
REPUBLIC OF MOLDOVA
ROAD SECTOR PROGRAM

STATE ROAD ADMINISTRATION

AMENDMENT No.2

to the Tender Documents

ref: Tendering No. RSP/2017/OT/W9/01

Contract RSP/W9/01:
“Construction of R1 Bahmut Bypass, km 68+250 – km 74+177”

Issued on 18 August, 2017

General:

The following amendment articles are applicable to Tender Documents for Contract RSP/W9/01: “Construction of R1 Bahmut Bypass, km 68+250 – km 74+177”.

Article 1

Tender Documents, Part 1- Section II: Tender Data Sheet, *ITT 37.1 has been added, as follows:*

“Within twenty-eight (28) days of the receipt of notification of award from the Employer, the successful tenderer shall furnish the performance security in a form of bank guarantee in accordance with the conditions of contract, subject to ITT 31.2, using for that purpose the Performance Security Form included in Section IX, Annex to the Particular Conditions - Contract Forms.

A Performance Security furnished in a form of bond, issued by a bonding or insurance company shall not be accepted.”

Article 2

Tender Documents, Part 1 – Section IV: Tender Forms, Bill of Quantities, Bill No. 000, GENERAL REQUIREMENTS, Item 00402, *the quantity has been revised, as follows:*

No.	Item	Unit of Measure	Quantity
00402	Maintain contract office / Mentinerea oficiului proiectului	Month	36

Article 3

Tender Documents, Part 1 – Section IV: Tender Forms, Bill of Quantities, Bill No. 000, GENERAL REQUIREMENTS, Item 00701, *the description, the unit of measure and quantity have been revised, as follows:*

No.	Item	Unit of Measure	Quantity
00701	Install, manage & maintain traffic measures throughout the period of the works / Instalarea, administrarea și meținerea traficului pe parcursul lucrărilor	Month	36

Article 4

Tender Documents, Part 1 – Section IV: Tender Forms, Bill of Quantities, Bill No. 000, GENERAL REQUIREMENTS, *a new Item 00702 has been added, as follows:*

No.	Item	Unit of Measure	Quantity
00702	Perform road maintenance measures for the full length of the Site (so far as the same is under his control) throughout the period of the works	Month	36

Article 5

Tender Documents, Part 1 – Section IV: Tender Forms, Bill of Quantities, Bill No. 000, GENERAL REQUIREMENTS, Item 01601, *the unit of measure and the quantity have been revised, as follows:*

No.	Item	Unit of Measure	Quantity
01601	Compliance with environmental management plan requirements	Month	36

Article 6

Tender Documents, Part 1 – Section IV: Tender Forms, Form of Tender Security, has been amended as follows:

the following text shall be added after the last sentence of the Form:

“The governing law shall be that of the Republic of Moldova.

[For foreign Tenderers the following text shall be inserted:] “Any dispute related to this Guarantee shall be settled exclusively by the International Chamber of Commerce (ICC) under ICC Rules of Arbitration.”

[For domestic Tenderers the following text shall be inserted:] “Any dispute related to this Guarantee shall be settled exclusively by the International Commercial Arbitration Court of the Chamber of Commerce and Industry of the Republic of Moldova under the Law of the Republic of Moldova No. 23 of 22 February 2008 on arbitration.’

Article 7

Tender Documents, Part 1 – Section IV: Tender Forms, Contract Data, Clause 20.6 (a) has been amended as follows:

- **The following text has been deleted:** “... the UNCITRAL Rules”
and replaced with the following text: “the ICC Rules of Arbitration”
- **A new paragraph has been added to the Clause 20.6 (a) stating the following text:**
The arbitration institution nominated to administrate the proceedings shall be - The International Chamber of Commerce (ICC), Paris, France.

Article 8

Tender Documents, Part 1 – Section IV: Tender Forms, Contract Data, **Clause 20.6 (b) has been added as follows:**

“The rules for the conduct of arbitration proceedings shall be the Law of the Republic of Moldova No. 23 of 22 February 2008 on arbitration. The arbitration institution nominated to administrate the proceedings shall be - the International Commercial Arbitration Court of the

Chamber of Commerce and Industry of the Republic of Moldova, Chisinau, Republic of Moldova”.

