

This Project is co-funded by the European Union  
and the Republic of Türkiye



# IMPLEMENTATION GUIDELINES

FOR END BENEFICIARY / LEAD INSTITUTION

# WORKS CONTRACTS







# FOREWORD

This Guideline has been prepared as a tool to be used by the End Beneficiaries and Lead Institutions during implementation and monitoring of Works Contracts. International Federation of Consulting Engineers - FIDIC Red Book, Practical Guide to Contract Procedures for EU External Actions (PRAG) and other relevant monitoring manual and documents of the European Commission have been taken into consideration during its preparation, as well as relevant Cooperation Agreements, Protocols and CFCU's Manuals of Procedures.

The purpose of this document is not to replace the provisions of the Works Contract, the applicable EU regulations and national laws, which are legally binding, but to strengthen the processes and capacities of the Lead Institutions and End Beneficiaries when practicing their roles.

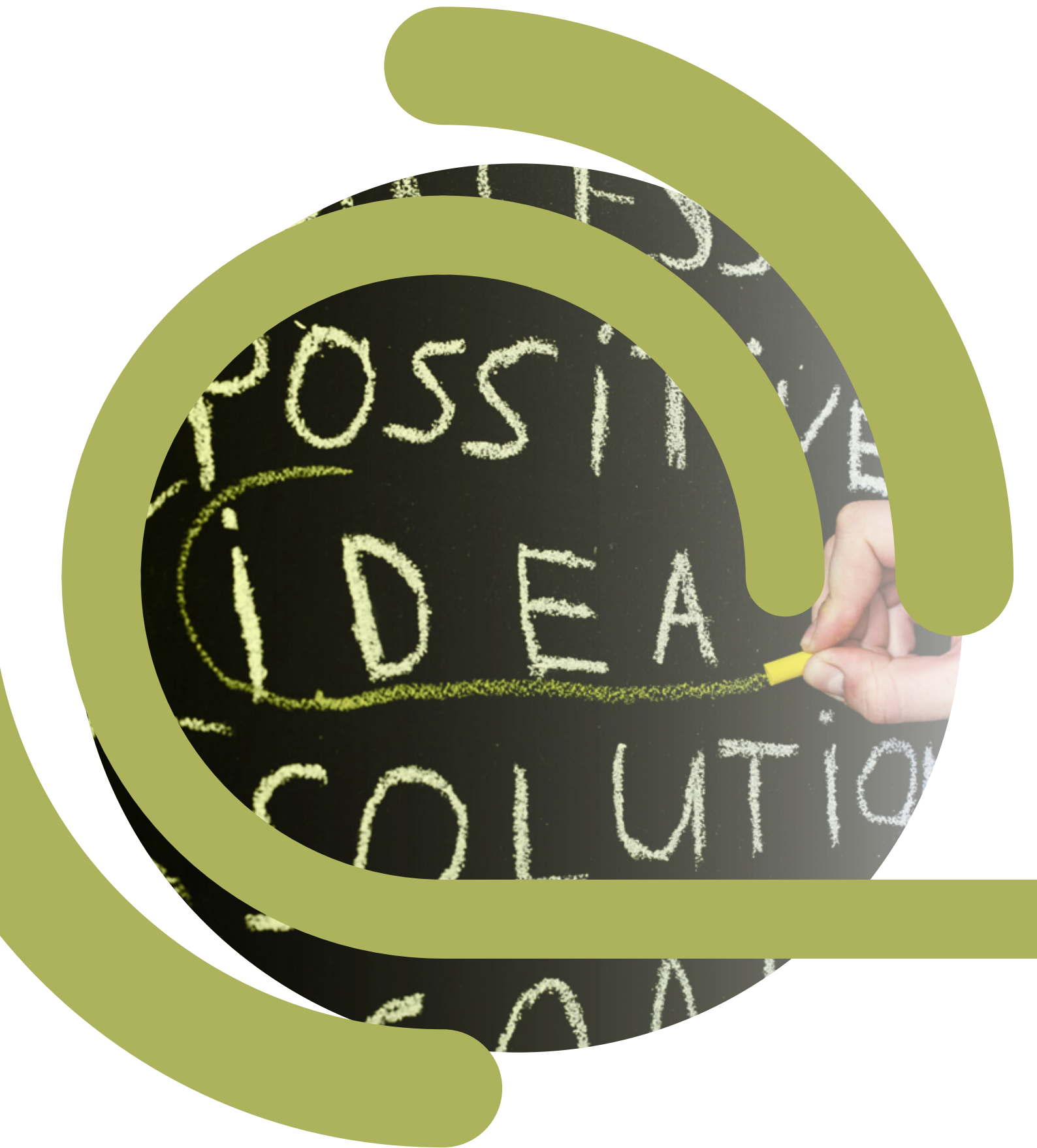
# Abbreviations

<b>BoQ</b>	Bill of Quantities
<b>CFCU</b>	Central Finance and Contracts Unit
<b>CIR</b>	Common Implementing Regulation
<b>DAA</b>	Dispute Adjudication Agreement
<b>DAB</b>	Dispute Adjudication Board
<b>DNP</b>	Defects Notification Period
<b>EB</b>	End Beneficiary
<b>EoT</b>	Extension of the Time for Completion
<b>EU</b>	European Union
<b>EUD</b>	Delegation of the European Union to Türkiye
<b>FIDIC</b>	(Fédération Internationale des Ingénieurs-Conseils) contract conditions
<b>IPA</b>	Instrument for Pre-Accession Assistance
<b>IPC</b>	Interim Payment Certificate
<b>LI</b>	Lead Institution
<b>MIS</b>	Monitoring Information System
<b>MoM</b>	Minutes of Meeting
<b>NAO</b>	National Authorising Officer
<b>NIPAC</b>	National IPA Coordinator
<b>OLAF</b>	European Anti-Fraud Office
<b>P/GC</b>	Particular/General Conditions of the Works Contract
<b>RED FIDIC</b>	Red Book- Conditions of Contract for Construction, 1999 Version
