

Attachment No. 6 to Particular Conditions of Contract

CONTRACTOR'S RESPONSIBILITIES FOR ENCOURAGING, MONITORING AND CONTROL OF LOCAL SECTOR PARTICIPATION IN PROJECTS BASED CONTRACTS

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1.0 Purpose and Scope

- 1.1 Purpose:** To define a process to be followed by the Contractor for encouraging and monitoring Local Industry participation in Project based contracts through Subcontracting and to define the control, preventive measures and corrective actions to be taken place by Company and Contractor in case of non-compliance as per Central Agency for Public Tenders Law, Executive Regulations and its amendments issued from time to time.
- 1.2 Scope:** The document covers the steps to be followed by Contractor to comply applicable laws at various stages of tendering and project execution by Contractors and its sub-contractors related to Local Industry participation.

2.0 Statutory Laws

- KNPC Tendering Bylaw (June 2020).
- HPC Bylaw of 2020.
- Public Tenders Law No. 49 of 2016 (CAPT Law).
- Law No. 74 of 2019 for amending provisions of the Law No. 49 of 2016.
- Executive Regulation no. 30/2017.

3.0 Definitions

The following definitions shall be followed:

“Contractor” An entity who signed a contract with KNPC for executing complete Works defined in the Contract.

“Local Product” means any product produced in the State of Kuwait.

“KNPC” & “Company” means the same.

“Procurement Element” means the total value of products / materials to be procured for executing of the Works defined in the Contract.

“Project contracts” means a contract signed for carrying out Engineering, Procurement and Construction contract (EPC), which is based on MTKP Model or Procurement and Construction contract (PC) which is based on the ADHOC Model.

“Services Element” means the total value of works of where no physical goods are involved required to complete the defined Works such as construction, design, maintenance, training etc.

“Small and Medium Enterprise” (SME) means any economic enterprise in Kuwait certified as a small or medium enterprise by the National Fund for Small and Medium Enterprise Development (Law no. 98 of 2013 and its amendment Law No.2 of 2014).

“Subcontractor” means an entity including its legal successors or permitted assigns classified and registered, who signs a contract, after the approval of KNPC, with the main Contractor for the implementation of part of the works of the project.

“Superintendent” means the person or persons referred to in Contract or such other persons appointed from time to time by the Company to act as Company’s representative for all activities related to the Contract and fulfil the role of Superintendent defined in the Contract.

“User / End User” means Contract Superintendent, his authorized representative together with his team involved in project management activities until completion and handover.

“Works” means all that work to be performed by the Contractor together with providing the Temporary Works and all the other duties, obligations and responsibilities of the Contractor pursuant to the Contract.

4.0 Law Mandate

Contractor shall refer Particular Conditions of the Contract clause for Local Industry preference.

5.0 Remedies and Payment Abatements

In case, the Contractor is unable to comply with the provisions stated above, despite Superintendent’s instruction for recovery / rectification plans, then, this condition is considered as a violation of the Contract leading to the application of a payment abatement equal to 20% of the value (either on the subsequent invoices or on final invoice as decided by Superintendent) of the subcontracting works / purchases made in violation of the said law / by-laws in addition to any other proceedings specified in the Contract and/or the relevant by-laws. No waiver is allowed in this regard, unless the same is justified with strong reason (along with substantiation) like nature of scope/project quality cannot be met by such subcontracting / purchasing, items related to OEM, non-availability of specialized services locally, compatibility with present systems / equipment etc.

6.0 Local Industry Preference in Purchases and Subcontracts:

6.1 Company’s responsibilities:

6.1.1. Company shall identify, in the scope of work, the list of categories of products/works that can be chosen to be subcontracted locally from the list stipulated in the document. Such categories to be defined based on local

capabilities and capacities, as available in Company approved CEC/VEC list without affecting the performance standards of the Contract.

