**SPECIFIC ADMINISTRATIVE CLAUSES**

**(SAC)**

**WORKS CONTRACT**

**DOSSIER NO.:** OBR-23/001

**SUBJECT MATTER:** REMOVAL OF ASBESTOS, COMPLETE REPAIR OF THE ROOF, REPLACEMENT OF CEILINGS AND RENOVATION OF ROOMS AFFECTED BY DAMP, PLUMBING AND ELECTRICAL INSTALLATIONS AND BUILDING COMPLETION WORK AT THE RESIDENCE.

**PLACE OF PERFORMANCE:** EMBASSY OF SPAIN IN NAIROBI (KENYA**)**

**PROCEDURE:** NEGOTIATED PROCEDURE WITH PRIOR PUBLICATION (*Additional Provision One of Act 9/2017 of 8 November, on Public Sector Contracts)*

**LEGAL SERVICE REPORT**: These Specific Administrative Clauses (hereinafter, SAC) were approved by the Legal Service of the Ministry on 18 April 2023.

Approved:

The Minister

Signature delegated pursuant to Order AUC/462/2021 of 28 April

The Director-General for the Foreign Service

María Hilda Jiménez Núñez

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| **SUMMARY**  |
| * **Type of contract:** Administrative Works Contract
* **Dossier number:** OBR-23/001
* **Subject matter of the Contract**: Refurbishment work at the Residence, essentially comprising the removal of asbestos, the complete renovation of the roof, the replacement of ceilings and renovation of rooms affected by damp, plumbing and electrical installations, and building completion work.
* **Place of performance**: Embassy of Spain in Nairobi (Kenya)
* **Address:** Lakeview Estate, Off Ngecha Road, Lower Kabete, Nairobi
* **Performance period:** 11 weeks
* **Possibility of extension:** No
* **Classification:** Not required. Article 77.1.a) of Act 9/2017 of 8 November, on Public Sector Contracts

 * **Common Procurement Vocabulary (CPV)**:

 45261900-3 Roof repair and maintenance work 45262660-5 Asbestos-removal work 45330000-9 Plumbing and sanitary works 45321000-3 Thermal insulation work  45421146-9 Installation of suspended ceilings 45400000-1 Building completion work* **Contracting Authority:** The Minister and, by delegation, the Director-General for the Foreign Service (pursuant to Order AUC/462/2021 of 28 April, setting limits for the administration of certain expenses and for the delegation of powers)
* **Profile of the Contracting Party**: This can be found at <http://contrataciondelestado.es>
* **Processing of the tender dossier**: Ordinary
* **Award procedure**: Negotiated with prior publication, Additional Provision One of Act 9/2017 of 8 November, on Public Sector Contracts
* **Estimated Contract value:** Kenyan Shillings (KES) 24,600,770.00.
* **Value Added Tax** (16%): Kenyan Shillings (KES) 3,936,123.20 USD ‬‬‬‬‬‬
* **Base budget of the tender:** Kenyan Shillings (KES) 28,536,893.20.
* **Budget allocation:** 12.01.13.142A.630 and 12.01.13.142A.830
* **Assessment criteria:** Economic and qualitative
* **Performance bond**: 5% of the amount awarded (excluding VAT or similar applicable tax)
* **Warranty period:** One year from receipt of confirmation of acceptance of the works
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**1. IDENTIFICATION AND ELEMENTS OF THE CONTRACT**

**1.1. SUBJECT MATTER OF THE CONTRACT**

The subject matter of the Contract is the refurbishment of the Residence, essentially comprising the removal of asbestos, the complete renovation of the roof, the replacement of ceilings and renovation of rooms affected by damp, plumbing and electrical installations, and building completion work.

The details and characteristics of the work and the manner in which it is to be carried out are set out in the Project and in the Technical Specifications (hereinafter, TS).

The subject matter of the Contract has not been divided into lots because it consists of complete works that are very homogeneous in scope, and it is therefore believed that the participation of several enterprises could jeopardize its proper performance.

**1.2. PLACE OF PERFORMANCE**

The subject matter of the Contract shall be performed at the Spanish Embassy Residence in Nairobi located at Lakeview Estate, Off Ngecha Road, Lower Kabete.

**1.3. ECONOMIC-BUDGETARY REGIME OF THE CONTRACT**

**Base budget of the tender:** The base budget of the tender, which precludes any bid of a higher amount, is Kenyan Shillings (KES) 28,536,893.20 (

|  |  |
| --- | --- |
| ITEM | Total value (KES) |
| PREPARATORY WORK |  |
| GROUND FLOOR |  |
| UPPER FLOOR |  |
| DRILLING, PLUMBING, PAINTING, PIPING, ELECTRICAL AND MECHANICAL INSTALLATIONS |  |
| COMPLETION WORK, FINISHING TOUCHES AND ASSISTANCE WITH BRICKWORK |  |
| COST OF LABOUR AND MATERIALS (CLM) | 20,672,915.97 |
| Overheads (13% of CLM) | 2,687,479.07 |
| Business profit (6% of CLM) | 1,240,374.96 |
| TOTAL OVERHEADS (TO) |  |
| TAXABLE BASE (CLM + TO) | 24,600,770.00 |
| VAT (16%) |  |
| **BASE BUDGET OF THE TENDER (EV + VAT)** | **28,536,893.20** |

The base budget of the tender includes all types of expenses, licences, fees, taxes and state or local duties that are or could be levied on the services comprising the subject matter of the Contract while it remains in force.

**Cost structure** (Article 100.2 of the LCSP):

Direct costs (85%)............................

Indirect costs (15%)..........................

COST OF LABOUR AND MATERIALS (CLM)... 20,672,915.97

**Estimated Value** (LCSP Article 101):

|  |  |
| --- | --- |
| ITEM | Total value (KES) |
| COST OF LABOUR AND MATERIALS (CLM) | 20,672,915.97 |
| TOTAL OVERHEADS (TO) |  |
| **ESTIMATED VALUE** |  |

**Budget allocation:**

|  |  |
| --- | --- |
| **Budgetary item** | **Amount** |
| 12.01.13.142A.630 (Performance) | KES 28,536,893.20  |
| 12.01.13.142A.830 (Advance payment) |  |

 **Advance payment:** Pursuant to Article 240.2 of Act 9/2017 of 8 November, on Public Sector Contracts, and Articles 155 and 156 of Royal Decree 1098/2001 of 12 October, approving the General Regulations of the Public Administration Contracts Act, the Contractor shall be entitled to receive an advance payment comprising part of the Contract price for preparatory operations carried out, such as installations and stockpiling of materials or heavy machinery allocated to the work. A single percentage of 20% of the base budget of the tender is established as the maximum amount that may be requested.

 This amount shall be charged to Item 830 of the budget, in accordance with Additional Provision Twenty-four of Act 47/2003, which establishes that "*Payments on account for preparatory operations carried out, such as installations and stockpiling of materials or heavy machinery allocated to the work, in the terms regulated in Article 240.2 of Act 9/2017 of 8 November, on Public Sector Contracts, shall be charged, in budgetary terms, to Chapter 8 "Financial assets*".

