



Finance Contract:	SERBIAN INLAND WATERWAY INFRASTRUCTURE Finance Contract between the Republic of Serbia and European Investment Bank (Official Gazette of the Republic of Serbia - International Contracts No. 02/2019)
Procurement procedure:	Works on reconstruction and expansion of the Bogojevo Port in Serbia
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## Clarification No. 8 to TD

**Clarification of Volume 1, Section 1, ITT, VOL 1, Volume 1, Section 2, ANNEX 2 APPENDIX TO TENDER FOR A WORKS CONTRACT, Volume 2, Section 3 – PCC, Tender Guarantee form, Volume 2, Section 5 - Advance Payment Guarantee form, Volume 2, Section 6 - Retention Money Guarantee**

QUESTIONS	ANSWERS
<p><b>Question 1</b></p> <p>Since the PCC does not foresee an amendment to Cub-Clause 14.9 regarding the Payment of Retention Money, kindly clarify if it is possible for the Contractor to replace the 2nd half of the retention money with a Bank guarantee (after the issuance of the Taking over Certificate and the payment of the 1st half of the retention money)?</p>	<p><b>Answer 1</b></p> <p>Yes, it will be possible to replace half of retention money with the Bank Guarantee. The form of the Retention Money Guarantee to be used is given in Volume 2.</p>
<p><b>Question 2</b></p> <p>Under item 12.2 of ITT, it is stipulated that qualified staff (key staff and other staff) should be engaged on full-time permanent contracts, part-time contracts or sub-contractors. Also, within Volume 1, Section 4, Form 4.6.1.2 – Personnel to be employed on the contract, it is required a name of Employer to be provided.</p> <p>Please clarify, whether the STATEMENT OF AVAILABILITY is sufficient if some of the proposed qualified staff are currently not engaged by the Tenderer?</p> <p>Is service provider, for example for Health and safety and environmental protection is considered as a sub-contractor?</p>	<p><b>Answer 2</b></p> <p>Statement of availability is not required – the form shall be filled and completed with relevant information.</p> <p>It is the tender's responsibility to form formal relation(s) at its own discretion; the Contracting Authority is not in a position to define/approve sub-consultancy arrangements at this stage of procurement exercise.</p>
<p><b>Question 3</b></p> <p>Can an engineer who holds two licenses meet the requirements for both?</p>	<p><b>Answer 3</b></p> <p>Yes.</p>



<p><b>Question 4</b></p> <p>Reference:</p> <p>Vol_2_S2_d4o_specialconditions_en_BOGWKS_20220420 Sub-Clause 18.3 Insurance against Injury to Persons and Damage to Property Insert at end of first paragraph:</p> <p><i>"This insurance coverage shall be extended to third parties in all cases arising from incidents in Serbia involving vehicles or machines owned or in use by the Contractor".</i></p> <p>Question:</p> <p>Pursuant to the Serbian Law on Insurance, all vehicles and machinery registered in the Republic of Serbia are required to be insured under a Motor Vehicle Liability Insurance policy.</p> <p>Accordingly, it is not permissible to issue two liability insurance policies covering the same vehicle.</p> <p>Within the Serbian insurance market, it is not possible to arrange an additional liability insurance policy in the manner described in the added paragraph.</p> <p>The required coverage may be arranged by combining two complementary liability insurance policies – Motor Vehicle Liability Insurance and Third-Party Liability Insurance, which collectively provide sufficient and comprehensive protection.</p> <p>We kindly ask you to consider removing or appropriately revising the added paragraph in SC 18.3</p>	<p><b>Answer 4</b></p> <p>The requirement remains as defined in the Tender Document.</p>
<p><b>Question 5</b></p> <p>Ref: VOL 1, SECTION 3 – Tender Guarantee form – validity:</p> <p>Excerpt from Tender guarantee wording:</p> <p><i>... „We note that the guarantee will be released at the latest within 45 days of expiry of the tender validity period, including any extensions, in accordance with Article 15 of the Instructions to Tenderers [and in any case at the latest on (one year after the deadline for submitting tenders)]</i></p> <p>QUESTION:</p> <p>It is standard practice for a Tender Guarantee to remain valid for a defined period following the expiry of the tender validity, including any extensions (in this case, 45 days beyond the tender validity period). We kindly request clarification on the requirement for the Tender Guarantee to remain valid for one year after the tender submission deadline.</p>	<p><b>Answer 5</b></p> <p>The tender guarantee, to be found compliant with requirements of the tender document, must be valid 45 days beyond the bid validity period.</p>



