recorded in specific forms provided by SCA and signed by both parties.

2.2 Defects after Taking Over

2.2.1 Defects Liability Period

The defect liability period will be of XXXX days at minimum, and while the project is taken over, the Defects Liability Period shall commence on the date it was taken over.

2.2.2 Making Good Defects

The Contractor shall be responsible for making good any defect in or damage to any part of the Works which may appear or occur during the Defects Liability Period and which arises from, either:

I. Any defective materials, workmanship, or

II. Any act or omission of the Contractor during the Defects Liability Period, the Contractor shall make good the defect or damage as soon as practicable and at its own cost.
The Defects Liability Period for the Works shall be extended by a period equal to the period during which the Works cannot be used by reason of a defect/s or damage.

2.3 Variations

2.3.1 SCA’s Right to Vary

The appropriate authority in SCA may issue the Variation Order to the Contractor at any time before the Works are taken over, instructs the Contractor to alter, amend, omit, add to or otherwise vary any part of the Works in writing. Variations in the contract will exceed by more than 25% of the total contract value.

The Contractor shall not vary or alter any of the Works, except in accordance with a Variation Order from the designated staff of contracting authority. The Contractor may, however, at any time propose variations of the Works to the engineer.

2.4 Certificates and Payments

2.4.1 Issue of Certificate of Payment

Within 15 days after receiving an application for payment of Interim Bill, which the Contractor was entitled to make, the appropriate authority in SCA shall issue a Certificate of Payment to the SCA showing the amount due, with a copy to Contractor.

A certificate of payment, other than the Final Certificate of Payment, shall not be withheld on account of:

I. Defects of a minor character which are not such as to affect the use of the Works, or

II. Any part of the payment applied for being disputed; in such case a certificate of payment for the undisputed amount shall be issued.

2.5 Payment

Unless otherwise specified, the SCA shall pay the amount certified within 15 days from the date of issue of each certificate of payment to the Contractor. 10% of retention money from the whole project cost shall be deducted from the approved Certificate of final Payment. The total retention money shall be disbursed within fifteen (15) days upon issuing the Defect Liability Certificate and Certificate of Payment.

2.5.1 Application for Final Certificate of Payment

The Contractor shall make application to the appropriate authority in SCA for the Final Certificate of Payment within 28 days after the issue of the Defects Liability Certificate.

3. LIABILITY AND INSURANCE

3.1 Allocation of Risk and Responsibility

The Risks of loss or damage to physical property and of death and personal injury which arise in consequence of the performance of the contractor pertaining to works, materials, transport, third Party losses, workmen compensation etc will be the responsibility of the contractor.
3.2 Care of the Works and Sharing the Risk

3.2.1 Contractor’s Responsibility for the Care of the Works

The Contractor shall be responsible for the care of the Works or any Section thereof from the Commencement Date until the Risk Transfer Date applicable.

The Contractor shall also be responsible for the care of any part of the Works upon which any outstanding work is being performed by the Contractor during the Defects Liability Period until completion of such outstanding work.

3.3 Damage to properties and injury to persons

3.3.1 Contractor’s Liability

The Contractor shall be liable for and shall insure SCA against all losses, expenses and claims in respect of any loss of or damage to physical property (other than the Works), death or personal injury occurring before the issue of the last Defects Liability certificate to the extent caused by material or workmanship of the Contractor, or negligence or breach of legal duty of the Contractor, its Suppliers or their respective employees and agents.

4. DEFAULT

4.1 Contractor’s Default

If the Contractor:

I. Has failed to comply within 15 days after receiving notice from SCA for not executing the works or in neglecting to perform its obligations in accordance with the contract, or

II. Become bankrupt or insolvent, has a receiving order made against it or compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors or goes into liquidation, SCA may, after having given 6 days’ notice to the Contractor, terminate the Contract and expel the Contractor from the Site.

Any such dismissal and termination shall be without prejudice to any other rights or powers of SCAs, the appropriate authority in SCA or the Contractor under the Contract.

4.2 Valuation at Date of Termination

The appropriate authority in SCA shall, as soon as possible after such termination, certify the value of the works and all sums then due to the Contractor as at the date of termination.

4.3 Payment after Termination

SCA shall not be liable to make any further payments to the Contractor until the Works have been completed. When the Works are so complete, SCA shall be entitled to recover from the Contractor the extra costs, if any, of computing the Works after allowing for any sum due to the Contractor. If there is no such extra cost the SCA shall pay any balance due to the Contractor.