**Price revision:** In no case shall the prices be revised.

**1.4. NATURE OF THE CONTRACT AND APPLICABLE LEGAL REGIME**

The Contract referred to herein is a public sector contract, of an administrative and works nature, which shall be governed, as regards its preparation, award, effects and termination, by these SAC, by the Project, which includes the TS, and by the document in which the Contract is formalized. For everything not expressly regulated in the Contract and in the SAC and TS, Additional Provision One of Act 9/2017 of 8 November, on Public Sector Contracts, transposing Directives of the European Parliament and of the Council 2014/23/EU and 2014/24/EU, of 26 February 2014 into Spanish law, shall apply. The principles of the Public Sector Contracts Act (LCSP) shall be taken into account to settle any doubts or compensate for any lacunae encountered in applying the Contract.

The following documents shall form an integral part of the Contract, with the following order of precedence:

* The Specific Administrative Clauses
* The Project, which includes the Technical Specifications
* The letter of invitation to participate in the tender
* The formalization document
* The winning bid

**2. REQUIREMENTS FOR THE TENDERERS AND HOW TO ACCREDIT THEM**

**2.1. REQUIREMENTS FOR THE TENDERERS**

Bids for the Contract may be submitted, at the Administration’s invitation, by natural and legal persons—

whether individually, in a group, or in a temporary consortium—having full capacity to exercise rights and obligations, who have an organization with sufficient staff and material resources to technically and legally perform the Contract satisfactorily, respecting and complying with the regulations in force and accepting the scope of all the documents forming an integral part hereof.

Admission to the tender process shall require tenderers to have the economic and financial capacity necessary to perform the Contract. The Administration reserves the right to examine this capacity.

Entrepreneurs must also have any such business or professional licences as may be required to carry out the activity or service that constitutes the subject matter of the Contract.

**2.2. FORM OF ACCREDITATION OF THE REQUIREMENTS FOR THE TENDERERS: CAPACITY AND SOLVENCY**

1. **The capacity to exercise rights and obligations shall be evidenced as follows:**
2. **Foreign companies that are neither Spanish, nor from EU Member States, nor from signatories of the Agreement on the European Economic Area**, shall provide evidence to the corresponding Diplomatic Mission or Consular Post of Spain in the location where the Contract is to be performed that they are included on the local professional, commercial or similar register or, alternatively, evidence that they regularly engage locally in the activities comprising the subject matter of the Contract. Once this situation has been proven, the Diplomatic Mission shall issue the corresponding report, which shall be included in the tender dossier.
3. **Companies that are Spanish, or from an EU Member State, or from a signatory of the Agreement on the European Economic Area,** shall provide evidence of their capacity to exercise rights and obligations through the following **documents**:
* Spanish companies shall provide evidence of their capacity to exercise rights and obligations by submitting a certified copy of their **deeds or other document of incorporation, articles of association or founding charter** containing the rules governing their activities, duly entered on the corresponding public register;
* Non-Spanish companies from other EU Member States or from signatories of the Agreement on the European Economic Area shall provide, as evidence of their capacity to exercise rights and obligations, a certificate of registration with the applicable registry, in accordance with the legislation of the State in which they are established, or, alternatively, a signed declaration or certificate, as required by regulations, in accordance with applicable EU provisions.

In addition, they must submit a signed declaration that the company is not prohibited from entering into a contract with the Administration due to any of the causes laid down in Article 71 of the LCSP (following the template included in **Appendix 2**), and that the company is up to date with its tax and Social Security obligations, where applicable.

1. **Documentation accrediting representation:**
* Copy of the identity document of the signatory of the bid;
* Power of attorney of the signatory of the bid or equivalent document, duly entered on the corresponding register.
1. **Proof of financial solvency, as well as of technical or professional solvency,** shall be provided bysubmitting the following documentation:
2. **Financial solvency:**

A civil liability insurance policy shall be provided for a minimum amount equal to or greater than the base budget of the tender (KES 28,536,893.20). The validity period of the policy must cover the entire performance period of the Contract. It shall be accredited through a certificate issued by the insurer, stating the amounts and risks insured against, and the expiry date of the policy.

1. **Technical or professional solvency:**
	1. The Tenderers shall provide a list of works of the same or similar nature carried out in the past five years, and at least three certificates of satisfactory performance of works of the same or similar nature carried out for an amount equal to or greater than 50% of the base budget of the tender (KES 14,268,446.60), detailing the amount, dates, place of performance and the recipient of the works.
	2. In the case of Spanish entrepreneurs, technical or professional solvency may be accredited by their registration with the Official Registry for Tenderers and Classified Public Sector Companies, with the following classification, pursuant to Royal Decree 773/2015 of 28 August:

|  |  |  |
| --- | --- | --- |
| GROUP | SUB-GROUP | CATEGORY |
| C: Buildings | 1: Demolitions4: Brickwork, rendering and cladding7: Insulation and waterproofing | 2 |

* 1. **To oversee the performance of the Contract,** companies must assign **a supervisor** withat least two years' documented experience of works of the same or a similar nature. This person must exercise this responsibility throughout the performance of the Contract.

Classification shall not be required of non-Spanish entrepreneurs from EU Member States or from signatories of the Agreement on the European Economic Area, whether they bid for the Contract individually or as part of a consortium, nor shall it be required of other foreign entrepreneurs, without prejudice to the obligation to substantiate their solvency set out in points 1 and 2.

1. **Other documentation:**
2. Non-Spanish companies that choose to **submit to the Spanish Courts** must submit a declaration to that effect **(Appendix 3).**
3. **Confidentiality commitment:** All documentation and information provided to tenderers is confidential, and tenderers shall have a duty of confidentiality regarding the documentation and information received in relation to the tendering of this Contract. Tenderers shall expressly commit to respecting this duty by filling out and submitting **Appendix 4** tothese SAC.
4. **Temporary consortia:** Any temporary consortia tendering bids for this Contract must provide a Memorandum of Association, duly signed by the representatives of each of the companies that intend to form the consortium (**Appendix 5**).

Tenderers shall initially provide, in substitution of the documentation accrediting their capacity and solvency mentioned in sections A) and B) of this Clause, a **signed declaration** (following the template in **Appendix 2**, attached hereto), indicating that they meet the legally established conditions to enter into a contract with the Administration. In those cases where several entrepreneurs participate in a temporary consortium, a signed declaration must be provided by each of the participating entrepreneurs.

The Contracting Authority may at any time ask tenderers for all or part of the documentation substantiating their capacity and solvency for which the abovementioned signed declaration has been submitted in substitution, should it consider that there is reasonable doubt regarding the validity or reliability of that declaration, or when so required for the proper undertaking of the procedure.

Before the Contract can be awarded, the tenderer whose bid receives the highest valuation must substantiate that they possess valid documentation accrediting their capacity and solvency.

On the date of submitting their tenders and at the time that the Contract becomes legally binding, the tenderers must have the necessary capacity to exercise rights and obligations as well as the necessary solvency and must not be prohibited from entering into contracts with the Public Administration for any reason.

If a tenderer fails to substantiate that they meet the capacity and solvency requirements, their bid shall be excluded from the tender process.

All the documents required in this Clause must be accompanied by a translation into Spanish, where applicable, and must be originals, authentic copies, or certified photocopies.

**3. DEADLINE, PLACE AND FORM OF SUBMISSION OF BIDS**

The Embassy of Spain in Nairobi shall invite at least three companies with sufficient capacity and solvency to submit bids to perform the subject matter of the Contract.

Tenderers' bids shall comply with the SAC and the TS and other documentation governing the tender, and their submission implies unconditional acceptance by the entrepreneur of the contents of all these SAC.

Amendments, improvements or alternatives to the subject matter of the Contract are not authorized. Each tenderer may not submit more than one bid.

