

8 WORKS CONTRACTS

This chapter provides a step by step guide for Procurement Procedures applicable to Works Contracts according to contract value.

Since Works Contracts with a value above EUR 300,000 are unlikely to occur, the Local Open Tender and International Open Tender Procedures are not described in this Manual. Should the procedures be required, please contact the DCA Desk Officer at the County Office or the DCA ProLog Unit for assistance and standard tender documents.

'Works' means the outcome of building or civil engineering as a whole and is sufficient to fulfil an economic or technical function. Works Contracts cover either the execution or both execution and design of works or the realisation of a work corresponding to the requirements specified by the Contracting Authority. It is a Works Contract when an entrepreneur or construction company has the obligation of delivering works and is responsible for hiring or buying the necessary resources to fulfil this obligation i.e. the entrepreneur hires the labour, brings all equipment and buys the construction materials and resources.

Examples of Works Contracts are construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, drilling, etc.

Customs and regulations play a large part in the procurement of works and the Request for Proposal and contract shall be adapted as necessary to the risks and requirements of the specific works to be procured and the context in which the project is executed. It is important to be aware that too strict requirements may discourage companies from submitting proposals and entering a contract.

NOTE: Please read section 8.3 Legal Aspects concerning specific legal risks and necessary precautions for Works Contracts before proceeding.

WORKS		
EUR 300 - 9,999	Simple Procedure	See section 8.1
EUR 10,000 - 299,999	Negotiated Procedure	See section 8.2
EUR 300,000 - 2,999,999	Local Open Tender	Contact DCA Desk Officer for instructions and standard documents
Above EUR 3,000,000	International Open Tender	Contact DCA Desk Officer for instructions and standard documents

Ethical Considerations

The procurement of works is very complex and involves specific ethical risks, which are related to employees' labour rights and companies social and environmental responsibilities as well as the production, handling or transport of products. In order to avoid or prevent ethical risks, it is important to consider which risks are related to the procurement of works in a specific context. It is recommended to include ethical considerations in the market survey and to conduct a small-scale research on the contractors' ethical business performance in the sourcing process and further make procurement decisions which seek to avoid or manage the identified ethical risks. Also consider how internal purchasing practices may influence contractors' ability to meet ethical requirements and standards e.g. short lead times, changes to specifications and negotiating prices. Please ensure always to communicate the ethical

principles and standards to potential contractors either by personal contact or by publishing the COC. For more information on ethical procurement principles and implementation, see section 1.2 and 1.2.1.

The Administration and Supervision of Works Contracts

An engineer or a project manager with necessary construction experience shall be hired prior to the Procurement Procedure being initiated to administrate and supervise the process or the works e.g. prepare technical specifications, draft contract, etc. Please apply SER 1 for this type of contract.

The administration and supervision of a Works Contract can also be entrusted to a qualified employee of the Contracting Authority such as the project manager. In the Works Contract with the contractor, the provisions concerning the engineer are made applicable to the project manager, see article 1 of the GTC. However, it is important to establish a specific job description for the assignment which would include the main provisions of the contract for engineering services.

8.1 THE SIMPLE PROCEDURE

The Simple Procedure is the simplest Procurement Procedure. This procedure is applicable within the threshold of EUR 300 - 9,999.

For the Simple Procedure it shall be documented that the price of the works corresponds with or is lower than the market price while meeting the technical specifications. To establish this several methods exist. It is possible to collect written proposals or refer to recent contracts from the past 12 months. The advantages of written proposals are many. They evidence what has been offered, thereby reducing misunderstandings and are easy to document. Alternatively, the method can be verbally collected proposals documented in a Note to File or printed prices and specifications from the internet. Regardless of the method chosen, a minimum of three prices must be collected, specifications must be available and documented in the procurement file.

Before the procurement process is initiated, please ensure that all members of the Procurement Committee sign the Declaration of Impartiality and Confidentiality (GEN 2-1). Furthermore, please ensure that the mandatory general Advertisement of Business Opportunities (GEN 8) was published. For more information on the general Advertisement of Business Opportunities, see section 4.11.1.