<b>SC</b>	Sub-Clause
<b>TS</b>	Technical Specifications
<b>VAT</b>	Value Added Tax
<b>VO</b>	Variation Order



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# CHAPTER 1

## DEFINITIONS

### A - Instrument for Pre-Accession Assistance II – IPA II

**Instrument for Pre-Accession Assistance II (IPA II)** is an instrument of the European Union aimed for providing financial assistance to the candidate and potential candidate countries for EU membership, for the period 2014-2020. It replaced the previous Instrument for Pre-Accession Assistance (IPA I) for the financial years 2007-2013.

The IPA II was established with Regulation No. 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-Accession Assistance (IPA II)<sup>1</sup> (**IPA II Regulation**). In addition to this, two more Regulations were adopted governing the IPA II: Regulation No. 236/2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action<sup>2</sup> (**Common Implementing Regulation - CIR**) and Commission Implementing Regulation No. 447/2014 on the specific rules for implementing IPA II Regulation<sup>3</sup> (**IPA II Implementing Regulation**), setting out the applicable management and control provisions.

The IPA II replaced the previous “project” based approach under IPA I with the “sector” based approach for the period 2014-2020.

In this context, the funds provided to Türkiye under IPA II, as specified in the table below, are used for nine priority sectors under five priority areas, implemented through Annual or Multi-Annual Programmes:

1 [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/financial\\_assistance/ipa/2014/231-2014\\_ipa-2-reg.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/financial_assistance/ipa/2014/231-2014_ipa-2-reg.pdf)

2 [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/financial\\_assistance/ipa/2014/236-2014\\_cir.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/financial_assistance/ipa/2014/236-2014_cir.pdf)

