

**Odisha Urban Infrastructure Development  
Fund (OUIDF)  
Bhubaneswar  
INDIA**

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**L Eb/3                      German Financial Cooperation with India  
Environment related urban infrastructure development Odisha  
EUR 50 million ("FC Development Loan" or "Loan")  
EUR 2.5 million ("Accompanying Measures Grant" or "Grant")  
BMZ No.: 2008 66 087 (Loan Agreement)  
BMZ No.: 2008 70 188 (Financing Agreement)**

Separate Agreement to the Project Agreement dated 2nd August 2012  
and the Financing Agreement dated 2nd August 2012

Dear Sir or Madam

In accordance with the Project Agreement entered into between the State of Odisha, the Odisha Urban Infrastructure Development Fund (OUIDF) ("**Project Executing Agency**" or the "**PEA**") and KfW ("**KfW**") dated 2nd August 2012 pertaining to a Loan Agreement and a Financing Agreement dated 2nd August 2012 entered into between India acting by its President (the "**Borrower**" and the "**Recipient**") and KfW the following shall be determined by separate agreement between KfW, Government of Odisha and the Project Executing Agency:



**Pursuant to Article 1.1 of the Project Agreement:**

the details of the Project as well as the goods and services to be financed from the Loan and the Grant;

**Pursuant to Article 3.1 of the Project Agreement:**

the disbursement procedure, in particular the evidence proving that the disbursed loan and grant amounts are used for the stipulated purpose;

**Pursuant to Article 6.2 of the Project Agreement:**

the details pertaining to Article 6 (Project Implementation).

We propose the following to be agreed upon:



I. Project Design

1. Details of the Project

The Project concerns the creation of the Odisha Urban Infrastructure Development Fund ("**OUIDF**" / "**Project**") in the State of Odisha, and the funding of urban projects with positive environmental impact through this institution using a credit line by KfW. The overall objective of the Project is to contribute towards improvement of environment protection and preservation of natural resources and living conditions of urban population of Odisha.

The institutional framework of the OUIDF will consist of an Urban Loan Fund (the "**Loan Fund**"), a Grant Fund (the "**Grant Fund**"), as outlined in the Loan Agreement and a Project Development Fund (the "**PDF**") as outlined in the accompanying Financing Agreement. The Loan Fund will have the objective of providing loans to the environment related urban infrastructure sub-projects in a non-guarantee mode. The Grant Fund shall support sub-projects with capital grant as viability gap funding where necessary. The PDF shall provide project development support and capacity building to the Urban Local Bodies (ULBs), development authorities, regional improvement trusts, special planning authorities, Odisha State Housing Board, and Statutory Boards in order to enable them to develop well-structured and bankable projects. The ultimate goal of the OUIDF is to perform a sustainable intermediation role linking capital markets and ULBs.

The criteria for reaching these objectives, the Project results and the required Project activities as well as the assumptions underlying the Project purpose and the Project results are contained in Annex 1.

The design of the Project is based on a) a feasibility study dating from August 2009 including an add-on study dating from March 2011 available to KfW and the Housing and Urban Development Department (HUDD), Government of Odisha, and b) the Minutes of the Meeting signed on 7<sup>th</sup> May, 2010 between KfW and the HUDD, Government of Odisha during the Project appraisal mission from 3<sup>rd</sup> to 7<sup>th</sup> May 2010.

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The OUIDF shall adopt and establish an Environmental, Climate Change, and Social Framework (ECSF). The ECSF shall incorporate the overall approach of the national and state policy and regulatory framework, as well as the environment, climate, and social safeguard requirements of the Borrower, the State of Odisha, and KfW's "Sustainability Guidelines related to the Climate Change from January 2011"<sup>1</sup>. Sub-projects shall comply with all national and state laws and regulations in respect to environment, climate, as well as social requirements including involuntary resettlement.

The following Project activities shall be financed from the Loan Fund and the Grant Fund:

- Provision of financial assistance to ULBs, development authorities, regional improvement trusts, special planning authorities, Odisha State Housing Board, Statutory Boards, Public Sector Undertakings and Private Investors, for setting up Infrastructure Projects in the State of Odisha having a positive impact on the environment;
- Provision of loans or taking equity position in the Infrastructure Projects sponsored by Private Investors on a commercial basis when the Infrastructure Projects are considered strategically important;
- Measures to become financially self sustainable and to mobilize sources (including private and capital market) to finance urban infrastructure development;
- Investment of only infrastructure Projects that at the time of the investment comply with all relevant KfW, State and Central Government legislation regarding environmental, climate, and social protection.

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<sup>1</sup> [http://www.kfw.de/kfw/de/I/II/Download\\_Center/Fachthemen/PDF-Dokumente\\_Nachhaltigkeit/FZ-NRL\\_2011\\_endg\\_und\\_formatiert\\_EN.pdf](http://www.kfw.de/kfw/de/I/II/Download_Center/Fachthemen/PDF-Dokumente_Nachhaltigkeit/FZ-NRL_2011_endg_und_formatiert_EN.pdf)

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The following Project activities shall be financed from the Project Development Fund:

- Establishment and institutional build-up and capacity building of the OUIDF/Asset Management Company (AMC);
- Development of the Environmental, Climate Change, and Social Framework (ECSF) of the OUIDF;
- Development of lending policies, procedures, processes and operational manuals and other documents necessary for operation of the OUIDF;
- Development of innovative financial products (pooled financing and capital market mechanisms) and PPP structures;
- Project preparation support to the ULBs and state level agencies (detailed project reports, project design studies, tendering and implementation process etc.) under the Project Development Fund;
- Capacity building support to the ULBs, development authorities, regional improvement trusts, special planning authorities, Odisha State Housing Board, and Statutory Boards.

## 2. Time Schedule

The underlying time schedule for the preparation, implementation and operation of the Project is contained in Annex 2.

## 3. Total Cost and Financing

The estimated total Project cost ("**Total Cost**") underlying the Project appraisal is approximately EUR 58 million. Out of which EUR 50 million shall be financed by a loan from KfW and EUR 5 million shall be granted by equity contribution by the Government of Odisha to the Project Executing Agency. Additionally, a grant of EUR 2.5 million shall be made by KfW and EUR 0.5 million by the Government of Odisha for technical assistance for project development and capacity building. The Loan will be transferred by the Government of India ("**Borrower**") to the State of

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Odisha on a back-to-back basis. The Government of Odisha will transfer 50 % of the loan amount, namely EUR 25 million, to the Loan Fund of the Project Executing Agency on a back-to-back basis. The currency risk will be borne by the Project Executing Agency. The remaining 50 % of the Loan, amounting to EUR 25 million, will be passed on as a capital grant to the Grant Fund of the Project Executing Agency. The 50/50 distribution of the Loan between the Loan Fund and the Grant Fund may be revised during implementation based on the actual volume of reimbursements to the respective funds. The Project Development Fund of EUR 2.5 million for technical assistance will be transferred as a grant from the Borrower through the Government of Odisha to the Project-Executing Agency. The composition of Total Costs and the financing plan are contained in Annex 3.

4. **Changes in the Project Design**

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

II. **Project Implementation**

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

1.1 The Project Executing Agency shall be responsible for the implementation of the Project. An Asset Management Company ("**AMC**"), shall be engaged through competitive bidding process which shall provide technical support to the Project Executing Agency for the implementation of the project. The Project Executing Agency will incorporate binding clauses specified in this Separate Agreement with KfW in terms of reporting, responsibilities, award of contracts, implementation principle in the consulting contract of the AMC.

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Supervisory Authority of the Project Executing Agency will be the Board of Trustees according to the Indian Trust Fund Charter or any other clause that may be deemed appropriate, which shall approve (or delegate authority to approve) sanctions and disbursements from the fund based on due diligence and recommendations by the AMC. Auditing of the funds will be performed by the Accountant General Odisha, which is the statutory mandated auditor for public institutions in Odisha.

- 1.2 The detailed time, cost, and financing schedule, regularly updated for the proper technical and financial implementation of the Project, shall be prepared as soon as possible by the AMC to the OUIDF which in turn will furnish necessary information to KfW as per the Agreements. Such schedule is to show, by deadlines and amounts, the intended chronological interrelation of the Project activities and the resulting financial requirements. If any deviation from such schedule becomes necessary during the implementation of the Project, KfW shall be furnished with a revised schedule.

## 2. Award of Contracts for Works, Goods, and other Services

- 2.1 The contracts for works, supply and all other services for the sub-projects which shall be awarded may follow the Odisha procurement guidelines as long as they are generally compatible with the KfW guidelines, particularly related to tendering procedures, dual envelope system, transparent evaluation of the technical and financial bids etc. as presented in the KfW Guidelines for the procurement of goods and work contracts (Annex 5).

- 2.2 The bidding period shall be fixed in a way that allows the bidders sufficient time to prepare their bids.

- 2.3. In the pre-qualification notice or - if no pre-qualification is conducted - in the tender documents, the Project Executing Agency shall obligate the bidders to submit together with the pre-qualification documents or together with the bid a declaration of undertaking (Annex 5, page 27).
- 2.4 When concluding contracts for goods and services to be financed from the Loan Fund, the Grant Fund or the PDF, the Project Executing Agency shall also observe the following principles:
- a) As no import duties may be financed from Loan Fund, the Grant Fund or the PDF pursuant to Article 1.3 of the Loan Agreement and Article 1.3 from the Financing Agreement, such import duties, if part of the contract value, shall be stated separately in the contracts for the goods and services and in the invoices.
  - b) If payments due under the contracts for goods and services are to be made from the Loan or the Grant, said contracts shall include a provision stipulating that any reimbursements, guarantee or similar claimable payments and any insurance payments shall be made for account of the Borrower to account no. 3800 0872 03 (IBAN: DE 53 5002 0400 3800 0872 03) at KfW, Frankfurt am Main (BIC: KFWIDEFF; BLZ 500 204 00), with KfW crediting such payments to the account of the Borrower. If such payments are made in local currency they shall be remitted to a special account of the Borrower in the country of the Borrower, which may be drawn on only with the consent of KfW. Such funds may be re-utilized for the execution of the Project with KfW's consent.
- 2.5 Prior to the conclusion of contracts for works, supply and all other services KfW shall be furnished for comment with the draft contract as agreed upon, duly endorsed by the consultants. The same applies to any subsequent modifying or amending agreements.