Step Guide:

1

Purchase Request with Technical Specifications



Identify the works to be procured from the Procurement Plan and draft the technical specifications.



Procurement starts with the completion and authorization of the Purchase Request Form GEN 1-1. The Purchase Request originates outside the Procurement Department and the specifications shall be drafted by an engineer, architect or other specialist in collaboration with the project manager.

The Purchase Request identifies the technical specifications of the works, ensures sufficient budget and requests the procurement responsible staff to procure the works.

Determine if it is necessary or relevant to divide the works into several sublots to promote competition or to support the project market economy (e.g. depending on the capacity of the construction companies available in the market) or to avoid delays. Please refer to section 4.1.1.

Clear, well-defined technical specifications are a prerequisite for receiving proposals matching the requirements and the budget. When drafting the technical specifications, please refer to section 4.12.1.

NOTE: If a candidate assists with input to the technical specifications, the candidate is excluded from participating in that procedure.



MANDATORY TEMPLATE

GEN 1-1: Purchase Request Form

2

Collect Proposals



Approach the candidates for a written or non-written proposal, search the internet for the best price and quality or refer to recent contracts to ensure that the price corresponds with the present market price or lower. Make sure to have at least three proposals for comparison and file the collected proposals in the procurement file.



Although optional, it is recommended to use a written RFP, applying WOR 1. The use of a written RFP prevents misunderstandings and ensures that all the required information is collected.



If a non-written proposal is collected the Procurement Committee shall make a written note of the price, name of candidate, description of service and note the date. This note shall be filed in the procurement file.

When preparing the RFP, take into consideration whether the contract is of low or high risk of delays, insurance uncertainties, deficient quality, uncertainties on permits or authorisation, lack of capacity to administrate contract, etc. and whether the construction company is a small company or a large international company. For information on legal aspects, see section 8.3. The higher the value and risk involved, the more important it is to include clauses ensuring the execution of the works and protecting the interest of the Contracting Authority. It is though important to be aware that too strict requirements may discourage companies from lodging a proposal.

At this stage it is also important to collect general information on sector and country specific ethical risks. This will assist in identifying potential risks related to procuring the works in question. Define requirements to e.g. certifications, CSR policies etc. and communicate the ethical requirements and standards to the candidates.



SUPPORT TEMPLATE

WOR 1: Request for Proposal

3

Evaluate and Select Candidate



Evaluate the proposals and select the candidate offering the best price meeting the technical specifications. Issue a Note to File with a justification for the selection of the candidate. As an alternative to a Note to File, for evaluation purposes it may be useful to apply the WOR 3 Evaluation Grid and Report, which is also used for the Negotiated Procedure.

Before issuing the Contract, please verify the selected candidate(s)'s eligibility as per DCA Counter Terrorism Policy, by checking the UN Security Council, EU and donor

required sanctions lists.



SUPPORT TEMPLATE

WOR 3: Evaluation Grid and Report

4

Issue Contract



After selecting the best offer a contract shall be issued by the Procurement Committee, applying WOR 2. Check if the contract must be adapted to existing legislation, traditions and requirements. Works Contracts are complex contracts and the higher the value and risks involved, it becomes more important to include clauses ensuring the execution of the works and protecting the interest of the Contracting Authority.



The standard contract in WOR 2 includes the GTC and the COC which shall never be amended. If amendments to the GTC are needed, instructions must be included in the contract itself. Incorporate into the contract all agreements reached with the selected candidate (e.g., amount of global price, bank account references, etc.). Please consider carefully the legal issues specified in section 8.3.



Note that the RFP (WOR 1) and contract (WOR 2) templates are designed for 'global price' contracts only. Global price contracts are generally used for Works that can be defined in their full physical and qualitative characteristics before proposals are called for or where the risks of substantial design variations are minimal. This is usually construction of buildings, pipe laying, power transmission towers, and series of small structures, such as shelters, latrines and ablution units, which are the most commonly constructed buildings under projects.