Article 9

Tender Documents, Part 2 – Requirements, Volume II, Technical Specifications, Chapter 007. Traffic Management, *the following text has been amended as follows:*

the following text has been deleted:

“During the Works Execution period Contractor shall organize and maintain the road traffic, with exception of specific maintenance works during winter period (snow and glazed frost cleaning). During the winter period Contractor shall (i) maintain the traffic throughout the zones of unfinished construction; and (ii) provide pavement related routine maintenance including repairing potholes, patching and preserve the unfinished constructions.

Failure to comply with one of above mentioned requirements of Traffic Management will result to a penalty of 1000 EURO/ day calculated from the Engineer’s Notice, but should not exceed 2% of the Contract price.

In accordance with the current legislation, the Contractor shall be responsible for the road accidents caused by the non-compliance with the contract provisions and the traffic management requirements during the execution of the road works by the Contractor or his Subcontractors.

Measurement

Traffic management measures of all kinds as outlined above or as necessitated by any other requirement of the Contract will be measured as a Lump Sum.

Payment

The Lump Sum for traffic management will be paid in equal monthly installments throughout the construction period.

Traffic management and safety during construction shall be regulated in 2 stages as follows:

Stage 1: Pieces and type of safety devices shall be as per the requirement shown in the drawings or as directed by the engineer during construction and maintenance of the same for the entire period of particular construction zone.

Stage 2: Continuous maintenance of the above, with all barricades, traffic cones, reflective tapes, signs, flagmen, lamps/blinkers etc., as per the drawings or as directed by the engineer

In the event of persistently inadequate measures under this item for any month during the construction period the Engineer may deduct the monthly instalment amount for that month. Any such amounts deducted shall not be recoverable later.

No.	Item	Unit of measure
00701	Manage & maintain traffic throughout the period of the works	Lump-sum

”

and replaced with the following:

“During the Works execution period Contractor shall organize and maintain the road traffic, with exception of specific maintenance works during winter period (snow and glazed frost cleaning).

Throughout the execution of the Works the Contractor shall

- (i) maintain the traffic throughout the zones of unfinished construction;
and
- (ii) provide road maintenance for the full length of the Site (so far as the same is under his control) including repairing potholes, patching and preserve the unfinished constructions.

Failure to comply with one of above mentioned requirements of Traffic Management will result to a penalty of 1000 EURO/ day calculated from the Engineer’s Notice, but should not exceed 2% of the Contract price.

In accordance with current legislation, the Contractor shall be held accountable for road accidents on the Site (so far as the same is under his control) caused by non-compliance with the contract provisions and the traffic management and road maintenance requirements during the execution of the road works by the Contractor or his Subcontractors.

Measurement

Traffic management and road maintenance measures of all kinds as outlined above or as necessitated by any other requirement of the Contract will be measured as monthly rates.

Payment

The cost and expenses for traffic management and road maintenance will be paid monthly throughout the construction period.

(a) Traffic management measures comprise the following:

- Number and type of safety devices shall be as per the requirement shown in the drawings or as directed by the engineer during construction and maintenance of the same for the entire period of particular construction zone.
- Continuous maintenance of the above, with all barricades, traffic cones, reflective tapes, signs, flagmen, lamps/blinkers etc., as per the drawings or as directed by the engineer.

In the event of persistently inadequate traffic management measures under this item for any month during the construction period the Engineer may deduct the monthly amount for that month. Any such amounts deducted shall not be recoverable later.

(a) Road maintenance measures comprise the following:

- Repair, fill and compact pot holes and ruts
- Erosion control of shoulders and slopes
- Clear drains to allow free passage of water
- Clear culverts and other water ways
- Cut grass and bushes
- Maintain road signs in place

In the event of persistently inadequate road maintenance measures under this item for any month during the construction period the Engineer may deduct the monthly amount for that month. Any such amounts deducted shall not be recoverable later.