The Contracting Authority may not disclose information provided by entrepreneurs which they have designated as confidential when submitting their bid.

**Deadline for submission of bids**: The deadline for submission of bids shall be 15 working days from the day following the date of dispatch of the invitation to tender.

**Place of submission of bids:** Bids shall be submitted by hand or by post to the Registry of the Spanish Embassy in Nairobi.

**Address**: CBA Building, 3rd Floor. Mara & Ragati Roads, Upper Hill. P.O. Box 45503-00100 Nairobi, Kenya.

**Opening hours:** Monday to Friday from 09:00 to 13:00.

If the submission is made by post, the Diplomatic Mission shall be notified by email to the following address: emb.nairobi@maec.es. This must be sent before the deadline set for the submission of bids.

After the deadline for submission, the Registry shall issue a certificate listing the bids received before the deadline had passed and those received after the deadline.

**Form of presentation of bids:** The bid shall consist of three separate and independent envelopes, duly sealed and signed by the tenderer or person legally representing them, with the following requirements:

* The information stipulated in the templates given in **Appendix 1** of these SAC shall be clearly indicated on the outside of each envelope, so that this information may be read without the need to open the envelope.
* Contents of the envelopes:
	+ **Envelope no. 1**: "Administrative documentation". This shall contain the documentation substantiating compliance with the prerequisites for participation in the tender (capacity and solvency), as well as that relating to the proposed criteria subject to a value judgment, and shall **exclusively** include:

1. **Appendix 2** of the SAC (signed declaration)

2. **Appendix 3** of the SAC (in the case of non-Spanish companies that choose to submit to the Spanish courts)

3. **Appendix 4** of the SAC (confidentiality commitment)

4. **Appendix 5** of the SAC (in the event that the tenderer is a temporary consortium)

5. **Appendix 6** of the SAC (commitment to assign the necessary human resources).

In the event that it is necessary to correct the documentation presented in Envelope no. 1, tenderers shall be given a period of no more than three working days to make the necessary corrections.

* + **Envelope no. 2**: "Proposed criteria subject to a value judgment”. This shall contain the aspects that may be assessed by means of a value judgement (Appendix 7). For this purpose, it shall include **Appendix 7** of the SAC (Proposed criteria subject to a value judgement).

Once the contents of Envelope no. 2 have been assessed, in accordance with Clause 4 of these SAC, Envelope no. 3 shall be opened.

* + **Envelope no. 3**: "Proposed criteria subject to automatic valuation". This shall contain the aspects of the bid in accordance with **Appendix 8** of these SAC.

Financial proposal, which shall:

* + - * Be expressed in Kenyan Shillings (KES)
		- Contain the total budget (which may in no case be higher than the base budget of the tender established herein)
		- Be signed by the entrepreneur and include the company/entrepreneur's stamp, if available.

**4. AWARD CRITERIA AND ASPECTS SUBJECT TO NEGOTIATION**

**CRITERIA FOR THE AWARD OF THE CONTRACT**

The Contracting Authority shall award the Contract on the basis of the best bid submitted in accordance with the following award criteria:

* Qualitative criteria (up to a maximum of 10 points). It shall include:
	+ Technical visit to the facilities; and
	+ Submission of a brief report substantiating the understanding of the works foreseen and described in the Project.
* Financial criteria (up to a maximum of 90 points). It shall include:
* Financial bid.

**ASSESSMENT OF AWARD CRITERIA. TOTAL: 100 POINTS**

**CRITERIA WHOSE ASSESSMENT IS SUBJECT TO A VALUE JUDGMENT (according to the template in Appendix 7):**

**4.2.1. Site visit: up to a maximum of 2 points.**

2 points for the tenderer who visits the Diplomatic Mission’s premises, 0 points for the tenderer who does not visit the Diplomatic Mission’s premises.

**4.2.2. Submission of a brief report substantiating the understanding of the works foreseen and described in the Project: up to a maximum of 8 points.**

Tenderers shall submit a report on the eight points listed in Appendix 7. Comments shall be made on whether or not each of them corresponds to the content of the Project. The comments shall be based on proof and evidence that demonstrates that they understand what the Project entails. This may be accompanied by photographs, plans, sketches or any other type of evidence. The report shall contain a maximum of eight pages.

A maximum of 8 points may be awarded: 1 point for each of the best-commented statements; 0 points when a statement is not commented on or is commented on incorrectly as compared with the rest. No points shall be deducted for incorrectly commented statements.

For the assessment of the qualitative criteria, the Spanish Embassy in Nairobi may request a report on them from the technical services of the Deputy Directorate-General for Property Affairs of the Ministry of Foreign Affairs, European Union and Cooperation.

**4.2. CRITERIA THAT CAN BE VALUED THROUGH THE USE OF FORMULAS (according to the template in Appendix 8):**

**Financial bid: up to a maximum of 90 points**

The highest score (90 points) shall be awarded to the enterprise that submits the lowest financial bid, with the score being assigned in inverse proportion to the rest of the bids by applying the following formula:

Formula: P = 90 x Oi / Oo

 Being:

 P: Score obtained

 Oi: Budget of the lowest bid

 Oo: Budget of the bid being valued

**4.3. ASPECTS SUBJECT TO NEGOTIATION**

Once the tenderers have accredited compliance with the prerequisites for participation in the tender, and once the formalities relating to Envelope no. 1 have been completed, i.e. obtaining the evaluation report on the criteria subject to value judgement, the Diplomatic Mission shall open Envelope no. 2, which shall contain the aspects of the bid regarding the criteria subject to automatic valuation.

Once the envelopes have been opened and the bids have been read, a single **round of negotiations** shall be held with the tenderers, which shall begin with a written communication addressed to each enterprise inviting it to improve, within a minimum period of three working days, the aspects subject to negotiation detailed below, always guaranteeing the principle of equal treatment among the tenderers. In particular, information that may give an advantage to any tenderer over the others shall not be provided in a discriminatory manner, and industrial secrecy and intellectual property rights shall be protected, so that the bid proposed by a participating company is not disclosed to the other tendering companies**.**

The issues subject to negotiation are as follows:

* Financial bid.

Failure to comply with the aspects subject to negotiation during the performance of the Contract may be considered grounds for termination of the Contract.

**4.4. ABNORMALLY LOW BIDS**

The disproportionate or abnormal nature of the bids, in accordance with the provisions of Article 149 of the LCSP, shall be assessed in accordance with the parameters set out in Article 85 of Royal Decree 1098/2001 of 12 October, approving the General Regulations of the Public Administration Contracts Act, and which are indicated below.

In principle, bids shall be considered disproportionate or unreasonable if they fall into the following categories:

1. When, in the case of a single tenderer, it is lower than the base tender budget by more than 25 percentage points.

2. Where there are two tenderers, the bid which is more than 20 percentage points lower than the other bid.

3. Where there are three or more tenderers, bids which are more than 10 percentage points lower than the arithmetic mean of the bid submitted. However, the bid with the highest amount shall be excluded from the calculation of this mean. Any bid that is more than 25 percentage points lower than the base budget of the tender shall be considered disproportionate.

In the event that the Contracting Authority appreciates that any financial bid is abnormally in the above terms, the procedure set out in Article 149 of the LCSP shall be followed.

**4.5. TIE-BREAK**

Once the negotiation process has been completed, the Contracting Authority shall rank, from highest to lowest, the bids that have not been excluded from the award procedure and have not been declared disproportionate or abnormal. This ranking shall take into account the award criteria established in these SAC, and as many technical reports as considered necessary may be requested.