The contract shall be forwarded unsigned to the selected candidate and returned signed to the Contracting Authority. Only thereafter shall the contract be signed by the Contracting Authority. Signing the contract creates a legally binding document for both parties.

Before signing the contract the Procurement Committee shall ensure:

- That adequate and exact reference is made in the contract to the relevant RFP or proposal
- That the contractor acknowledges the GTC and the COC without exceptions or amendments
- For new contractors, make sure that satisfactory references and company data has been collected

NOTE: If the selected candidate cannot accept the GTC, the Procurement Committee shall decline that proposal and continue the process with another candidate.



MANDATORY TEMPLATE

WOR 2: Contract

5

Receive and Inspect



The Contracting Authority shall follow up on the timely delivery and satisfactory quality of the received Works and take remedial measures to mitigate any negative consequences for the beneficiaries, caused by late delivery or shortfall in the agreed extent and quality.

The administration of a Works Contract and the inspection of the works require expertise. For example, the measurement of the works, article 39 of the GTC, and the determination whether the works can be considered completed, article 45 of the GTC, cannot be undertaken by someone other than an engineer or a project manager having the adequate qualifications. A qualified engineer should not have difficulties in identifying the standard contractual clauses and in taking all necessary dispositions e.g. issuance of instructions, notices, certificates to ensure proper execution of the works. After inspection and approval of the works, a Certificate of Final Completion shall be signed and filed in the procurement file.



DOCUMENTATION IN THE PROCUREMENT FILE

- Declaration of Impartiality and Confidentiality
- Purchase Request
- Proof of minimum 3 prices or proposals
- Evaluation and justification for selection of candidate
- Contract
- Copy of invoice
- Certificate of Final Completion
- Note to file, if relevant

8.2 THE NEGOTIATED PROCEDURE

The Negotiated Procedure is more formal than the Simple Procedure. This procedure is applicable within the threshold of EUR 10,000 – 299,999 and requires that a minimum of three candidates are invited simultaneously to submit a proposal based on a written RFP. The contract shall be awarded to the most compliant candidate. It is mandatory to publish an Award Notice for contracts above EUR 30,000 and letters to all unsuccessful candidates shall always be submitted.

The Negotiated Procedure is less formal than a Local Open Tender and gives the opportunity to negotiate the terms of the contract.

Before the procurement process is initiated, please ensure that all members of the Procurement Committee sign the Declaration of Impartiality and Confidentiality (GEN 2-1). Furthermore, please ensure that the mandatory general Advertisement of Business Opportunities (GEN 8) was published. For more information on the general Advertisement of Business Opportunities, see section 4.11.1.

Step Guide:

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Determine if it is necessary or relevant to divide the works into several sublots to promote competition or to support the project market economy (e.g. depending on the capacity of the construction companies available in the market) or to avoid delays. Please refer to section 4.1.1.

Clear, well-defined technical specifications are a prerequisite for receiving proposals matching the requirements and the budget. When drafting the technical specifications, please refer to section 4.12.1.

NOTE: If a candidate assists with input to the technical specifications, the candidate is excluded from participating in that procedure.



MANDATORY TEMPLATE:

GEN 1-1: Purchase Request Form
WOR 1: Request for Proposal

2

Prepare Shortlist



Prepare a shortlist with a minimum of three candidates applying GEN 13. It is recommended to include 4-8 candidates to ensure that a minimum of three proposals are collected. For more information on sourcing candidates see section 4.11.2.

Before shortlisting the candidates, the following shall be evaluated:

- The candidate's previous experience with similar Works
- The candidate's references
- Implementation capacity of the candidate
- Experience of the staff
- The candidate's access to plant and equipment



At this stage it is also recommended to collect general information on sector and country specific ethical risks to identify potential risks related to procuring the Works in question. Include the information in the sourcing decisions and further in drafting the RFP. See section 1.2.1 for implementation of the ethical procurement principles.