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3. **Provisions for the Proper Operation of the Project**

- 3.1 To secure the proper operation of the Project, the Project Executing Agency shall follow the implementation principles as set out below and shall monitor the implementation of the Sub-Project and prepare detailed time, cost and financing schedules.

**Implementation principles**

- 3.1.1 The Loan Fund will on-lend the funds of the Loan which it receives from the Government of Odisha to end borrowers (ULBs, development authorities, regional improvement trusts, special planning authorities, Odisha State Housing Board, Statutory Boards) with a margin over the rate it pays to the Government of Odisha. The margin should cover all its operational costs including provisions for non-performing loans, and exchange rate risk.
- 3.1.2 The Loan Fund will offer both short, medium, and long term loans. Loan maturities and grace periods will be based on individual project needs. Depending on its ability to access additional long term funds, it should expand its loan product portfolio to long term loans of up to 20 years maturity.
- 3.1.3 The Trust Charter should oblige the AMC to manage the Loan Fund in line with internationally accepted prudential financial principles including the instalment of adequate risk management policies. Terms and conditions (maturities, interest rates, repayment schedules etc.) of the loans from the Loan Fund to end borrowers may be decided by the OUIDF based on guidelines issued by the OUIDF.
- 3.1.4 The relevant ULBs shall be fully involved in the planning, structuring, review of the monthly progress of the works etc. This shall be the case whether the ULB itself will borrow the funds from the OUIDF or whether a state level agency develops the sub-project and acts as borrower. Furthermore the ULB should be involved in the monitoring of the project outcome and service level benchmarks. Asset ownership,

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operation and maintenance will remain with the ULB or state machineries in place at the point of project structuring or parastatels, as the case may be.

- 3.1.5 Max. 50% of the cost of one sub-project may be financed out of the Grant Fund. In exceptional cases this grant may go up to 70% depending on the viability of the project.
- 3.1.6 Max. 20% of the total assets of the Loan Fund may be invested in one sub-project.
- 3.1.7 Min. 10% of the costs of each sub-project should be borne by the implementing agency (ULB, development authorities, regional improvement trusts, special planning authorities, Odisha State Housing Board, Statutory Boards).
- 3.1.8 The Project Executing Agency shall strive to use at least 10% of the total volume of the Loan Fund to finance sub-projects not requiring any capital grant support. These would be commercially sustainable projects including Public Private Partnerships.
- 3.2 The surplus generated by the Loan Fund (net-income from lending activities to end borrowers minus debt service to the Project-Executing Agency) can be used to:
- Strengthen the capital base of the Project Executing Agency via retained earnings;
  - contribute to the cost of prolongation of the tenor to 20 years;
  - cover the debt service on the portion which is passed on to the Grant Fund as a grant;
  - finance additional urban infrastructure sub-loans with positive environmental effects by the Project Executing Agency;
  - increase the budget of the PDF;
- The Project Executing Agency will confirm semi-annually that the funds have been used for those purposes.
- 3.3 The Project Executing Agency shall select the Sub-Projects refinanced from the Loan Fund and/or Grant Fund with the eligibility criteria as set out below.

### Eligibility Criteria for the Sub-Projects

- 3.3.1 Sub-projects shall comply with the Environmental, Climate Change, and Social Framework (ECSF) which has to be set up by the Project Executing Agency.
- 3.3.2 The sub-projects shall be operated in a technically sustainable manner and with the highest quality standards available at reasonable costs.
- 3.3.3 The loan agreements with the ULBs, development authorities, regional improvement trusts, special planning authorities, Odisha State Housing Board, Statutory Boards shall ensure that the sub-borrowers prepare, implement, operate and maintain the sub-projects in conformity with sound financial and high quality engineering practices.
- 3.3.4 It has to be ensured that sub-projects are integrated in a master plan / City Development Plan established for the respective ULB and are compatible with urban development plans and that there are possibilities for future extension/upgrading.
- 3.3.5 At least 60% of the Loan and Grant Funds should be invested in the following sectors:
- Water Supply and Water Supply Improvement Schemes (WSIS);
  - Underground Sewerage Schemes (UGSS);
  - Solid Waste Management (including landfill sites, waste-to-energy, segregation, recycling and reuse, larger compost yards/dump areas);
  - Climate Adaptation Measures (e.g storm water and flood drains).
- Slum development, rehabilitation and provision of basic urban infrastructure and civic amenities to the informal settlements of the urban areas.
- 3.3.6 WSIS may only be financed out of the Loan and Grant Fund, in places where a sewerage system has been conceptualized as well.

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- 3.3.7 The ULBs or any other entities to be financed out of the Loan Fund shall have a financially adequate condition and shall be financially capable to complete and operate the relevant sub-project.
- 3.3.8 The tariff structure of the sub-projects (water and sanitation) shall aim at cost recovery by user charges for operation and maintenance ("O&M") and debt service. If this is not feasible, financing of O&M and debt service by subsidies or otherwise has to be ensured. For other sectors, the O&M and debt service has to be ensured as well by some source of funding. The loan agreements with the ULBs or any other entities shall therefore contain covenants with respect to implementation of appropriate user charges (water and sanitation projects).
- 3.3.9 The entire or part of the O&M can be awarded to private contractors (e.g. service contracts). In that case, the contract documents and particularly the specifications have to be designed by the ULB, development authorities, regional improvement trusts, special planning authorities, Odisha State Housing Board, Statutory Boards to ensure a sustainable operation and a fair remuneration of the contractor.
- 3.3.10 The loan agreements with the ULBs, development authorities, regional improvement trusts, special planning authorities, Odisha State Housing Board, Statutory Boards shall contain covenants with respect to transparent accounting and reporting by the ULBs.
- 3.3.11 The project documents shall be prepared in a professional manner and supported by qualified consulting firms accredited by the Project Executing Agency. The Project Executing Agency shall submit to KfW the list of the accredited consulting firms working for the ULBs, development authorities, regional improvement trusts, special planning authorities, Odisha State Housing Board, Statutory Boards in the different projects (project preparation, detailed design and supervision) financed by the Project Executing Agency. Once established the AMC will formulate criteria for the qualification of the consulting firms which have to be approved by the Project Executing Agency and KfW. The accreditation process should be repeated after 2 – 3 years, if necessary.



3.4 As per the KfW standard procedures, the prior consent of KfW to the sub-projects to be financed out of the Project Executing Agency shall be required for first three sub-projects in each sector. In order to enable KfW to appraise the sub-projects, the Project Executing Agency shall furnish it with the following documents before granting sub-loans for projects under this Programme:

- Appraisal Report of AMC;
- Completed checklist on compliance with eligibility criteria;

Other information KfW may reasonably request for appraising the projects.

For all following sub-projects the Project Executing Agency shall fill out a compliance checklist and confirm with each draw-down request that the financed sub-projects fully comply with the eligibility criteria of the Project.

### **III. Disbursement Procedures**

Disbursement shall be governed by the regulations as stipulated in Annex 4 (Disbursement Procedure) which forms an integral part of this agreement. The proper use of funds shall be certified by the Project Executing Agency's statutory auditor.

### **IV. Reporting and Other Provisions**

#### **1. Reporting**

1.1 Until further notice, Project-Executing-Agency shall report to KfW semi-annually on the progress of the Project (progress reports) and on the development of all other important general conditions. The Project Executing Agency will submit the following reports to KfW:

- Semi-annual progress reports, covering, inter alia, the status and performance of the Project (including sanctioning, disbursements, information on sub-projects and their performance, monitoring of developmental objectives, results and indicators, steps completed with regard to organisational transformation and repositioning including staffing) as well as an outlook on the planned activities for the future reporting periods;



- Audited annual financial statements and semi-annual financial statements including reports on the development of the long term planning
- Any information indicating that sub-projects financed under the Project are likely to become an NPA or face other substantial problems.

1.2 In addition, the Project Executing Agency shall report on all circumstances that might jeopardize the achievement of the overall objective, the Project purpose and the results. At the time of the physical completion and commissioning of the Project, but before the expiry of the guarantee period pertaining to the project measures at the latest, the Borrower/Project Executing Agency shall submit a final report on the measures carried out. The first report on the state of affairs shall be submitted as of 31.1.2013 The reports must have been received by KfW not later than 4 weeks after the end of the period under review. However, upon establishment, the AMC will prepare templates for reporting to KfW and send them for approval to Project Executing Agency and KfW

## 2. Other Provisions

2.1 The Project-Executing-Agency shall send KfW all such documents as are necessary for KfW to give the comments and approvals mentioned above or in the enclosed guidelines early enough to allow reasonable time for examination.

2.2 The Project-Executing-Agency shall set up Project sign boards that will contain at least the following message:

"A development project of the Government of India, co-financed by the Federal Republic of Germany through KfW."

2.3 The above provisions may be amended or modified at any time by mutual consent if this should appear useful for the implementation of the Project or the execution of the Loan Agreement and the Financing Agreement. In all other respects, the provisions of Articles 7.3 and 9 of the Loan Agreement and the provisions of

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Articles 7.2 and 8 of the Financing Agreement shall apply to this Agreement accordingly.

Please confirm your consent to the above Agreement by signing in a legally binding form and returning the enclosed copies. We enclose a copy of the present letter with the request to forward it in due course to the Asset Management Company to be founded immediately after their completion.

Yours sincerely,

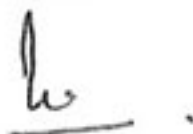
KfW




Annexes

- Annex 1: Objectives and Results of the Project and Assumptions for their Achievement
- Annex 2: Time Schedule
- Annex 3: Total Cost and Financing
- Annex 4: Disbursement Procedure
- Annex 5: Guidelines for Procurement of Supply and Work Contracts under Financial Cooperation with Developing Countries (FI051)

Read and agreed:

signed by   
Government of Odisha

dated 02/8/12

signed by   
Odisha Urban Infrastructure Development Fund (OUIDF)

dated 02.08.2012

**Environment related urban infrastructure development Odisha**

**Details of the Project**

**Overall development-policy objective**

To improve environment protection and preservation of natural resources and the living conditions of the urban population.

**Programme objective**

To contribute towards improvement of environment and preservation of natural resources in urban and industrial areas through innovative operational strategies and approaches which include the poor and work towards uncoupling of economic growth and consumption of natural resources and which support the coping with dangers from climate change.