If two or more of the bids are tied in terms of the criteria that form the basis for awarding the Contract*,* the Contract shall be awarded to the tender with the lowest financial bid and, if the bids still remain tied, the award shall be made by drawing lots.

 **5. AWARD, PERFORMANCE BOND AND FORMALIZATION OF THE CONTRACT**

**5.1. AWARD AND ADVANCE PAYMENT**

Once the negotiation process has been completed, the bids shall be ranked according to the order resulting from the tender, in accordance with the provisions of Clause 4.

Prior to the award of the Contract, the enterprise that has submitted the bid with the best value for money shall be asked to submit the documents required in Clause 2, substantiating its capacity to exercise rights and obligations and its solvency.

Together with this documentation, the enterprise proposed for the award of the Contract shall inform the Diplomatic Mission in writing if it is requesting an advance payment, as well as the amount thereof, for preparatory operations, which may not exceed 20% of the amount of the award, indicating what this amount shall be used for (installations, stockpiling of materials, heavy machinery assigned to the work).

The amount of the advance payment approved by the Contracting Authority shall be communicated in the notification of the final award of the Contract. The advance payment shall be made after the signing of the Constructability Verification Certificate, and upon submission by the successful tenderer of the corresponding invoice for this amount. The awardee shall guarantee this advance payment by providing the corresponding advance payment bond, as established in Article 240.2. LCSP, unless the exception envisaged in Additional Provision One, Contracting abroad, section 1.g), of the LCSP is considered applicable. Said provision establishes that "*exceptionally, through a substantiated decision by the Contracting Authority, and when the circumstances so require, the provision of this advance payment bond may be exempted, provided that this is in accordance with international commercial practices".*

**5.2. PERFORMANCE BOND**

For the award of the Contract, the successful tenderer shall submit, within 10 working days from the day following the day on which it received the request, the documentation substantiating that it has lodged the performance bond.

As a guarantee for the obligations assumed in this Contract, the Contractor shall provide a deposit of 5% of the amount of the award, excluding Value Added Tax or any similar applicable tax, in the event that this or a similar tax is applicable, by means of a cash deposit, bank guarantee or surety insurance policy. This performance bond may also be constituted by withholding this amount from the cost in the first payment to be made to the enterprise awarded the Contract. Exceptionally, if the Diplomatic Mission considers it necessary, Additional Provision One, Contracting Abroad, section 1.f) of the LCSP may be applied, which establishes that *"the awardee may be required to provide guarantees similar to those provided for in this Act to ensure the performance of the contract, provided that this is possible and appropriate to the conditions of the State in which the contracting is carried out and, failing this, those that are customary and authorized in that State or are in accordance with international commercial practices.*

The performance bond shall be lodged directly with the Spanish Embassy in Nairobi~~.~~

The performance bond shall correspond to the items mentioned in Article 110 of the LCSP.

If this requirement is not met for reasons attributable to the tenderer, the Administration shall understand that the tenderer has withdrawn its bid, and the provisions of Article 150.2 of the LCSP shall be applicable.

If, as a result of an amendment of the Contract, its cost changes, the amount of the performance bond shall be adjusted.

The provisions of Articles 109.2 and 109.3 of the LCSP, relating to the readjustment of performance bonds, shall be applicable, as well as the stipulations of Articles 113 and 111 of the LCSP in relation to calls on performance bonds, and their return and cancellation.

**5.3. CIVIL LIABILITY POLICY**

Before the formalization of the Contract, the successful tenderer shall provide a civil liability insurance policy or equivalent insurance in accordance with local custom and practice, for a minimum amount equal to the base budget of the tender (KES 28,536,893.20), to cover the obligation to compensate for damage caused to third parties as a result of the performance of this Contract.

**5.4. FORMALIZATION**

Performance of the Contract may not begin until it has been formalized.

**6. DECISION NOT TO AWARD OR CONCLUDE THE CONTRACT AND WITHDRAWAL OF THE ADMINISTRATION FROM THE AWARD PROCEDURE**

The decision not to award or conclude the Contract or to abandon the procedure may be taken by the Contracting Authority before the Contract is concluded.

Withdrawal shall not prevent the immediate initiation of a new tender procedure, provided that the requirements of Article 152 of the LCSP are met.

 **7. PERFORMANCE OF THE CONTRACT**

The execution of the contracted works shall commence from the date of signature of the Constructability Verification Certificate.

The Constructability Verification Certificate and the start of the performance of the Contract shall be carried out within a maximum period of one month from the formalization of the Contract. If this period is exceeded, the Contract may be terminated, unless the delay is due to causes beyond the control of the Contracting Administration and the Contractor, and this is stated in the corresponding substantiated decision.

The constructability verification of the works shall consist in verifying their geometric reality, the availability of the land required for their proper execution and the feasibility of all the assumptions appearing in the project drawn up, and which are basic to this Contract.

The Contractor is obliged to take part in this act, and its absence without just cause shall be considered a breach of contract.

In the constructability verification, a record shall be drawn up which shall form an integral part of the Contract for the purposes of its enforceability, one copy of which shall be given to the Contracting Authority, another to the Contractor and a third to the Project Manager.

The works shall be executed in strict compliance with the stipulations contained in these SAC and the with the Project that serves as the basis for the Contract, and in accordance with the instructions given to the Contractor by the Project Manager as a technical interpretation of the Contract, and, where appropriate, by the person responsible for the Contract, in the areas of their respective competence.

Where instructions are given orally, they shall be ratified in writing as soon as possible in order to become binding on the parties.

**7.1.** The period set forth for the performance of this Contract is 11 weeks.

The awardee is obliged to comply with the ultimate deadline set for the performance of the Contract, as well as with the partial deadlines set by the Administration.

**7.2.** The performance of the Contract shall be in accordance with the provisions of the regulations in force and as determined in the TS, under the direction, inspection and oversight of the Contracting Authority, which may issue the appropriate instructions to re-establish good order in the performance of the Contract.

The Project Manager, as the person responsible for the Contract, shall be in charge of supervising its performance, adopting the decisions and issuing the necessary instructions in order to ensure the correct fulfilment of the subject matter of the Contract, pursuant to Article 62.2 of the LCSP.

The Project Manager shall be assisted in making the technical decisions and issuing the necessary instructions to ensure the correct fulfilment of the subject matter of the Contract, with the advice provided by an expert from the Architecture Division of the Deputy Directorate-General for Property Affairs.

The Contractor's clear refusal to observe the instructions of the Project Manager, their reiterated lack of collaboration with the supervisory duties of the Project Manager, or the non-delivery or incomplete delivery of the reports or documentation required by the latter for the effective control of the performance of the Contract shall be cause for an admonition and, as the case may be, for termination of the Contract.

**7.3.** In addition to the Contractor’s general obligations, derived from the legal framework governing this Contract, the following obligations shall be especially observed:

1. The Contract is performed at the Contractor's risk and responsibility. The Contractor shall be responsible for compensating for any damage caused to the Contracting Administration or to third parties, as a consequence of the actions required for the performance of the Contract, except when such damage has been caused as an immediate and direct consequence of an order given by the Administration.

The Contractor shall be liable for any claims relating to intellectual, industrial or commercial property arising from the performance of the Contract.