MANDATORY TEMPLATE

GEN 13: Shortlist of Suppliers/Candidates and Receipt Form

3

Draft Request for Proposal



Carefully prepare the RFP applying the template in WOR 1 and approach the candidates for a proposal. The RFP shall be forwarded simultaneously (same day) to all the shortlisted candidates. This is to ensure that all candidates are given an equal amount of time to prepare and submit their proposal. It is recommended to provide candidates with a minimum of two weeks to submit a proposal.



When preparing the RFP consider all the articles and options and decide on:

High-Risk Contract

Is the Contract of low or high risk in terms of delays, insurance uncertainty, deficient quality, uncertainty on permits or authorisation, lack of capacity to administrate contract and whether the construction company is a small company, operating in the project country only, or a large international company. The higher the value and risk involved, the more important it is to include clauses ensuring the execution of the



works and protecting the interest of the Contracting Authority. For information on legal aspects, see section 8.3. It is important to be aware that too strict requirements may discourage small companies from lodging a proposal.



Evaluation Criteria

Article A.15 of the RFP informs the candidates of the technical and financial criteria, which the Procurement Committee will use for the evaluation of the proposals. Furthermore, it informs the candidates of the weights assigned to the technical and financial scores. Finally, the article details how the Procurement Committee will weigh the various technical criteria.



Article A.15 suggest a set of predefined technical evaluation criteria with preassigned weights. These can be changed by the Procurement Committee to match the specific needs of the Works Contract in question. The technical score is a sum of the points each candidate has obtained for each technical criterion.



The financial evaluation criteria are predefined in article A.15 as the formula $Sf = 100 \times Fm/F$ (Sf is the financial scores of a proposal; Fm is the lowest price; and F is the price of the proposal under evaluation). This formula cannot be changed. Under the evaluation in Step 4, the Procurement Committee uses this formula to calculate a financial score for each proposal received.

The overall score is calculated per proposal using the following pre-defined formula: $(St \times 40\%) + (Sf \times 60\%) = \text{overall score}$ (St being the technical proposal and Sf the financial proposal).

The assigned weights of 40% and 60% are flexible and the Procurement Committee shall adapt the weight to the specific needs with respect to the budget available (weight of financial proposal) and the technical and quality requirements (weight of the technical proposal) for the Works Contract. Please take note that assigning a high weight to the financial proposal will indicate that price is the most important factor of the two, and the overall score will favour the cheapest price. Is the highest weight assigned to the technical proposal, the emphasis will be on the quality and the technical requirements and the overall score will favour the best technical offer. This will require a robust budget as there tends to be a link between quality and price.

Please note that the overall score links directly to the Award Criteria in WOR1 A.16

Ethical Criteria

It is recommended to obtain general information on sector and country specific ethical risks to identify potential risks related to procuring the works in question. Is there a need to include specific criteria to ethical procurement issues in the RFP such as certifications (or equivalent proof of compliance to ethical criteria) or the inclusion of specific terms related to e.g. environmental or social performance? Note that noncompliance to employees' health and safety are often high-risk areas for Works Contracts and should be addressed specifically in an article in the RFP.

Donor Requirements

Take note of specific donor requirements such as requirements to nationality, exclusivity clauses, publication rights, visibility, right to audit, exclusion and eligibility clauses, preference criteria, etc., which might require amendment of the RFP.

Bank Guarantees

Will a prepayment-, tender- or a performance guarantee be required? For more

information on bank guarantees, see section 9.3.

Subcontracting

Decide if subcontracting is to be allowed and be aware that subcontracting may induce a high risk in some contexts.

Follow Up

To ensure that enough offers are received on time it is recommended to contact all shortlisted candidates 1-2 days after submitting the RFP to ask if they intend to submit a proposal. When a short deadline is required, it is a good practice to follow up to explain the importance of completing the Submission Form and submitting the offer prior to the deadline.



MANDATORY TEMPLATE:

WOR 1: Request for Proposal

4

Register Proposals and Initiate Evaluation



Upon receipt of the quotations the date and time of receipt are registered in GEN 13 and the Procurement Committee initiate the evaluation, utilising the Evaluation Grid in WOR 3. Make sure all the evaluation criteria defined in the RFP are applied to the Evaluation Grid before evaluation starts.