- 6.1.2 Company shall, to the extent possible and without affective the desired performance standards, shall study the possibilities to confine the products specification to give preference to products available locally. Such products or product categories shall be listed in the scope of work from which the Contractor shall choose to procure locally in order to meet the requirement. The Company to ensure such proposed tender requirements do not unreasonably discriminate local contractors and manufacturers (i.e. the requirements of products & services are stated such that to preclude local companies from participation), unless above stated requirement cannot be met due to specific reasons like OEM's equipment, compatibility with existing systems, certification of authenticity etc.,

6.2 Contractor's responsibilities:

- 1) The following shall be discussed in the Kick off Meeting:
 - a. The requirement of applicable Law(s);
 - b. The clauses in the contract related to Local Industry participation;
 - c. Process of selection, evaluation, monitor, remedy to be followed for compliance to Local industry.
- 2) Contractor's subcontracting procedure and/or plan shall necessarily include the following as minimum:
 - a. List of products & works identified that can be subcontracted / purchased from Local industry (based on list identified in the scope of work). If the same is not identified, then Contractor shall propose for Superintendent's approval;
 - b. Audit procedure of subcontractors of all tiers (methods, findings, reporting to company related to local industry participation);
 - c. Subcontracting/purchasing approval process;
 - d. Remedial/recovery procedure in case of non-compliance.

- 3) The Contractor shall not be allowed to change the categories and its corresponding value of local products and services, which is submitted and reviewed by Company, unless it is specifically approved by the Superintendent, based on reasonable justification provided by Contractor.
- 4) The Contractor, unless the Superintendent otherwise authorizes in writing, shall procure and ensure that its Subcontractor & Vendors of all tiers procure all material, equipment, plant or machinery for incorporation into the Works only from Vendor selected from the lists of Company-approved V/CEC Lists. Company reserves the right to update the approved list of Vendors at any time without any entitlement to the Contractor for an extension of time and / or additional costs.
- 5) Contractor shall ensure that the List of vendors/manufacturers or Subcontractors shall be restricted only to local suppliers & contractors provided minimum eight (8) suppliers/contractors are available in Company approved specified list. If the above condition is not met, then Contractor shall ensure at least 60% of the proposed list for subcontracting or purchase are local suppliers / contractors.
- 6) The Contractor and its Subcontractors at all tiers (unless the Superintendent otherwise authorizes in writing) shall use Company approved V/CEC list for selecting Local contractors as Subcontractors. Company reserves the right to update the approved list of Vendors at any time without any entitlement to the Contractor for an extension of time and / or additional costs
- 7) The Contractor and its Subcontractors of all tiers shall give price preference of up to Twenty percent (20%) (or as stipulated in the Law, amended from time to time) to local products against foreign products, subject to complying with specifications and delivery requirement.
- 8) In any case, if the requirements stated above (S.No.3 to 7) cannot be met due to specific reasons like OEM's equipment, compatibility with existing systems, certification of authenticity, performance criteria etc., then Contractor shall approach Superintendent of Contract with detailed justification, which, Superintendent of Contract may process and approve as per the provisions of Article 62 of Public Tender Law 49/2016.