2. The Contractor shall have the staff necessary to perform the Contract. Said staff shall depend exclusively on the Contractor, who shall have all the rights and duties inherent to their condition as employer regarding said staff, and who is required to comply with the obligations in force, especially regarding social, labour, tax and social security matters, at the place of performance of the Contract.

In particular, the Contractor shall ensure that the workers assigned to the performance of the Contract undertake their duties correctly, in accordance with the specifications contained in the TS.

The Contracting enterprise shall ensure that there is a stable work team, and that variations in its composition are merely occasional and due to substantiated reasons, in order not to alter the correct performance of the Contract.

3. The awardee shall be responsible for all expenses arising from the Contract, including those of a fiscal or tax nature, whether they are taxes, fees or special contributions, and whatever the nature and territorial scope of the tax in question, with the exception of VAT or any similar equivalent tax. Specifically, the costs thus established in the TS shall be borne by the awardee.

The Contractor shall be responsible for obtaining all permits, authorizations and licences required to render the supplies and installation contracted.

4. The works carried out shall remain the property of the Administration, as shall the rights inherent thereto, and their commercial and industrial property. The Administration reserves the right to use them, and they may not be subject to commercialization, reproduction or any other use not expressly authorized by the Administration, which may at any time request the delivery of the documents and materials that comprise them, with all their background and data.

The works that are subject to intellectual property shall be understood to be expressly assigned exclusively to the Administration, except in cases of pre-existing rights.

5. The enterprise awarded the Contract shall designate a technical coordinator or manager, integrated into its own staff, whose duties shall include the following:

1. Acting as the Contractor's interlocutor with the "contracting entity", channelling communication between the Contractor and the members of the work team assigned to the Contract, on the one hand, and the "contracting entity", on the other, in all matters relating to the performance of the Contract.
2. Distributing work among the staff entrusted with performing the Contract, and giving said staff the necessary working orders and instructions regarding the performance of the subject matter of the Contract.
3. Supervising the correct performance by the members of the work team of the functions entrusted to them, as well as monitoring said staff’s presence in the workplace.
4. Organizing the holiday schedule for the staff assigned to the performance of the Contract, and to this end the Contracting enterprise shall coordinate appropriately with the "contracting entity", so as not to disturb the proper functioning of the service.
5. Informing the "contracting entity" of any changes, either temporary or permanent, to the work team assigned to the performance of the Contract.
6. Ensuring compliance with local regulations regarding occupational health and safety obligations.

**8. OCCUPATIONAL HEALTH AND SAFETY PLAN**

Within 20 calendar days from the signing of the Contract, the Contractor shall submit to the Spanish Embassy in Nairobi a Health and Safety Plan for the work that includes, as a minimum, the health and safety measures envisaged in the Project that governs this contracting dossier. This Plan shall be submitted to the Project Manager for review.

The Project Manager shall report within 10 calendar days on whether it is appropriate for approval and, if not, indicate the points to be corrected, for which a period of time shall be assigned in accordance with the significance of the corrections, but never longer than 10 calendar days.

In any case, the deadline for approval of the Health and Safety Plan shall be one month from the signing of the Contract. The technical services of the Deputy Directorate-General for Property Affairs shall be responsible for approving the plan.

If, due to the Contractor's failure to comply with the deadlines indicated in the above paragraph, it is not possible to start the works upon receiving authorization to commence them, the Contractor may not claim any extension of the deadline for this reason. In addition, such non-compliance shall give rise to the imposition of a daily penalty of 0.02% of the Contract cost.

The Health and Safety Plan shall be drawn up on the basis of the Health and Safety Study, which shall be complied with by all the subcontracting companies under the Contractor and by all self-employed workers.

The Health and Safety Plan may be modified by the Contractor depending on the execution process of the work, the evolution of the works and any possible incidents or changes that may arise during the course of the work. In order for such a modification to be put into practice, it is necessary to have the express approval of the Contracting Authority, if the local legislation so establishes.

Any Health and Safety issues of the workers throughout the performance of the work shall be the responsibility of the Contractor.

**9. PAYMENT SCHEME**

**The cost shall be paid in Kenyan Shillings (KES)** as follows**:**

1. **Advance payment**: Pursuant to Article 240.2 of Act 9/2017 of 8 November, on Public Sector Contracts, and Articles 155 and 156 of Royal Decree 1098/2001 of 12 October, approving the General Regulations of the Public Administration Contracts Act, the Contractor shall be entitled to receive, as an advance payment, a part of the Contract price for preparatory operations carried out, such as installations and stockpiling of materials or heavy machinery assigned to the work. This amount shall be guaranteed by means of a bank guarantee or a surety bond contract. The original copy of this guarantee shall remain in the Diplomatic Mission’s possession, and shall not be returned to the Contractor until the corresponding part of the work has been performed in accordance with the Contract. The lodging of this guarantee may be exempted if the exception set forth in Additional Provision One, Contracting Abroad, section 1.g) of the LCSP is considered to be applicable.

This advance payment shall be requested expressly and in writing when the enterprise that has been proposed for the award of the Contract is notified, and said request shall be attached to the documentation set forth in Clause 5.1 of these SAC. This advance payment shall not exceed 20% of the Contract price. It shall be expressly authorized by the Contracting Authority, and shall be paid after the signing of the Constructability Verification Certificate, and upon submission by the Contractor of the corresponding invoice.

The advance payment shall be amortized on a linear basis in each work certificate issued during the Contract performance period until the final cancellation of the Contract.

1. **Payments on account:** The Contractor shall receive as payment on account the value of the works executed that are substantiated by means of monthly certification by the Project Manager.

These certifications shall include the works executed during the previous one-month period and shall be issued within 10 days following the end of said period. The certification shall be accompanied by an assessed list of the works executed.

The monthly certifications shall include any changes to the work units set forth in the project, although it shall not be necessary for the Project Manager to substantiate these changes, in which case their payment shall be deferred until the completion of the work.

Payment on account shall in no case imply approval or reception of the works included in the certification.

1. **Definitive settlement:** Once the works have been completed and received with full approval, the Administration, within three months, shall approve the final certification of the works executed, which shall be paid to the Contractor as definitive settlement of the Contract.

**10. PRICE REVIEW**

The prices resulting from the award shall not be reviewable under any circumstances.

**11. PENALTIES**

Penalties of 0.2% of the Contract price, excluding VAT or any similar applicable tax, may be imposed for each day that the enterprise awarded the Contract fails to fulfil the subject matter thereof or fulfils it in a defective manner. In addition, daily penalties of the same amount may be imposed if the Contractor, for reasons attributable thereto, incurs delays in meeting the ultimate deadline or in meeting partial deadlines.

Whenever the penalties reach a multiple of 5% of the price of the Contract, excluding VAT or any similar applicable tax, the Contracting Authority is entitled to terminate the Contract or to decide to continue the performance of the Contract with the imposition of new penalties.

The penalties set forth in the two paragraphs above shall be imposed by a decision of the Contracting Authority, adopted at the proposal of the Project Manager appointed by the Administration, and shall be made effective by deducting the corresponding amounts from the total or partial payments to be made to the Contractor, or be drawn from the performance bond deposited, when said amounts may not be deducted. The imposition of these penalties does not exclude compensation for damage to which the Administration may be entitled.

**12. AMENDMENT, SUCCESSION OF THE CONTRACTOR, ASSIGNMENT AND SUBCONTRACTING**

**12.1. AMENDMENT**

Once the Contract has been perfected, the Contracting Authority may introduce amendments thereto for reasons of public interest, pursuant to the terms and conditions established in Article 204 of the LCSP, when this is foreseen in the SAC or in the cases and with the limits established in Article 205 of the LCSP.