3 [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/financial\\_assistance/ipa/2014/20140502-commission-implementing-reg-on-ipa2\\_en.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/financial_assistance/ipa/2014/20140502-commission-implementing-reg-on-ipa2_en.pdf)



## IPA- II POLICY AREAS AND SECTORS<sup>4</sup>

POLICY AREA	SECTOR / SUB-SECTOR	LEAD INSTITUTION
<b>1</b> PREPARATORY REFORMS FOR MEMBERSHIP TO THE UNION	1 Democracy and Governance 1.1 Civil Society  2 Rule of Law and Fundamental Rights 2.1 Judiciary 2.2 Fundamental Rights 2.3 Home Affairs	Ministry of Foreign Affairs  Ministry of Foreign Affairs Ministry of Justice Ministry of Interior Affairs
<b>2</b> SOCIO-ECONOMIC AND REGIONAL DEVELOPMENT	3 Environment and Climate Program  4 Transport  5 Energy  6 Competitiveness and Innovation	Ministry of Environment, Urbanization and Climate Change  Ministry of Infrastructure and Transportation  Ministry of Energy and Natural Resources  Ministry of Industry and Technology
<b>3</b> EMPLOYMENT, SOCIAL POLICIES, EDUCATION, PROMOTING GENDER EQUALITY AND HUMAN DEV. OF RESOURCES	7 Education, Employment, and Social Policies	Ministry of Labour and Social Security
<b>4</b> AGRICULTURE AND RURAL DEVELOPMENT	8 Agriculture and Rural Development 8.1 Rural Development Program 8.2 Agriculture Program	Ministry of Agriculture and Forestry  IPARD Agency
<b>5</b> REGIONAL AND CROSS- BORDER COOPERATION	9 Regional and Cross-Border Cooperation	Ministry of Foreign Affairs

### B - FIDIC Contract Conditions for Construction

In general, EU funded works contracts are administered in accordance with **FIDIC** (*Fédération Internationale des Ingénieurs-Conseils*) contract conditions.

Depending on the nature of the project, there are several types of FIDIC contract conditions to be used. Most frequently used are two types of the contract of works: Unit Price Contracts and Lump Sum Contract. Unit price contracts usually relate to the works that are executed based on the design made by the Employer (**Red Book**- Conditions of Contract for Construction of Building and Engineering Works), while the lump sum contracts are contracts that are based on the total price and they relate to design and construction by the contractor (**Yellow Book**- Conditions of Contract for Plant and Design-Build).

These Guidelines focus on the Conditions of Contract for Construction (First Edition 1999) - commonly referred to as the "Red Book".

<sup>4</sup> Presidential Circular numbered 2019/20 regulating the distribution of roles and responsibilities of the relevant institutions in Türkiye entered into force on 4 October 2019.





### C - National IPA Coordinator

The Director for EU Affairs (Ministry of Foreign Affairs, Directorate for EU Affairs) is appointed as the National IPA Coordinator (NIPAC) in order to identify the priorities of the Programme and Strategy Paper for Türkiye and ensure that they complement each other; and also ensure the coordination of the work with stakeholders and the consistency between the programme practices and Indicative Strategy Paper for Türkiye; to ensure overall coordination of programming; monitoring, evaluation, and reporting of the implementation. The secretariat services of the National Pre-Accession Assistance Coordinator are provided by the Ministry of Foreign Affairs, Directorate for EU Affairs<sup>5</sup>

### D - National Authorising Officer

The Deputy Minister of Treasury and Finance is appointed as the National Authorizing Officer (NAO). The NAO bears overall responsibility for the financial management of the funds under IPA II and for ensuring the legality and regularity of the procedures.

The secretariat services of the National Authorizing Officer shall be provided by the Management Structure composed of the National Fund (NF) and Support Offices for the NAO, established within the Ministry of Treasury and Finance<sup>6</sup>.