**Indicators of the programme objective**

- Effectiveness and efficiency of selected public and private investment programmes in the area of preservation and management of natural resources are improved.
- Uncoupling of economic growth from consumption of natural resources and environmental degradation in urban areas.
- Governments on national and state level use innovative approaches with regard to integration of climate change into environmental policy, pro-poor development planning and public investment programmes.

**Risks**

- Economic growth is slowing down and leads to decline in environmental investments.
- Municipal governments are changing their priorities and are no longer interested in implementation of environmental measures.
- Cost sharing and user contribution cannot be implemented effectively.

**Project objective**

To contribute to improvement of sustainable urban infrastructure with environmental impact in Odisha and to strengthen the financial responsibility and project planning, financing and implementation capacities of the participating urban local bodies.

**Indicators of the project objective**

- A specialized financial intermediary, the OUIDF, consisting of three trusts, Loan Fund, Grant Fund and Project Development Fund is established and starts investments within its first year of operation.
- FC credit line is fully invested by OUIDF in sustainable bankable urban infrastructure projects within 5 years after its establishment.
- 3 years after completion of construction, the urban infrastructure projects are well maintained and function as planned
- ULBs are actively involved in the selection, planning and development of at least 70% of the projects financed out of the FC credit line.

## Risks

- Establishment of OUIDF fails or is delayed due to political reasons.
- Project preparation and implementation are delayed.
- Capacity Development at ULB level is not sustainable due to high personal fluctuation.
- Sustainable and cost covering concepts for operation cannot be achieved in environmental urban infrastructure due to political reasons.
- Technical quality of the constructed infrastructure is poor or sub-standard (ULB gives priority to low costs instead to high (expensive)
- Quality of equipment, material and works and/or contractors are unable to provide best quality works and supplies
- Political support for implementation of decentralization reforms stops or is slowed down.

<b>Output 1</b> Urban Loan Fund, Grant Fund and Project Development Fund have been set up and private partner is participating in the fund management.	<b>Output 2</b> The capacities of the participating urban local bodies to manage the development of sustainable customer oriented urban infrastructure are strengthened	<b>Output 3</b> High quality urban infrastructure projects with positive environmental effects are financed by the OUIDF and completed
<b>Legal documents for establishment of the funds as trusts under the Trust Act are completed, signed and registered.</b>	<b>An accrual accounting system at ULB level is introduced.</b>	<b>Project pipeline is generated (identification and development of urban infrastructure projects).</b>
<b>Equity for Urban Loan Fund is paid in and registered.</b>	<b>An independent assessment of manpower requirements and training needs is conducted.</b>	<b>Appraisal and loan sanctioning process is completed in a timely manner and timely disbursement of funds.</b>
<b>Bidding and selection process for participation of private partner in fund management is successfully completed.</b>	<b>Steps to set up an urban cadre have been initiated.</b>	<b>Design, tendering and construction and handing over of projects to ULB/operator.</b>
<b>Asset Management Company is established and legal documentation governing the relationship between Fund and AMC is concluded.</b>	<b>A procurement process in line with KfW- and GoO-guidelines has been set up.</b>	<b>ULBs are involved in the process of identification, development, financing and operation of projects.</b>

### **Risks related to achievement of outputs**

- Private partner cannot be found.
- Established capacities of urban local bodies do not continue on a constant basis due to change in personnel and missing administrative structures.
- Problems with land acquisition, land rights, rights of way
- Resources for sustainable project operation are inadequate or not sustainable (e.g. water, groundwater, electricity)
- Problems during operation due to lack of skilled staff, funds, inadequate payment

**Environment related urban infrastructure development Odisha  
Time Schedule for the Project**

Expected Disbursement of the KfW credit line (in The EUR):

<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>
2,500	10,000	15,000	22,500

Expected Disbursement of the KfW grant element (in The EUR):

<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>
250	600	900	750



**Environment related urban infrastructure development Odisha**  
**Total Cost and Financing**

Component	TOTAL	KfW	GoO
	OUTLAY	Commitment	Commitment
	EUR Mn.	EUR Mn.	EUR Mn.
<b>INVESTMENT COMPONENT*</b>			
Urban Infrastructure Development Fund (UIDF)	30	25	5
Equity contribution to Fund	5	-	5
Loans to ULBs	25	25	-
Capital Grant Fund (CGF)	25	25	-
Grants to ULBs	25	25	-
<b>Sub-Total</b>	<b>55</b>	<b>50</b>	<b>5</b>
<b>PROJECT DEVELOPMENT &amp; CAPACITY BUILDING COMPONENT</b>			
Project Development Fund (PDF)	0.5	0.5	-
Grants for Project Development	0.5	0.5	-
Capacity Building TA	2.5	2.0	0.5
Grants for Capacity Building	2.5	2.0	0.5
<b>Sub-Total</b>	<b>3.0</b>	<b>2.5</b>	<b>0.5</b>
<b>TOTAL</b>	<b>58.0</b>	<b>52.5</b>	<b>5.5</b>

\* all figures are subject to changes during project implementation.

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email:eva-maria.rommel@kfw.de

## Disbursement Procedure

German Financial Cooperation with India  
Loan/Financing/Project/Programme Agreement of KfW  
EUR 50,000,000.00 (Loan) and EUR 2,500,000.00 (Grant)  
Project/Programme name: Environment related urban infrastructure development  
Orissa  
KfW-Reference No.: 2020 80 547 (Loan Agreement) and BMZ No.2008 70 188  
(Financing Agreement)

### 1 INTRODUCTION

This annex stipulates the disbursement procedure for the above-mentioned project/programme. The Separate Agreement including this Annex shall be made available to all staff of the borrower, recipient, or project/programme-executing agency ("**Authorized Party**") and any other party involved with disbursements.

KfW disburses loans and non-repayable financial contributions ("**Funds**") upon request of the **Authorized Party** in accordance with the progress of the projects/programme financed. KfW supervises the contractual use of the Funds which it has reserved for specific goods and services on the basis of the "Separate Agreement" pertaining to the Loan/Financing/Project/Programme Agreement. The List of Goods and Services as well as the corresponding Funds reserved thus form the framework within which the Authorized Party may request disbursement from KfW once all contractual prerequisites for disbursement have been fulfilled.

### 2 GENERAL PROVISIONS

- 2.1 All withdrawal applications shall
  - indicate the **KfW Reference Number**,
  - be **numbered consecutively** and
  - be signed by representatives of the Authorized Party who have been designated as authorized towards KfW and of whom KfW has received **specimen signatures** (example see **Attachment A**).
- 2.2 In general, KfW accepts only **original** withdrawal applications. If, in exceptional cases, a withdrawal application has been transmitted by fax, the original is to be sent by mail immediately afterwards marked as fax confirmation. KfW is released by the Authorized Party from liability for any damage resulting from false transmissions, due in particular to transmission errors, abuse, misunderstanding, or mistakes.
- 2.3 For payments made in a currency other than that committed ("**Foreign Currency**"), KfW will debit the borrower or recipient with such amount as was expended by KfW for the procurement of the foreign currency, inclusive of incidental expenses.
- 2.4 KfW will not be liable for delays caused by transferring banking institutions in the disbursement or remittance of Funds. If any delay is caused by KfW, its liability will be limited to the payment of interest accrued.

### 3 SPECIAL PROVISIONS

3.1 Authorized Party is the Orissa Urban Infrastructure Development Fund (OUIDF).

#### 3.2 Procedure to be applied:

The Funds assigned to the “**Loan Fund**” and the “**Grant Fund**” as specified in the Separate Agreement I.1. + I.3 shall be disbursed according to the **Reimbursement Procedure (Encl. Statement of Expenditures – SOE)**.

The Funds assigned to the “**Projekt Development Fund**” as specified in the Separate Agreement I.1. + I.3 shall be disbursed according to the **Reimbursement Procedure (Encl. Statement of Expenditures – SOE)**.

#### 3.3 Reimbursement procedure (SOE Loan/Grant Fund)

The Authorized Party will send KfW a duly signed withdrawal application (see Attachment B), indicating the beneficiary’s name and payment instructions (full bank details).

The Authorized Party first pays in full the amounts due and KfW reimburses the loans extended by the Authorized Party after a six months period has elapsed but as soon as the amount pre-financed has reached at least EUR 1,500,000.00, whatever happens earlier.

In due time, the Authorized Party will prepare a Statement of Expenditures (SOE), drawn up in accordance with the loans/subloans extended and described in the Separate Agreement. The SOE, duly filled in, (form see Attachment) is to be attached to the withdrawal application.

##### 3.3.1 Documents

All original evidence of expenditures pertaining to the loans is to be kept until at least five years after completion of the financed measures and will have to be accessible at all times for inspection by KfW or third parties so instructed by KfW (e.g. auditors).

#### 3.4 Reimbursement procedure (Project Development Fund):

The Authorized Party will send KfW a duly signed withdrawal application (see Attachment C), indicating the beneficiary’s name and payment instructions (full bank details).

The Authorized Party first pays in full the amounts due and KfW reimburses the the expenditures for goods and services to the the Authorized Party after a six months period has elapsed but as soon as the amount pre-financed has reached at least EUR 100,000.00, whatever happens earlier.

In due time, the Authorized Party will prepare a Statement of Expenditures (SOE), drawn up in accordance with the items mentioned in Annex “Cost and Financing Schedule” of the Separate Agreement. The SOE, duly filled in, (form see Attachment C) is to be attached to the withdrawal application.



### 3.4.1 Documents

All original evidence of expenditures pertaining to the loans is to be kept until at least five years after completion of the financed measures and will have to be accessible at all times for inspection by KfW or third parties so instructed by KfW (e.g. auditors).

**3.6** The Authorized Party shall assign an **external auditor** to examine annually (in compliance with KfW Terms of Reference for Auditors, Attachment D, whether the payments have been managed properly. A copy of each auditor's report will be sent to KfW in due course after the end of the period under review. The final audit report will be presented together with the last Withdrawal Application as additional requirement for the final payment.

**3.7 Debit advices** will be automatically distributed monthly by mail to the addressees of the Separate Agreement and to other parties involved as communicated to KfW by the Authorized Party. In the event the Authorized Party has communicated an e-mail address to KfW, the debit advices will be sent daily.

Please contact the KfW-official mentioned above if you have any questions about the disbursement procedure, quoting the KfW-reference number.