Proposals shall be ranked according to their combined technical and financial scores using the weighting of the technical proposal and the financial proposal predefined in the RFP send to the candidates.



Please note that candidates who have not submitted their quotation before the deadline shall not be considered.

Evaluation Challenges

- In case all candidates have offered prices which are too high and/or the technical specifications need to be changed or adjusted, it is not necessary to issue a new RFP. Instead the candidates can be contacted in writing with the amendments and new deadline and request a revised quotation.
- If less than three proposals have been received and if some candidates have declined to submit a proposal, the Contracting Authority can proceed with the best offer provided that the general procurement principles are met. E.g. it shall be ensured that enough candidates were shortlisted, that all candidates have been given enough time to submit a proposal, and that all candidates have acknowledged the receipt of the RFP. If it is not possible to find a minimum of three qualified candidates in the market, it is important to survey broader e.g. markets in neighbouring districts and countries. See section 4.11.2 for how to source new candidates. Lack of candidates in the local market is not sufficient grounds for proceeding with less than three proposals.



MANDATORY TEMPLATE:

WOR 3: Evaluation Grid and Report

GEN 13: Shortlist of Suppliers/Candidates and Receipt Form

5

Interview and Negotiation**Interview**

The candidates who are administratively compliant having passed the questions in Part A of the Evaluation Grid, can be invited for an interview. This is not a requirement, but it is recommended. After the interviews the Procurement Committee has the possibility to change the scores in the Evaluation Grid. There is a separate column in the Evaluation Grid for this purpose.



An interview can also facilitate a discussion on identified ethical risks in order to find possible solutions or determine if the proposal shall be turned down for ethical reasons.

Negotiation

The Procurement Committee has the option to negotiate the terms of the contract, and it is recommended to do so. There are no specific procedures on negotiations except that the general procurement principles shall always be respected, and negotiations shall not entail any substantial deviation from the terms and conditions of the RFP. The main purpose of negotiation is to obtain better conditions in terms of technical quality, implementation period, price, payment conditions, etc.

Negotiations may have the purpose of reducing the scope of the services or revising other terms of the contract in order to reduce the proposed remuneration. This may be necessary when the prices proposed exceed the limits of the funds available to the Contracting Authority. In this case, all candidates involved should be invited to participate in the negotiations and to potentially submit a new proposal.

The negotiations can be done by email, phone or at a meeting. A written recap shall be prepared, filed, copied and submitted to the candidate.

When negotiating the terms, consider how requirements on e.g. delivery times and price may affect the candidates' ability to comply with the ethical principles and standards.

**MANDATORY TEMPLATE**

WOR 3: Evaluation Grid for Negotiated Procedure

6

Select Candidate and Issue Contract

Finalize evaluation and select the best and most compliant candidate whose proposal has been determined to be substantially responsive to the requirements of the RFP and has obtained the highest overall score. This provided further that the candidate has also been determined to fulfil the eligibility and non-exclusion criteria including the eligibility as per DCA Counter Terrorism Policy, by checking the UN Security Council, EU and donor required sanctions lists.



After selecting the winning candidate, the Procurement Committee issues the contract applying WOR 2. Check if the standard contract must be adapted to national legislation, traditions or requirements to Works Contracts.



Works Contracts are complex and the higher the value and risks involved, the more important it becomes to include clauses ensuring the execution of the works and



protecting the interest of the Contracting Authority. It is important to be aware that too strict requirements may discourage smaller companies from entering into a contract.

The standard contract in WOR 2 includes the GTC and the COC which shall never be amended. If amendments to the GTC is needed, instructions must be included in the Contract itself. All agreements reached with the selected candidate shall be incorporated into the contract e.g. amount of global price and bank account references. Please consider carefully the legal issues specified in section 8.3.

