

RFP02/2021: River Basin Management Plans for Kosovo

QUESTION & ANSWERS N°5 – 09.03.2021

Q1: *In the tender document is written that Service Providers are alerted that non-acceptance of the terms of the General Terms and Conditions (GTC) may be ground for disqualification from this procurement process. Is it acceptable to make suggestions in the proposal for additional provisions?*

A1: *The question relates to our standard template terms, spanning across all potential contractors and all work we do under the IWRM-K Program. Non-acceptance of those terms and conditions is indeed ground for disqualification. Also, we strive to treat all potential contractors equally to avoid favoritism and the appearance of favoritism.*

Q2: *In article 7 of the Terms and Conditions of Contract is prescribed that Contractor must defend indemnify and hold IWRM-K harmless against damages resulting from an act or omission of Contractor. Not-for-profit organizations need to be cautious on the responsibilities it absorbs and therefore does not accept to defend clients. Does IWRM-K agree to deleting the obligation to “defend” in article 7?*

A2: *For the reasons stated under A1 above, it is IWRM-K legal policy that we do not consider exceptions to the indemnity language in Section 7. Indemnification. We treat all RFP participants equally regardless of the legal status of their organization.*

Q3: *Please In article 7 of the Terms and Conditions of Contract is prescribed that Contractor must defend indemnify and hold IWRM-K harmless against damages resulting from an act or omission of Contractor. This obligation to indemnify is not limited to negligent acts or omission, meaning there is no insurance coverage. Could IWRM-K agree to making article 7 of the Terms and Conditions of Contract only applicable to negligent act and negligent omissions?*

A3: *Due to the nature of the work contemplated we consider any downgrade in the standard of care to be against public policy and thus unacceptable.*

Q4: *In the Terms and Conditions of Contract is no limitation of liability. It is common practice in international tenders to limit liability of the Contractor. Could IWRM-K agree to add a limitation of liability to the agreement? Could IWRM-K agree to, for example, an overall limitation of liability for all claims resulting from the agreement of 1x the price of the agreement, unless the damages result from gross negligence or willful misconduct?*

A4: *We can potentially consider a fair liability cap for future cases but changing the Terms and Conditions requires lengthy deliberation and drafting which cannot be applied to this particular procurement; however, death and personal injury will need to be carved out in any potential changes.*

Q5: *Could IWRM-K agree to exclude liability for indirect damages, including but not limited to consequential damages, loss of profit, missed savings and damages incurred due to production stagnation and/or business interruption?*

A5: *Same response as above.*

Q6: *Could IWRM-K agree to have any liability claim expire after 5 years after termination or expiration of the agreement?*

A6: *We can't agree to this proposition.*