**UNITED NATIONS OFFICE FOR PROJECT SERVICES**

**and**

**(2) [*Insert Consultant's Name*]**

**Consultant Services for New Design and/or Repair of Road Drainage Structures in South Kordofan State, Sudan**

**Contract No.:**SDN-2020-RFP-01

Month **2020**

**Contract for Consultant Services for Works**

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Schedule 2 - Details

Schedule 3 - Equipment, Facilities, Personnel and Services of Others to be Provided by the Employer

Schedule 4 - Remuneration and Payment

Schedule 5 - Time Schedule for Services

Schedule 6 - Insurances

Schedule 7 - Key Personnel

INSTRUMENT OF AGREEMENT

**THIS Contract** is made on the [***insert***] day of [***insert month***] 20[***insert***].

**BETWEEN**

**(1)** **The** **United Nations Office for Project Services (“UNOPS”)**, an organ of the United Nations, having its postal address at [***address***], [***insert name of city and country***] (the **"Employer"**); and

[**(2)** [***insert name***], a [***insert type of company e.g. limited liability***] company incorporated under the laws of [***insert***] and having its registered address at [***address***], [***insert name of city and country***] (the “**Consultant**").] [Use in case of a single Consultant]

[**(2)** [***insert name***], a [***insert type of company e.g. limited liability***] company incorporated under the laws of [***insert***] and having its registered address at [***address***], [***insert name of city and country***]**;**

**(3)** [***insert name***], a [***insert type of company e.g. limited liability***] company incorporated under the laws of [***insert***] and having its registered address at [***address***], [***insert name of city and country***] (together the “**Consultant**”).] [Use in case of a joint venture, association or consortium]

**BACKGROUND**

A The Employer intends to implement the Works.

B The Services are required in relation to the implementation of the Works.

C The Consultant has represented to the Employer that it has the appropriate experience, expertise, licences and resources to undertake the Services and has agreed to undertake the Services in accordance with the Contract.

D In reliance on the Consultant's representations the Employer has entered into the Contract.

E The Contract sets out the terms and conditions upon which the Consultant will undertake the Services.

**THE AGREEMENT:**

1. The Employer agrees to pay the Consultant in accordance with Clause 5 of the Contract and Schedule 4 [*Remuneration and Payment*], in consideration for the Consultant executing and completing the Services and otherwise performing all of its obligations in accordance with the Contract.
2. In the Contract, words and expressions shall have the same meanings as are respectively assigned to them in the General Conditions.
3. The following documents, listed in the order of priority, are deemed to form and be read and construed as part of the Contract:
   1. this Instrument of Agreement;
   2. Schedule 2 [*Details*];
   3. the Particular Conditions (if any);
   4. the General Conditions;
   5. the remaining Schedules.

**SIGNING PAGE**

**IN WITNESS WHEREOF**, the Parties have caused the Contract to be executed by their respective duly authorised representatives as of the date first written above:

SIGNED BY \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[***insert name of authorised signatory of UNOPS***]

Duly authorised to sign the Contract for and on behalf of the Employer, UNOPS:

In the presence of: ­­­­­­­­­­­­­­­­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (witness)

Address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Occupation \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNED BY \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[***insert name of authorised signatory of the Consultant***] [In case of a joint venture, association or consortium, the party designated in the bid/proposal as authorized to represent the joint venture, association or consortium shall sign the Contract]

Duly authorised to sign the Contract for and on behalf of the Consultant, [***insert***]:

In the presence of: ­­­­­­­­­­­­­­­­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(witness)

Address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Occupation \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

GENERAL CONDITIONS

# GENERAL PROVISIONS

## Definitions

In the Contract, the following words and expressions shall have the meanings stated below. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

"**Affiliate**" means:

(a) the ultimate parent company of a Party; or

(b) any company controlled by that ultimate holding company; or

(c) any company controlling a Party; or

(d) any company controlled by a Party.

“**Agreed Compensation**” means the sums as defined in Schedule 4 [*Remuneration and Payment*] which are payable to the Consultant under the Contract.

**"Authority(ies)**" means all local, regional, territorial, free zone, municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, judicial or administrative body, recognised by the United Nations and having jurisdiction over the Services and the Consultant as well as its Affiliates.

“**Commencement Date**” means the date stated in Schedule 2 [*Details*].

“**Consultant(s)**” means the company(ies) named in the Instrument of Agreement, who is/are employed by the Employer to perform the Services, and legal successors to and permitted assignees of such company(ies).

"**Consultant's Representative**" means the person designated by the Consultant in accordance with Sub-Clause 3.3.

"**Consultant's IPR**" means all intellectual property rights owned or held by the Consultant in accordance with Sub-Clause 1.7.

“**Contract**” means the Instrument of Agreement, Schedule 2 [*Details*], the Particular Conditions (if any), the General Conditions, the remaining schedules as listed in the Instrument of Agreement.

“**Contractor(s)**” means the contractor(s) responsible for implementing the Works in relation to which the Services are required.

"**Convention on the Privileges and Immunities of the United Nations**"means the convention adopted by the General Assembly on 13 February 1946, which defines and specifies numerous issues relating to the status of the United Nations, its assets and its officials, in terms of the privileges and immunities that must be granted to them by its [Member States](http://en.wikipedia.org/wiki/United_Nations_member_states).

“**Country**” means the country where the Works are to be implemented.

"**Date of the Contract**" means the date of execution of the Contract, as stated in the Instrument of Agreement.

“**Day**” means a business day in the city stated in Schedule 2 [*Details*].

**“Deductible”** means the maximum amount which the Consultant may be responsible under the insurance policies required under the Contract before the insurance may be responsible under such policies.

"**Deliverable**" means a document to be prepared by the Consultant under the Contract and includes any documents identified in Schedule 1.

"**Dispute**" means all disputes or disagreements arising out of or in connection with the formation, performance, interpretation, nullification, termination or invalidation of the Contract or the Services, or any other related dispute or disagreement.

"**Document**" means each Deliverable and any other document, plan, design, specification, report, or other document required to be prepared by the Consultant as part of the Services.

“**Employer**” means the Party named in the Instrument of Agreement, who employs the Consultant, and legal successors to the Employer and permitted assignees.

"**Employer's IPR**" means all intellectual property rights owned or held by the Employer in accordance with Sub-Clause 1.7.

**"Employer's Representative"** means the person designated by the Employer in accordance with Sub-Clause 2.1.

“**Final Completion** **of the Services**” means when all the Services have been provided by the Consultant and accepted by the Employer, unless the Contract has been otherwise terminated in accordance therewith. This shall not relieve the Consultant of its obligation to rectify at his own cost any defect in the Services that may occur during and until the expiry of the Liability Period as set out in Schedule 2 [*Details*].

“**Final Completion of the Works**” means when the Works have reached Final Completion under the contract(s) between the Employer and the Contractor(s) responsible to implement the Works.

“**FIDIC**” means the Fédération Internationale des Ingénieurs-Conseils (a/k/a the International Federation of Consulting Engineers.

"**IPR**" means all intellectual property rights conferred by Law or equity and subsisting anywhere in the world, including:

### (i) copyright; (ii) inventions (including patents, innovation patents and utility models); (iii) confidential information, trade secrets, technical data and know-how, whether or not confidential and in whatever form held, including formulae, design specifications, drawings, data, manuals and instructions; (iv) designs; (v) trademarks and service marks; and (vi) circuit layout designs, topography rights and rights in databases, whether or not any of these is registered, registrable or patentable;

### any similar rights resulting from intellectual activity in the industrial, commercial, scientific, literary or artistic fields which subsist now or in the future; and

### any applications and the right to apply for registration of any of the above; and

### any information or advice that is subject to legal professional privilege.

"**General Assembly**" means the main deliberative, policymaking and representative organ of the United Nations (UN).