### Attachments

- A) Example of a Letter Designating Authorized Signatories
- B) Withdrawal Application Form Reimbursement Procedure (Loan Fund/Grant Fund) with Statement of Expenditures (SOE)
- C) Withdrawal Application Form Reimbursement Procedure (Project Development Fund) with Statement of Expenditures (SOE)
- D) Terms of Reference: Audit of Funds under the "Reimbursement Procedure"

EXAMPLE OF A LETTER DESIGNATING AUTHORIZED SIGNATORIES

From: \_\_\_\_\_  
*Party of the Authorized Representative according to the Loan/Financing/Project/Programme Agreement)*

To:  
**KfW Bankengruppe**  
**Attn: L3b**  
**Postfach 11 11 41**  
**60046 Frankfurt am Main**

**German Financial Cooperation with India**  
**Loan/Financing/Project/Programme Agreement of KfW**  
**EUR 50,000,000.00 (Loan) and EUR 2,500,000.00 (Grant)**  
**Project/Programme name: Environment related urban infrastructure development**  
**Orissa**  
**KfW-Reference No.: 2020 80 547 (Loan Agreement) and BMZ No.2008 70 188**  
**(Financing Agreement)**

Dear Sir/Madam,

With reference to the Loan/Financing/Project/Programme Agreement for the project/programme mentioned above, we would like to inform you that any one of the persons whose authenticated specimen signatures appear in this letter is authorized to sign withdrawal applications on behalf of the Borrower/Recipient/Project/Programme Executing Agency

- a) Name: \_\_\_\_\_  
Function: \_\_\_\_\_  
Specimen Signature: \_\_\_\_\_
  
- b) Name: \_\_\_\_\_  
Function: \_\_\_\_\_  
Specimen Signature: \_\_\_\_\_
  
- c) Name: \_\_\_\_\_  
Function: \_\_\_\_\_  
Specimen Signature: \_\_\_\_\_

All previous notices (if any) providing signatures of officials authorized to sign applications for withdrawal under this loan/financial contribution are hereby revoked.

Yours sincerely,

\_\_\_\_\_  
*Signature of the Authorized Representative of the Loan/Financing/Project/Programme Agreement* *Date*

**Note:** In the event that each application is to be signed by more than one official, the authorization must state this clearly. If authorized signatories are divided into two groups, and joint signature is required, this must also be clearly stated.



From:

\_\_\_\_\_  
(Address Authorized Party)\_\_\_\_\_  
(date)

KfW Bankengruppe  
 TM a  
 Postfach 11 11 41  
 60046 Frankfurt am Main  
 Germany

Re.: TM a – German Financial Cooperation with India  
 Loan/Financing/Project/Programme Agreement of KfW  
 EUR 50,000,000.00 (Loan) and EUR 2,500,000.00 (Grant)  
 Project/Programme name: Environment related urban infrastructure development  
 Orissa  
 KfW-Reference No.: 2020 80 547 (Loan Agreement) and BMZ No.2008 70 188  
 (Financing Agreement)

Withdrawal Application No. ....  
 Reimbursement Procedure SOE (Loan Fund/Grant Fund)  
 KfW-Reference No.: 2020 80 547

In conformity with the loans/sub-loans specified on the attached Statement of Expenditure  
 the following loans/sub-loans were duly paid and are to be reimbursed:

Item No.*	Contract for loan/sub-loan dated ..... with .....	Statement of Expenditure (Attachment) No. .... dated .....	Currency/Amount

\* Item of the "List of Goods and Services"

According to the "List of Goods and Services", the following amounts of the payment due shall be paid from the Loan/Financial Contribution, which we ask you to disburse as follows:

Currency/Amount

.....

Beneficiary (name and address of the company)

.....

Account no:.....IBAN (if applicable)

Bank name:.....BIC code: .....

Correspondent bank:\*).....BIC code: .....

As supporting evidence the Statement of Expenditures is enclosed.

We confirm that the loans/subloans have not already been financed from grants or long-term loans.

We await your debit advices for the disbursements made by you.

.....

(Signature of the Authorized Party)

\*) In addition, if the payee's bank is not located in the country of the currency of payment, the name and address of the bank's correspondent in that country should be provided. Separate applications are required for each currency requested

Attachment: Statement of Expenditures

Withdrawal application No: ..... dated.....  
**Statement of Expenditure (SOE)**

<b>KfW-Reference No: 2020 80 547</b>	<b>Project Name:</b> .....	<b>Accounting Period:</b> From..... to.....
--------------------------------------	-------------------------------	--

Column 1*	2	3	4	5	6
Consecutive No. and description of individual sub-loan, date of subloan-agreement	Amount of sub-loan-agreement Currency:	Expenditure in preceding accounting period Currency:	Expenditure in current accounting period Currency:	Total expenditures Currency:	Still to be disbursed (column 2 less column 5) Currency:
<b>TOTAL</b>					

Date.....  
 .....  
 Signature of Authorized Party / Authorized Third Party  
*\*please list the respective sub-loan-agreements*

From:

\_\_\_\_\_  
(Address Authorized Party)\_\_\_\_\_  
(date)

KfW Bankengruppe  
 TM a  
 Postfach 11 11 41  
 60046 Frankfurt am Main  
 Germany

Re.: TM a – **German Financial Cooperation with India**  
**Loan/Financing/Project/Programme Agreement of KfW**  
**EUR 50,000,000.00 (Loan) and EUR 2,500,000.00 (Grant)**  
**Project/Programme name: Environment related urban infrastructure development**  
**Orissa**  
**KfW-Reference No.: 2020 80 547 (Loan Agreement) and BMZ No.2008 70 188**  
**(Financing Agreement)**

Withdrawal Application No. ....  
**Reimbursement Procedure SOE (Project Development Fund)**  
**KfW-Reference No. 2008 70 188**

In conformity with the loans/sub-loans specified on the attached Statement of Expenditure the following goods and services were duly paid and are to be reimbursed:

Item No.*	Contract for goods and services dated ..... with .....	Statement of Expenditure (Attachment) No. .... dated .....	Currency/Amount

\* Item of the "List of Goods and Services"

According to the "List of Goods and Services", the following amounts of the payment due shall be paid from the Loan/Financial Contribution, which we ask you to disburse as follows:

Currency/Amount

.....

Beneficiary (name and address of the company)

.....

Account no:.....IBAN (if applicable)

Bank name:.....BIC code: .....

Correspondent bank:\*).....BIC code: .....

As supporting evidence the Statement of Expenditures is enclosed.

We confirm that the goods and services have not already been financed from grants or long-term loans.

We await your debit advices for the disbursements made by you.

.....

(Signature of the Authorized Party)

\*) In addition, if the payee's bank is not located in the country of the currency of payment, the name and address of the bank's correspondent in that country should be provided. Separate applications are required for each currency requested

Attachment: Statement of Expenditures



Withdrawal application No: ..... dated .....  
**Statement of Expenditure (SOE)**

KfW-Reference No. 2008 70 188	<b>Project Name:</b> .....	<b>Accounting Period:</b> From.....to.....
-------------------------------	-------------------------------	---

Column 1*	2	3	4	5	6
Consecutive No. and description of individual measures (if applicable, allocate contract no./purpose of contract)*	Amount of measure (as agreed)/ contract amount currency:	Expenditure in preceding accounting period currency:	Expenditure in current accounting period currency:	Total expenditures currency:	Still to be disbursed (column 2 less column 5) currency:
<b>TOTAL</b>					

Date.....  
 .....  
 Signature of Authorized Party / Authorized Third Party  
 \*please list the items according to those indicated in the Annex, "Total Cost and Financing", pertaining to article I.1 to I.3 of the Separate Agreement.  
 Allocate respective contracts concluded or force account works.

**Terms of Reference: Audit of Funds under the "Reimbursement Procedure"**

**Objective**

1. The objective of the audit of the fund(s) paid under the reimbursement procedure is to permit the auditor to express an opinion on the financial reports (i.e. statements of expenditure as defined in the Annex "Disbursement Procedure" to the Separate Agreement) and the corresponding accounting procedures. The disbursements have been made under the financial position of KfW-loan/grant no. ... [KfW reference no.] for financing of ... [(part of) name of project/programme] .
2. The audit shall be effected annually ("Audit Period") and the respective report(s) should be presented not later than 3 months after the end of the period covered. During the Audit Period total disbursements amounting to ... were effected.

**Scope**

3. The audit will be conducted in accordance with International Standards on Auditing as published by the International Auditing and Assurance Standards Board of the International Federation of Accountants, with special reference to ISA 800 (Auditor's Report on Special Purpose Audit Engagements) and will include such tests and controls as the auditor considers necessary as well as on-site visits if also deemed necessary. The auditor must bear in mind that, for the establishment of the audit opinion, he has to carry out a compliance audit and not a normal statutory audit.

The preparation of the financial reports (statements of expenditure) on the cash receipts and disbursements as basis of accounting is the responsibility of the Project Executing Agency. The financial information has to be established in accordance with consistently applied accounting standards and the underlying Loan / Financing Agreement including the corresponding Separate Agreement.

The auditor's opinion, established in the audit opinion report, will explicitly state whether:

- (a) The payments have been made in accordance with the conditions of the relevant (Loan/Financing) Agreement(s) and the corresponding Separate Agreement. Where ineligible expenditures are identified, these should be noted separately.
- (b) The accounting documents have been maintained in accordance with the provisions of the (Loan/Financing) Agreement and Separate Agreement.
- (c) Expenditures are supported by relevant and reliable evidence. All supporting documents and records with respect to the statements of expenditure submitted as the basis for withdrawal applications have been made available.

- (d) The audited statements of expenditures can be relied upon to support the related withdrawal applications. Clear linkage should exist between the statements of expenditures, the withdrawal applications presented to KfW and accounting records.
- (e) Goods and services financed have been procured in accordance with the relevant (Loan/Financing) Agreement and Separate Agreement.
- (f) Specific deficiencies and areas of weakness have been identified in the internal systems and controls of the Project Executing Agency. Where deficiencies are identified, these should be noted separately.

### Reports

- 4. **The audit report(s)**
  - (a) will be issued by the auditor in English language
  - (b) will include all aspects specified in the preceding paragraph ("Scope")
  - (c) will contain these Terms of Reference as integral part
  - (d) will provide a schedule showing receipts and disbursements during the Audit Period, including the financial support provided by local funds or other sources, if any.
  - (e) will comprise the auditor's statement to appraise and quantify the consequences of specific deficiencies, if any.
- 5. If considered pertinent, the auditor will also prepare a "**management letter**", in which the auditor will:
  - (a) give comments and observations on the accounting records, systems and controls examined during the course of the audit (as far as necessary for the understanding of the financial reports and the statements of expenditures);
  - (b) identify specific deficiencies and areas of weakness in systems and controls of the Project Executing Agency that have come to the auditor's attention, especially with regard to withdrawal, procurement, storage and payment transactions, and make recommendations for their improvement;
  - (c) report on actions taken by the management of the Project Executing Agency to make improvements with respect to deficiencies and areas of weakness reported in the past;
  - (d) bring to the Project Executing Agency's attention any other matters that the auditor considers pertinent.