In the cases of amendment of the Contract referred to in Article 205, the amendments decided by the Contracting Authority shall be binding on the Contractors when they involve, individually or jointly, a change in the amount of the Contract that does not exceed 20% of the initial price of the Contract, excluding VAT (Article 206).

When, in accordance with the provisions of the above paragraph, the amendment is not compulsory for the Contractor, it shall only be decided by the Contracting Authority with the prior written agreement of the Contractor. Otherwise, the Contract shall be terminated in accordance with the provisions of Article 211.1.g).

The amendments shall be decided by the Contracting Authority, after following the procedure established in Articles 191 and 242 of the LCSP and Article 102 of the General Regulations of the LCSP. They shall be formalized in an administrative document in accordance with the stipulations of Article 153 of the LCSP, after readjustment of the performance bond, and published in accordance with the provisions of Article 207 and 63 of the LCSP.

In the event that the amendments entail the elimination or reduction of work units, the Contractor shall not have the right to claim any compensation (Article 242 of the LCSP).

Whenever the contractual conditions change, the Contractor shall be obliged to update the Work Programme.

However, the following shall not be considered to be amendments:

a) Excess measurements, understood as the variation that during the proper execution of the work occurs exclusively in the number of units actually executed as compared with those set forth in the project measurements, provided that overall they do not represent an increase in expenditure of more than 10% of the initial price of the Contract. These excess measurements shall be included in the final certification of the work.

b) The inclusion of new prices, set by hearing the parties via the procedures established in the LCSP and in its implementing regulations, as long as said prices do not involve an increase in the overall price of the Contract or affect work units that in all exceed 3% of the original budget of the Contract.

1. Planned amendments:

In accordance with Article 204 of the LCSP, Contracts may be modified during their term of validity up to a maximum of 20% of the initial price when the SAC have expressly set forth this possibility, in the following form and with the following content: the amendment clause shall be formulated clearly, precisely and unequivocally.

Under no circumstances may the Contracting Authority provide for, in the SAC, amendments that may alter the overall nature of the initial Contract. In all cases, the overall nature of the initial Contract shall be understood to have been altered if the works are replaced by other, different works or if the type of Contract is modified. The overall nature of the Contract shall not be understood to have been altered when only a specific unit of work is replaced.

Where more than one cause for amendment is foreseen, the circumstances, conditions, scope, limits and percentage shall refer to each of them.

2. Unforeseen amendments:

Amendments not foreseen in the SAC or which, having been foreseen, do not comply with the provisions of Article 204 of the LCSP, may only be carried out when the amendment in question meets the requirements of Article 205 of the LCSP.

3. Amendment procedure:

The special procedural characteristics of contractual amendments are those established in Article 207 of the LCSP.

Without prejudice to the provisions of Article 191 of the LCSP, before amending the Contract in such cases, the drafter of the technical specifications shall be given a hearing, if these have been prepared by a third party external to the Contracting Authority by virtue of a service contract, so that, within a period of no less than three days, said third party may formulate any considerations it deems appropriate.

The amendment decision shall be notified to the tenderers that were admitted, including, moreover, the information necessary to enable the tenderer to lodge, where appropriate, a sufficiently substantiated appeal against the amendment decision if it does not comply with the legal requirements.

**12.2. SUCCESSION OF THE CONTRACTOR**

In the event of a merger, demerger, contribution or transfer of companies or branches of activity, the Contract shall continue to be in force for the enterprise which has assumed the rights and obligations, provided that it meets the conditions of capacity and solvency required for the award of the Contract.

**12.3. ASSIGNMENT**

By virtue of the provisions of Article 214.1 of the LCSP, the rights and obligations arising from the Contract may be assigned by the Contractor to a third party provided that the technical or personal qualities of the assignor have not been the determining reason for the award of the Contract, and the assignment does not result in an effective restriction of competition in the market. Without prejudice to paragraph 2.b) (of said Article), assignment to a third party may not be authorized in the event that it would lead to a substantial alteration of the Contractor's characteristics, if these constitute an essential element of the Contract.

**12.4. SUBCONTRACTING**

In the event of subcontracting any of the services that are the subject matter of the Contract, this may not exceed 40% of the price of the Contract, and the Contracting Authority shall be notified in advance and in writing. Said communication shall indicate the part of the service to be subcontracted and the identity of the subcontractor, sufficiently justifying the suitability of the latter to render the services in terms of available technical and human resources and experience. Any subcontracting shall require prior express written authorization of the Administration.

Subcontractors shall be bound only to the main Contractor, who shall therefore assume full responsibility for the performance of the Contract vis-à-vis the Administration.

The Subcontractor and subcontracted staff shall be required to observe the duty of confidentiality in the terms set out in Clause 16.1 of these SAC.

The Contracting Administration may verify the Contractor's strict compliance with its payment obligations, where applicable, with all the subcontractors or suppliers that participate in the Contract.

**13. COMPLETION OF THE CONTRACT**

The Contract shall be deemed to have been completed by the Contractor when the latter has performed the entire subject matter of the Contract, in accordance with the provisions of its clauses, of these SAC, of the TS, and of the other contractual documents, to the satisfaction of the Administration.

A warranty period of one year from receipt of confirmation of acceptance of the works is established.

Once the warranty period has elapsed without any objections having been raised by the Administration, the Contractor's liability shall be extinguished, and the performance bond lodged shall be cancelled.

If, during the warranty period, vices or defects are found in the work carried out, the Contracting Authority is entitled to demand that the Contractor remedy them.

The Contractor shall have the right to be informed of and to have its views heard regarding any observations made in relation to the performance of the contracted services.

**14. TERMINATION OF THE CONTRACT AND ITS EFFECTS**

The Contract may be terminated, without any obligation other than the payment of the service actually provided, in the following cases:

1. The death or supervening incapacity of the individual Contractor.

2. The extinction of the legal personality, except in the cases indicated in Clause 12.2 of these SAC.

3. The declaration of bankruptcy or insolvency of the Contractor.

4. Supervening loss of the requirements to contract with the Administration.

5. Non-compliance with the main obligation of the Contract, and especially, defective performance not corrected at the express request of the Administration, and the interruption or abandonment of the provision of the service without just cause or authorization.

6. Non-fulfilment during the performance of the Contract of the aspects subject to negotiation.

7. Non-compliance with obligations regarding non-assignment or non-subcontracting.

8. Breach of the obligation to maintain secrecy.

9. Obstruction of the Administration's powers of management and inspection, and in particular, the Contractor's manifest refusal to observe the instructions of the Project Manager appointed by the Administration, its repeated lack of collaboration with the supervisory functions of the Project Manager, or the non-delivery or incomplete delivery of the reports or documentation required by the Project Manager for the effective control of the performance of the Contract;

10. Withdrawal by the Administration.

11. Mutual agreement between the Administration and the Contractor.

 **15. SETTLEMENT OF DISPUTES**

Any litigious issues that may arise in the performance of the Contract shall be resolved by mutual agreement between the parties and, failing that, shall be submitted to the jurisdiction of the Spanish Courts, in the event that the companies concerned are Spanish.

In all other cases, such matters shall be subject to the jurisdiction of the Spanish Courts if the Contractor so accepts, in accordance with **Appendix 3** of these SAC.