"**Key Personnel**" means those persons specified in Schedule 7 [*Key Personnel*] in the capacity and role identified therein.

"**Law(s)**” means:

(a) all legislation, including, decrees, resolutions, acts, statutes, ordinances, rules, regulations, directives and other orders, treaties, by‑laws, codes of practice and other subordinate legislation of the Country or any country in which the Services are performed;

(b) the requirements, rules and regulations of any Authority, including legislation and regulations covering the registration and licensing of the Consultant necessary for the proper execution of the Services in accordance with the Agreement; and

(c) the guidelines of the Country or any country in which the Services are performed and of all relevant Authorities, with which the Consultant is legally required to comply.

"**Liability**" means any liability or obligation (whether actual, contingent or prospective) including for any loss irrespective of when the acts, events or things giving rise to the liability or obligation occurred.

“**Local Currency**” means the currency stated in Schedule 4 [*Remuneration and Payment*] and "**Foreign Currency**" means any other currency.

"**Member States**" means a government of a country that holds membership of the United Nations.

"**New IPR**" has the meaning as defined in Sub-Clause 1.7(h).

“**Party**” and “**Parties**” means the Employer or/and the Consultant and “**third party**” means any other person or entity as the context requires.

"**Personnel**" means any director, secretary, officer, staff, employee, subcontractor, representative or agent.

"**Site**" means the location where the Works in relation to which the Services are required are to be implemented.

“**Services**” means the services defined in Schedule 1 to be performed by the Consultant in accordance with the Contract.

"**Subcontractor**" or “**Subconsultant**” means any subcontractor or subconsultant engaged by the Consultant to perform a part or parts of the Services.

"**Term of the Contract**" means that the Contract shall remain in force until Final Complementation of the Services, unless otherwise terminated in accordance with the Contract.

"**Use**" has the meaning in Sub-Clause 1.7(a).

“**Variation**” means a change, alteration, addition or omission to the Services which is instructed by the Employer under Sub-Clause 4.4.

“**Works**” means the works in relation to which the Services are required, as described in Schedule 2 [*details*].

“**written**” or “**in-writing**“ mean hand-written, type-written, printed or electronically made and resulting in a permanent un-editable record.

“**year**” means 365 days.

## Interpretation

### The marginal words and other headings in the Contract shall not be taken into consideration in the interpretation of the Contract.

### The singular includes the plural and vice-versa where the context requires.

### The documents forming the Contract are to be taken as mutually explanatory of one another and shall be read as a whole. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

#### the Instrument of Agreement;

#### Schedule 2 [*Details*];

#### the Particular Conditions (if any);

#### the General Conditions; and

#### the remaining Schedules.

### Notwithstanding the priority of documents, if there is any ambiguity or discrepancy in or between the documents forming the Contract in regard to the obligations or requirements for the standard or quality of Services, then the higher or more onerous obligation or requirement shall prevail.

### Words indicating one gender include all genders.

### Provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing, and signed by both Parties.

## Communications

### Whenever the Contract provides for the giving or issue of any notice, instruction or other communication by any person, unless otherwise specified such communication shall be:

#### in writing;

#### marked to the attention of the relevant representative of the Parties as set out in Schedule 2 [*Details*]; and

#### either:

#### delivered at the address set out in the Schedule 2 [*Details*]]; or

#### sent by facsimile to the facsimile number of the addressee set out in the Schedule 2 [*Details*]; or

#### sent as a document, signed, scanned and attached in an email to the email address set out in the Schedule 2 [*Details*]

### If the addressee has notified in writing a change of fax number or email address, then the communication shall be to that number or address.

### A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.

### A delivery, letter, document attached to an email or facsimile is deemed to be received:

#### in the case of a delivery to the relevant address when delivered to the relevant address (against a written receipt);

#### in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and

#### in the case of a document attached to an email, upon receipt of the email in the inbox of the recipient’s address.

### For the avoidance of doubt, any notice or other communication will not be deemed to have been given or made under the Contract if it is in the form of email (other than as an attached document in accordance with Sub-Clause 1.3(c)) or minutes of any meetings.

### Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party, a copy shall be sent to the other Party, as the case may be.

## Language

### The language for notices, instructions and communications shall be English.

### Unless otherwise specified in the Contract, the Consultant's Documents will be written in English.

## Change in Laws

### In the event of a change in Laws, the Agreed Compensation shall be adjusted accordingly.

## Assignments and Sub-Contracts

### The Consultant shall not assign transfer or otherwise dispose of the rights or benefits under the Contract, without the prior written consent of the Employer.

### The Employer may assign, transfer or otherwise dispose of its rights under the Contract without the written consent of the Consultant.

### The Consultant shall not initiate or terminate any sub-contract for the performance of all or part of the Services without the prior written consent of the Employer.

## Employer’s and Consultant’s Intellectual Property Rights (IPR)

### The Employer grants to the Consultant for the Term of the Contract a non-exclusive, personal, non-transferable, royalty free licence to use, modify, enhance, alter or decompile (**Use**) the Employer's IPR necessary for the performance of the Services.

### Any documentation and information supplied by the Employer to the Consultant for the purposes of performing the Services:

#### shall not be used, copied or reproduced by the Consultant for any other purpose; and

#### remains the property of the Employer and shall be returned to it upon request upon Final Completion of the Services or prior termination of the Contract.

### The Consultant grants to the Employer a perpetual, unrestricted, non-exclusive, irrevocable, transferable, royalty-free licence (with a right to sub-licence) to Use (including for the purpose of the disclosure of information or documentation to third parties) the Consultant's IPR which are required by the Employer for:

#### assessment of the performance of the Services;

#### the design, construction, commissioning and/or expansion of the Works; and

#### the operation, support and maintenance of the Works and the use and enjoyment of the Deliverables, or any part of the Deliverable, in connection with the Works.

### Any enhancement, adaptation, change, modification or development (**Enhancements**) of the Employer's IPR is the property of the Employer.

### Any Enhancements of the Consultant's IPR, whether arising as part of the Consultant’s performance of the Services or otherwise, is the property of the Consultant.

### The Employer grants to the Consultant a non-exclusive, personal, non-transferable, royalty free licence to Use any Enhancements to the Employer's IPR which are required by the Consultant for the performance of the Services.

### The Consultant grants to the Employer a non-exclusive, irrevocable sub-licensable, perpetual, transferable and royalty free license to Use any Enhancements to the Consultant's Existing IPR for:

#### assessment of the performance of the Services; and

#### the operation, support and maintenance of the Works and the use and enjoyment of the Consultant's Deliverables in connection with the Works.

### All IPR created by the Consultant specifically for the Works in performing the Services (**New IPR**) shall vest immediately in the Employer.

### The Employer grants to the Consultant a non-exclusive and royalty free licence to Use the New IPR to the extent necessary for the performance of the Services.

### Prior to and as a condition of Final Completion or on termination of the Agreement, the Consultant shall provide to the Employer all documentation, data and other information that contains New IPR in the Consultant's possession in an electronic and unlocked format.

## Third Party’s Intellectual Property Rights (IPR)

### If any Third Party's IPR forms part of the Services or is necessary to the functioning or operation of the Deliverables, the Consultant shall ensure that the Employer is granted a licence to Use the Third Party’s IPR for:

#### assessment of the performance of the Services;

#### the design, construction, commissioning and/or expansion of the Works; and

#### the operation, support and maintenance of the Works and the use and enjoyment of the Deliverables, or any part of the Deliverable, in connection with the Works.