4.4 Performance Security

The selected bidder must keep at least 5% amount of the total contract as performance security of the with SCA in the form of verifiable bank guarantee. The performance security will be released after the successful completion of all construction works as per the BoQ and approved by the SCA.
4.5 **Effect on Liability for Delay**

The Contractor’s liability under Clause 1.4.1 shall immediately cease when the SCA expels him from the Site without prejudice to any liability there under that may have already occurred.

4.6 **Changes in Cost and Legislation**

4.6.1 **Labor, Materials and Transport**

Prior to bidding, Contractors shall calculate the total project cost based on the provided documents and the project site. As per nature of the Contract, the Contractor shall not claim any changes in the material, labor and transportation costs due to any changes including:

1. Constitutional and other Regulations
2. Customs and Import Duties

4.7 **Clearance through Customs**

The Contractor must bear all custom, import duties and taxes. The Contractor must obtain clearance through the customs of all plant, machinery, and equipment.

5. **FORCE MAJEURE**

5.1 **Definition of Force Majeure**

Force Majeure is an exceptional event or circumstance:

a) For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by Government agencies.

b) Force Majeure shall not include

(i) Any event which is caused by the negligence or intentional action of a Party or such Party’s Sub-Consultants or agents or employees, nor

(ii) Any event which a diligent Party could reasonably have been expected both to take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder.

c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

5.2 **Adjustments for Force Majeure**

a) Any period within which a Party shall, pursuant to its Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
6. CONTRACT DATA

6.1 Commencement
The date for commencement of the Woks is the date of Signing the Contract.

6.2 The SCA
The SCA is the Swedish Committee for Afghanistan.

6.3 The appropriate authority in SCA
The ........... is the appropriate authority in SCA nominated by the SCA for the contract management function on SCA behalf.

6.3.1 Time for Completion
The time for completion is eight (08) months for the Construction and Installations, and after that (06) months for operation and Maintenance, during which period all the defects will have been rectified.

6.4 Ruling language
The version in English Language (ruling language) shall prevail.

6.5 Day to Day Communications
The language for day to day communications in written shall be English, Pashto or Dari.

6.6 Programme to be furnished
The programme of work must be submitted in the SCA designated form which will be shared with the contractor.

6.7 Site mobilization and service arrangement
The contractor shall make its own arrangements to provide and pay for the services temporarily required for purposes of the Contract and for their disposal on completion of the Contract.

6.8 SCA’s Equipment
SCA’s equipment or services are not available for the use of the Contractor.

6.9 Working Hours
SCA’s normal working hours at site would be adjusted as per governmental labor law, if there is no double shift works.

6.10 Workmen Compensation
Insurance shall be taken, by the Contractor against workmen Compensation toward any losses or damages to the workmen on the work
7. TEMPORARY WORK

7.1 Preparation Work

7.1.1 Temporary Work Plan

1) The Contractor shall prepare temporary work plan incorporating temporary enclosure, temporary office, temporary toilets, workshop, warehouse, approach plan, scaffolding plan, temporary power supply and water supply and drainage systems. Temporary work plan shall be submitted and approved by the SCA.

2) In case of existing school site, temporary work plan shall be explained to the school by the SCA and approved by the school authorized person.

7.1.2 Verification of Site Conditions

1) The Contractor shall verify the site boundaries and the site dimensions, with the design documents and shall report its findings to SCA. In case of site boundaries are unclear or different from the design drawings, SCA shall discuss the matter with the representative of the school and MoE provincial engineer to make a decision on the matter.

2) The Contractor shall verify the site conditions and if any existing constructions, pipes, cables, etc. which is to be removed or demolished to proceed the work, shall report to the SCA.

7.1.3 Temporary Enclosure

1) Temporary enclosure shall be installed to ensure security around construction area in principle. The area of enclosure shall be decided in consideration with security and activity of the school, and shall be kept enough space for working and storage of materials and equipment.

2) Temporary enclosure shall be of timber, metal or wire fence with adequate height up to (2m) to safeguard materials and human resources of Contractor.

7.1.4 Project Signboards

1) Upon instruction by the SCA, the contractor shall prepare and set up a permanent Project signboards. The Project information on such a signboard shall be carved on a 60cm x 80cm x 2cm white marble and SCA will give the text of signboard to the contractor. The contractor’s bid shall include all the associated costs of preparation and installation of such a sign board.

