



MILLENNIUM FOUNDATION KOSOVO

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CLARIFICATIONS # 1

Contract name.: Procurement of Consultant Services Data Quality Review Consultancy		
Reference No.: RFP / MFK / QCBS / 2021 / No. 008		
Date: 09 June 2021		
No.	Question	Answer
1.	I have a question regarding one of the clauses in the Proposal Data Sheet which mentions that foreign bidders have to be locally registered. So, my question here is whether the local registration is a pre-requisite for a foreign bidder to submit the bid or the local registration is to be done if the bidder is awarded the contract?	The local registration should be done after the bidder is awarded with the contract if requested by the applicable law.
2.	There was a link given that was given that referred to Government of Kosovo's website where the document of this law was uploaded. However, the document was in Albanian. So, is it possible that MDK can share the English official version of that law?	Please see the answer provided for question 7c.
3.	I had a question regarding the eligibility for tendering. Having in mind that Kosovo Legal Services Group & B&S Europe are jointly implementing the PAJI Activity, we were wondering if we would be eligible for tendering for this one?	As per MCC's Policy for Monitoring and Evaluation, "MCC requires that DQRs be conducted by an independent entity." Given that B&S Europe is already implementing the PAJI activity, our view is that B&S Europe would not be able to remain independent or impartial to the PAJI activity indicators that are covered in this DQR.

4.	Regarding the Previous MCC contracts, I guess any means any. But if we are talking for contracts 10 or 15 years ago with MCC, either direct or indirect, and linking it with incorrect emails or non-existent emails anymore because these entities have expired long time ago. Is there any time limit for this or it is any time with MCC projects?	It is any time with MCC funded contracts.
5.	It is mentioned there that there is no MIS in place for the M&E Plan. Is there a plan to build one or not?	No, there is no plan to build an MIS.
6.	“Having in mind that KLSC and B&S Europe are jointly implementing the PAJI activity, we wanted to confirm whether we would be eligible to tender for this project?”	Please see the answer provided for question 3.
7.	<p>Local registration of foreign Consultants (ITC 1.5, Proposal Data Sheet) –</p> <p>a. Considering the relatively short period of consultancy and minimal in-country physical presence of the Consultant, we request you to relax the requirement for local registration</p> <p>b. Is the registration a pre-requisite to submit the bid or can the registration be done after the firm wins the contract?</p> <p>c. Can you please share an English version of the law placed at https://gzk.rks-gov.net/ActDetail.aspx?ActID=16426 ? While the website is available in English, the legal document does not seem to be available in English.</p> <p>d. What is the exact nature of registration required? Do we need to setup a separate legal entity or is it simply a registration with the Government?</p> <p>e. e. Any inputs on process, requirements, timelines, etc.?</p>	<p>a. Please see the answer provided for question 1.</p> <p>b. Please see the answer provided for question 1.</p> <p>c. When we are opening the website, we are able to access the English version of this law. Please select “English” on the top left</p> <div data-bbox="1312 651 2020 730" style="border: 1px solid #ccc; background-color: #f0f0f0; padding: 5px; text-align: center;"> Shqip <u>English</u> Srpski Türkçe Bosanski  </div> <p>and then you can view the English version for this law: LAW NO. 06/L-016 ON BUSINESS ORGANIZATIONS</p> <p>Type of act: Laws Act number: 06/L-016 Institution Assembly of the Republic of Kosovo</p> <p>d. Please refer to the law mentioned above. e. Please refer to the law mentioned above.</p>
8.	Submission deadline: For bid submission, a gap of atleast 2 weeks after responses to queries are issued, would be much helpful. We request you to extend the deadline further by 2 weeks i.e. 30th June.	Thank you for your request. Due to internal processes, we are interested in receiving proposals on or before June 17th.
9.	Written Power of Attorney (ITC 12.10) – Due to lockdown, the Courts in India are closed and getting physical signatures might be a challenge. In lieu of the Power of Attorney, can you please accept a letter of authority?	<p>There is not required the specific form of the Power of Attorney.</p> <p>The Power of Attorney shall demonstrate that the person signing has been duly authorized to sign the proposal on behalf of the bidder and its associates, if applicable;</p> <p>in the case of JVs:</p>