### E - Contracting Authority (Central Finance and Contracts Unit = CFCU)

The CFCU, as part of the Operating Structure under each IPA II Annual Programme, is designated as Contracting Authority responsible for the administrative and financial implementation of the Programme. The CFCU is responsible for the tendering, contracting, payments to the Contractors and as such has the ultimate responsibility of the correct utilization of the EU funds.

In FIDIC terminology the Contracting Authority is referred to as “**The Employer**”.

### F - Project Manager

The Project manager is the person responsible for monitoring the implementation of a project on behalf of the Contracting Authority. In the contractual terms, the Project Manager is formally the Head of the CFCU.

### G - Lead Institution (LI)

Lead Institution, as part of the Operating Structure under the IPA II Annual Programme, is the Ministry in charge of the relevant sector/sub-sector. Lead Institution, in the context of the Service Contracts, is responsible for the overall coordination and monitoring of the projects under the respective IPA Programme.

5 Presidential Circular numbered 2019/20 regulating the distribution of roles and responsibilities of the relevant institutions in Türkiye entered into force on 4 October 2019.

6 Presidential Circular numbered 2019/20 regulating the distribution of roles and responsibilities of the relevant institutions in Türkiye entered into force on 4 October 2019.



## H - End Beneficiary (EB)

End Beneficiary (EB); it is the institution that is the end-user of the values, outcomes, and results to be delivered. End Beneficiary of the IPA Programme is in charge of technical implementation, management, and sustainability of the projects and monitoring of the contracts awarded under the overall supervision of the CFCU.

## I - Delegation of the European Union to Türkiye (EUD)

The Delegation of the European Union (EUD) represents the European Commission in Türkiye. EUD oversees the implementation of the contracts. Moreover, EUD executes the ex-ante approval function in accordance with the PRAG, which includes approval and endorsement of the Addendum to the contract (if any).

## J - Contractor

The contractor is the natural or legal person [participating either individually or in a grouping (consortium)] established in a Member State of the European Union or in a country or territory of the regions covered and/or authorised by the specific instruments applicable to the programme under which the contract is financed.

Actually, the Contractor is the natural/legal person who was successful in the tendering process for the relevant Works Contract and was awarded and signed the contract.

## K - Sub-contractor

Sub-contractor is an economic operator to whom the Contractor entrusts performance of a part of the works. The works contract defines that the subcontracting is subject to approval by the Contracting Authority upon Engineer's consent. Usually, the subcontracting should be authorised by the Contracting Authority/the Employer, otherwise, it may lead to sanction for breach of contract. The Sub-contractor must satisfy the eligibility and exclusion criteria applicable to the Contract. It shall be formalised with a written agreement for sub-contracting between the Contractor and Sub-contractor. However, this does not create any contractual relationship between the Sub-contractor and the Contracting Authority and the Contractor bears the overall responsibility for its obligations under the Contract.

The Red FIDIC works contract also recognizes the term "nominated subcontractor". This is a subcontractor who is stated in the works contract and whom the Engineer instructs the contractor to employ as a subcontractor.

## L - The Engineer

The Engineer (according to FIDIC) is the legal/ natural person, engaged by the Contracting Authority to carry out the supervision of works.

The Engineer shall have no authority to amend the works contract.

The works contract specifies for which authority the Engineer should request the Employer's comments/approval.

The Engineer performs his duties and exercises his authority in accordance with the works contract, but he is also required to comply with the conditions of the service contract for supervision.







## CHAPTER 2

# WORKS CONTRACT

**Works Contract** (hereinafter referred to as Contract) is a legally binding agreement between the Contracting Authority/The Employer and The Contractor, signed following the decision to award a contract.

The Contractor and the Contracting Authority/The Employer are the only parties to the Contract. The Contractor shall execute the contract with the requisite care, efficiency, and diligence in line with best practice in the field concerned and in compliance with the Contract. The Lead Institution and the End Beneficiary shall provide all necessary support during the implementation and monitor the implementation.