2) The contractor is advised to set up a temporary work metallic signboard as per SCA given standard design and texts and install in project site.

7.1.5 Temporary Offices, Warehouse and Toilets, etc.

1) The Contractor shall set up temporary office, toilet and adequate warehouse for the equipment and materials to be stored at site in accordance with their needs.

2) In the case of the storage of inflammable materials, such as paint and oil, the structure shall be capable of containing a temperature increase inside the warehouse while due attention is paid to ventilation. This type of warehouse shall be lockable and shall have the indications “storage of inflammable materials” and “no fire inside” at the entrance and fire extinguishers shall be provided.
3) A high floor of not less than 300 mm from the ground surface shall be adopted for storing cement as a preparatory measure for inundation and the inner walls of this storage shall be lined with polyethylene film to prevent the entry of moisture from outside.

7.1.6 Workshops and Material Yards, etc.
1) The Contractor shall set up such workshops of a suitable size for bending bars, etc. as well as material yards for the storage of reinforcing bars, wood and aggregates, etc. in accordance with their need. All of these workshops and material yards shall have either concrete or mortar floor, shall be covered by sheets or roofed.
2) A job-mixed concrete mixer shall be installed on either the concrete or mortar floor capable of withstanding dead load, dynamic load and vibration of the mixer and shall be roofed.
3) Elevated ground shall be set up for storing reinforcement bars, wood and roofing material so as to prevent them direct contact with the ground. The reinforcing bars, wood and roofing materials shall be covered by sheets or shall be roofed to protect them from rain.
4) In regard to aggregates, fine aggregates and coarse aggregates shall be temporarily stored on either a concrete or mortar floor which has a suitable inclination for water drainage. These temporarily stored aggregates shall be covered by sheets to protect them from rain and dust.

7.1.7 Scaffolding
1) Both the external and internal scaffolding shall be steel pipe or Russian timber which is commonly used in the project area.
2) Both the external and internal scaffolding shall have a stable structure with the suitable use of braces and struts and prevents any collapse. The struts and other members to support the scaffolding shall not be nailed to the exterior concrete blocks or bricks of the building. Neither shall through holes be made in the exterior walls for the purpose of keeping the struts in place.
3) The posts for the external scaffolding shall be rectangular timber of not less than 80 mm x 80 mm and shall be buried at least 300 mm in the ground with backfilling and tamping around each post. The maximum distance between the posts shall be 1.0 m or less and neighboring posts shall be tightly bound by bridging timber.
4) Both the external and internal scaffolding shall be provided with walkways which do not hinder work safety, handrails to prevent accidental falling and safety signs. The safety signs shall be written in either English or Pashto/Dari or shall use symbols which can be easily understood by workers.
5) The Contractor shall check and confirm the safety and rigidity of both the external and internal scaffolding during and after assembly.

7.1.8 Temporary Power Supply
1) The Contractor shall set up a temporary power supply system by connecting city-grid or providing generator to provide power for lighting and power equipment during the construction period at its own expense.
2) On-site electrical wiring and connection works shall be conducted in a manner which prevents an electrical accident during the construction work or rainy weather, and the Contractor shall report the completion of the temporary wiring and connection work to SCA.
7.1.9 Temporary Water Supply for curing and construction

1) The Contractor shall supply water for the work by well, city water, tank lorry service or other means at its own expense.

2) The Contractor shall install water reservoir tank on site to serve the construction work. The absence of any rust, dirt, oil or other harmful substance inside the tank shall be checked to ensure the use of clean water for the construction work.

3) In the case of the use of a steel reservoir, the Contractor shall confirm the absence of any rust or oil inside the reservoir and shall report to the Consultant.

7.1.10 Temporary Drainage System

1) The Contractor shall install suitable temporary drains and drainage ditches around construction area to intercept or divert, and drain out surface rainwater or miscellaneous wastewater which may adversely affect work to appropriate place.

7.1.11 Removal of Temporary Structures and Systems

1) The Contractor shall remove all the temporary structures, materials used for the temporary power and water supply systems, temporary electricity posts, cables and piping, etc. by the completion of the construction work.

2) Ex-temporary structure sites shall be backfilled, leveled and cleaned.

3) The Contractor shall complete all payment of user charges for the temporary power and water supply by the completion of the construction work.