



PORTO DE LUANDA E.P.

**ANNEX III
SPECIFICATIONS**

Competition Limited by prior qualification No. 001/68.00/2019

**"ACQUISITION OF CONSULTANCY SERVICES FOR THE
ELABORATION OF STUDIES AND CONCEPTION OF THE GENERAL
MASTER PLAN OF THE PORT OF LUANDA - PDGPL (2020-2044)"**

August 28th, 2019

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Specifications
CONTRACT FOR THE ACQUISITION OF CONSULTANCY SERVICES
FOR THE ELABORATION OF STUDIES AND CONCEPTION OF THE
GENERAL MASTER PLAN OF THE PORT OF LUANDA-PDGPL (2020 -
2044)

Specifications

Procedure No. 01/68.00/2019

PORT COMPANY OF LUANDA

Luanda, August 30TH, 2019



TITLE I
LEGAL CLAUSES

CHAPTER I
GENERAL PROVISIONS

1.st Clause - definitions

In the documents of the procedure and the contract, the following words and phrases have the meaning that this paragraph assigns to them, except when the context imposes different reasoning, it is understood by:

- a) '*Public contracting authority (EPC)*' means as the Port Company of Luanda, E.P.;
- b) '*Supplier*' means the company or merchant to whom the contracting public authority assists the proposal for the procurement of services;
- c) '*Contract*' means the agreement signed by the contracting public entity and the supplier, where they stipulate the duties and conditions between them, with the purpose, of the acquisition of consultancy services, for the elaboration of studies and Conception of the General Master Plan of the Port of Luanda - PDGPL (2020-2044).

2.nd Clause - Object

- 1- This specification shall comprise the clauses to be included in the contract to be settled, following the pre - qualification limited competition, with a view to acquiring consultancy Services for the elaboration of studies and Conception of the General Master Plan of the Port of Luanda - PDGPL (2020-2044).
- 2- The signature of the contract does not confer on the service provider any right of exclusivity in the provision of the services referred to herein.
- 3- The provision of the services covered by this procedure shall comply with the provisions of this specifications.
- 4- The object of the contract referred to, in this Specifications, covers all services and any other interventions that are indicated and detailed in the technical specifications and the commercial proposal and which represents the set of activities necessary for the full implementation of the services.

3rd Clause – Contract and prevalence

- 1- The underlying contract to this procedure shall be entered into in writing as a rule.
- 2- The contract is consist of the respective contractual clauses and their extensions.
- 3- The contract to be concluded also incorporates the following elements:
 - a) Clarifications and corrections to the specifications provided by EPC;
 - b) The specifications;
 - c) The proposed award, and
 - d) Clarifications on the tender awarded by the successful Tenderator and accepted by the contracting public entity.
- 4- In the event of a divergence between the documents referred to in the preceding paragraph, the respective prevalence is determined by the order in which they are indicated.
- 5- In the event of a divergence between the documents referred to in paragraph 3 of this clause and the contract agreement, the first shall prevail, except where the proposed adjustments have been accepted by the supplier.

4th Clause – Term of validity

- 1- The contract shall remain in force for a period of 6 months from the date of the award or, until the execution of the services in accordance with the contractually defined terms and conditions, without prejudice to the obligations that must last beyond the termination of the contract.
- 2- In all cases, the period of validity of the contract shall not exceed ten months, including any express or implied extensions of the time limit for the performance of the benefits constituting its object.

CHAPTER II CONTRACTUAL OBLIGATIONS OF THE PARTIES

5th Clause – Obligations of the contracting public entity

- 1- Due to the proper realization of the services subject to the contract, the contracting public authority shall pay the service provider the price set forth in the contract to be concluded.
- 2- Payment must be made in the legal currency in progress in the Republic of Angola and for non-resident exchange, the payment will be made in foreign currency (dollars or Euros).
- 3- The payment must be paid within 30 days of receipt by the contracting public authority of the respective invoices.
- 4- If the deadline set out in the preceding paragraph is not observed, it is deemed that the performance of the payment only expires in 45 days after receipt of the invoices.
- 5- In the event of disagreement on the part of the Contracting Public Authority, related to the values indicated in the invoices, it shall communicate to the service provider, in writing, the respective grounds, being obliged to provide the necessary clarifications or to issue a new corrected invoice.
- 6- Provided the invoices are duly issued and accepted by the contracting public entity, it must be paid in accordance with legally established terms and deadlines.
- 7- The contracting public entity shall also:
 - a) Create the necessary conditions for the service provider to have access to all the information necessary to provide the services with the necessary quality;
 - b) Appoint a technical representative before the start of the services which must be used as a contact element;
 - c) Provide, where necessary, physical space and appropriate facilities for the execution of the services, keeping such places and their accesses in transit conditions and free for the execution of the services.