Additionally, the Engineer may instruct the Contractor to execute any of the above road maintenance measures which are urgently required. The Contractor shall comply with the

instruction within the time specified in the instruction. If the Contractor fails to comply with the instruction, the Employer shall be entitled to employ and pay other persons to carry out the work, and the Contractor shall pay to the Employer all costs arising from this failure.

No.	Item	Unit of Measure
00701	Install, manage & maintain traffic measures throughout the period of the works	Month
00702	Perform road maintenance measures for the full length of the Site (so far as the same is under his control) throughout the period of the works	Month

”

Article 10

Tender Documents, Part 2 – Requirements, Volume II, Technical Specifications, Chapter 016.19. Environmental Health and Safety Officer, *the following text has been deleted:*

“Payment

The costs and expenses for compliance with the Environmental Management Plan Requirements shall be included in the rates and prices entered by the Contractor in the Bills of Quantities.

No.	Item	Unit of Measure
01601	Compliance with environmental management plan requirements	Lump-sum

”

and replaced with the following:

“

Measurement

Measures to ensure compliance with the Environmental Management Plan Requirements of all kinds as outlined above or as necessitated by any other requirement of the Contract will be measured as a monthly rate.

Payment

The costs and expenses for compliance with the Environmental Management Plan Requirements will be paid monthly throughout the construction period.

In the event of persistently inadequate environmental management measures under this item for any month during the construction period the Engineer may deduct the monthly amount for that month. Any such amounts deducted shall not be recoverable later.

No.	Item	Unit of Measure
01601	Compliance with environmental management plan requirements	Month

”

Article 11

Tender Documents, Part 2 – Requirements, Volume II, Technical Specifications, Chapter 101.03. 101.03 Works description, *the following text has been deleted:*

“The Engineer shall review the conformity of the Contractor’s Proposal, require corrections as necessary and, when he determines the Proposal to be technically and financially acceptable, forward the submission to the Employer for approval. In the event that changes to the contract scope are required a Variation order will be prepared and (subject to the approval of the Employer) issued to the Contractor as ‘Approved for Construction’.

The time period for the Engineer’s review and submission to the Employer is 14 days.”

And the following text has been added:

“Within 14 days after Contractor’s submission, the Engineer shall review the conformity of the Contractor’s draft Construction Drawings, require corrections as necessary. The Engineer, in responding to the Contractor shall list the specific omissions / corrective measures necessary to enable him to approve the documents, and, when he determines the draft Construction Drawings to be technically and financially acceptable, forward the submission to the Employer for approval.

If no changes to the design or contract drawings, then the Engineer pass the Construction Drawings for the Employer approval, but if there are changes to the design or contract drawings then the parties should follow GCC 13.1 – 13.3 as applicable and (subject to the approval of the Employer) issued to the Contractor as ‘Approved for Construction’.

Moldovan Law No. 721, on Quality in Construction,

Art. 13. - (1) of Law No. 721, dated 2nd February 1996, on Quality in Construction, requires that construction works, as well as modernization, change, transformation, consolidation and repair can be done only based on a project elaborated by natural or legal persons licensed in this field and checked by State Service for Verification and Expertise of Projects and Constructions.

It is the responsibility of the Contractor to ensure that the final Construction Drawings are elaborated by natural or legal persons licensed in the respective field, and to resolve non-conformities and discrepancies reported by the State Service for Verification and Expertise of Projects and Constructions.

It is the responsibility of the Employer to present the final Construction Drawings for verification to the State Service for Verification and Expertise of Projects and Constructions.

The time period for the Employer to review of the final Construction Drawings is 14 days from the date of submission of the final Construction Drawings by the Contractor. Subsequently, the time period for the Employer to obtain the verification of the final Construction Drawings from the State Service for Verification and Expertise of Projects and Constructions and to issue the verified final Construction Drawings to the Contractor is 30 days from the date of Employer's approval of the final Construction Drawings."

Article 12

Tender Documents, Part 2 – Requirements, Volume III, Drawings:

the following drawing has been added to the updated Tender Documents:

"Drawing No. 91.1, Bus station –339-III/2015 – DA"

Article 13

Tender Documents, Part 3 - Section VIII: Particular Conditions of Contract, **the Sub-clause 1.13, has been amended as follows:**

1. The Law No. 721 dated 2nd February, 1996, on the quality in construction, establishes the legal, technico-economic and the organizational basis of activities of the physical persons and legal entities in the construction field, their obligations and their liability for the quality assurance in construction.