### Question 6

Ref: VOL 2, SECTION 5 - Advance Payment Guarantee form

#### a) Missing part in the text:

Excerpt from Tender guarantee wording:

We accept notably that no amendment to the terms of the contract can release us from our obligation under this guarantee. We waive the right to be informed of any change, addition or amendment of the Contract.

of Contract and in any case at the latest at the expiry of 6 months after the expected date of issue of the Performance Certificate.<sup>1</sup>

QUESTION:

We assume that the following part is missing from the text:

*<We note that the Advance Payment Security will be released in accordance with Article \_\_ of the Particular Conditions ...=>*

We would appreciate it if you could add the missing part.

#### b) Validity is defined as follows:

*<... 6 months after the expected date of issue of the Performance Certificate=>*

QUESTION:

Bearing in mind that the advance payment will be repaid upon completion of the Works, we kindly request clarification regarding the reasons for the requirement that the Advance Payment Guarantee remain valid for a period of six (6) months following the expected date of issuance of the Performance Certificate.

### Answer 6

- a) Correct. Part of the text is missing: "We note that the guarantee will be released in accordance with article 46.7 of the general conditions."
- b) This request from the standard wording shall be read in the light of the footnote that reads: "this mention has to be inserted only where required, for example where the law applicable to the guarantee imposes a precise expiry date or where the guarantor can justify that he is unable to provide such guarantee without expiry date." The form of the guarantee as given by PRAG calls for 18 months, while 6 months is considered a reasonable time, in case the footnote becomes applicable. The draft guarantee will be subject of approval by the Contracting Authority.

### Question 7

Ref: VOL 2, SECTION 6 - Retention Money Guarantee Validity is defined as follows:

*<6 months after the expected date of issue of the Performance Certificate>*

QUESTION:

We kindly request clarification regarding the reasons for the requirement that the Retention Money Guarantee remain valid for a period of six (6) months following the expected date of issuance of the Performance Certificate.

### Answer 7

The above answer (6, under b) is applicable to this question.



<p><b>Question 8</b></p> <p>Ref: VOL 2, SECTION 3, PCC, SC 14.15 / Currencies of Payment „... <i>The exchange rate, applied for conversion of EUR in RSD for the payment of an order or invoice established in EUR, shall be the selling exchange rate of the National Bank of Serbia (NBS)</i></p> <p><i><a href="https://webappcenter.nbs.rs/ExchangeRateWebApp/ExchangeRate/IndexByDate?isSearchExecuted=false">https://webappcenter.nbs.rs/ExchangeRateWebApp/ExchangeRate/IndexByDate?isSearchExecuted=false</a>) effective on the date of invoicing.”</i></p> <p>QUESTION:</p> <p>Bearing in mind that VOL1, Section 2, ANNEX 2 APPENDIX TO TENDER FOR A WORKS CONTRACT, SC 14.15 defines the following:</p> <p><i>„For the economic operators registered in Republic of Serbia: the economic operators established and operating under the laws of the Republic of Serbia shall express their tender prices in EUR, however, in accordance with the national legislation the payment will be done in RSD (Serbian Dinars) using the official buying exchange rate of the National Bank of Serbia</i></p> <p><i>(<a href="https://webappcenter.nbs.rs/ExchangeRateWebApp/ExchangeRate/IndexByDate?isSearchExecuted=false">https://webappcenter.nbs.rs/ExchangeRateWebApp/ExchangeRate/IndexByDate?isSearchExecuted=false</a>) applicable on the date of invoicing&lt;</i></p> <p>We kindly request clarification regarding the exchange rate to be used for payment purposes (please note that the same question also relates to the „Currency of Insurance”).</p>	<p><b>Answer 8</b></p> <p>The price of the tender shall be expressed in EUR. Due to local legislation, in case the contract is awarded to the economic operator(s) established and operating in the Republic of Serbia, payment will be conducted in the national currency by applying <b>middle</b> exchange rate. This change will be incorporated into contract in case the awarded economic operator falls under this category.</p>
<p><b>Question 9</b></p> <p>Ref: VOL1, Instruction to Tenderers, page 17/29, Tender prices <i>„For the economic operators registered in Serbia only: the economic operators established and operating under the laws of the Republic of Serbia shall express their price in EUR ... „</i></p> <p>QUESTION:</p> <p>There is no definition of „<i>economic operator</i>”. This term repeats after in SC 14.15 (Payment).</p> <p>We kindly request clarification.</p>	<p><b>Answer 9</b></p> <p>Economic operator in every context in the Tender Documents means the legal person/entity.</p>