## Employer’s Document Management System

### In addition to the Consultant's obligations under Sub-Clauses 1.3, if requested by the Employer, the Consultant shall upload copies of all notices, instructions and other communications under the Contract to the Employer’s Document Management System.

### The Employer shall provide to the Consultant the necessary training to use of its Document Management System, as may be reasonably requested by the Consultant, to enable the Consultant to comply with its obligations under this Sub-Clause.

## Confidentiality

### Subject to the following Sub-Clauses, the Parties shall keep confidential and shall not, without the prior written consent of the other Party, disclose to any third party the terms and conditions of the Contract or any documents or other information furnished directly or indirectly by either Party in connection with the Contract or the Services, irrespective of whether such information has been furnished prior to the making of the Contract or at any time.

### Either Party may disclose the terms and conditions of the Contract and any documents and information acquired by it under or pursuant to the Contract without the prior written consent of the other Party if such disclosure is made in good faith:

#### to the extent required by applicable Laws;

#### to any insurer under a policy of insurance issued pursuant to the Contract;

#### to its internal organs, including its directors, employees and officers and the General Assembly in the case of the Employer;

#### to any Subcontractor for the furtherance of the performance of that Party's obligations under the Contract;

#### to outside consultants or advisers engaged by or on behalf of the disclosing Party and acting in that capacity in connection with the Services (including insurance, tax and legal advisers); or

#### to the appropriate authorities of Member States pursuant to the Employer’s obligations under the Convention on the Privileges and Immunities of the United Nations.

### The obligations under this Sub-Clause shall not apply to information and documents which:

#### now or in the future have entered the public domain through no fault of the disclosing Party; or

#### otherwise lawfully become available to the disclosing Party from a third party under no obligation of confidentiality.

### This Sub-Clause shall survive the expiry or termination of the Contract.

## Official-Not-To-Benefit, Corruption and Fraud

### The Consultant warrants that it has not engaged, or attempted to engage, in any way whatsoever, in any corruption or fraud in connection with the selection process or the execution of the Contract or any other activities of the Employer or any other entity of the United Nations, involving, in any way whatsoever, any Employer's Personnel or Employer's Representative, officials, or other agent of the Employer or any other entity of the United Nations.

### In this Sub-Clause, “**Corruption**” means the offering, giving, receiving or soliciting from or to any person, directly or indirectly, anything of value as an inducement or reward:

#### for doing or forbearing to do any action in relation to the Agreement or the selection process, or any other activities of the Employer or of any other entity of the United Nations; or

#### for showing or forbearing to show favour or disfavour to any person in relation to the Agreement, or any other activities of the Employer or of any other entity of the United Nations.

### In this Sub-Clause, “**Fraud**” means a misrepresentation or omission of facts in order to influence, or to attempt to influence, the selection process or the execution of the Contract or any other activities of the Employer or of any other entity of the United Nations. The Consultant acknowledges and agrees that any breach of this Sub-Clause shall entitle the Employer to terminate the Contract immediately upon the provision of a written notice without any liability to the Consultant for termination charges or any other liability of any kind.

## Entire Agreement

### The Contract constitutes the entire agreement between the Employer and the Consultant with respect to the subject matter of the Contract and supersedes all prior arrangements, representations, communications, negotiations, agreements and contracts (whether written or oral) made between or entered into by the Parties with respect to the subject matter of the Contract prior to the Date of the Contract.

## Severability

### If the enforcement or operation of any provision or part of the Contract is prohibited by Law or is by Law rendered void, invalid or unenforceable, such prohibition, voidness, invalidity or unenforceability shall not affect the validity or enforceability of the rest of that provision and/or any other provisions of the Contract.

## Counterparts

### The Contract may be executed in any number of counterparts, all of which when taken together shall constitute the one and the same instrument.

## Independent Consultant

### The Consultant shall be an independent consultant performing the Contract and is not and shall not be considered to be an employee or agent of the Employer. The Contract does not create any partnership, joint venture or other joint relationship between the Employer on the one hand and the Consultant on the other hand.

## Privity

### No provision of the Contract is intended to or does confer upon any third party (including any Subcontractor) any implied benefit or right enforceable at the option of the third party against the Employer.

## Waiver

### None of the terms, provisions or conditions of the Agreement shall be considered waived by the Employer unless a waiver is given in writing by the Employer.

### Any waiver of the Employer's rights, powers or remedies under the Agreement shall be dated and signed by the Employer's Representative granting such waiver and shall specify the right and the extent to which it is being waived.

### Any waiver under this Sub-Clause is without prejudice to the privileges and immunities of the United Nations, of which the Employer is an integral part, as expressly reserved under Sub-Clause 9.1 [*Privileges and Immunities*].

## Publicity and Use of the Name, Emblem of the Employer and the United Nations

### The Consultant shall not:

#### advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with the Employer; or

#### in any manner whatsoever use the name, emblem or official seal of the Employer or the United Nations, or any abbreviation of the Employer’s name or the United Nations in connection with its business or otherwise without the prior written permission of the Employer.

### This Sub-Clause shall survive the expiry or termination of the Agreement.

## Mines

### The Consultant warrants and represents that neither it, nor any of the Consultant’s subsidiaries or Affiliates (if any) is engaged in the sale or manufacture of anti-personnel mines or components utilised in the manufacture of anti-personnel mines.

### The Consultant acknowledges and agrees that any breach of this Sub-Clause shall entitle the Employer to terminate the Contract immediately by providing a written notice to the Consultant without any liability to the Consultant for termination charges or any other liability of any kind.

## Unexploded Ordinances

### If at any time during the carrying out of the Services an unexploded ordinance or land mine is discovered at the Site, the Consultant shall immediately stop all work at the Site, notify the Employer’s Representative, and as applicable, take all necessary steps to ensure the safety of all persons and property and secure the Site. The Consultant shall immediately resume work at the Site when instructed by the Employer’s Representative.

## Blasting

### The Consultant shall not instruct the use any explosives without the prior written permission of the Employer. The Consultant shall comply with all regulations in force in the Country regarding the use of explosives and shall provide appropriate storage facilities before applying for permission to use any explosives.

### The Employer’s approval or refusal to permit the use of explosives shall not relieve the Consultant from any of its warranties, obligations or liabilities under or in connection with the Contract and the Consultant shall not be entitled to any additional time or additional costs for the performance of the Services in relation to such approval or refusal.

# The EMPLOYER

## Employer's Representative

### The Employer’s Representative shall be the person designated by the Employer in Schedule 2 [*Details*] to be his representative for the administration of the Contract.

### Except as otherwise specified in the Contract, no comment, review, representation, inspection, testing, certificate, consent, examination, approval, instruction, notice, proposal, request or similar act (including absence of disapproval) by or on behalf of the Employer or the Employer's Representative shall relieve, reduce or otherwise affect the Consultant's undertakings, warranties, obligations or liabilities, including responsibility for errors, omission, discrepancies and non-compliances.

## Information

### In order not to delay the Consultant in the performance of the Services, the Employer shall within a reasonable time give to the Consultant free of cost all information which may pertain to the Services which the Employer is reasonably able to obtain.

## Decisions

### On all matters referred to him in writing in accordance with the Contract by the Consultant the Employer shall give his decision in writing within a reasonable time so as not to delay the Services.