According to the provision of the above mentioned Law, as a precondition to obtain the Construction Authorization the Contractor shall provide the following, within 28 days of signing the Contract Agreement, to enable the Employer to fulfil obligations under Sub-Clause 1.13(a):

- Employment records of one Authorized Site Master for road works certified in Republic of Moldova and copy of the certificate of his attestation;
- Evidence of the licensing and registration of the company in Republic of Moldova.

2. According to the provision of the Government Decision No. 361, dated 25 June 1996, the Employer has the obligation to verify/expertize the Construction Drawings which have to be prepared by the Contractor in accordance with Subsections 006.02 and 101.03 of the Technical Specifications.

The Contractor shall prepare the Construction Drawings based upon and in fulfillment of the intentions of the design implicit in the contract drawings, including any necessary corrections for identified defects, in sufficient detail to allow the works to be constructed and measured accordingly and to minimise the estimated Cost of the works to be executed. The Contractor shall prepare and submit the Draft Construction Drawings, within a period of 4 months after the Commencement Date, in sufficient detail to allow the Contractor to proceed with the works in accordance with the Programme.

Within 14 days after Contractor's submission, the Engineer shall review the conformity of the Contractor's draft Construction Drawings, require corrections as necessary. The Engineer, in responding to the Contractor shall list the specific omissions / corrective measures necessary to enable him to approve the documents, and, when he determines the draft Construction

Drawings to be technically and financially acceptable, forward the submission to the Employer for approval.

If no changes to the design or contract drawing, then the Engineer pass the Construction Drawings for the Employer approval, but if there are changes to the design or contract drawing then the parties should follow GCC 13.1 – 13.3 as applicable and (subject to the approval of the Employer) issued to the Contractor as ‘Approved for Construction’.

The time period for the Employer to review of the final Construction Drawings is 14 days from the date of submission of the final Construction Drawings by the Contractor. Subsequently, the time period for the Employer to obtain the verification of the final Construction Drawings from the State Service for Verification and Expertise of Projects and Constructions and to issue the verified final Construction Drawings to the Contractor is 30 days from the date of Employer’s review of the Final Construction Drawings.

3. The Law No. 163 dated 09.07.2010 on the construction works authorization, which regulates the authorization, approval and verification procedures of the designs, construction or demolition of structures and elements of development according to the town planning documentation and development of the territory, using system of regulating documents in construction for ensuring transparency and publicity of the issuance of the administrative acts and for creating a favourable business environment.
4. The Law No. 845 dated 03.01.1992 on the entrepreneurship and enterprises, regulates the establishment of the branches and representations of the enterprises in Republic of Moldova.
5. The Law No. 220 dated 19.10.2007 regulates the State registration of the legal entities and of the individual entrepreneurs.

Article 14

Tender Documents, Part 3 - Section VIII: Particular Conditions of Contract, the Sub-clause 1.8, Care and Supply of Documents, has been added as follows:

“the following paragraph has been deleted:

The Specification and Drawings shall be in the custody and care of the Employer. Unless otherwise stated in the Contract, two copies of the Contract and of each subsequent Drawing shall be supplied to the Contractor, who may make or request further copies at the cost of the Contractor.

and replace with the following:

The Specification and Drawings shall be in the custody and care of the Employer. Unless otherwise stated in the Contract, one copy of the Contract and of each subsequent Drawing shall be supplied to the Contractor, who may make or request further copies at the cost of the Contractor.”

Article 15

Tender Documents, Part 3 - Section VIII: Particular Conditions of Contract, ***Sub-clause 4.1, Contractor’s General Obligations, a new paragraph has been added:***

“a new paragraph is added as follows:

The Contractor shall submit within 28 days after receiving any request from the Employer, reasonable evidence that financial as well as personnel and equipment arrangements as demonstrated during the tender stage have been made and are being maintained which will enable the Contractor to execute the Works in accordance with Clause 8.2 [Time for Completion] and Clause 8.3 [Programme].