- 9) Contractor shall submit periodic reports as defined in the Contract consisting of projected and actual compliance to Local sector participation with breakdown (which indicates the monthly amount of the products from local manufacturers and services generated from the local sub-contractor) with documentary evidences like receipts / purchase orders / invoices, proof of SME registration etc. supporting the data provided (a sample format attached).
- 10) The above stated requirements for products and services is applicable to subcontractors at all tiers and Contractor shall perform periodic audit, as per the approved audit procedure and submit its findings to Company on its Subcontractors' compliance to above requirement.
- 11) Contract Superintendent shall review and provide his feedback in case of non-compliance to the requirement as per prevailing laws. Contractor shall submit the recovery plans of alternative items/works that can be considered for subcontracting / purchasing, for Contract Superintendent's approval, in order to meet the requirement. At unavoidable circumstances, in case, the requirement could not be complied, contractor shall provide request for waiver to Company with justification & supporting documents substantiating the reasons, which shall be mainly due to nature of project, specialized products or services, or due to considerable effect on quality & performance of the project or non-availability or lack of response from local suppliers/service providers etc.
- 12) If the provided justification, as the case may be, is not acceptable, Contract Superintendent shall write the same to Contractor rejecting his request for waiver mentioning Superintendent's intention to apply payment abatement as defined in the Contract for the portion of non-compliance. Contractor shall submit within pre-determined period, his recovery plans & measures acceptable to Contract superintendent, failing which, the payment abatement shall be applied in the forthcoming invoice. (note: period of submission from contractor and period for company review will follow the same period(s) defined in the Contract for document submission and approval cycle).

ATTACHMENT 1:
(PERIODIC REPORT FORM DURING EXECUTION PHASE)

CONTRACT NO.: _____

TITLE: _____

1. VALUE OF LOCAL PRODUCTS PROCURED FROM LOCAL MANUFACTURERS & VENDORS (EXCLUDING SME)

S. No.	ITEM DESCRIPTION	MANUFACTURER / VENDOR NAME	QUANTITY	VALUE IN KD.
<u>ACHIEVED TILL LAST MONTH</u>				
	Item a			
	Item b			
	Item c			
TOTAL VALUE(x)				
<u>THIS MONTH</u>				
	Item d (attach PO/receipt/invoice)			
	Item e (attach PO/receipt/invoice)			
	Item f (attach PO/receipt/invoice)			
TOTAL VALUE(y)				
	<u>PROJECTED</u>			
	Item g			
	Item h			
TOTAL VALUE(z)				
GRAND TOTAL (x + y +z)				
Percentage with respect to Total Procurement Element				

ATTACHMENT 2
VALUE OF LOCAL PRODUCTS PROCURED FROM SME

S. No.	ITEM DESCRIPTION	MANUFACTURER / VENDOR NAME	QUANTITY	VALUE IN KD.
<u>ACHIEVED TILL LAST MONTH</u>				
	Item a			
	Item b			
	Item c			
TOTAL VALUE(x1)				
<u>THIS MONTH</u>				
	Item d (attach PO/receipt/invoice)			
	Item e (attach PO/receipt/invoice)			
	Item f (attach PO/receipt/invoice)			
TOTAL VALUE(y1)				
	<u>PROJECTED</u>			
	Item g			
	Item h			
TOTAL VALUE(z1)				
GRAND TOTAL (x1 + y1 +z1)				
Percentage with respect to Total Procurement Element				

ATTACHMENT 3
VALUE OF SERVICES TO BE SOURCED FROM LOCAL SUB-CONTRACTORS

S. No.	DETAILS OF SERVICES TO BE SUB-CONTRACTED TO LOCAL SUBCONTRACTORS	VALUE IN KD.
	<u>ACHIEVED TILL LAST MONTH</u>	
	TOTAL VALUE(a)	
	<u>THIS MONTH</u>	
	TOTAL VALUE(b)	
	<u>PROJECTED</u>	
	TOTAL VALUE(c)	
	GRAND TOTAL (a+b+c)	
	Percentage with respect to Total Services Element	

ATTACHMENT 4
VALUE OF SERVICES TO BE SOURCED FROM SME

S. No.	DETAILS OF SERVICES TO BE SUB- CONTRACTED TO LOCAL SUBCONTRACTORS	VALUE IN KD.
	<u>ACHIEVED TILL LAST MONTH</u>	
	TOTAL VALUE(a1)	
	<u>THIS MONTH</u>	
	TOTAL VALUE(b1)	
	<u>PROJECTED</u>	
	TOTAL VALUE(c1)	
	GRAND TOTAL (a1+b1+c1)	
	Percentage with respect to Value of Local Services	