## Equipment, Facilities, Personnel and Services of Others to be Provided by the Employer

### If provided in the Contract, the Employer shall make available, free of cost, to the Consultant for the purpose of the Services the equipment and facilities described in Schedule 3 [*Equipment, Facilities, Personnel and Services of Others to be Provided by the Employer*].

### The Employer shall arrange at his cost the provision of Personnel and Services of others as described in Schedule 3 [*Equipment, Facilities, Personnel and Services of Others to be Provided by the Employer*].The Consultant shall co-operate with such Personnel and the suppliers of such services, but shall not be responsible for them or their performance.

## Payment of Services

### The Employer shall pay the Consultant for the Services in accordance with Clause 5 of the Contract and Schedule 4 [*Remuneration and Payment*].

# The CONSULTANT

## Services

### The Consultant shall provide the Services as stated in Schedule 1, including the obligation for the Consultant to rectify, at his own cost, any defects in the Services that may occur during the implementation of the Works and thereafter.

### In providing the Services, the Consultant shall exercise reasonable skill, care and diligence, and comply with any applicable Law and relevant standards, including UNOPS’ design planning manual(s) as specified in Schedule 1.

### The Consultant shall, at its own cost, at all times during the performance of the Services, be, and ensure that any person who carries out any part of the Services is, registered and/or licensed as required by any Law or Authority to perform the Services.

## Employer's Property

### Anything supplied by or paid for by the Employer for the use by the Consultant shall be and remain the property of the Employer.

## Consultant’s Representative

### The Consultant’s Representative shall be the person designated by the Consultant in Schedule 2 [*Details*] to be his representative for the administration of the Contract.

### If required by the Employer, the Consultant shall designate an individual to liaise with the Employer’s Representative in the Country.

## Consultant’s Key Personnel

### The key personnel who are proposed by the Consultant to provide the Services shall be subject to acceptance by the Employer with regard to their qualifications and experience and shall be listed in Schedule 7 [*Key Personnel*]. Such acceptance shall not be unreasonably withheld.

## Changes in Personnel

### If it is necessary to replace any of the personnel provided by the Consultant, the Consultant shall arrange for such replacement by a person of comparable competence as soon as reasonably possible.

### The cost of such replacement shall be borne by the Consultant.

## Subcontractors/Subconsultants

### The Consultant shall not subcontract the whole or any part of the performance of the Services without the Employer's prior written consent, which consent shall not be unreasonably withheld. Any consent given by the Employer may be on reasonable conditions determined by the Employer.

### The Consultant shall ensure that any Services performed by a Subcontractor/Subconsultant are in accordance with the Contract.

### The Consultant's obligations under the Contract are not lessened or otherwise affected by entering into any contract with a Subcontractor. The Consultant is solely responsible for its Subcontractor and any act or omission of any Subcontractor or those for whom the Subcontractor is responsible.

## Alcoholic Liquor or Drugs

### The Consultant shall not bring, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs onto the Site, or permit or suffer any such importation, sale, gift, barter or disposal by its employee, agents, staff, labour, subcontractors, or subconsultants.

## Arms, Ammunition and Explosives

### Unless instructed or permitted by the Employer in writing, the Consultant shall not bring onto or store on the Site, give, barter or otherwise dispose of to any person or persons, any arms, ammunition or explosives of any kind or permit or suffer the same.

## Festivals and Religious Customs

### The Consultant shall in all dealings with its personnel have due regard to all recognised festivals, days of rest and religious or other customs.

## Epidemics

### In the event of any outbreak of illness of an epidemic nature in the Country, the Consultant shall comply with and carry out such regulations, orders and requirements as may be made by the Authorities or local medical or sanitary authorities for the purpose of dealing with or overcoming the epidemic.

## Child Labour

### The Consultant represents and warrants that neither it nor any of its Affiliates (if any) is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, amongst other things, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral, or social development.

### The Consultant acknowledges and agrees that any breach of this Sub-Clause shall entitle the Employer to terminate the Agreement immediately upon the provision of a written notice without any liability as a result of the termination or any other liability of any kind.

## Sexual Exploitation

### The Consultant shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by the Consultant’s Personnel. For these purposes, sexual exploitation and abuse includes sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, unless such sexual activity is consensual between two persons who are married and such marriage is recognized as valid under the laws of the country of citizenship of such Consultant’s Personnel.

### In addition, the Consultant shall refrain from, and shall take all reasonable and appropriate measures to prohibit its employees or other persons engaged and controlled by it from exchanging any money, goods, services, or other things of value, for sexual favours or activities, or from engaging any in sexual activities that are exploitive or degrading to any person.

### The Consultant acknowledges and agrees that any breach of this Sub-Clause shall entitle the Employer to terminate the Agreement immediately upon the provision of a written notice without any liability as a result of the termination or any other liability of any kind.

# Duration, Variation, Suspension and Termination

## Commencement and Time Schedule for the provision of the Services

### The Services shall commence on the Commencement Date, as indicated in Schedule 2 [*Details*] and last until Final Completion of the Services, as defined in Sub-Clause 1.1.

### The Services shall be provided in accordance with the Estimated Time for Completion as set out in Schedule 2 [*Details*] and the time schedule as set out in Schedule 5 [*Time Schedule for the Provision of the Services*].

## Delays

## If the Consultant believes it is entitled to an extension of time and associated costs as a result of an act or omission of the Employer, its personnel or contractors, the Consultant shall submit a claim to the Employer in accordance with Sub-Clause 8.1.

## Force Majeure

### If the Services are delayed or suspended as a result of a Force Majeure event, the Consultant may be entitled to additional time and/or compensation. In this case, the Consultant shall inform the Employer in accordance with Sub-Clause 8.1.

### Force Majeure shall be understood as an exceptional event or circumstance:

#### which is beyond the Consultant’s control;

#### which the Consultant could not reasonably have provided against before entering into the Contract;

#### which, having arisen, the Consultant could not reasonably have avoided or overcome; and

#### which is not substantially attributable to the Employer.

### Force Majeure shall be constituted upon the occurrence of the following events or circumstances, so long as the above conditions are satisfied:

#### war, (whether war be declared or not), invasion, act of foreign enemies within the Country;

#### rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war within the Country;

#### munitions of war, ionising radiation or contamination by radio-activity within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity; and

#### earthquake, hurricane, typhoon, tsunami,fire, flooding or other natural disaster that are outside the normal range for that place at that time of year.

## Variations

### At any time prior to the Final Completion of the Services, the Employer may instruct the Consultant to vary the Services. Such instruction shall be in writing.

### Within 14 days of receiving such written instruction, or another time frame agreed upon with the Employer, the Consultant shall provide the Employer with a written proposal to implement the requested variation. Such proposal shall include additional time or/and costs necessary for such implementation. If any are available and relevant, the costs of a variation shall be based on the rates included in Schedule 4 [*Remuneration and Payment*].

### As soon as practicable after having received such proposal, the Employer shall request further information from the Consultant or, when the Employer is satisfied with the proposal, provide a written notice to the Consultant, confirming the terms and conditions of the variation.

### If the Services are varied, the Consultant shall be entitled to an extension of time and/or additional compensation, as applicable.

### If the circumstances so required, the Consultant may propose the Employer in writing to vary the Services.

## Suspension of the Services and Termination of the Contract

### The Employer may suspend all or part of the Services for any reasons by giving a 14-days written notice to the Consultant. Upon receiving such the Consultant shall immediately make arrangements to stop the Services and minimise expenditure.

### In case of a suspension of the Service by the Employer, the Consultant may be entitled to additional time and/or compensation. In this case, the Consultant shall inform the Employer in accordance with Sub-clause 8.1.