If the Contractor does not accept to submit to the Spanish Courts, any dispute concerning the interpretation or performance of this Contract shall be settled at the request of either party by binding arbitration. The arbitration shall be conducted through the Nairobi Centre for International Arbitration in accordance with the local rules in force at the time. Judgment on any award rendered by the arbitrators may be entered in any State or Federal Court having jurisdiction thereon. Both parties declare that this arbitration award is irrevocable.

### 16. DATA PROTECTION, CONFIDENTIALITY OF INFORMATION AND DATA PROCESSING

**16.1. OBLIGATIONS OF THE CONTRACTOR**

The Contractor is obliged to keep confidential the content of the awarded Contract, as well as any data or background information that is not public or known and is related to the subject matter of the Contract, to which it has had access during the Contract. This obligation of confidentiality shall be maintained for a period of five years from the time the information comes to its knowledge.

The Contractor is obliged to comply, in all cases, with national and EU data protection regulations.

Staff performing the service have the duty and obligation to maintain the secrecy and confidentiality of all information to which they may have direct or indirect access, including but not limited to plans, drawings, designs, specifications, communications, computer software and program documentation, records, data, graphics, notes, models, samples, technical and commercial information of any kind, whether transmitted verbally, in writing or by magnetic or any other telematic means, and knowledge and experience directly related to the result and execution of the contracted services, as well as personal data.

The personal data processing that the awardee undertakes to carry out shall be limited to the actions that are necessary to provide the contracted services, in accordance with the content of its bid.

The obligations arising from this Clause are of an essential nature, giving rise to the termination of the Contract in the event of non-compliance.

**16.2. OBLIGATIONS OF THE ADMINISTRATION**

The Ministry of Foreign Affairs, European Union and Cooperation (MAUEC) undertakes to comply with the applicable EU and national regulations on personal data protection.

The personal data collected through the bids and contained in the attached documentation shall be used for the management and monitoring of this tender dossier, as well as, where appropriate, to comply with the regulatory obligations imposed during the term of the Contract.

Once the term has expired, the data shall be kept for the sole purpose of complying with the required legal obligations and for the formulation, exercise or defence of claims, during the period of limitation of the actions derived from this Contract.

To exercise the rights of access, rectification, erasure and the right to object provided for in current legislation, the data subject may contact the data controller, who shall be designated by the Ministry of Foreign Affairs, European Union and Cooperation, at the following address: Plaza de la Provincia, 1, 28012, Madrid, Spain, and at the email address dpd@maec.es.

**APPENDIX 1**

**TEMPLATES FOR THE INFORMATION ON THE OUTSIDE OF THE ENVELOPES**

**ENVELOPE NO. 1**

**ADMINISTRATIVE DOCUMENTATION**

**(Documentation substantiating fulfilment of the prerequisites)**

DOSSIER No: OBR-23/001

SUBJECT MATTER OF THE CONTRACT: ...................................................................................................

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

**NAME OF ENTREPRENEUR OR ENTERPRISE:** ................................

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

NIF (TAX IDENTIFICATION NUMBER) OR SIMILAR: .....................................

POSTAL ADDRESS: ..............................................................................................

PHONE: .....................................

EMAIL: .........................................................................................

**NAME OF REPRESENTATIVE**: ....................................................................................

IDENTIFICATION No. (NIF OR SIMILAR): .....................................

POSTAL ADDRESS. ...............................................................................................

PHONE: .....................................

EMAIL: .........................................................................................

CAPACITY IN WHICH IT OPERATES: .......................................

PLACE, DATE, SIGNATURE: .............................. STAMP:

 *(if the entrepreneur or enterprise owns one)*

**ENVELOPE NO. 2**

**PROPOSED CRITERIA SUBJECT TO A VALUE JUDGEMENT**

DOSSIER No: OBR-23/001.

SUBJECT MATTER OF THE CONTRACT: ...................................................................................................

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

**NAME OF ENTREPRENEUR OR ENTERPRISE:** ................................

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

NIF (TAX IDENTIFICATION NUMBER) OR SIMILAR: .....................................

POSTAL ADDRESS: ...............................................................................................

PHONE: .....................................

EMAIL: ..........................................................................................

**NAME OF REPRESENTATIVE**:.....................................................................................

IDENTIFICATION No. (NIF OR SIMILAR): .....................................

POSTAL ADDRESS: ...............................................................................................

PHONE: .....................................

EMAIL: ..........................................................................................

CAPACITY IN WHICH IT OPERATES: .....................................

PLACE, DATE, SIGNATURE: ........................ STAMP:

 *(if the entrepreneur or enterprise owns one)*

**ENVELOPE NO. 3**

**DOCUMENTATION ON CRITERIA THAT CAN BE VALUED BY MATHEMATICAL FORMULAS**

DOSSIER No: OBR-23/001

SUBJECT MATTER OF THE CONTRACT: ...................................................................................................

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

**NAME OF ENTREPRENEUR OR ENTERPRISE:** ................................

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

NIF (TAX IDENTIFICATION NUMBER) OR SIMILAR: .....................................

POSTAL ADDRESS: ...............................................................................................

PHONE: .....................................

EMAIL: ..........................................................................................

**NAME OF REPRESENTATIVE**:.....................................................................................

IDENTIFICATION No. (NIF OR SIMILAR): .....................................

POSTAL ADDRESS: ...............................................................................................

PHONE: .....................................

EMAIL: ..........................................................................................

CAPACITY IN WHICH IT OPERATES: .....................................

PLACE, DATE, SIGNATURE: ........................ STAMP:

 *(if the entrepreneur or enterprise owns one)*

**Dossier no: SER-18/011**

**ENVELOPE NO. 1**

**Dossier no.: OBR-23/001**

**APPENDIX 2**

**SIGNED DECLARATION**

Mr / Ms ........................, with NIF (Tax Identification Number).................., acting in the name and on behalf of the company ..........................., with NIF (Tax Identification Number).......................... of.................... nationality and with registered office at ..........................., telephone number .............., email ......................., provided for notification purposes, aware of the conditions and requirements to take part in the negotiated procedure without prior publication for the award of the Contract of ....................................................., with dossier number ......................., in accordance with the provisions of Clause 2 of the Specific Administrative Clauses governing this Contract, **on the end date of the period for submitting bids:**

 HEREBY DECLARES that,

1. The company ..................... possesses the legal personality and capacity to exercise rights and obligations in order to take part in this tender procedure.
2. Mr / Ms ................................, has sufficient agency to act on behalf of the company bidding for this tender.
3. The company .............................. has the economic/financial and technical/professional solvency required to take part in this tender.
4. The company ...................... is not prohibited from entering into a contract with the Administration due to any of the causes laid down in Article 71 of Act 9/2017 (LCSP) and is up to date with its tax and Social Security obligations *(paragraph to be completed only in the case of Spanish or EU companies).*

The company ......................................., if awarded the Contract, undertakes to substantiate to the Contracting Authority, prior to being awarded the Contract, its possession of and the validity of the required documents.

Likewise, it undertakes to provide the documentation substantiating compliance with the conditions established to be awarded the Contract, at any time before the adoption of the proposed award, when so requested by the Contracting Authority, in order to guarantee the success of the procedure.

And in witness whereof and for the appropriate purposes in the above-mentioned tender process, this declaration is issued at ......................