		A power of attorney, naming one of the individuals/partners as being in charge, signed by legally authorized signatories of all the partners.
10.	Workshop logistics: Can you please confirm that MFK will make all necessary arrangements and bear expenses towards facilities, logistics, schedules, etc. for the various stakeholder workshops?	Depending on the proposal as well as the COVID-19 situation in the country, the consultant can propose online methods for the stakeholder workshops. Should the consultant propose physical workshops, MFK will assist in basic necessary arrangements such as providing contacts of relevant stakeholders, but MFK will not bear the expenses for the workshops.
11.	Taxes levied on the Consultant: Can you please confirm that no taxes, including but not limited to VAT, Withholding Tax, Sales Tax, etc. will be levied by the Government of Kosovo on invoices raised by the Consultant?	As provided in GCC 18 and under Section 2.5(a) of the Threshold Program Grant Agreement, the Consultant will be exempted from: <ul style="list-style-type: none"> i. any tariffs, customs duties, import taxes, export taxes and other similar charges on any goods, works or services introduced into Kosovo in connection with the Program; ii. sales tax, value-added tax, excise tax, property transfer tax and other similar charges on any transactions involving goods, works or services in connection with the Program; iii. taxes and other similar charges on ownership, possession or use of any property in connection with the Program; and iv. taxes and other similar charges on income, profits or gross receipts attributable to work performed in connection with the Program and related social security taxes and other similar charges on all natural or legal persons performing work in connection with the Program. <p>However, if the Consultant(s) is a natural person who are citizens or permanent residents of Kosovo; and legal persons formed under the laws of Kosovo, will not be exempted from taxes and other similar charges on income, profits or gross receipts attributable to work performed in connection with the Program and related social security taxes.</p> <p>As per the Threshold Agreement, the Government of Kosovo will ensure that MCC's grant is free from the above-mentioned taxes stipulated under Section 2.5(a) of the Threshold Agreement. MFK will provide the necessary support to ensure that the Consultant does</p>

		not pay the exempted taxes when performing work in connection with the Program.
12.	<p>Insurance (Special Conditions of Contract, GCC 36.1) –</p> <p>a. We have a global insurance policy in place which will be able to cover the relevant risks and coverages required under this assignment. This insurance policy is issued in and governed by laws of the United States of America. We would be able to add MFK as a “Co-insured” in this policy, if required. Can you please confirm that such a policy would suffice the insurance requirement? In case Kosovo is an “admitted market” for insurance and there is a compulsion to procure a local insurance policy, can you please share details about the relevant regulatory instruments which one can refer to in this regard?</p> <p>b. Can you please specify the amounts of various coverages required?</p>	<p>With regards to the first question under a) please note that MFK would be able to accept an insurance issued by a financial institution legally established in the Republic of Kosovo and authorized to provide this guarantee/insurance OR in case the such financial institution is located outside Kosovo, such institution should have a correspondent financial institution located in Kosovo in order for MFK to be able to enforce such insurance.</p> <p>With regards to second question under b) the amounts of various coverages, such amounts shall be decided for each insurance requirement in accordance with the relevant provisions of the Applicable Laws in Kosovo. For instance, for professional liability insurance, as per the applicable law, it required a minimum coverage of amount and currency equal to the value of the contract.</p>
13.	<p>LOE: The estimated level of consultancy effort is specified as 143 man-days in the proposal data sheet. Considering a duration of 9 months and three key personnel along with support staff, this appears low. The DQR Phase - Field work being budgeted at 80 working days, the total man-days for overall assignment could be much higher than 143. Our past experience with submitting Data Quality Review proposals to MCA entities suggests that a work of similar scope and complexity may be usually budgeted at around 220-250 man-days.</p>	<p>Based on MCC’s best practices, the level of effort for this assignment has been calculated at 143 days, which should be divided between the three positions. It should be noted that not all MFK indicators are subject to the DQR - only 32 indicators. The 80 working days for the field work has been generously estimated to account for the 32 indicators from 8 different sources from where we receive data for our ITT.</p> <p>Should the consultant propose to allocate more working days in their proposals, we suggest to provide a clear rationale for it in TECH-7: Comments and Suggestions on the Terms of Reference & Assignment.</p> <p>The disclosed LOE is an “estimate,” not an upper or lower bound of available man-days.</p>
14.	<p>Payment structure (Table 4: Deliverable Specifications and Funds Disbursement): The current payment structure provides for a 30% payout against DQR Report. A substantial amount of effort is expected to be spent towards data collection and report writing for this deliverable. At 85 working days, almost 60% of the assignment’s total efforts of 143</p>	<p>The request specified in RFP remains unchanged.</p>