6th Clause – Supplier obligations

Without prejudice to other obligations under the applicable law, in the specifications or contractual clauses, the conclusion of the contract is to the service provider the following main obligations:

- a) Performing the services, in the exact terms we set out in these specifications, according to international quality standards, proven recognized, appropriate to the concrete conditions of Angola;
- b) Provide training to the employees or technicians of the contracting public entity, or at its service, whenever the nature of the contract requires it;
- c) Dispose of all necessary resources for the provision of services, including qualified personnel, equipment and materials;
- d) Comply with and make all its employees, employees, agents or representatives strictly comply with all the internal policies and regulations of the Contracting Public Entity, whenever within the premises of that;
- e) Appoint a responsible or technical representative before the start of the services, which shall act as a contact element and representative of the service provider, with the power to negotiate on commercial aspects such as project extensions, requests Changes or large adjustments to the plan or project;
- f) Qualify and maintain qualified employees according to the specific needs of the services covered on the basis of these specifications;
- g) Maintain, fully, all legally required insurance, necessary for the purpose of carrying out the purpose of this contract, for the entire period of validity;
- h) Immediately communicate to the Contracting Public Authority, the occurrence of any facts affecting or which would affect the services under its responsibility, such as accidents, interruption of roads, seizures, vehicle malfunction, thefts and others;
- i) Allow the Contracting Public Entity, to supervise the services, without limits, forcing itself to comply with its recommendations, without thereby leaving the service provider being in any way exempt from the obligations and liabilities assumed in relation to The specifications;
- j) CORRECT the studies or works that have been produced and are considered as disabled, without additional charges for the Contracting Public Entity;

- k) Provide your staff with adequate equipment for the type of activity to be developed, maintaining safety, health and hygiene at work under the legislation and other regulatory standards in force;
- l) Ensure that the provision of services is not interrupted by the absence of materials or the technical owner and that the quality of the services is maintained;
- m) Replace any employee, employee, agent or representative used in the provision of services, by a mere interpellation of the Contracting Public Entity, whenever it deems necessary, not determining such substitution any modification of the contractual conditions;
- n) Finished the execution of the services according to the work schedule proposed by the supplier and approved by the contracting public entity, which is an integral part of this specification.
- o) Execute the services with the highest standards of professional competence and ethical integrity;
- p) Indicate the list of all team members involved in the project with detailed information, and if there is any unavailability of any member of the project must designate another with qualifications and experiences equal to or greater than that of the replaced, under Approval of the contracting public entity;
- q) Comply with all applicable legislation, as well as the standards and specifications of official bodies or entities holding patent or copyright;
- r) Respect the tax laws in force in Angola, mainly those who regulates taxes due.

7th Clause – Place of service provision

- 1- The services covered by this procedure shall be provided in the area of jurisdiction, of the Contracting Public Entity, including and extended to the projected development area, up to the region of Barra do Dande, determined by the Contracting Public Entity.
- 2- The Contracting Public Entity may, in the term of the contract, request the provision of the services covered by this procedure in other facilities to be indicated, with temporary or permanent presence, without any changes in the price.

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8th Clause – Language of the provision of services

- 1- The services must be provided in Portuguese, with all the resources allocated to the provision of services and that interact directly with the Contracting Public Entity must have the knowledge of Portuguese language, oral and written.
- 2- The documentation to be provided must be written in Portuguese, and can only be written in another language when the Contracting Public Entity so requests or consents.

9th Clause – Technical team

The technical staff provided by the service provider for the execution of the contract shall have the necessary and adequate resources for the complete and perfect fulfilment of the obligations, in accordance with the provisions of the technical clauses of the specifications.

10th Clause – Personnel Management

- 1- During the entire period of the contract, the service provider is responsible for the recruitment, remuneration, training and management of all personnel necessary for the effective provision of services, on any day of the year.
- 2- During the whole period of the contract, the service provider is liable to the Contracting Public Entity and to third parties, for acts of all personnel that it uses in the execution of the contract and for the risks that comes from the development of Activities included in the provision of services.
- 3- The responsibility for the correct execution of the contract is exclusive to the service provider, even if it has recourse to third parties for the said implementation.

TITLE II TECHNICAL AND FINANCIAL CLAUSES

CHAPTER I OF WARRANTIES

11th Clause – Guarantee

- 1- The warranty period for the services provided for in the present specifications is 10 years, from the date of the total execution of the services.
- 2- Where deficiencies are detected during the guarantee period referred to in the preceding paragraph, the service provider undertakes to carry out, at his own account and immediately, any adjustment or corrective work that is necessary.