Before the Contractor makes any material change to such arrangements, the Contractor shall give notice to the Employer with detailed particulars which shall be satisfactory”.

Article 16

Tender Documents, Part 3 - Section VIII: Particular Conditions of Contract, Sub-clause 4.2, Performance Security, *the following text shall be added to the existing text:*

“The Performance Security shall be provided in paper form (signed and stamped in original). The authenticity of the provided bank guarantee shall be confirmed by the issuing bank through an authenticated SWIFT message, using the abovementioned corresponding banking relationship.

The bank selected by the Contractor, shall have:

- at least 10 years of successful banking activity;
- proven financial strength / high credit worthiness, to ensure the Beneficiary of the bank guarantee against any potential financial losses;
- a corresponding banking relationship with a bank from the Employer’s country;
- an authentic authorization for issuing such type of demand guarantee;

For the purpose of the above criteria and for approval of Guarantor by the Employer, the Contractor shall provide the following evidence (in original, signed and stamped, if not indicated otherwise):

1. Letter of Good standing, issued by higher ranked bank/authority from the country of origin, i.e. Central Bank/ Authorized Financial Conduct Authority;
2. Credit rating evidence:
For International Banks, credit rating provided by one of the BIG Three rating agencies: Standard & Poor's (S&P), Moody's, and Fitch Group; minimum rating: BB;
For Moldavan Banks, in case of absence of an international credit rating as provided above, the Contractor could provide an official rating of bank efficiency local rating agencies provided by local authorized rating agencies: i.e. Expert-Grup SRL, Agentia de rating și estimare Estimator-VM SRL. The selected bank shall have one of the first 3 highest values of indexes used for elaboration of the banking efficiency rating.
3. Authenticated copy of banking license issued by a higher ranked bank/authority from the country of origin (i.e. Central Bank).”

After the receipt of the Performance Security, issued in the form annexed to the Particular Conditions, and of the supporting documents requested for approval of the issuing bank, the Employer shall reply within 5 working days to the Contractor copying the Engineer confirming the acceptability of the Performance Security or stating the reasons for

rejection and listing the corrective measures required from the Contractor with the reference to the contract provisions.

Article 17

Tender Documents, Part 3, Section VIII - Particular Conditions of Contract, *the Clause 12, Sub-clause 12.3, Measurement and evaluation, has been added:*

“12. Measurement and evaluation
12.3 Evaluation

an additional sentence has been added to the 5th paragraph of GCC 12.3:

“The Engineer may request the Contractor to provide detailed price analysis for any item of Bill of Quantities.”

Article 18

Tender Documents, Part 3, Section VIII - Particular Conditions of Contract, Sub-clause 14.2, the paragraph stating:

“This guarantee shall be issued by a reputable bank or financial institution selected by the Contractor, and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.”

has been replaced with the following text:

“The Engineer shall deliver to the Employer and to the Contractor an Interim Payment Certificate for the advance payment or its first instalment after receiving a Statement (under Sub-Clause 14.3 [Application for Interim Payment Certificates]) and after the Employer receives (i) the Performance Security in accordance with Sub-Clause 4.2 [Performance Security] and (ii) a guarantee in amounts and currencies equal to the advance payment. This guarantee shall be issued by a **reputable bank**, selected by the Contractor, and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer. The bank guarantee for advance payment shall be provided in paper form (signed and stamped in original). The authenticity of the provided bank guarantee shall be confirmed by the issuing bank through an authenticated SWIFT message, using the abovementioned corresponding banking relationship.