### If the Consultant is not discharging his obligations, the Employer may terminate the Contract by providing a further 14 days written notice to the Consultant.

### The Employer may terminate the Contract for cause by providing a 14-day written notice to the Consultant.

### The Employer may terminate the Contract for convenience by providing a 28-day written notice to the Consultant.

### Upon termination of the Contract by the Employer, the Consultant shall stop the provision of the Services promptly and take all actions necessary or as may be directed by the Employer to transfer any documents, IPR and equipment to the Employer, as applicable.

### Upon termination of the Contract, the Consultant shall be entitled to any outstanding payment for the Services provided up to the termination of the Contract, and to cover the costs reasonably incurred by the Consultant to bring the Services to an end.

### The Consultant may, by providing a 28-day written notice to the Employer, terminate the Contract, or at his discretion, without prejudice to the right to terminate, suspend the provision of the whole or part of the Services:

#### when 28 days after the due date for payment of an invoice he has not received payment of that part of it which has not by that time been contested in writing; or

#### when Services have been suspended for a period exceeding 182 days.

## Accrued Rights, Claims and Liabilities of Parties

### Termination of the Contract shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.

# Payment

## Payment to the Consultant

### The Employer shall pay the Consultant for the Services subject to Sub-Clause 6.7 [*Set-Off]* in accordance with the Contract, including for variations instructed in accordance with Sub-Clause 4.4 [*Variations*], in particular this Clause 5 and Schedule 4 [*Remuneration and Payment*].

## Time for Payment

### Unless the Employer objects in writing to the invoices of the Consultant in accordance with Sub-Clause 5.4, payments to the Consultant shall be made within 28 days upon receipt by the Employer of such invoices, unless otherwise stated in Schedule 4 [*Payment and Remuneration*].

## Currency of Payment

### Payments shall be made in the currency stated in Schedule 4 [*Remuneration and Payment*].

## Disputed Invoices

### If any item or part of an item in an invoice submitted by the Consultant is contested by the Employer, the Employer shall give a written notice of his intention to withhold payment with reasons and shall not delay payment of the remainder of the invoice.

## Audit and Investigation

1. Each payment made by the Employer to the Consultant may be subject to a post–payment audit by auditors, whether internal or external, of the Employer or by other authorised and qualified agents of the Employer at any time during the Term of the Contract and for a period of two (2) years following the termination of the Contract. The Employer is entitled to a refund from the Consultant for any amounts shown by such audits to have been paid by the Employer other than in accordance with the terms and conditions of the Contract.
2. The Consultant acknowledges and agrees that, from time to time, the Employer may conduct investigations relating to any aspect of the Contract or the award thereof, the obligations performed under the Contract, and the operations of the Consultant generally relating to performance of the Contract. The right of the Employer to conduct an investigation and the Consultant’s obligation to comply with such an investigation does not lapse upon Final Completion of the Service or prior termination of the Contract. The Consultant must provide its full and timely cooperation with any such inspections, post-payment audits or investigations. Such cooperation must include, but is not limited to, the Consultant’s obligation to make available the Consultant’s Personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant to the Employer access to the Consultant’s premises at reasonable times and on reasonable conditions in connection with such access to the Consultant’s Personnel and relevant documentation. The Consultant must require its agents, including, but not limited to, the Consultant’s attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by the Employer.

## 

## Set-Off

### The Employer, without prejudice to any other right it may have, may set-off any amount that may be due by the Consultant to the Employer under the Contract with any amount that may due by the Employer to the Consultant under the Contract.

# Liabilities

## Joint Liability

## In case the Consultant is a joint-venture, association or consortium, each party of such joint-venture, association or consortium shall be jointly liable to Employer for any and all of the obligations of the Consultant under the Contract.

## Liability Period

### Notwithstanding anything else in the Agreement or any legal requirement of the Country or any other jurisdiction (including, for the avoidance of doubt, the jurisdiction of the place of establishment of the Consultant), the Consultant shall not be liable to the Employer for any loss or damage resulting from any occurrence unless a claim is formally made against it before the expiry of the Liability Period as set out in Schedule 2 [*Details*].

## Limit of Liability

### The maximum compensation which the Consultant may have to pay to the Employer in respect of liability under Clause 6 shall be limited to the amount stated in the Schedule 2 [*Details*].

## Exceptions

### Sub-Clause 6.3 [*Limit of Liability*] does not apply to claims arising:

#### from deliberate default, fraud, fraudulent misrepresentation or reckless misconduct; or

### otherwise than in connection with the performance of obligations under the Agreement.

# Insurance

### The Consultant shall undertake and maintain during the Term of the Contract, and shall require its Subcontractors to undertake and maintain, the following valid and enforceable insurances:

#### Professional Liability Insurance;

#### Public Liability Insurance;

#### Employer’s Liability Insurance;

#### Any other insurance required in Schedule 6 [*Insurance*].

### The above insurance shall meet the minimum requirements set out below and in Schedule 6 [*Insurance*].

### The Consultant shall also procure and maintain during the Term of the Contract any other valid and enforceable insurance as may be required by Law and require its Subcontractors to effect and maintain such valid and enforceable insurance(s).

### Unless otherwise instructed by the Employer, the Consultant’s insurances shall be placed with insurers of good repute and with a financial rating of not lower than Standard & Poor's BBB, Moody's Baa or A.M. Best BBB+.

### The Consultant shall immediately notify the Employer in writing of the occurrence of any of the following events:

#### any circumstance which may lead to the cancellation, non-renewal, suspension or impairment of any insurance undertaken pursuant to this Clause;

#### an insurer denying coverage or liability for a claim;

#### an insurer asserting orally or in writing, that one or more of the insurances is void, voidable or otherwise unenforceable; or

#### it becoming aware of any circumstances which might lead to one or more of the insurances becoming void, voidable or unenforceable.

### The Consultant shall provide the Employer with a no less than 28-day written notice in advance of the cancellation, non-renewal, suspension or impairment of any of the insurances taken out pursuant to this Clause.

### The insurances referred to in this Clause shall:

#### name the Employer as co-insured;

#### contain a clause waiving the insurers' subrogation rights against each insured party, its personnel and agents (except where such rights are due to a vitiating act); and

#### provide for a no less than 30-day written notice of their cancellation, non-renewal or amendment to be given to the Employer.

### The Consultant shall, as soon as reasonably practicable, submit to the Employer copies of cover notes and/or a broker letter in evidence that:

#### the insurances to be procured and maintained pursuant to this Clause have been undertaken by the Consultant; and

#### all premiums due have been paid.

### Upon request of the Employer, the Consultant shall provide the Employer copies of the policies of the insurances required under this Clause.

### If the Consultant fails to procure or maintain during the Term of the Contract any of the insurances required under this Clause, the Employer may terminate the Contract immediately upon written notice to the Consultant without any liability of any kind to the Consultant as a result of such termination.

### The Consultant shall give the Employer and the insurer (as may be required by the applicable insurance) written notice immediately upon:

#### the occurrence of any loss which will or may exceed the deductible on a Consultant Insurance policy; and

#### becoming aware of any circumstances which might give rise to a loss which will exceed the deductible of the applicable insurance.

### Any notice given by the Consultant shall include full details of the nature of the loss or the circumstances which may give rise to the loss, its amount and the steps that have been taken, or will be taken in respect of such loss or circumstances subject to the insurer’s consent (as may be required under the applicable insurance). The Consultant shall keep the Employer fully informed in respect of any material developments as soon as they occur.