12th Clause - Collateral to ensure compliance with obligations.

- 1- In order to ensure the exact and timely fulfilment of its obligations, the service provider shall provide a collateral/deposit of 20% of the total value of the contract.
- 2- The Public Contracting Entity may consider lost in its favor the deposit given as security provided, irrespective of judicial decision, in cases of non-compliance with legal, contractual or pre-contractual obligations on the part of the service provider.
- 3- The deposit will be released in accordance with the Public Procurement law.

13th Clause - Warranty Provision Modes

- 1- The collateral/ deposit can be provided by cash deposit or by bank guarantee, as chosen by the service provider, and accepted by the contracting public entity.
- 2- All expenses arising from the provision of collateral are the responsibility of the service provider.

14th Clause -Price advances¹

- 1- At the request of the service provider and if so, decides the Contracting Authority, it may make advances of payments on behalf of the services to be provided or preparatory acts or accessories of such services, as long as:
 - a) The value of advances is not more than 15% of the contractual price;
 - b) The service provider has previously proved to the Contracting Authority the provision of a deposit for advance price, in accordance with the Law of Public Procurement.
- 2- Advances will be paid to payments as agreed in the contract

15th Clause - Budgetary Calculation

- 1- The overall value of this agreement will be guaranteed by the funds entered in the Contracting Public Entity, relative to the year 2019 and 2020.
- 2- The service provider before commencing the execution of the contract shall require his/her route of the Global cabimentation note.

16th Clause -Insurance

- 1- The service provider shall enter into the following mandatory insurances, appropriate to the protection of the interests of the Contracting Public Entity:
 - a) Against occupational accidents;
 - b) Liability for all bodily harm and/or material caused to third parties and/or to the Contracting Public Entity.
- 2- The service provider undertakes to maintain during the entire duration of the contract which is to be concluded and eventual extension, the insurance referred to in the preceding paragraph, duly paid and updated.

17th Clause - Confidentiality

- 1- The service provider assumes the obligation that the information and documentation, whatever its support, will not be transmitted to third parties, neither be subject of any use or manner of exploitation other than that intended directly and exclusively to the execution of the contract.
- 2- It shall also be obliged to protect confidential information appropriately or in accordance with the applicable professional *standards*, and not to use under any circumstances, the data and information provided by the Contracting Public Entity, for any other purposes other than those inherent in the development and execution of the contract.
- 3- The duty of secrecy shall remain in force until the end of the 25 -year period following the completion or termination, for any cause, of the contract, without prejudice to the subsequent submission to any legal duties relating, inter alia, to the protection of Trade secrets or credibility, prestige or trust due to legal persons.

18th Clause - Intellectual property and copyright

- 1- All the know-how concerning the provision of the services included in this procedure, in particular the results of studies, reports or any other documents, prepared by the service provider, for Subcontracted entities as well as all intellectual property rights on them are, under the contract to be concluded, to the extent permitted by law, property or owned by the Contracting Public Entity, for all purposes, it may freely modify and use them for any purpose.
- 2- The service provider undertakes, in contracts which it concludes with subcontracted entities, to guarantee the provisions of the preceding paragraph.

- 3- The service provider shall indemnify the Contracting Public Entity for all damages, damages or costs arising from actions or procedures for infringement of intellectual property rights in respect of documents, manuals, equipment, Materials, drawings, written or drawn pieces, ideas or techniques protected by intellectual property rights, even if such infringement is not due to the negligence or intent of the service provider.
- 4- The obligations resulting from the direct or indirect use of patents, designs, trademarks or manufacturing marks, including those relating to the obtaining of the necessary authorizations from the respective owners and those inherent in the payment of the corresponding charges, shall be held solely by the service provider, who should be deemed as the only liable in the event of any legal issue resulting therefrom, as well as any claim arising from the infringement or allegation of breach of such Rights.
- 5- The service provider may not invoke any personal rights in respect of intellectual property rights in order to prevent the fulfilment of the obligations arising from the contract to be concluded.
- 6- The service provider shall comply with all legal obligations and duties resulting from the direct or indirect use of industry property rights of the Contracting Public Entity or third parties, including registered drawings, trademarks of Trade or manufacturing, registered patents or licenses.
- 7- In the event of infringement, or alleged infringement, of the industrial property rights referred to in the previous paragraph, the service provider is the only responsible for any judicial matter or claim, complaint made to the Contracting Public Entity, indemnifying it for all expenses incurred by it, as a result, is to be made and of all the sums it has to pay as the title it might be.