	man-days are budgeted towards this deliverable. This report also serves as foundation work for the deliverables under Task 3. Given the significance of this deliverable and the amount of efforts required, we request you to increase the payout structure from 30% to 50%.	
15.	DQR Phase - Field work meetings: If MFK can provide a sense of the number of officials (of the implementing and beneficiary entities) involved in collecting and preparing data for submission into the ITT, it could serve as a very useful input for the Consultant's proposal. If not, an organization chart of these entities could also be useful.	The figure in page 98 of the RFP with the data collection process provides all parties involved. However, here's a more extensive list of all officials who are involved in collecting and providing data for: <ul style="list-style-type: none"> ● The MFK M&E Team - 2 people ● The M&E Implementing Teams (for KODC, PAJI, GSI) - 4 people ● ERO (for RELP indicators) - up to 5 people ● KEDS (for RELP indicators) - 2 people ● KOSTT (for RELP indicators) - 2 people ● GFA (IC for SEEK) - 2 people ● Decon (IC for DHM) - 1 to 2 people ● FMI (IC for IPP) - 1 person ● Niras (IC for EDC) - 1 person
16.	ITT and Source files: <ol style="list-style-type: none"> a. Can you please share the MS Excel based latest filled-in Indicator Tracking Table (ITT) and corresponding source files used to collect and prepare the data for submission into the ITT? b) b. What proportion of source data is expected to be in Albanian? 	<ol style="list-style-type: none"> a. The information about the indicators, definitions, sources, and their target can be found in the M&E Plan (page 37 and onwards). The progress of the indicators in the ITT excel and the source files will be shared during the inception phase. b. All source data are in English.
17.	Submission of hard copies: Considering the present situation, there are challenges in delivery of international courier. We request you to relax the requirement to submit hard copies of deliverables.	The request specified in RFP remains unchanged.
18.	we have certain suggestions on the contract conditions as described below: We request that following clauses be incorporated: - <ol style="list-style-type: none"> 1. The total aggregate liability of consultant, whether in contract, tort (including negligence) or otherwise, under or in connection with this agreement, shall in no circumstances exceed a sum equal to the fees paid or payable by the Client under this agreement. In no event will Consultant be liable for any consequential, incidental, indirect, punitive or special losses or damages (including loss of profits, data, anticipated savings, business or goodwill), regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranties, failure of essential purpose or otherwise. We have precedence available 	The General Conditions of Contract and MCC Additional Provisions will not be changed.

of such insertion from our past DQR contracts with MCA entities, which we will be happy to share.

2. Anti-Bribery and Anti-Corruption:

Each Party represents, warrants and undertakes that:

(a) It has not and shall not offer, promise, give, encourage, solicit, receive or otherwise engage in acts of bribery or corruption in relation to this Agreement (including without limitation any facilitation payment), or to obtain or retain business or any advantage in business for any member of its group, and has and shall ensure to the fullest extent possible that its employees and agents and others under its direction or control and directly involved in providing Services under the Agreement do not do so. For the purposes of this clause it does not matter if the bribery or corruption is (i) direct or through a third party; (ii) of a public official or a private sector person; (iii) financial or in some other form; or (iv) relates to past, present, or future performance or non-performance of a function or activity whether in an official capacity or not, and it does not matter whether or not the person being bribed is to perform the function or activity to which the bribe relates, or is the person who is to benefit from the bribe. For the purposes of this clause, a “person” is any individual, partnership, company or any other legal entity, public or private.

(b) Each Party shall, adhere to applicable anti-bribery and corruption laws.

(c) Each Party shall, immediately upon becoming aware of them, give the other Party all details of any non-compliance with sub-clauses (a) and (b).

(d) It is a condition of this Agreement that each Party fully complies with this Clause. If it does not do so, without prejudice to any other remedy available to a party, the non-breaching party shall have the right (but not the obligation) in its absolute discretion to terminate the whole of this Agreement, or that part of this Agreement to which the bribery or corruption relates. For the avoidance of doubt, any breach of this Clause shall be deemed to be incapable of remedy.