### The Consultant shall not, without obtaining the prior written consent of the Employer and the insurer (as may be required under the applicable insurance):

#### make any admission of liability to a third party;

#### enter into any negotiation to settle or compromise a claim under a Consultant’s Insurance;

#### enter into a settlement or compromise a claim on the Consultant’s Insurances; or

#### commence litigation or arbitration proceedings.

### In handling a claim with an insurer, the Consultant shall keep the Employer fully informed and seek the co-operation of the Employer and its professional advisors.

### The insurances required under this Clause shall be primary to and not in excess to (except in respect of any layers of third party cover effected specifically for the Services) or contributing with any other insurance maintained by any insured.

### Neither failure to comply nor full compliance with the insurance provisions of the Contract shall limit or relieve the Consultant of its liabilities and obligations under the Contract. Any amounts not insured or not recovered from the insurers shall be borne by the Consultant and/or the Employer in accordance with these obligations, liabilities or responsibilities.

### The Consultant shall be responsible under any of the insurance policies required in this Clause for any deductible, fees and other costs or failure to recover in whole or part, in which case the Consultant shall indemnify the Employer in respect of such deductible, fees and other costs or failure to recover.

### The cost of the above insurances shall be deemed to be incorporated into the Consultant’s fees.

### The obligations in this Clause shall survive the termination or expiry of the Contract.

# Claims and Dispute Resolution

## Claims

### If the Consultant believes to be entitled to additional time or costs under the Contract, it shall inform provide details to the Employer regarding the claim within 14 days of the circumstances giving rise to such claim.

### Within 28 days of receiving such claim, the Employer shall respond to the Consultant, asking for more information, grant or deny the claim.

## Amicable Resolution

### In the event of a Dispute, written notice of such Dispute shall be given to the other Party's Representative. That notice shall:

#### set out the legal basis of the claim;

#### set out the facts upon which the claim is based;

#### have annexed copies of correspondence and any relevant background material;

#### contain detailed particulars of the quantification of the claim; and

#### if the claim is made by the Consultant, be signed by its chief executive officer (or equivalent officer).

### Upon receipt of such notice by the other Party, the Employer’s Representative and the Consultant’s Representative shall attempt to resolve this matter amicably. If the Employer’s Representative and the Consultant’s Representative are unable to resolve the Dispute amicably within 28 Days, the Dispute shall be referred by either Party to Senior Representatives of the Parties to be designated in writing by the Parties at that time.

### If the Senior Representatives of the Parties are unable to resolve the Dispute amicably within 28 days, the Dispute shall be finally resolved, at the request of either Party, through arbitration in accordance with the provisions of Sub-Clause 8.3 [*Arbitration*].

## Arbitration

### If the Parties do not resolve the Dispute amicably pursuant to Sub-Clause 8.2, the Dispute shall be finally resolved, at the request of either Party, through arbitration in accordance with the UNCITRAL Arbitration Rules then in effect (the "**Rules**") provided that:

#### there shall be no seat or place of arbitration. The place of hearing shall be determined at the time of the Dispute;

#### the language of the arbitration shall be English;

#### the decisions of the arbitral tribunal shall be guided by the general principles of international commercial law. The arbitral tribunal shall have no authority to award punitive damages. In addition, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate (“**LIBOR**”) then prevailing, and any such interest shall be simple interest only; and

#### the Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

### The arbitral proceedings and any information and documents relating to these proceedings shall be regarded as confidential, subject to Sub-Clause 1.10.

# Privileges and Immunities

Nothing in or relating to the Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs, of which the Employer is an integral part, which are hereby expressly reserved.

# MISCELLANEOUS

### In connection with the performance of the Contract, the Consultant acknowledges that the imports and customs Law and regulations of the Country shall apply to the furnishings and shipments of any products and components thereof to the Country. The Consultant specifically acknowledges that the aforementioned import and custom Laws and regulations of the Country prohibit, among other things, the importation into the Country of certain products and components.

### The Contract may not be amended except in writing signed by a duly authorised representative of each of the Parties.

### Subject to any express provision in the Contract to the contrary, the respective warranties, obligations or liabilities of the Parties do not cease on the expiry or termination of the Agreement.

**PARTICULAR CONDITIONS**

Do not apply

|  |  |
| --- | --- |
| **Clause Number** | **New or Revised Clause** |
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### **SCHEDULE 1**

**Terms of Reference**

1. **1.0 Introduction:**

United Nations Office for Projects and Services (UNOPS) requests proposals for “**Consultant Services for New Design and/or Repair of Road Drainage Structures in South Kordofan State, Sudan”** in accordance with the requirements, terms and conditions of this Request for Proposal (RFP). This RFP sets forth the requirements for suppliers to include both pricing and service descriptions and proposals in the specified format.

**1.1 Background UNOPS Information**

UNOPS is the operational arm of the United Nations, helping a range of partners’ for the implementation of around1.9 Billion USD of development, infrastructure, procurement and humanitarian projects every year.

The UNOPS Sudan office is based in Khartoum and works closely with the Government of Sudan and international partners to support humanitarian response, recovery and development initiatives. UNOPS is the United Nations sector lead for the Basic Infrastructure Sector in Sudan and helps partners achieve their project goals in sectors including: construction of all kinds of infrastructures (dams, roads, bridges, etc.), water resource management, education, census and elections, human resource management and mine action.

**1.2 Context of the project**

Sudan South Kordofan State has been the center of armed conflict between the Government of Sudan and opposition groups in the past decades. Due to the series of armed conflicts, the state has struggled with poverty and the lack of basic services. It was only after 2016 when the ceasefire was endorsed that some areas of the state have become accessible to humanitarian actors. With the recent political development, the State has a potential to restore peace and stability and repair of the access roads became one of the urgent needs for the state.

At this specific stage, UNOPS intervention will concern the improvement of the access roads through the rehabilitation and the repair of six (6) drainage structures at selected locations. Based on a more detailed assessment, available budget and prioritization of needs in consultation with local stakeholders, the options will be for instance the redesign of the causeways or the design of small culvert bridges across ravines to allow the road to be passable for users. The structures are located in the major routes (axis) that are:

* Dalami – Kurtala – Habila – Dellinge (108,5 Km): This is the only access to Dalami locality from the asphalt road that connects to Kadugli the State Capita and El Obeid in North Kordofan. ;
* Abu Kershola – Sidra – El Rahad (72 Km): This road serves also as the only connection to Kadugli, El Obeid and Khartoum.

1. **2.0 Development Objective**

This programme is designed to address insecurities of vulnerable communities of Abu Kershola and Dallami localities of South Kordofan State of Sudan, who were most severely affected by the conflicts and following mass displacement and large numbers of returnees. The programme will utilize a multi-sectoral human security approach to address the most urgent humanitarian needs while paving pre-conditions for development through strengthening the access to basic services and WASH, livelihood systems, education, and protection measures, after removing landmines and ERW in and around the community. The effectiveness and sustainability of the programme will be enhanced by adopting and mainstreaming the human security approach. The mainstreaming will focus on five different areas.

The repair of the six (6) causeways is only a small part of a larger programme that UNOPS is aiming to implement.

1. **3.0 Scope of Infrastructure Design Works**

It is expected that the design will provide suitable, sufficient and detailed enough in order to rehabilitate and construct the causeways. Without limitation, the following elements for each causeway have to be considered and designed:

* Any protection for the works if deemed necessary such as a cofferdam;
* Excavations for the foundations if needed;
* Foundations type for each causeway;
* Engineered and compacted backfill if replacement or improvement is needed;
* Concrete conduits, culverts or any other drainage mean;
* Approaching embankments
* Slopes protections for embankments and backfills against erosion and scouring;
* Road structure below the concrete platform;
* Repair and improvement of concrete platform;
* Etc.