Clause 19- Payment delay

If the payment is not made within 60 days from the date of the execution of all services, the service provider is entitled to interest on arrears at the statutory rate.

CHAPTER II OF SURVEILLANCE

20th Clause - Supervision

- 1- Without prejudice to the tasks committed to the representative of the Contracting Public Entity, it may designate a person, natural or legal, with sufficient technical qualifications, to supervise the services to be carried out by the service provider, in accordance with the stipulated in the specification note.

The contracting public entity shall inform the service provider in writing of the authority, responsibility, work procedures and scope of the supervision of the inspector concerned.

- 2- The cost of the inspection will not be included in the total value of the contract and must be borne by the Contracting Public Entity.

TITLE III

CONTRACTUAL PENALTIES AND RESOLUTION

CHAPTER I

PENALTY OF PENALTIES

21st Clause - Delays and Penalties

- 1- In the event of non-compliance with the deadlines set out in the contract and due to the service provider, the daily fine of 0.1% of the total value of the contract is due.
- 2- In the event of resolution of the contract for non-compliance of the service provider, the Contracting Authority may require payment of compensation.
- 3- In determining the seriousness of the non-compliance, the Contracting Authority shall take into account the duration of the infringement, its reiteration, the degree of the culpability of the service provider and the consequences of non-compliance.
- 4- The penalties provided for in this clause shall not prevent the Contracting Public Entity from claiming compensation for the surplus damage.

22nd Clause - Acts of God or Force Majeure and Third Parties Attributable Facts

- 1- No penalties may be imposed on the service provider, nor shall it be considered as non-compliance, the non-fulfilment on time, of the contractual benefits, of

any party resulting from the case of force majeure, as such the circumstances extraordinary or unpredictable nature outside the will of the affected Party and that it cannot be controlled.

- 2- They may constitute force majeure, and if they meet the requirements of the preceding paragraph, namely, war situations (whether declared or not), turmoil, civil insurrection, natural disasters, general strikes of national scope, fires, floods, explosions, Government decisions or other situations not controllable by the parties.
- 3- The occurrence of circumstances that may substantiate cases of force majeure shall be communicated to the opposing party within a maximum of 5 days from the date on which they have been aware of the occurrence of the same.
- 4- Without prejudice to the previous paragraph, the service provider shall inform the Contracting Public Entity of the obligations arising from the contract whose compliance, in its opinion, is prevented or hampered by force of such occurrence and the Measures it intends to implement in order to mitigate the impact of the situation and the respective deadlines within 10 days of the occurrence of the circumstance of force majeure.

23rd Clause -resolution on the part of the contracting public entity

- 1- Without prejudice to other grounds of resolution provided for in the law, the Contracting Public Authority may terminate the contract, on a sanctioning basis, in the event that the service provider infringes in a serious or reiterated manner any of its obligations, in particular, in the following cases:
 - a) For the delay in the prestation of services exceeding 30 days or written statement by the successful tender that the delay shall exceed that period;
 - b) The total or partial breach of the contract by the service provider;
 - c) The bankruptcy of the provider or injunctive relief or diligence in an executive action concerning goods and equipment that prevent the normal maintenance of the provision of services;
 - d) The dissolution and liquidation of the service provider.
- 2- The resolution of the contract under the preceding paragraphs does not determine the repetition of the benefits already made by the Contracting Public Entity.

24th Clause - Resolution by the Service Provider

- 1- Without prejudice to other grounds of resolution provided for in the law, the service provider may resolve the contract when:
 - a) Any amount owed to him is in arrears for more than six (6) months or the amount due in fines exceeds 15% of the contract price, excluding interest;
 - b) The total or partial breach of the obligations assumed by the Contracting Public Entity in the contract, which puts into question its maintenance.
- 2- In the cases referred to in paragraph 1(a), the right of resolution or withdrawal may be exercised by means of a declaration sent to the Contracting Public Entity, which shall take effect thirty (30) days after receipt of the declaration , unless the contracting public entity complies with the arrears in that period, plus the interest on arrears to which it is held.
- 3- Without prejudice to the foregoing paragraphs, the right of withdrawal is only possible when the termination does not cause serious harm to the public interest underlying the contractual relationship or, if it implies such injury, when the maintenance of the Contract clearly calls into question or concerned the economic and financial viability of the service provider or if it proves excessively costly and, in the latter case, the public and private interests in attendance should be duly weighed.
- 4- The termination of the contract under the preceding paragraphs does not determine the repetition of the benefits already made by the service provider.