Note that the RFP (WOR 1) and contract (WOR 2) templates are designed for 'global price' contracts only, which is a total price for the entire assignment. Global price contracts are generally used for works that can be defined in their full physical and qualitative characteristics before proposals are called for, or where the risks of substantial design variations are minimal. This is usually construction of buildings, pipe laying, power transmission towers, and series of small structures, such as shelters, latrines and ablution units, which are the most commonly constructed buildings under projects.

The contract shall be forwarded unsigned to the selected candidate and returned signed to the Contracting Authority. Only thereafter shall the contract be signed by the Contracting Authority. Signing the contract creates a legally binding document for both parties.

Before signing the contract the Procurement Committee shall ensure:

- That adequate and exact reference is made in the contract to the relevant RFP
- That the contractor acknowledges the GTC and the COC without exceptions or amendments
- For new contractors, make sure that satisfactory references and company data has been obtained

NOTE: If the selected candidate cannot accept the GTC, the Procurement Committee shall decline the proposal and continue the process with another candidate.



MANDATORY TEMPLATE

WOR 3: Evaluation Grid for Negotiated Procedure
WOR 2: Contract

7

Send Letter to Unsuccessful Candidates



Once the selected contractor has returned the contract duly signed, a letter shall be sent to the unsuccessful candidates (WOR 4) informing them of the result of the procedure i.e. the name of the successful contractor and the total contract amount and the scores as per the Evaluation Grid.



MANDATORY TEMPLATE

WOR 4: Letter to Unsuccessful Candidates

8

Publish Award Notice



For contracts above EUR 30.000 it is mandatory to publish an Award Notice applying GEN 17. The Award Notice shall be published in a suitable media where candidates will notice the information and on the Contracting Authority's website. The purpose of a public announcement is to meet the principle of transparency with the added benefit

of attracting new candidates. Thus, the Award Notice is useful and recommended for all contracts.

For situations where the Procurement Committee finds that posting an Award Notice will bring project staff, beneficiaries, the project or the winning contractor at risk, the Procurement Committee may refrain from posting an Award Notice, see blanket derogation (k). This shall be duly documented.

NOTE: The Procurement Committee shall take notice of any specific donor requirements for publishing an Award Notice



MANDATORY TEMPLATE

GEN 17: Award Notice (optional below EUR 30,000)

9

Receive and Inspect



The Contracting Authority shall follow up on the timely delivery and satisfactory quality of the received works and take remedial measures to mitigate any negative consequences, caused by late delivery and/or shortfall in the agreed quantity and quality.

The administration of a Works Contract and the inspection of the works require an expertise in this area. For example, the "measurement" of the works in article 39 of the GTC and the determination whether the works can be determined as "completed" in article 45 of the GTC, cannot be undertaken by someone other than a qualified engineer or a project manager having the adequate qualifications.

A qualified engineer should not have difficulties in identifying the standard contractual clauses and in taking all necessary dispositions e.g. issuance of instructions, notices, certificates to ensure proper execution of the works. After inspection and approval of the works, a Certificate of Final Completion shall be signed and filed in the procurement file.



DOCUMENTATION IN THE PROCUREMENT FILE

- Declaration of Impartiality and Confidentiality
- Purchase Request
- Shortlist of Suppliers/Candidates and Receipt Form
- Request for Proposal
- Proposals Received
- Evaluation grid for Negotiated Procedure
- Contract
- Letter to Unsuccessful Candidates
- Copy of invoice
- Award Notice (optional below EUR 30.000)
- Certificate of Final Completion
- Note to File, if relevant

8.3 LEGAL ASPECTS - RISKS

For Works Contracts special precautions must be taken due to the inherently high legal risks and the complexity of the contracts. The following three sections describe in short some of the main legal issues of concern when applying Works Contracts.