**Guidelines for the  
Procurement of  
Supply and Work  
Contracts under  
Financial  
Cooperation  
with Developing  
Countries**

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## Introduction

These guidelines give information on the minimum requirements for the award of supply and work contracts in the implementation of programmes financed under *German Financial Cooperation (FC)*<sup>1</sup>. The guidelines are based on internationally acknowledged procedures and standards and apply to all supplies of goods and works<sup>2</sup> that are financed in full or in part from funds of German FC.

Under FC, contracts for supplies and goods are always *awarded* by the agency ("client") in charge of project implementation, which in most cases is also the agency that calls for tender. It is usually subject to applicable national laws. KfW takes care that

- the funds applied under FC are used as economically and efficiently as possible;
- the bidding process allows a fair competition that gives all bidders an equal opportunity and ensures the selection of the most favourable bid and, thus, the most efficient utilisation of scarce funds;
- the decision on the award of the contracts is taken in a comprehensible and transparent manner.

In addition, KfW reviews the draft contracts to be submitted to it to make sure that the international commercial practices applicable in the industry in question are observed, especially with regard to liability, payment terms and warranty, and that the drafts do not have any serious flaws or contain contradictions that might impede the execution of the project.<sup>3</sup> Where these guidelines require a statement from KfW, its positive comment ("no objection") is a prerequisite for the contract to be financed from funds of FC.

KfW endorses the harmonization of the principles and procedures applied in the framework of international development cooperation. Therefore the harmonized standard documents for tenders and contracts, introduced by the international financing institutions (IFIs) as lead agencies, are generally to be utilized.

In exceptional cases, for instance for specific programme lines, other awarding procedures may be applied. In appropriate cases KfW may also agree with the project-executing agency, following a general review of the executing agency's procurement system, on a simplified review procedure. For archiving purposes the documents are to be submitted on paper and in electronic format (PDF file).

---

<sup>1</sup> Expressions written in italics are explained in Annex 6.

<sup>2</sup> Consulting services will be carried out in accordance with the "Guidelines for the Assignment of Consultants in German Financial Cooperation with Developing Countries".

<sup>3</sup> A list of KfW's information and review requirements is contained in Annex 1.

## Financial Cooperation – what is it?

Financial Cooperation (FC) is a component of German Development Cooperation. The purpose of FC is to finance investments in the economic and social infrastructure, poverty reduction, and environmental protection in developing countries with loans at favourable conditions and grants provided from the German federal budget and, where appropriate, complemented by market funds raised by KfW. FC is carried out by KfW on behalf of the German Ministry for Economic Cooperation and Development (BMZ). FC funds are used to expand water and electricity supplies, improve health and education systems, develop transport infrastructure and increase agricultural output, among others. They are also used to support loan programmes for small and medium-sized enterprises and economic reforms.

## 1 Principles

### 1.1 Competitive Bidding

1.01 In principle, supplies and services for projects financed from FC funds are to be procured by the *contracting agency* on the basis of international competitive bidding. Unless there are justified restrictions in individual cases or if none of the reasons for exclusion specified under para 1.04 apply, there are no restrictions regarding the bidder's country of domicile or the country of origin of supplies and services.

1.02 Restrictions to the principle of international competitive bidding described in Section 2 are admissible in justified cases only upon prior approval by KfW. The specific features of the alternative forms of procurement to be applied in these cases are described in Section 3. The provisions of Section 2 will apply to these cases accordingly.

### 1.2 Fair and Transparent Bidding Process, Core Labour Standards

1.03 All parties involved in a procurement process financed under FC must ensure a fair and transparent competition and at least observe those ILO Core Labour Standards that have been ratified by the developing country. This must be documented by a corresponding declaration of undertaking (Annex 5) of all parties involved in the bidding process. The declaration of undertaking must be signed in a legally binding manner by duly authorized representatives of the bidder. Failure to submit this declaration and non-compliance with the requirements will lead to exclusion from the tender.

### 1.3 Eligible Bidders

1.04 Bidders may submit bids if none of the following reasons for exclusion apply:

- participation of a bidder is ruled out by sanctions issued by the UN Security Council;
- The bidder is or was involved as a consultant in the preparation or implementation of the project. The same applies to an enterprise or an individual that is closely connected to the bidder under a company group or a similar business link, or to several enterprises or individuals associated correspondingly. (exception: In *BOT* projects or turnkey projects a participation of future suppliers or manufacturers may even be desirable);
- failure to submit a declaration of undertaking in accordance with para 1.03;
- the bidder is legally barred from the procurement process in the country of the *contracting agency* on the grounds of previous violations of regulations on fraud and corruption;



- the bidders or sub-contractors to be contracted for considerable portions of the contract are enterprises economically intertwined with the *contracting agency* in the host country and/or state-controlled enterprises that are not legally or financially independent.

#### 1.4 Engagement of a Consultant

1.05 During the awarding procedure the *contracting agency* is usually supported by an independent qualified consultant in the preparation of the bidding documents, the evaluation of the bids, the award of contract, the drafting of contract documents and contract negotiations.

## 2 Procedures in international competitive bidding

### 2.1 Submission of Documents to KfW, Publication of Procurement Notice and Bidding Period

2.01 As a rule, KfW must be furnished with the pre-qualification and bidding documents for comment in due time prior to the planned publication. It will examine whether the documents respond in form and substance to the requirements of the project, the loan and financing agreements concluded for the project and the provisions of these procurement guidelines. Among other things, it will ensure that the *bidding period* allows the bidders sufficient time to thoroughly prepare their bids and that the conditions of the procurement process have a neutral effect on competition.

2.02 The purpose of publishing the invitation to submit bids is to draw the attention of all potential bidders to the intended procurement process and to the opportunity of participating. The procurement notice must be published in due time prior to issuing the prequalification and bidding documents and in an appropriate form specifying date and place of issue. The invitation to participate in an international competitive bidding process is usually published in the developing country and in Germany, if appropriate also in international media. It is commissioned by the *contracting agency*.

- The procurement notice must be published in Germany in the databases of Germany Trade and Invest<sup>4</sup> (GTAI) before or at the same time as its publication elsewhere. To this end, the *contracting agency* will supply the GTAI with the text of the procurement notice and, free of charge, with a copy of the complete bidding documents, at its discretion either as a copy in the developing country or in electronic file format directly per e-mail. Publication is free of charge.
- Publication in the developing country will follow the rules and regulations applicable there to the *contracting agency*. Publication will in principle take place in the daily newspapers of the developing country.

2.03 The deadlines for preparation of the qualification documents and for preparation of the bids must consider the particular circumstances of the project, its size and complexity and ensure adequate and transparent competition. In principle, at least 30 calendar days should be allowed for pre-qualification procedures and 45 calendar days for submission of bids.

2.04 An extension of the *bidding period* may be granted in exceptional circumstances only. Following prior information to KfW, all bidders must be notified in writing and in due time before the expiration of the original period.

---

<sup>4</sup> Full name: Germany Trade and Invest – Gesellschaft für Außenwirtschaft und Standortmarketing mbH

2.05 Comments of the *contracting agency* on inquiries from individual bidders during the *bidding period* will be communicated to all bidders in writing simultaneously and in due time, that is, at least 14 days before expiry of the *bidding period*.

## **2.2 Qualification Procedure**

2.06 The qualification of the bidders will be assessed in consideration of the scope and complexity of the projects. In complex and technically complicated projects that require substantial effort from the bidders in the preparation of their bids or in bidding processes that are likely to draw an unreasonably large number of bids, the *contracting agency* usually conducts a pre-qualification in consultation with KfW prior to the actual bidding process. In all other bidding processes a post-qualification is to be carried out (see section 2.2.2).

### **2.2.1 Prequalification**

2.07 In procurement processes with prequalification the bidding will be conducted in two stages. In the first stage, the pre-qualification stage, the submitted documents are examined in order to establish whether the bidders are capable of delivering the required goods and works duly and properly. In the pre-qualification the following essential criteria are examined:

- absence of reasons for exclusion (see criteria under para 1.04);
- experience in the execution of comparable projects;
- experience in the developing country or in comparable countries;
- availability of qualified personnel and appropriate facilities and equipment in sufficient quantities;
- adequate financial capacity.

2.08 The invitation to the pre-qualification will specify the minimum requirements for the qualification, the evaluation matrix and the criteria for determining the number of bidders that are to be invited to submit their bids following the qualification. The maximum number of bidders depends on the nature of the project and the effort involved in preparing the bid.

### **2.2.2 Postqualification**

2.09 In bidding procedures with post-qualification the qualification documents and the actual bid are usually submitted simultaneously in two separate envelopes (two-envelope procedure). In the first public session only the qualification documents will be opened and examined for completeness, inclusion of the required bid bond and fulfilment of the qualification criteria. The qualification will be evaluated according to the criteria specified under para 2.08.

2.10 The two-envelope procedure may be dispensed with in justified exceptions, for instance in the procurement of standardized commercial goods or when bidding is restricted to enterprises whose qualification has been verified as part of their registration with the *contracting agency*. In this case fulfilment of the necessary qualification criteria will be examined at the start of the evaluation of the bids.

### **2.2.3 Evaluation Report on Qualification, Information of the Bidders**

2.11 The *contracting agency* will prepare a detailed evaluation report on the results of the qualification procedure. If the contracting agency is supported by a consultant (para 1.05) this report is to include his/her certificate or separate comment. In procedures with pre-qualification the *evaluation report* includes the *contracting agency's* recommendation on the bidders to be invited to tender. If more than the maximum number of candidates qualify (para 2.08) these will be selected according to the number of points scored.

2.12 The evaluation report is to be sent by the *contracting agency* to KfW. Financing of the supplies and works from FC funds will be conditional on KfW's no-objection to the recommendations contained in the *evaluation report* before the invitations to tender are sent out (in procedures with pre-qualification) and before the bids are opened in the case of the two-envelope procedure.