CHAPTER II DISPUTE RESOLUTION

25th Clause - Extrajudicial Resolution

- 1- The parties declare that they are in good faith and that they will make every effort and use all the means at their fingertips, with a view to ensuring the pursuit of the objectives set out in the contract, always privileging the solution of any divergences, doubts or the use of collaboration and conciliation.
- 2- The parties regulate their relations, in all regards the contract and its object, the principles of fairness and good faith and will seek to always reconcile their particular interests with the spirit of mutual collaboration and friendly understanding.

- 3- In the event of a conflict with regard to matters relating to the interpretation, application or integration of the contract, or its validity and efficacy, or of any of its clauses, the parties shall, first, attempt to reach a conciliatory agreement, within thirty (30) days, from the date of notification, to be carried out by either party, for the commencement of the conciliation procedure.
- 4- If the conflict is not resolved in accordance with the preceding paragraph, either party may submit the matter to the jurisdiction of the competent courts of law in accordance with the following clause.

26th Clause - Competent Jurisdiction

For all issues arising from the contract, the Tribunal Da Comarca de Luanda is competent, with the express resignation of any other forum.

TITLE IV FINAL PROVISIONS

27th Clause - Assignment of Contractual Position

- 1- The service provider may not assign its contractual position or any of the rights and obligations arising under the contract without the Express permission of the Contracting Public Authority, under penalty of termination of the contract.
- 2- The service provider may not, without prior written permission of the Contracting Public Entity, subcontract companies to provide the services to which it is contractually obligated, under penalty of contractual termination.

28th Clause – Subcontracting

The service provider shall, where possible, subcontract the Micro, small and medium-sized Enterprises, taking into account the specificity of the services to be provided as well as the commercial object of the contracting in question.

29th Clause - Other charges

All expenses arising from the provision of collateral, licenses, fees and taxes are the responsibility of the service provider.

30th Clause – Modifications

- 1- Modifications to the contract may be initiated by both the Contracting Public Entity and the service provider at any time prior to the final execution of the contract.
- 2- If the Contracting Authority or the service provider wishes to make any modifications to the contract, they must do so by written agreement in accordance with the legislation in force.

31st Clause - Change of Circumstances

- 1- The publication of new laws or regulations, as well as the approval of any administrative measures that violate rights, intensify the obligations or diminish the legal or contractual guarantees of the parties and that may cause damage or affect the Economic and financial balance of the contract and/or the assumptions that led to its conclusion, should be considered, for the purposes of the Civil code, as a change in the circumstances which led the parties to conclude the contract.
- 2- In the event of any circumstance foreseen in the preceding paragraph, the Parties shall, by way of agreement, revise the contract in order to restore their balance on the basis of safeguarding the interests of both.

32nd Clause - Communications and Notifications

- 1- Any communications or notices between the Port Company of Luanda, E.P. and the service provider must be made by means of a registered letter or, as well as by e-mail with acknowledgement of receipt.
- 2- Any communication or notification made is deemed to have been received on the date on which the acknowledgement of receipt is signed.
- 3- Any alteration of the contact information of each party, including the amendment of the legal representative and the registered Office, shall be communicated immediately to the other party in accordance with paragraph 1 of this clause.

33rd Clause - Count of deadlines

The deadlines provided for in these specifications are in working days, suspending on Saturdays, Sundays and public holidays.

34th Clause - Applicable Legislation

- 1- The contract is governed by the clauses contained in the contract, the present specifications, as well as by Angolan law, namely the public procurement law.
- 2- The service provider shall, in all its mandatory provisions and in the others, comply with the contract, in this booklet of specifications and the legal diploma referred to in the preceding paragraph, and are also obliged to Compliance with all others that are in force in the Republic of Angola and which report to the contract.

35th Clause - Date of Entry Into Force

- 1- The contract shall enter into force when the following assumptions are fulfilled:
 - a) Signing of the contract by the parties;
 - b) Approval of the contract by the competent bodies "for authorization /approval, in the cases established in the applicable legislation;
 - c) Submission by the service provider of the guarantee of the exact and timely fulfilment of the contractual obligations referred to in the article12;
 - d) Obtaining the Court of Auditors *visa (if applicable)*;
 - e) Reception of Down Payment by the service provider (if the hypothesis provided for in paragraph c) of this paragraph is found.
- 2- The date of the fulfilment of the obligation held in the last place is that of the entry into force of the contract, and the parties shall confirm the date of entry into force of the contract in writing.

ANNEX - TECHNICAL SPECIFICATIONS (Terms of Reference)