1. **4.0 Phases of the Design**

**General Requirements**

The frequent occurrence of intense floods has been identified as high risk aspect in the project design as such should be included within the design approach. The consultant will be required to effectively demonstrate his approach to resilient design within the proposal. The hydrological and geotechnical aspects are very important for this particular design.

The successful designer should include the resolution of technical queries associated with the design during the construction and make provision for the Lead Designer to answer the site queries during the construction works (consider one day per month during 6 months period for construction).

The consultant will undertake an environmental and social screening assessment of the proposed works. The screening will be carried out in-country based on visual observation of the project site and surrounding areas, supplemented with available desktop data where this is available. The assessment will consider the direct impacts associated with the project as well as associated or indirect activities such as the surrounding of construction materials.

The screening process will make general reference to the environmental and social assessment screening questions outlined in the United Nations Environmental and Social Screening procedure for UNOPS projects Guidance Note. The Consultant will be required to prepare the assessment methodology; provide a description of the social and environmental baseline; and describe potential environmental and social impacts that require mitigation or management through the whole life of the project. The screening report will include an Environmental and Social Management Plan (ESPM) which will govern all construction phase activities. The ESMP will be developed to address the specific environmental issues/impacts identified in the screening report and will be presented in such a way that is understandable and practicable from the construction team’s perspective.

The design should be fully coordinated and incorporate not only the physical interaction of designed elements, but must also consider foreseeable risks to health and safety. The design must as far as is reasonably practicable should eliminate hazards and reduce risk associated with those hazards which remain. The Designer must provide adequate information about any significant risks to health and safety associated with the design. The Designer must co-ordinate their work with that of others in order to improve the way in which health and safety risks are managed and controlled.

The Designer shall allow for the attendance or the availability on a Monthly basis of the Lead Design Manager to be involved with Technical Committee meetings. The Designer shall make available during the construction period suitably qualified technical staff to respond promptly and efficiently to Technical Queries relating to the design and specification of the project.

The Designer shall prepare in line with the Construction Schedule samples of key construction components for approval by UNOPS.

The project design shall be executed in three phases as summarized below:

**Phase 1 - Site Investigation and Preliminary Design, 0-30%**

In this phase of the project, a site investigation and associated environmental screening will be carried out and preliminary designs will be prepared. The following approach is proposed;

The Consultant shall undertake detailed site investigations and carryout initial design for the proposed works. The Consultant shall gather all the required documentation to assure compliance with the requirements of the project, specification and relevant codes of design in Sudan.

The consultant has to conduct during this phase the geotechnical and the topographical survey.

The design approach shall be described within a Design Brief, compiled by the designer that shall be issued for approval to UNOPS prior to triggering the design works.

The Design Brief shall be developed in line with BS 7000-4:2013 Incorporating Corrigenda Nos. 1 and 2 Design management systems Part 4: Guide to Managing Design in Construction

The activities during this phase of the works shall include the preparation and issuance of a site visit report including the existing data analysis. This report shall also detail the investigative work carried out, the alternatives technical solutions for achieving the project objectives, costs of these and the recommended manner to proceed with the project implementation.

The Site Investigation and Preliminary Design shall include the following activities (0-30% progress):

1. The Designer will be required to coordinate with the UNOPS Project Manager to supply and provide an accurate boundary and topographic survey. This survey will identify the location of boundaries and/or project limits and the location of existing causeways;
2. The Designer will secure all necessary permits and approvals for the works. The UNOPS Project Manager will support this process;
3. The Designer will review all available information on the physical characteristics, including geo-technical data, hydrological and hydrogeological data, environmental assessment, and bathymetric data concerning the river;
4. Evaluate siting of the proposed Works with respect to actual traffic patterns and accessibility for vehicles and pedestrians (including the factors of handicapped access, safety, and regional climate);
5. Comply with the appropriate Flood Prevention Design Codes and Bridges Design Codes available in Sudan;
6. Prepare concept drawings (site plan, concept drawings showing foundation types, slopes, dimensions, opening, etc.) for review by the UNOPS and appointed members from the Ministry;
7. Identify any major engineering issues related to resilience, structural, seismic, or environmental conditions that could affect the configuration, integrity and cost of the future causeway;
8. Prepare the first construction cost estimate based upon the preliminary design (+/- 30%).

A formal, written approval is required before the Designer is authorized to proceed to the 30-80%, Design Development stage.

**Phase 2 - Detailed Design and Technical Specifications (30-85%)**

This phase follows review and approval of the preliminary design report by UNOPS. The focus of this project phase will be the detailed engineering design of the approved engineering option.

During design development, the Designer will refine the initial concept or preliminary design. It is expected that the design development phase will take the concept design to the next level of detail as follows:

1. Review preliminary design with the relevant Ministry technical team, the UNOPS Project Manager as well as preliminary documents for review to regulatory agencies;
2. Guide the different stakeholders in order to take a decision about the retained option;
3. Perform a comprehensive hydrological and geotechnical studies and simulations;
4. Adapted the chosen preliminary design to the findings of these studies;
5. Perform a detailed design with enough drawings and technical specifications covering all the engineering aspects of the causeways: geotechnical, Hydraulics, structural, concrete, etc;
6. Write the technical specification that must explain the requirements and comply with the detailed drawings;
7. Throughout the design, the Designer will interface with UNOPS Project Manager and the Technical personnel from the relevant ministries to translate the evolving design and to discuss cost implications of major decisions;
8. Prepare the detailed construction cost estimate based upon the detailed design (+/- 10%).

A formal, written approval from UNOPS is required before the Designer is authorized to proceed to the 85-100%, Design Development stage.

**Phase 3 - Final Revision Phase (Construction Documents) 85-100%**

The following steps summarize (but are not limited to) the major elements to be completed by the Designer at the 85-100% Design Stage.

1. Comprehensive design report justifying all the design components including: design criteria, design inputs and their justifications (Hydraulic, geotechnical, structural, etc.), calculation notes, etc;
2. Final detailed drawings and technical specifications after all the stakeholders comments;
3. A detailed Bill of Quantity in compliance with the drawings and the technical specifications;
4. Quality Control Guidance that outline the different tests and their frequency that should be conducted during the construction by the contractor.
5. Consult with the Project Manager regarding any special requirements to be included in the contract documents for the bidder’s information.
6. Make sure that all the documents are reviewed and accepted by the UNOPS Project Manager.
7. **5.0 Expected Outputs**

This RFP does not specifically request assistance during the tender process as this will be undertaken by UNOPS. The consultant may however be asked to provide tender adjudication support. If it is the case, it will be an additional service.

**9.0 Deliverables**

The following deliverables will be completed during design development process and will form part of the Design Services Agreement.

* All required planning, design and construction permits and approvals;
* Environmental and social screening assessment;
* Site visit Report;
* Geotechnical and Topographical Survey Reports;
* Design Brief and Design Criteria;
* Preliminary Design (drawings and justifications);
* Detailed design;
* Technical specifications;
* Bill of Quantities;
* Construction Estimate (preliminary and detailed);
* Design report;
* Timelines for execution of works (in each phases 1 , 2 and 3);
* Quality Control test plan.

|  |  |  |
| --- | --- | --- |
| **Design Area** | **Deliverable** | **Design Stage** |
| **Existing data Analysis, Site visit and investigation campaign** | Site Visit Report  Environmental and social screening assessment  Geotech/Topo Report | 0 – 30% |
| **Preliminary Design phase** | Design Criteria and Design Brief  Preliminary Design drawings  Preliminary Cost estimate (+/-30%) | 0 – 30% |
| **Detailed Design Phase** | Full set of drawings showing the detailed design  Related Technical Specifications  Bill of Quantities  Detailed Cost Estimate (+/- 10%) | 0 – 85% |
| **Final Revision Phase (Construction Documents)** | Reviewed Detailed drawings after comments  Design report;  Quality Control test plan. | 85%-100% |

1. **7.0 Management of the Design Project**

The communication and transfer of information is critical to the success of the Design phase of the project. It has, therefore been considered necessary to create and ensure an effective mode of communication between UNOPS and the consulting firm to ensure that stakeholders’ needs are met.