2.13 Following receipt of KfW's no-objection, the *contracting agency* will inform all bidders immediately on the outcome of the evaluation.

### **2.2.4 Further Steps following Conclusion of the Qualification Procedure**

2.14 In procurement procedures with pre-qualification, the bidders selected in accordance with the findings of *evaluation report* will be invited to submit their bids in the second stage. In bidding procedures with post-qualification only the bids of those bidders who have fulfilled the qualification criteria will be opened in the second public session. The procedure for opening the bids will be conducted in accordance with para 2.22. If the two-envelope procedure was dispensed with (see para 2.10), after appraisal of the qualification criteria only the bids of those bidders will be evaluated further who have met the qualification criteria.

## **2.3 Bidding Documents and Terms**

2.15 The bidding documents inform the bidders about the nature and scope of the goods and works to be provided and about the conditions of the contract. They will be designed in a way that ensures fair and transparent competition with equal opportunities for all bidders. To this end the bidders will also have to be informed about the selection criteria and how these are weighted in the evaluation of the bids. As a general rule, the documents include:

- general information about the project and the supplies and services to be provided;
- information on the execution of the bidding process and evaluation procedures;
- sample form of tender;
- general and specific conditions of contract and, if appropriate, draft contract;
- general technical conditions of contract, neutral technical specifications with bill of quantities, specifications or performance criteria for performance-based contracts;
- clear and complete design documents;
- specification of standards and measuring system applied;
- specimen declaration of undertaking;
- standard forms of bid bond, advance payment bond and performance bond (see Section 4.6)
- preliminary cost estimates, unless there are serious reservations against their disclosure.



2.16 Wherever possible, the standard documents of the *IFIs* are to be utilized. These will be applied wherever possible without any modifications, particularly with regard to the distribution of risk between the contractual parties. Any deviations that may become necessary are to be listed clearly in an annex.

2.17 Implementation agreements and covenants of KfW, for instance with regard to the inclusion of HIV/AIDS prevention measures in construction projects in sub-Saharan Africa, to the extent that they are relevant for the contracts, will usually be taken into consideration in the specific or technical conditions of contract but not in the general conditions of contract.

2.18 The procurement conditions clearly and unequivocally define the obligations to be entered into by the subsequent contractual parties. In particular, this applies to the scope of supplies and the place of delivery, liability and warranty obligations, and public charges and levies to be borne by the bidder. The distribution of risks resulting from geotechnical or hydrological conditions and from environmental protection requirements is to be settled. The *contracting agency* will make available studies accessible to all bidders.

2.19 The procurement conditions will also specify whether alternative bids are admissible and how they may be taken into consideration in the evaluation of bids.

#### **2.4 Currency of Bid Price**

2.20 The bidding documents specify the currencies in which the bid price is to be expressed. Usually the currencies of bids are commonly used international currencies (such as the US dollar or the Euro) and/or the national currency of the *contracting agency*.

2.21 With regard to possible changes in the exchange rates during the procurement process, the *contracting agency* specifies the relevant date for the conversion of bid prices. Such date should be as near the bid opening date as possible. The contracting agency also indicates the rate to be used for the conversion (usually the selling rate published by an official source on a specific date).

#### **2.5 Bid Opening**

2.22 The bids, which are to be submitted in a sealed envelope, must be opened at the place and time specified in the bidding documents. The bid opening will take place in public, with the name of the bidder and total amount of the bid and any alternative bids read aloud and recorded. A record of the bid opening session will be prepared, signed by the members of the bid opening commission and submitted to KfW immediately. At KfW's request a copy of the bid will be presented simultaneously to KfW in a sealed envelope.

#### **2.6 Examination and Rejection of Bids**

2.23 After opening of the bids they are examined for completeness, for compliance with the bidding documents and for conformity of the bonds submitted by the bidder with the specifications of the bidding documents.

2.24 Bids are generally rejected if

- a bid is received after the *closing date*;
- a bid fails to comply with the bidding documents in material respect, e.g. with the general conditions of contract or major technical specifications;



- a bid contains major reservations or restrictions; or
- a bid lacks the declaration of undertaking specified under para 1.03.

2.25 Negotiations between the *contracting agency* and a bidder as well as alterations of bids between the opening of the bids and the award of the contract are not admissible. However, the *contracting agency* may seek clarifications from the bidders that are necessary for the evaluation of the bids. Neither the clarifications demanded by the *contracting agency* nor the alterations made by the bidder may lead to any changes in the contents or price of the bid. Queries on the part of the *contracting agency* and responses from the bidder must be in writing.

2.26 The procurement procedure is confidential. Confidentiality enables the *contracting agency* and KfW to prevent inadmissible interference. The *contracting agency* and KfW as well as the persons in charge of the evaluation and preparation of the recommendation for the award of contract therefore will give no information on the evaluation of bids nor make any award recommendation to the bidders or to other persons who are not officially involved in the procurement procedure. In the case of breach of confidentiality KfW may demand cancellation of the tender procedure.

## 2.7 Evaluation of Bids

2.27 Bids that are not rejected are usually evaluated by the *contracting agency* in cooperation with the consultant or by the consultant. The purpose of the evaluation is to determine the most advantageous offer by assessing the relevant factors of the individual bids and by subsequently comparing all the bids submitted. If specified in the bidding documents (see para 2.15), the evaluation includes not only the price offered but also other factors that are relevant to the success of the project and that can be quantified, such as the delivery or construction period, personnel, equipment lists, costs of operation and total useful life, supply of spare parts, service, and the qualification for training local personnel. If the evaluation was preceded by a prequalification, criteria that were already considered then may not be examined again unless doubts have subsequently emerged with regard to the fulfilment of the minimum qualification criteria.

2.28 The bids that have not been rejected are examined individually for technical and arithmetic correctness. Bids are evaluated and weighted in quantitative terms, in monetary units where possible and only according to the criteria stipulated in the bidding documents. The most advantageous bid determined on the basis of this procedure after correction of any arithmetic errors will win the contract. The lowest bid price alone is generally not decisive.

2.29 If a bid price appears to be unusually low in relation to the services to be rendered the bidder will be requested to submit a written breakdown of his price calculation. If after review of the notes submitted by the bidder reasonable doubts persist as to whether the required goods and works can be provided at the rates offered and if this is reasonably expected to pose a considerable risk to the performance of the contract, the bid in question will have to be excluded.

2.30 To enable a comparison of bids the evaluation of the bid prices will consider the import duties and taxes actually applicable. In cases where competition between qualified bidders would be seriously distorted as a result of local regulations or double taxation agreements, an appropriate procedure will be agreed between the *contracting agency* and KfW prior to the start of the tender to redress such distortion; a corresponding note will be included in the bidding documents.

2.31 On completion of the bid evaluation KfW is furnished with a detailed report on the evaluation and comparison of the bids ("*Evaluation Report*") and with a substantiated recommendation for award that must be coordinated with any government agencies of the developing country whose involvement may be required. If the *contracting agency* is supported by a consultant (para 1.05) this report is to include his/her certificate or separate comment.

2.32 If an extension of the *validity period* became necessary the reasons are to be stated in the *evaluation report*. An extension of the *validity period* may not lead to changes in the bid prices. The extension entitles the bidders to withdraw their bids upon expiry of the original binding period without allowing the bid bond to be drawn. KfW reserves the right to refrain from financing if the procurement procedure is unduly delayed.

2.33 The *contracting agency* will submit to KfW the *evaluation report* and award recommendation in such good time as to permit KfW's comment to be issued not later than three weeks before expiry of the *validity period*. KfW reserves the right to refrain from financing if the report is not submitted in due time.

2.34 KfW generally reserves the right to review the bids of all bidders or of specific bidders as well as all other documents in connection with the procurement process and award up to two years after completion of the project.

## **2.8 Cancellation of the Bidding Process**

2.35 The bidding process may be cancelled if

- competition was inadequate;
- no bid was received that is considered as substantially responsive;
- the responsive bids substantially exceed the budget;
- the technical or financial bases of the procurement have changed materially prior to the award, or
- the rates of the bid are obviously and clearly unreasonably high.

2.36 Competition is usually inadequate if clearly fewer bids qualified for evaluation than could be expected from the size of the market, if the prices appear to be clearly excessive or if there is obvious price fixing.

2.37 If no substantially responsive bid was received a new qualification procedure may be dispensed with and a new bidding process may be initiated, or, under circumstances defined in Section 3.6, the contract may be *awarded at the contracting agency's discretion* to one of the bidders that originally qualified.

2.38 If the lowest bid was higher than the estimated cost this alone is no reason for cancelling the bidding procedure.

2.39 If the lowest responsive bid is clearly higher than the cost estimate the *evaluation report* must discuss on the basis of an analysis of causes whether a reasonable price could be achieved through a new bidding process. If this is not to be expected, after KfW's no-objection and cancellation of the procurement process, negotiations may be conducted with the bidder who has submitted the most advantageous responsive bid in order to determine how a reasonable contract price can be reached by adjusting the scope of the contract and/or by altering the distribution of risks and burdens.

2.40 Any cancellation of the bidding process as well as the further steps require KfW's no-objection. The cancellation of the bidding process must be notified by the *contracting agency* to all bidders stating the reasons. If the bidding process is cancelled a new procurement process is usually conducted under different circumstances that ensure greater competition, for instance by changing the object or the terms of the procurement.

## **2.9 Information to the Bidders**

2.41 After the award of the contract the other bidders will be informed by the *contracting agency* that their bid was not successful and whether their bid fulfilled the general and technical procurement conditions.

## **3 Other Forms of Procurement, Discretionary Award and Counterpart Measures**

3.01 On the condition that KfW give its prior no-objection, a deviation from the principle of international competitive bidding is possible in specific cases. Particularly in the forms described in sections 3.2 to 3.4, KfW may admit less stringent review requirements than those specified in section 2, or it may permit conditions of contract that differ from those specified in section 4 if this does not violate the principles mentioned in section 1. The following forms of procurement may be applied in lieu of international competitive bidding.

### **3.1 Supplies and Services Limited to Germany or to the Member States of the European Union**

3.02 When competition is adequate the procurement process may be limited to enterprises domiciled in, for example, Germany or the EU, that conduct a significant portion of their business there and that do not resort to supplies or services from third countries to provide the supplies and services to be contracted.