The bank selected by the Contractor, shall have:

- at least 10 years of successful banking activity;
- proven financial strength / high credit worthiness, to ensure the Beneficiary of the bank guarantee against any potential financial losses;
- a corresponding banking relationship with a bank from the Employer’s country;
- an authentic authorization for issuing such type of demand guarantee;

For the purpose of the above criteria and for approval of Guarantor by the Employer, the Contractor shall provide the following evidence (in original, signed and stamped, if not indicated otherwise):

1. Letter of Good standing, issued by higher ranked bank/authority from the country of origin, i.e. Central Bank/ Authorized Financial Conduct Authority;

2. Credit rating evidence:

For International Banks, credit rating provided by one of the BIG Three rating agencies: Standard & Poor's (S&P), Moody's, and Fitch Group; minimum rating: BB;

For Moldavian Banks, in case of absence of an international credit rating as provided above, the Contractor could provide an official rating of bank efficiency local rating agencies provided by local authorized rating agencies: i.e. Expert-Grup SRL, Agentia de rating și estimare Estimator-VM SRL. The selected bank shall have one of the first 3 highest values of indexes used for elaboration of the banking efficiency rating.

3. Authenticated copy of banking license issued by a higher ranked bank/authority from the country of origin (i.e. Central Bank).”

After the receipt of the Advance Payment Guarantee, issued in the form annexed to the Particular Conditions, and of the supporting documents requested for approval of the issuing bank, the Employer shall reply within 5 working days to the Contractor copying the Engineer confirming the acceptability of the Advance Payment Guarantee or stating the reasons for rejection and listing the corrective measures required from the Contractor with the reference to the contract provisions.

Article 19

Tender Documents, Part 3, Section VIII - Particular Conditions of Contract, Sub-clause 14.7, Payment, ***the following text has been revised as follows:***

“The Contractor shall notify to the Employer, prior to first payment under the Contract, details of the bank account (s) nominated by the Contractor for payments for the currency or currencies specified in the Contract. All payments of the amounts due to the Contractor shall be made into the bank account (s) thus nominated by the Contractor.”

Article 20

Tender Documents, Part 3, Section IX, Annex to the Particular Conditions, Contract Form for Advance Payment Guarantee, has been amended as follows:

The following text has been added after the last paragraph of the Form as follows:

“The governing law shall be that of the Republic of Moldova.

[For foreign Contractors the following text shall be inserted:] ”Any dispute related to this Guarantee shall be settled exclusively by the International Chamber of Commerce (ICC) under ICC Rules of Arbitration.”

[For domestic Contractors the following text shall be inserted:] “Any dispute related to this Guarantee shall be settled exclusively by the International Commercial Arbitration Court of the

Chamber of Commerce and Industry of the Republic of Moldova under the Law of the Republic of Moldova No. 23 of 22 February 2008 on arbitration.”

Article 21

Tender Documents, Part 3, Section IX, Annex to the Particular Conditions, Contract Form for Performance Security, has been amended as follows:

- **The following text has been added after the last paragraph of the Form as follows:**

“The governing law shall be that of the Republic of Moldova.

[For foreign Contractors the following text shall be inserted:] ”Any dispute related to this Guarantee shall be settled exclusively by the International Chamber of Commerce (ICC) under ICC Rules of Arbitration.”

[For domestic Contractors the following text shall be inserted:] “Any dispute related to this Guarantee shall be settled exclusively by the International Commercial Arbitration Court of the Chamber of Commerce and Industry of the Republic of Moldova under the Law of the Republic of Moldova No. 23 of 22 February 2008 on arbitration.”

- **In the first footnote the following expression has been deleted:**
“...or a freely convertible currency acceptable to the Employer”.
- **the first sentence from the footnote no.2 stating the following text has been deleted:**
“Insert the date twenty-eight days after the expected completion date”

and replaced with the following text:

“Insert the date twenty-eight days after the expected date of Performance Certificate issuance”.

Article 22

Tender Documents, Part 3, Section IX, Annex to the Particular Conditions, Contract Form for Retention Money Security, has been amended as follows:

The following text shall be added after the last sentence of the Form as follows:

“The governing law shall be that of the Republic of Moldova.

[For foreign Contractors the following text shall be inserted:] ”Any dispute related to this Guarantee shall be settled exclusively by the International Chamber of Commerce (ICC) under ICC Rules of Arbitration.”

[For domestic Contractors the following text shall be inserted:] “Any dispute related to this Guarantee shall be settled exclusively by the International Commercial Arbitration Court of the Chamber of Commerce and Industry of the Republic of Moldova under the Law of the Republic of Moldova No. 23 of 22 February 2008 on arbitration.”