### Question 10

Ref: VOL 2, SECTION 3, PCC, SC 14.7 Payment

At the beginning of Sub-Clause 14.7, insert the following text:

*<Payments due by the Employer shall be made on a <shared cost= basis to the bank account mentioned on the financial identification form completed by the Contractor. The same form, annexed to the payment request, must be used to report changes of bank account. Sums due shall be paid within no more than thirty (30) calendar days from the date on which an admissible payment request is registered by the Employer. The date of payment shall be the date on which the Employer's account is debited. The payment request shall not be admissible if one or more essential requirements are not met.*

*The thirty (30) day period may be suspended by notifying the Contractor that the payment request cannot be fulfilled because the sum is not due, because appropriate substantiating documents have not been provided or because there is evidence that the expenditure might not be eligible. In the latter case, an inspection may be carried out on the spot for the purpose of further checks. The Contractor shall provide clarifications, modifications or further information within fifteen (15) days of being asked to do so. The payment period shall continue to run from the date on which a properly drawn-up payment request is registered."*

#### QUESTION:

This Sub-Clause has been significantly amended altering the fundamental FIDIC payment procedure in a manner that significantly impacts the Contractor's rights. This creates a financial risk, as it is impossible to establish clear payment deadlines, making it difficult for Contractor to plan Project cash flow. It remains unclear when payments are due, and on what grounds the Employer holds the right to reject them. Additionally, new terms are introduced without definitions.

Furthermore, with a minimum IPC after all deductions set at EUR 2 million, this Sub-Clause is highly unfavorable for the Contractor. These changes contradict the nature of the FIDIC payment mechanism, where the Employer is obligated to pay the amount certified by the Engineer in the IPC.

We kindly request clarification on following terms:

- "shared cost" (basis);

### Answer 10

Shared cost means fee incurred by the bank for money transfer.

Admissible refers to all contractual conditions that need to be fulfilled for invoice to be processed by the Contracting Authority.

Appropriate substantiating documents refer to all documents as defined by the Contract on which the payments are based to be correct, admissible and approved by Supervision Engineer.

Properly drawn – up payment means the payment request that meets all contractual obligations.



<ul style="list-style-type: none"><li>• „admissible” (payment request);</li><li>• „appropriate” (substantiating documents);</li><li>• „properly drawn-up” (payment request).</li></ul>	
<p><b>Question 11</b></p> <p>Ref: VOL1, Instruction to Tenderers, page 8/29 (ref. prices in VOL 4)</p> <p><i>„The prices in Volume 4 are deemed to have been set based on the conditions in force 30 days prior to the deadline for submitting tenders.”</i></p> <p>QUESTION:</p> <p>Usual Base Date under the FIDIC Contracts is 28 days before Tender submission.</p> <p>Having in mind that Sub-Clause 13.8 (Adjustment for Changes in Cost) is applicable and it refers to the Base Date, we kindly request clarification.</p>	<p><b>Answer 11</b></p> <p>The conditions in force 30 days prior to the deadline for submitting the tenders are standard time frame used at international market approach and it does not refer to base date from which the adjustment for changes in cost is applicable.</p>
<p><b>Question 12</b></p> <p>Ref: VOL 1, SECTION 2, ANNEX 2, APPENDIX TO TENDER</p> <ul style="list-style-type: none"><li>• <i>Item 1.1.3.3. - Time for Completion - 912 (nine hundred twelve) calendar days from signing of the Contract by the last of the parties and provision of the performance security.</i></li><li>• <i>Item 8.1 Commencement Date - Within 21 calendar days from signing of the contract by the last of the parties and provision of the valid and acceptable Performance Security.</i></li></ul> <p>QUESTION:</p> <p>The definitions of „Time for Completion” and „Commencement Date” are not aligned and are inconsistent with the provisions of the GCC. Pursuant to FIDIC GCC Sub-Clause 8.1, the Time for Completion shall commence from the Commencement Date.</p> <p>We kindly request clarification.</p>	<p><b>Answer 12</b></p> <p>Time for completion is 912 calendar days from commencement date.</p>