Legal Risks for Works Contracts

- Risk of serious accidents, damages and uncertainty about insurance coverage
- Risk of delays
- Risk of deficient quality
- Risk of lack of capacity in Contracting Authorities to manage and administrate the Works Contracts
- Risk of uncertainty of obtaining required building permits and authorisations
- Risk of uncertainty about the legal status of the lands where buildings are to be constructed

Recommended Precautions

The following precautions are recommended when applying Works Contracts:

- Works projects shall only be undertaken in collaboration with partners with an established record and expertise in construction.
- A qualified engineer or a project manager with necessary construction experience shall be hired. This shall be done before the start of the Procurement Procedure, to make sure he/she is involved in the preparation of the Works Contract and the technical specifications, and he/she can participate in the Procurement Procedure for the works Please refer to the contract for Engineering Services in SER 1.
- International technical assistance shall be obtained when capacity is lacking in the project country. This could be advice from an international engineer on the necessary technical specifications of the works.
- An insurance company shall be contacted in advance to determine what kind of insurance coverage will be available, at which price and under which conditions. Clauses 17 of the GTC and article A.20 of the contract will have to be amended accordingly.
- A legal opinion from a reputable law firm in the country where the works are to be carried out shall be obtained at the project feasibility stage to ensure that:
 - All necessary authorisation and building permits can be obtained on time and without major uncertainties.
 - There is a valid and official title to the land in the name of the legal person or authority who is involved in the project and willingness to put the land at disposal of the works or who is recipient of the works such as the local authority. Ensure the necessary official approvals have been given and appropriate legally binding commitments from the owner of the land exists, article A.15 of the contract in WOR 2.
 - Mandatory applicable laws and regulations in the country of execution are known in advance and incorporated in the conditions of the contract in article A.12 in WOR 2, and article A.12 in the RFP (WOR 1). See also section 9.4 and 9.5 on applicable law and settlement of disputes.
 - The legal length of the defects liability period is established in article 47 of GTC and contract in WOR 2.
 - Appropriate insurance coverage is provided for in the proposed contract and legally enforceable in the country of execution.

Complexity of the Contractual Provisions and Administration

Because of the inherent risks in construction activities, the Works Contract is necessarily a complex and complicated contract which strives to distribute the risks, rights, obligations and liabilities of the parties. The GTC for Works Contracts is inspired by internationally recognised practices, terms and clauses in the construction business. The administration of a Works Contract requires expertise in the area and should be designated to an engineer or a project manager having the adequate qualifications. Examples where expertise is required is the "measurement" of the works in article 39 and the determination that the works can be considered completed in article 45 and 51. A qualified engineer should not have difficulties in identifying the standard contractual clauses and in taking all necessary dispositions e.g. issuance of instructions, notices, certificates to ensure a proper execution of the works. Entering a proper Service Contract with an engineer for that purpose is therefore also crucial (see SER 1).

A difficult part of the administration of a Works Contract is the determination of “interim payments” in article. 40 of the GTC, due to the contractor, based on the measurement of the works.

Although the GTC for Works Contracts provide for two different kinds of contracts, a “global price” contract or a “fee-based” contract, the RFP refers only to global price contracts. Global price contracts are generally used for works that can be defined in their full physical and qualitative characteristics before tenders or proposals are requested, or where the risks of substantial design variations are minimal, usually construction of buildings, pipe laying, power transmission towers, and series of small structures, such as shelters, latrines, ablution units etc.

Applicable Law and Settlement of Disputes

The issues mentioned in section 9.4 and 9.5 are of importance and relevance in the context of a Works Contract. A Procurement Procedure for an international Works Contract shall not be initiated unless and until all issues critical to land rights and the allocation of risks have been assessed by a lawyer, both under the conditions and the law of the country of execution of the works and the applicable law, if different. In the area of construction, many mandatory rules are likely to override the contractual provisions. Labour law in the project country has also to be taken into consideration in respect of labour used on the site.

Article 61 of the GTC contains provisions for an amicable settlement of disputes. Failing such settlement, article 61.2 of the GTC and corresponding article 61 in the contract, give the Contracting Authority the option of choosing a court or an arbitration clause. When choosing arbitration, the arbitration body, the place of arbitration and the arbitration rules shall be specified in the contract. Depending on the country, the region, the legal system, the scope and circumstances of the Construction Contract in question, available options for arbitration may vary considerably.