3. Economic and Trade Sanctions:

As of the date of this Agreement the Client warrants that, (a) neither Client nor any of its subsidiaries, or any director or corporate officer of any of the foregoing entities, is the subject of any economic or trade

sanctions or restrictive measures issued by the United Nations, United States or European Union (“Sanctions”), (b) the Client is not 50% or more owned or controlled, directly or indirectly, individually or collectively, by one or more persons or entities that is or are the subject of Sanctions, and (c) to the best of Client’s knowledge, no entity 50% or more owned or controlled by a direct or indirect parent of the Client, is the subject of Sanctions. For purposes of clause (c) in this section, “parent” is a person or entity owning or controlling, directly or indirectly, 50% or more of the Client. For so long as this Agreement is in effect, the Client will promptly notify CRISIL if any of these circumstances change, upon occurrence of which, CRISIL shall have the right to terminate the Agreement immediately in whole or in part for reasons of the Client’s breach.

4. Non-Exclusivity: The Client acknowledges that CRISIL or its associates may have other commercial transactions with the Client, other parties reviewed for the Client or referred in the agreement (if any) and the services provided under the agreement shall be on a non-exclusive basis.

5. Client may notify the Consultant in writing within 10 calendar days of Consultant providing the Deliverables to the Client any substantial non-conformity of the Deliverables vis-à-vis the Requirements. Upon receiving Client’s notification, the Consultant shall rectify the non-conformity verified by it and resubmit the Deliverables to the Client within 15 calendar days. The Deliverables shall be considered “accepted” upon such re-delivery or the expiry of 10 calendar days as stated above, whichever is earlier.

6. We suggest English laws with courts in London having exclusive jurisdiction.

7. We suggest to include the below clauses:

Project Delay, Suspension or Cancellation:

If for any reason (other than Consultant’s material breach of the Agreement), the Project is suspended, deferred and/or canceled, then: all amounts paid to the Consultant until the effective date of suspension, deferred and/or cancellation shall be considered ‘drop dead fee’ and such fee shall not be refundable; and

Client shall in addition, pay Consultant all amounts otherwise payable under the Proposal for work done up to the date of suspension, deferment or cancellation.

Client acknowledges this does not grant the Client a right to suspend, defer or cancel the Project but is stated as Consultant's rights and are liquidated damages.

Termination

Consultant will be entitled to terminate the Agreement by giving 15 days' notice to the Client in case (i) Client fails to pay the amount due against a correct invoice, 30 days after the same becomes due and payable; (ii) if the provision of Services or Deliverables are delayed for the reasons attributable to Client, including but not limited to, Client's failure to perform its obligations under this Agreement for a period beyond 2 months from the date of this Agreement and Client's failure to remedy it this failure within 30 days or within such further period as Consultant may have subsequently approved in writing. Notwithstanding anything to the contrary stated in this Agreement, Consultant shall not be obliged to perform its services or submit any further Deliverables where Client is in breach of its payment obligations under this Agreement.

8. 33. Confidential Information; Rights of Use

We suggest including:-

Provided that this clause shall not apply to any information (a) which forms part of the public domain; or (b) which is received from a third party; or (c) which is independently developed; or (d) which is required to be submitted to any regulatory, statutory or governmental authority

9. 34. Documents Prepared by the Consultant to be the Property of the MCA Entity

"The Client however acknowledges that all right, title and interest in the methodologies, processes, techniques, ideas, concepts, trade secrets and know-how (all collectively referred to as the "Knowledge Material") of the Consultant continue to remain those of the Consultant even if any of them is embodied in the reports, developed or supplied in connection with the Services. The Client shall have the non-exclusive perpetual license to use the reports (including any Knowledge Material provided as a part of the report to the Client) to the extent necessary for the Client to use the reports in accordance with this Contract."

	10. We suggest to either follow arbitration and conciliation act 1996 or we can agree to London Court of International Arbitration / ICC or UNCITRAL Arbitration Rules and suggest English Laws as neutral laws.	
19.	Does Threshold Agreement foresee any tax exemption and how this should be reflected in the financial offer?	Please see the answer provided for question 11.
20.	What is the budget for the procurement with Ref. Number RFP / MFK / QCBS / 2021 / No. 008 “Procurement of Consultant Services Data Quality Review Consultancy”?	Regarding this procurement activity, the MFK Management has decided to disclose the estimated level of effort (LOE), instead of the estimated budget.

End of the document