<p><b>Question 13</b></p> <p>Ref: PCC, SC 4.2 Performance Security</p> <p><i>„The Performance Security, submitted by the Contractor, shall be in the format given in the Schedule of Guarantees in the Contract“.</i></p> <p>QUESTION:</p> <p>According to the definition, Schedules should be documents entitled “Schedules” completed by the Contractor and submitted with the Letter of Tender, as included in the Contract. Since capitalized letters are used, “<i>Schedules of Guarantees</i>” appears to be a defined term.</p> <p>We kindly request clarification.</p>	<p><b>Answer 13</b></p> <p>The performance Security shall be in the form given in the Tender Document, Volume 2.</p>
<p><b>Question 14</b></p> <p>Ref: PCC, SC 13.8 Adjustment for Changes in Cost</p> <p><i>„This Sub-Clause shall apply 12 months after commencement date.“</i></p> <p>QUESTION:</p> <p>We assume that the term “commencement date” is intended to refer to the Commencement Date.</p> <p>The Appendix to Tender should include a table of adjustment data, as the relevant Sub-Clause may be applicable.</p> <p>We kindly request clarification and the corresponding amendment to the Appendix to Tender.</p>	<p><b>Answer 14</b></p> <p>The adjustment for changes in cost is applicable as defined by Article 13.8. As part of the Tender Form (given in Volume 1, Section 2) there is Schedule of Cost Indexation that shall be filled by tenderers. This form will be incorporated in the Appendix to Tender when the contract is awarded.</p>
<p><b>Question 15</b></p> <p>Ref: PCC, SC 14.1 The Contract Price</p> <p><i>„VAT on Payment Certificates will be paid in compliance with the national laws concerning the execution of the project.“</i></p> <p>QUESTION:</p> <p>The Sub-Clause is not properly drafted.</p> <p>We kindly request clarification on whether the wording of the Sub-Clause adds to or modifies the PCC?</p>	<p><b>Answer 15</b></p> <p>The works are going to be financed through the Finance Contract for Serbian Inland Waterway Infrastructure between the Republic of Serbia and the European Investment Bank (Official Gazette of RS, No.2/19) and the budget of the Republic of Serbia. The loan part will be VAT exempt while the part of the works paid by the budget will not.</p>



**Question 16**

12) Ref: PCC, SC 14.4 Schedule of Payments

*“The Schedule of Payments shall be in the form of an Activity Schedule linked to the Bill of Quantities per the activities concerned. The total of the items in the Activity Schedule shall be equal to the Accepted Contract Amount, unless varied in accordance with the Contract.*

*The activities in the Activity Schedule shall correspond to activities in the programme referred to in Sub-Clause 8.3. If requested by the Engineer at any time, the Contractor shall provide a breakdown of the prices of activities in the Activity Schedule to assist in the valuation of variations under Sub-Clause 13.3.”*

QUESTION:

The Sub-Clause has been amended, introducing a new term, „Activity Schedule”, without providing a definition. The term „Activity Schedule” is not defined within the Contract. Additionally, the Sub- Clause conflates elements that are typically treated separately, such as the BoQ, Programme, and IPCs. The use of the „Activity Schedule” remains undefined.

We kindly request clarification.

**Answer 16**

“**Activity Schedule**” means a schedule prepared by the Contractor and accepted by the Engineer, allocating the Accepted Contract Amount among defined construction activities aligned with the Programme under Sub-Clause 8.3, for the purpose of interim payment valuation. The Activity Schedule does not replace the Bill of Quantities unless expressly stated, and shall be used solely as a payment mechanism, with its total equal to the Accepted Contract Amount as adjusted in accordance with the Contract.