Therefore the Designer shall allow for the attendance scheduled meetings of the Lead Design Manager, UNOPS project Manager and his/her team, as well as 0%, 30%, 85%, and 100% design review meetings.

Technical personnel from the appropriate government departments of Sudan shall support and represent the beneficiary’s needs. The technical representatives from the relevant Govt. and UNOPS will be responsible for the review and approval of the design process at key completion (i.e., 30%, 85%, 100%) stages. UNOPS will review the technical progress reports, design schedules, design changes, and submit its recommendations and or comments to the consultant.

Table below indicates constituents of the project board and reporting channels.

Project Board

Government of Sudan, UNOPS, United Nations Mine Action Services (UNMAS)

Implementing Agency: UNOPS

Beneficiaries: Localities: Dalami and Abu Kershola. Villages: Dalami Town , Kadber , Kukaya, Hijer , Um Baraka, Bobaya, Hajar Senina, Eain Al Dabap,

Gardoud Niama, Gamgaka, El Farsha, Aradiba, Abu Alhassan, Zilataya, Tajelbo, Um Shutour, and Sidra.

Technical Reps. from relevant Govt. Agencies

Monitoring

UNOPS Project Manager

Consultant

1. **8.0 Sequence of Approval**

The approval of the design phases shall follow the sequence below:

1. Internal UNOPS reviews and approvals.
2. Government of Sudan – via the technical focal point person

Adequate time must be built into the design plan to facilitate these approvals (minimum 10 days)

**9.0 Construction Documents**

The Consultant will be required to submit final construction documents including specifications to the Project Manager for review and approval.

Designs -All drawings shall be prepared to ISO standards. They shall include all layouts, elevations, sections, details, dimensions and schedules necessary to permit pricing, contracting and construction of the specified project. Drawings shall include:

* Full title blocks including the name and logo of the Government of Sudan and UNOPS
* Drawing numbers
* Revision numbers
* Revision details
* Legend
* Scale

1. **10.0 Reporting**

**Monthly Progress Reports**

Monthly progress reports with details have to be submitted to UNOPS by the Consultant. The Progress Reports shall incorporate all information related to the design of the project. Deviations from schedule and project budget should be noted along with any anticipated delays with a recommended course of action. Outstanding issues from the previous month design activities should be noted along with planned activities for the coming month.

**11.0 Design Programme**

**Timing**

A total of 90 calendar days are envisaged from commencement to completion of the design works and subsequent handover of information to UNOPS.

If the contractor fails to deliver the Services or part thereof in accordance with the milestone dates specified noted for the 100% tender design stages, UNOPS may, without prejudice to its other remedies under the Contract, deduct from the payments due to the Designer, as Delay Damages, a sum equivalent to 0.2 percent of the actual Contract price per each calendar day of delay for each package. The total amount of liquidated damages so applied may not exceed 10% of the total Contract price.

**SCHEDULE 2**

**Details**

|  |  |
| --- | --- |
| **Commencement Date** | The Service shall commence from [the Date of the Contract signing]. |
| **Day** | The term “Day” shall refer to business days in the city of South Kordofan Sudan. |
| **Estimated Time for Completion** | The estimated time for completion of the Services is [xxxx]. |
| **Works** | The term “Works” refer to [describe underlying works under which the Services are required]. |
| **Employer’s Representative** | The Employer’s Representative is:  [xxx] |
| **Consultant’s Representative** | The Consultant’s Representative is [*insert name*] |
| **Communications** | Notices and other written communications shall be addressed to, as may be applicable:   * **To the Employer**:   [xxxx]   * **To the Employer’s Representative**:   [xxxx]   * **To the Consultant**:   [*Insert Information of the Consultant*]   * **To the Consultant’s Representative**:   [*Insert Information of the Consultant’s Representative*] |
| **Liability Period** | The Liability Period shall no lesser than [7 years] or as provided by Law. |
| **Liability Limit** | The Consultant’s contractual liability to the Employer shall be limited to the Agreed Compensation, as set out in Schedule 4 [*Remuneration and Payment*].  The Consultant’s liability for negligence, errors or omissions to the Employer shall be limited to the maximum liability limit under its Professional Indemnity insurance. |

**SCHEDULE 3**

## Equipment, Facilities, Personnel and Services of Others to be Provided by the Employer

**SCHEDULE 4**

**Remuneration and Payment**

* 1. In full consideration for the complete and satisfactory performance of the Services under this Contract, UNOPS shall pay the Consultant a contract price of USD xx,xx, as per payment schedule below.
  2. The price of this Contract is not subject to any adjustment or revision because of price or currency fluctuations or the actual costs incurred by the Consultant in the performance of the Contract.
  3. Payments effected by UNOPS to the Consultant shall be deemed neither to relieve the Consultant of its obligations under this Contract nor as acceptance by UNOPS of the Consultant's performance of the Services.
  4. UNOPS shall effect payments to the Consultant after acceptance by UNOPS of the invoices submitted by the Consultant to the address specified, upon achievement of the corresponding milestones and for the following amounts:
  5. All payments shall be made by UNOPS to the following Bank account of the Consultant:

[Name of the bank]

[Account number]

[Address of the bank]

* 1. The payment schedule should be as follows:

1- Delivery of  Design in line with Design Complete  30%

2- Delivery of  Design in line with Design Complete 30%

3- Delivery of  Design in line with Design Complete 40%

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Milestone** | **Amount** | **Target date** |
| 1 | Inception and Draft Final Report | 10% |  |
| 2 | Draft and Final Assessment Report | 10% |  |
| 3 | EIA Draft and Final Reports | 10% |  |
| 4 | Draft and Final Feasibility Report | 10% |  |
| 5 | Draft and Final Waste Management Strategy document | 10% |  |
| 6 | Draft and Final Business Plan document | 10% |  |
| 7 | Detailed Engineering Drawings, Specifications & BoQ and related procurement documentation -15% | 20% |  |
| 8 | Draft and Final Implementation Plan, Communications and Capacity Development Plans | 20% |  |

**SCHEDULE 5**

**Time Schedule for services**

**Timeline**

**SCHEDULE 6**

**Deliverables**

The following deliverables will be completed during design development process and will form part of the Design Services Agreement.

* All required planning, design and construction permits and approvals;
* Environmental and social screening assessment;
* Site visit Report;
* Geotechnical and Topographical Survey Reports;
* Design Brief and Design Criteria;
* Preliminary Design (drawings and justifications);
* Detailed design;
* Technical specifications;
* Bill of Quantities;
* Construction Estimate (preliminary and detailed);
* Design report;
* Timelines for execution of works (in each phases 1 , 2 and 3);
* Quality Control test plan.

**Insurances**

**As per Returnable Proposal Schedule 7**

**SCHEDULE 7**

**Key Personnel**

|  |  |  |
| --- | --- | --- |
| **Name** | **Title** | **Role** |
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