*(Place, date, signature and stamp, if applicable, of the enterprise/entrepreneur)*

**ENVELOPE NO. 1**

**Dossier no.: OBR-23/001**

**APPENDIX 3**

**TEMPLATE OF SUBMISSION TO SPANISH COURTS BY NON-SPANISH ENTERPRISES**

I, Mr / Ms ................................, with DNI (Spanish ID) (or equivalent document) no. ................................, on behalf of the enterprise ............................................, of............. nationality

hereby declare its willingness to submit to the Spanish Courts in order to resolve any type of discrepancy that may arise during the performance of the Contract for the refurbishment of the Residence of the Spanish Embassy in Nairobi (Kenya).

*(Place, date, signature and stamp, if applicable, of the enterprise/entrepreneur)*

**ENVELOPE Nº1**

**Dossier no.: OBR-23/001**

**APPENDIX 4**

**CONFIDENTIALITY COMMITMENT**

Mr / Ms ........................, with DNI (Spanish ID) (or equivalent document) .................., acting as ......................, in the name and on behalf of the company ..........................., with NIF (Tax Identification Number)................ ...... of ....................... nationality and registered office at .........................

HEREBY STATES THAT,

In relation to the works Contract for the refurbishment of the Residence of the Spanish Embassy in Nairobi (Kenya), it hereby undertakes to comply with the obligation to respect the confidential nature of the documentation and information received as a result of the TENDER PROCEDURE of the aforesaid Contract, in accordance with the provisions of Article 133 of the LCSP.

*(Place, date, signature and stamp, if applicable, of the enterprise/entrepreneur)*

**ENVELOPE NO. 1**

**Dossier no.: OBR-23/001**

**APPENDIX 5**

**TEMPLATE DECLARATION OF TEMPORARY CONSORTIUM**

Mr / Ms .............. with DNI (Spanish ID) ............ and address at ..............., acting in their own name and right, or on behalf of the company ....... with NIF (Tax Identification Number)............ in their capacity as ................... and

Mr / Ms .............. with DNI (Spanish ID) ............ and address at ..............., acting in their own name and right, or on behalf of the company ....... with NIF (Tax Identification Number)............. in their capacity as ............... and

(include all the entrepreneurs participating as a group).

Hereby declare under their responsibility

That, in the event of being awarded the Contract, they undertake, jointly and severally on behalf of the companies they represent, to execute the Contract under the Temporary Consortium system (*Union Temporal de Empresas—UTE*) pursuant to Article 69 of the LCSP, with each of them having a share of: ........................................................................................................................................

Mr / Ms ………….. with DNI (Spanish ID). .……..., and address at ………..…., is designated sole representative or agent of the Temporary Consortium, with sufficient power of attorney to exercise the rights and fulfil the obligations stemming from the Contract until the termination thereof

They also hereby undertake to formally establish a Temporary Consortium if they are awarded the Contract.

And in witness whereof and for the appropriate purposes, this declaration is issued and signed at .............., on ......................... 2023.

 (*Signature and stamp, if applicable, of all members of the Temporary Consortium)*

**ENVELOPE NO. 1**

**Dossier no.: OBR-23/001**

**APPENDIX 6**

**TEMPLATE OF COMMITMENT TO ASSIGN THE NECESSARY HUMAN RESOURCES**

Mr / Ms ........................, with DNI (Spanish ID) (or equivalent document) .................., acting in their capacity as ......................, in the name and on behalf of the company ..........................., with NIF (Tax Identification Number)................ ...... of .......................... nationality and registered office at .........................

HEREBY STATES THAT

The tendering entity undertakes to provide the human resources required to perform the Contract.

The persons proposed to fill the positions indicated in Clause 2.2.B)2.c of these SAC are as follows:

**Supervisor for the performance of the Contract**:

 Name:

 Surname(s):

 Identity card number:

 Job title or position in the company:

The aforesaid resources shall form part of the bid submitted by this company and shall be of a contractual nature. Therefore, should this company be awarded the Contract, it undertakes to maintain them in their positions during the period of execution of the service that constitutes the subject matter of this Contract and to notify the Contracting Authority of any variation that may occur with respect to them.

Date:

Signature of the tenderer:

**ENVELOPE NO. 2**

**Dossier no.: OBR-23/001**

**APPENDIX 7**

**PROPOSED CRITERIA SUBJECT TO A VALUE JUDGMENT**

Mr / Ms ........................, with identity card number .................., acting in their capacity as ............., in the name and on behalf of the company ..........................., with NIF (Tax Identification Number) ....................., of .......................... nationality and registered office at .........................

HEREBY DECLARES THAT, being aware of the conditions and requirements demanded for the award of the Contract of ............................................................................................................... with dossier number ........................, it undertakes to take charge of the performance thereof, strictly subject to said conditions and requirements, unconditionally accepting the Specific Administrative Clauses and declaring under its responsibility that it meets each and every one of the conditions demanded for entering into a contract with the Administration.

To this end, **the following documentation is attached** relating to the qualitative award criteria subject to a value judgement:

**1. Visit to the facilities. Date of the visit:**

**2. Submission of a brief report substantiating the correct understanding of the works foreseen and described in the Project: up to a maximum of 8 points.**

|  |  |
| --- | --- |
| **No.** | **Statement to be commented**  |
| 01 | The main building of the Spanish Embassy Residence is almost a century old and its roof has problems of water leaking |
| 02 | The timber structure of the roof is in generally good condition |
| 03 | The roof currently has thermal insulation panels on its entire surface |
| 04 | All roof tiles shall be replaced with new tiles |
| 05 | All the bathrooms on the upper floor shall be modified and renovated |
| 06 | The project includes the replacement of the indoor ceilings that contain asbestos  |
| 07 | Asbestos removal work shall be carried out by a NEMA (National Environment Management Authority, Kenya) licensed Contractor or Subcontractor. |
| 08 | The NEMA (National Environment Management Authority, Kenya) visited the site of the works proposed by the Embassy but its Environmental Impact Assessment does not include duties for the Contractor.  |

**ENVELOPE NO. 3**

**Dossier no.: OBR-23/001**

**APPENDIX 8**

**PROPOSED CRITERIA SUBJECT TO AUTOMATIC VALUATION**

Mr / Ms ........................, with identity document number .................., acting in their capacity as ............., in the name and on behalf of the company ..........................., with NIF (Tax Identification Number)..................... and registered office at ..........., email .......... provided for notification purposes, HEREBY DECLARES THAT, being aware of the conditions and requirements demanded for the award of the Contract of ............................................................................................................... with dossier number ....................., it undertakes to take charge of the execution thereof, strictly subject to said conditions and requirements, unconditionally accepting the Specific Administrative Clauses, as well as the Project.

To this effect, it undertakes to execute the Contract on the basis of the following **Financial Proposal expressed in Kenyan Shillings (KES)**:

|  |  |  |  |
| --- | --- | --- | --- |
| **MAXIMUM TENDER AMOUNT**(16% VAT INCLUDED) | **BID AMOUNT**(VAT EXCLUDED) | **VAT AMOUNT** | **TOTAL AMOUNT OF THE BID**(VAT INCLUDED) |
| **28,536,893.20** |  |  |  |

The price of the Contract shall be considered and accepted as including the entirety of expenses, such as overheads, profit, insurance, transportation and travel costs for my staff and all taxes, duties and fees arising from the performance of the Contract, even if these are not expressly stated in the Specific Administrative Clauses.

 *(Place, date, signature and stamp, if applicable, of the enterprise/entrepreneur)*

**ENVELOPE NO. 3**