### **3.2 Local Competitive Bidding**

3.03 If adequate competition is expected and if it is likely that international enterprises will not take part in the bidding process because of the moderate size of the project, for logistical reasons or because of the low local price level, the bidding process may be restricted to the developing country in question. In this case it will be admissible to restrict publication of the tender exclusively to national media and to the official national language and to conduct it in accordance with payment and contractual procedures customary in the country. Enterprises not domiciled in the developing country are generally allowed to participate in the tender.

### **3.3 Limited Competitive Bidding**

3.04 The procurement may be restricted from the beginning to a limited number of firms, for instance if they are the only firms that are capable of meeting the specifications or if the contract volume does not justify public bidding.

### **3.4 Price Quotation**

3.05 In individual cases the procurement of commercially obtainable goods and services of a kind, value or scope that does not justify a competitive bidding process can be conducted on the basis of



price quotations and of a sufficient number of (at least three) price quotations obtained from local or international dealers or manufacturers.

### **3.5 Multi-Stage Process**

3.06 In complex technical projects, particularly in the procurement for turn-key projects (BOT, BOOT or similar) precise technical specifications often cannot be made in advance. In such cases a multi-stage procurement process may be used. Details of this process are agreed between the *project-executing agency* and KfW at project appraisal.

### **3.6 Discretionary Award**

3.07 *Discretionary awards* of contracts are permitted in exceptional cases only. They are permitted

- in amending existing contracts if the additional scope is minor in comparison with the existing contract, the nature of the supplies and works is the same, and the award of these supplies and works does not justify a new bidding process;
- upon cancellation of a bidding process if a renewed bidding process is unlikely to yield reasonable results (see section 2.8);
- if for specific reasons only a particular enterprise is suitable for supplying the goods and services to be procured (for instance original spare parts, goods protected by copyright or patent registration, special experience or equipment);
- if supplies and services are so urgent that a bidding contest under these procurement guidelines is not possible, such as in the case of emergency measures.

3.08 In *discretionary awards* the *contracting agency* will examine in any case whether the bid price and the other elements of the bid are reasonable.

### **3.7 Force Account, Target Group-implemented Measures**

3.09 Bidding procedures may be dispensed with if measures are to be carried out by the *contracting agency*, by units that report to it, or directly by the target group to achieve greater sustainability or employment effectiveness because of specific circumstances (for instance emergency measures). In this case the contract is to be adapted to the particular requirements.

## **4 General Conditions of Contract**

### **4.1 General**

4.01 The General Conditions of Contract are an integral part of the tender documents. They define the obligations of the contract parties and the distribution of the risks.

4.02 The General Conditions of Contract may be drafted along the lines of internationally applied standard contracts in accordance with the nature and scope of the supplies and services to be awarded. For civil works projects these are usually the Conditions of Contract prepared by *FIDIC*. The *IFIs* have prepared *standard documents* for supply contracts. Other provisions, such as contractors' general terms and conditions or model forms of agreement should additionally be agreed only if this is inevitable. In such cases the order in which the individual arrangements are to be considered should be stated.

## 4.2 Liability

4.03 The liability between the contractual parties will be settled in such a manner as to prevent any gaps in liability. Especially in complex projects that are difficult to coordinate technically and on a time axis, and in which various enterprises are involved, the contract should stipulate that the overall liability for the execution and successful completion of the project be assumed by one of the parties to the contract in order to avoid gaps in liability. Where measures are to be carried out by a joint venture the contract is to stipulate joint and several liability of the participating firms.

## 4.3 Payment Terms

4.04 Payment terms will be in accordance with the usual international practice in the industry concerned and will provide for payments to be dependent on the delivery of supplies and performance of services and be in line with the progress of the project.

4.05 The advance payment represents an input by the *contracting agency* that is designed to cover mobilization expenses accruing to the contractor. As a rule, it should not exceed 20 % of the contract price and is to be paid immediately upon entry into force and effect of the contract and upon presentation of the required advance payment and performance guarantees.

4.06 Further payments will be effected in down-payments or instalments pro rata of the progress of the project.

4.07 Disbursement will be effected in the currencies specified in the contract. If necessary, exchange rate and currency risks will be regulated in such a way as to put none of the contractual parties at an advantage or a disadvantage.

4.08 The final payment, usually ten per cent of the contract value, is to be made upon preliminary acceptance. It is to be secured by a performance bond in the amount of the retention money for the services to be rendered during the warranty period (usually five per cent of the contract value). If the contractor fails to present this guarantee in due time, payment of the portion of the final payment representing the retention money will be made on final acceptance unless otherwise agreed in accordance with para 4.12.

4.09 The payment terms are to be in line with the Information leaflet "*Disbursement of Funds under Financial Cooperation with Developing Countries*". In particular, the necessary documentary evidence of the proper use of the funds must be provided for disbursement. As import duties and public charges to be borne by the *contracting agency* generally are not financed from funds of German Financial Cooperation they have to be shown separately by the contractor in the invoices. If the contractor pre-finances taxes and import duties, the deadlines for reimbursement and consequences of any breach of the obligation to reimburse must be agreed.

## 4.4 Price Adjustment

4.10 In cases where the supply of goods and works for a project may extend over a longer period of time, the bidding documents may contain price adjustment clauses that reasonably compensate cost changes that may occur during contract implementation. These clauses should take account of changes in the prices of the major cost constituents of the contract (such as labour, raw materials, supplies and equipment) according to a given system of index numbers or on other contractually agreed bases. Evidence of cost changes is to be furnished regularly by submission of official docu-



ments such as those issued by chambers of commerce or statistical offices. In order to prevent advantages or disadvantages to a contractual party, it must be ensured that the amounts for the price adjustment are disbursed in the currency that was contractually agreed for the cost subject to price adjustment (see section 4.3).

#### **4.5 Warranty**

4.11 The contractor's warranty obligations are defined in accordance with international industry practice. The warranty period is usually one to two years.

4.12 If the final acceptance towards the end of the warranty period is delayed by more than 90 days for reasons for which the contractor cannot be held accountable, the contracting agency may commission an international audit firm to determine whether and to what extent the services have been duly performed. Its vote will be binding for both parties. In particular cases it may be agreed that the contractor's warranty obligations will be considered fulfilled, if a contractually agreed latest date was exceeded for reasons beyond the contractor's control.

#### **4.6 Guarantees**

4.13 The contractor will provide abstract bid bonds, advance payment bonds and performance bonds. Advance payment bonds and performance bonds are to be made payable to KfW. The guarantor and the content of the bond (see specimens in Annexes 2 - 4) will require KfW's no-objection. The *contracting agency* will return the bonds of its own accord and immediately after their expiry or after the total amount has been utilized.

4.14 The bid bond ensures that the bidder adheres to the bid for the duration of the *validity period*. It is to be returned to the unsuccessful bidders after the contract has been awarded or after the *validity period* has expired, whichever event occurs first.

4.15 The advance payment bond ensures that in case the services are not performed the contracting agency will be refunded the advance payment which it has made. The amount of the advance payment bond equals the amount of the advance payment. As a rule, the bond will decrease pro rata in accordance with the value of the supplies and works provided.

4.16 The performance bond guarantees that all contractual obligations will be duly fulfilled by the contractor. The performance bond is usually valid throughout the life of the contract and normally amounts to ten per cent of the order price up to preliminary acceptance and five per cent of the order price after preliminary acceptance.

#### **4.7 Penalties**

4.17 Contractual penalties will be agreed in case the contractor fails to perform the services within the agreed period for reasons for which the contractor is responsible and if this failure leads to a delay in acceptance and entry into operation of the project. The amount of the penalty is usually established in the bidding documents as a specific amount or portion in relation to a time unit (e.g. an amount of money or percentage of the contract price per week) with a ceiling (usually five to 10 per cent of the contract price). This penalty is a blanket compensation for the additional cost and loss of operation caused by the delay. Especially in the case of contracts for plant and machinery, performance penalties are also stipulated which are due in the event of failure to achieve certain contractually agreed parameters.

## 4.8 Insurance

4.18 Goods and works are to be insured adequately and to the customary extent against all risks that may occur up to the orderly completion and acceptance of the project so that replacement or rehabilitation is possible in the event of damage.

4.19 Transport insurance is to be provided for the duration of the entire transport. Insurance to be agreed upon must be for full coverage (All Risks) and, where necessary, should include War Clauses (Cargo) and clauses for strikes and disturbances in accordance with internationally acknowledged clauses such as the *Standard Clauses* of the German Insurance Association.

4.20 For civil works, plant and machinery the insurance provided must cover risks resulting from the operation of construction sites and the assembly of structures. Here the main insurance to be provided is Contractors All Risks Insurance as well as insurance against damage to persons.

4.21 Insurance is to be taken out against extraordinary events such as war, riot, terrorism or revolution to the extent possible at reasonable terms and conditions. Otherwise the *contracting agency* and the contractor are to reach a settlement on the distribution of these risks in coordination with KfW.

4.22 In the case of financing of foreign currency costs, insurance is to be taken out in freely convertible currency and will provide for any payments due from the insurer to be made payable to KfW for account of the *contracting agency*. The payment clause corresponds to that of the advance payment bond and performance bond (Annex 3 and 4). If such insurance payments are rendered in national currency, they must be transferred to a special account of the *contracting agency* which cannot be accessed without KfW's consent.

## 4.9 Force Majeure

4.23 Force majeure means extraordinary circumstances that prevent the due performance of contractual obligations and are beyond the control of any of the parties to the contract, such as natural disasters, war, or disruption of public order.

4.24 It may be agreed that evidence of the existence of an event of force majeure and its being the cause for the contractor's failure to perform his contractual obligations is to be furnished in the form of a corresponding certificate issued by the local chamber of commerce or a similar institution.

4.25 An event of force majeure results in the suspension of contractual obligations and, thus, a postponement of the dates fixed for delivery of goods and provision of services and, accordingly, the warranty periods. As the case may be, the contractor is obligated to remove the obstacle, to take measures to eliminate damage, or to take any other extraordinary precautions (e.g. storage of goods) against reimbursement of costs. In the event of persistent force majeure the contract will be terminated; the General Conditions of Contract will contain provisions on the compensation of services rendered by the contractor in such a case.

## 4.10 Applicable Law, Settlement of Disputes

4.26 A clause will be included specifying the law applicable to the contract, and a provision on the settlement of disputes will be included. In larger or more complex projects the parties may agree on a Dispute Adjudication Board to accompany the project that will adjudicate on the disputed case upon failure of an attempt for an amicable settlement as first instance. In addition, an international court of arbitration will be appointed in any case, this means, in addition to the Dispute Adjudication Board, for

instance a court of arbitration in accordance with the rules of arbitration of the International Chamber of Commerce (*ICC*). In case the parties agree on a Dispute Adjudication Board, the dispute should not be referred to the international court of arbitration until at least one of the parties to the contract has refused to accept the decision of the Dispute Adjudication Board.. In principle, given the faster and less complex procedure, preference should be given to the Dispute Arbitration Board over an international court of arbitration or an ordinary court for the final settlement of a dispute.

## Information and Review Requirements of KfW

**Prior to publication** or invitation to pre-qualify or tender in procurement processes without pre-qualification, the following documents are to be submitted to KfW for comment:

- Invitation to tender
- Selection criteria for qualification (in detailed form)
- Tender documents, including specimen contract
- Draft notice specifying the fees for the purchase of the tender documents and their utilization, as well as list of the media in which the notice is to be published

In processes with **pre-qualification**, the following documents have to be submitted to KfW for comment prior to the **invitation to tender**:

- The evaluation report of the qualification, including the certificate or opinion of the consultant
- The recommendation on the list of bidders to be invited to tender

In processes with **post-qualification**, the following documents have to be submitted to KfW for comment prior to the **opening of the bids**:

- The *evaluation report* of the qualification, including the certificate or opinion of the consultant
- The recommendation on the list of bidders whose financial bids are to be opened.

Prior to the **award** of the contract, the following documents are to be submitted to KfW for comment:

- The signed record of the bid opening
- The *evaluation report*
- The recommendation on the award
- The certificate or opinion of the consultant on the recommendation of the award
- If applicable, an explanation why the *binding period* could not be observed
- At the request of KfW, if applicable, all or specific bids.

If a **suspension of the procurement process** is recommended instead of an award, KfW's no objection on the suspension and on the further steps must be obtained prior to suspension of the procurement process.

During the bidding process and *award*, **contacts between bidders and KfW** are undesirable unless KfW is the contracting agency in exceptional cases. Inquiries for clarifications are to be sent directly to the *contracting agency* or its representative.

If after notification of the result of the qualification or the award of contract a bidder files an **objection** or **protest**, KfW must be informed accordingly and on the subsequent decisions immediately.



**Standard Form of a Bid Bond**

Address of guarantor bank:

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

Address of beneficiary (contracting agency):

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

We, the undersigned ..... (Guarantor), in order to enable .....  
to bid for ..... (project, object of contract), hereby irrevocably and inde-  
pendently guarantee to pay to you an amount up to a total of

.....

waiving all objections and defences.

We shall effect payments under this guarantee on your first written demand, which must be accompa-  
nied by your confirmation that you have accepted the above-mentioned bid and that the firm  
..... is no longer prepared to abide by this bid.

This guarantee shall expire no later than .....

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

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

This guarantee is governed by the laws of .....

.....

Date

.....

Guarantor

**Standard Form of an Advance Payment Bond**

Address of guarantor bank:

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

Address of beneficiary (contracting agency):

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

On ..... you concluded with ..... ("Contractor") a contract for ..... (project, object of contract) at a price of .....

In accordance with the provisions of the contract the Contractor receives an advance payment in the amount of ....., which represents ..... % of the order value.

We, the undersigned ..... (Guarantor), waiving all objections and defences under the aforementioned contract, hereby irrevocably and independently guarantee to pay on your first written demand any amount advanced to the Contractor up to a total of ..... (in words: .....)  
against your written declaration that the Contractor has failed to duly perform the aforementioned contract.

This guarantee shall come into force and effect as soon as the advance payment has been credited to the account of the Contractor.

In the event of any claim under this guarantee, payment shall be effected to KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00) for account of ..... (contracting agency/project-executing agency).

This guarantee shall expire no later than .....

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

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

This guarantee is governed by the laws of .....

.....

.....

Place, date

Guarantor

**Standard Form of a Performance Bond**

Address of guarantor bank:

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

Address of beneficiary (contracting agency):

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

On ..... you concluded with ..... ("Contractor") a contract for ..... (project, object of contract) at a price of .....

In accordance with the provisions of the contract the Contractor is obligated to provide a performance bond for ... % of the contract price.

We, the undersigned ..... (Guarantor), waiving all objections and defences under the aforementioned contract, hereby irrevocably and independently guarantee to pay on your first written demand an amount up to a total of ..... (in words: .....

against your written declaration that the Contractor has failed to duly perform the aforementioned contract.

In the event of any claim under this guarantee, payment shall be effected to KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00) for account of ..... (project-executing agency/purchaser).

This guarantee shall expire no later than .....

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

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

This guarantee is governed by the laws of .....

.....

Place, date

.....

Guarantor

### Declaration

We underscore the importance of a free, fair and competitive procurement process that precludes abusive practices. In this respect we have neither offered nor granted directly or indirectly any inadmissible advantages to any public servant or other person nor accepted such advantages in connection with our bid, nor will we offer or grant or accept any such incentives or conditions in the present procurement process or, in the event that we are awarded the contract, in the subsequent execution of the contract. We also declare that no conflict of interest exists in the meaning of the kind described in the pertinent Guidelines<sup>5</sup>.

We also underscore the importance of adhering to minimum social standards ("Core Labour Standards") in the implementation of the project. We undertake to comply with the Core Labour Standards ratified by the country of @ (name of country).

We will inform our staff about their respective obligations and about their obligation to fulfil this declaration of undertaking and to obey the laws of the country of @ (name of country).

We also declare that our company/all members of the consortium has/have not been included in the list of sanctions of the United Nations, nor of the EU, nor of the German Government, nor in any other list of sanctions and affirm that our company/all members of the consortium will immediately inform the client and KfW if this situation should occur at a later stage.

We acknowledge that, in the event that our company (or a member of the consortium) is added to a list of sanctions that is legally binding for the client and/or KfW, the client is entitled to exclude our company/the consortium from the procurement procedure and, if the contract is awarded to our company/the consortium, to terminate the contract immediately if the statements made in the Declaration of Undertaking were objectively false or the reason for exclusion occurs after the Declaration of Undertaking has been issued.

.....

Place, date

.....

Bidder

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<sup>5</sup> See "Guidelines for the Assignment of Consultants in German Financial Cooperation" and "Guidelines for the Award of Contracts for Supplies and Services in German Financial Cooperation"



**Abbreviations and Glossary**

<b><i>Bidding period</i></b>	Period between the date of issue of the bidding documents and the date of submission of bids
<b>BOT</b>	Build-Operate-Transfer; here the term is used synonymously with other terms like BOOT, BOO.
<b>Contracting agency</b>	See definition in the introduction
<b>Core Labour Standards</b>	The core labour standards define internationally agreed minimum standards for worker rights. They concern forced child labour and other forms of child exploitation, freedom of assembly and non-discrimination. They are established by the International Labour Organisation (ILO). Details on the Core Labour Standards and a list showing what countries have ratified which standards can be found in the Internet at <a href="http://www.ilo.org">http://www.ilo.org</a>
<b>Development Gateway</b>	A list of ongoing procurement processes can be found at <a href="http://www.dgmarket.com">http://www.dgmarket.com</a> .
<b>Discretionary Award</b>	The term is synonymous with "direct award"
<b>Evaluation report</b>	See definitions in para 2.12 and 2.32
<b>FIDIC</b>	Fédération Internationale des Ingénieurs-Conseils ( <a href="http://www.fidic.org">http://www.fidic.org</a> ). Civil works projects are covered by the so-called "Red Book", electronic and engineering equipment and design-build projects by the "Yellow Book" and small, e.g. locally awarded projects by the "Green Book". The "Silver Book" for turnkey plant and equipment is only of limited importance as it does not provide for an independent consultant for FC financed projects.
<b>Financial Cooperation (FC)</b>	See definition in the introduction (box)
<b>GTAI</b>	Foreign Trade and inward investment agency of the Federal Republic of Germany Address: Germany Trade and Invest GmbH <sup>6</sup> , Villemombler Str. 76, D-53123 Bonn, Telephone: +49 (228) 24993-374 or -377, Telefax: +49 (228) 24993-446, Email: <a href="mailto:kfw-tender@gtai.de">kfw-tender@gtai.de</a> , Internet: <a href="http://www.gtai.de">www.gtai.de</a>
<b>Guidelines for the Assignment of Consultants in German Financial Cooperation with Developing Countries.</b>	Available in four languages at <a href="http://www.kfw-entwicklungs-bank.de/ebank/DE_Home//Download_Center/Ueberblickspublikationen/Richtlinien.jsp">http://www.kfw-entwicklungs-bank.de/ebank/DE_Home//Download_Center/Ueberblickspublikationen/Richtlinien.jsp</a>
<b>ICC</b>	International Chamber of Commerce Internet address <a href="http://www.icc-deutschland.de">http://www.icc-deutschland.de</a> and others
<b>IFI</b>	International financing institutions such as the World Bank, Asian Development Bank, African Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, Caribbean Development Bank.

<sup>6</sup> Full name: Germany Trade and Invest – Gesellschaft für Außenwirtschaft und Standortmarketing mbH

**Leaflet for the Disbursement of Funds**

Available in German, English, Spanish and French at

[http://www.kfw-entwicklungs-bank.de/ebank/DE\\_Home/Download\\_Center/Ueberblickspublikationen/Richtlinien.jsp](http://www.kfw-entwicklungs-bank.de/ebank/DE_Home/Download_Center/Ueberblickspublikationen/Richtlinien.jsp)

**Project executing agency**

Agency in the recipient country which is responsible for the implementation of the project, usually also *contracting agency*.

**Procurement**

Procedure to award a contract and its result. Procurement comprises preliminary information, qualification, preparation and evaluation of bids, contracting and information to unsuccessful bidders.

**Recipient country**

Country which is the recipient of the FC loan or grant or country in which the non-governmental recipient has its domicile.

**Standard conditions of the German Insurance Association**

<http://www.tis-gdv.de/tis/bedingungen/inhalt2.htm>

**Standard documents**

(„Standard Bidding Documents“) of the *IFIs* for tender, awarding and contractual documents are standardised specimen procurement documents of the *IFIs*. They are available in English, for instance, at <http://www.worldbank.org/> or <http://www.adb.org/>.

**Validity period**

Period within which the bids are binding; the binding period is identical to the term of the bid bond.