The works contract under the Red FIDIC conditions of the contract is used for building or engineering works designed by the Employer. Usually, the Contractor constructs the works in accordance with the design provided by the Employer, however, the works may include some elements of contractor-designed civil, mechanical, electrical, and/or construction works.

### A - Parts of the Contract/Contract Annexes

The General and Particular Conditions will together comprise the Conditions of Contract governing the rights and obligations of the parties. The Particular conditions should be prepared for each contract individually. Usually, the following documents are part of the Red FIDIC Works Contract, in the following order of precedence:

Annex A	Contract Agreement or Contract Form
Annex B	Tender form with the Appendix to Tender
Annex C	Particular Conditions
Annex D	General Conditions (Red FIDIC Conditions of Contract 1999)
Annex E	Technical Specifications
Annex F	Design Documentation (drawings)
Annex G	Bill of Quantities (after arithmetical corrections)
Annex H	any other documents forming part of the Contract

The various documents making up the contract shall be deemed to be mutually explanatory; in cases of ambiguity or divergence, they shall prevail in the order in which they are listed. Addenda shall have the order of precedence of the document they are modifying.

**Contract Form** specifies the main information about the Contracts, such as the Contract number, the parties signing the Contract, the title of the project, the contract value, the dates of signature, etc.

**Tender Form with the Appendix to Tender** stipulates the time for completion of works, the commencement of works, time for access to the site, duration of the defect notification period, the maximum amount of delay damages, total advance payment, limit of retention money, minimum of interim payment certificates, period of submission of insurance, minimum of amount of insurance, data for appointment of DAB, etc.



**Particular Conditions** amplify and supplement, if necessary, the General Conditions governing the contract. Unless the Particular Conditions provide otherwise, those General Conditions remain fully applicable. The numbering of the Articles of the Particular Conditions is not consecutive but follows the numbering of the Articles of the General Conditions.

**General Conditions** of the Red FIDIC works contract has been prepared by the Fédération Internationale des Ingénieurs-Conseils (FIDIC) and are recommended for general use for the purpose of the construction of building or engineering works where tenders are invited on an international basis.



## The Particular Conditions prevail over the General Conditions.

More information on the other parts of the standard Red FIDIC works contract is presented in the table below:

DOCUMENT	DESCRIPTION
<b>The Technical Specifications (TS)</b>	<p>Usually, the Annex with Technical specifications consists of two parts</p> <p><b>General Requirements</b> This part includes the description of the project area, the objective of the investment, scope of work, general standards that apply, general requirements related to contractor's equipment, workmanship, safety procedures, quality and assurance systems, site data, existing services, access to the site, monthly reports, progress meetings, security of the site, health and safety, test on completion, taking over, work programme, method statement, cross-cutting issues, visibility, etc.</p> <p><b>Technical specifications</b> This part consists of pure technical information related to the nature of the works to be executed, description of materials to be used, civil part, mechanical, electrical, etc.</p>
<b>The Design Documentation (drawings)</b>	<p>The design documentation usually consists of several parts depending on the scope of the subject of the work of the contract. It may include the detailed design for civil works, mechanical, electrical, or other, as relevant.</p>
<b>The Bill of Quantities (BoQ)</b>	<p>The Bill of Quantities (BoQ) includes the estimated quantities in a specific measurement unit, a unit price per item, and the total amount.</p> <p>Red FIDIC contracts are re-measurement contracts, meaning that the unit prices given in the contract shall apply, and the quantities may differ and should be certified by the Engineer.</p>
<b>Any other documents forming part of the Contract</b>	<p>This part usually includes the documents provided by the contractor in his offer in the tendering procedure, such as administrative documents for the company, work programme, and contractor's staff including organizational structure with CVs of persons, equipment, financial information, etc.</p>



## B - Contractual Terms and Conditions

The contractual terms and conditions are the provisions stipulated in the Contract that regulate the rights and obligations of the parties.

The Contract specifies, among others, the parties of the Contract, the date of signature, the commencement date, time for completion, defect notification period, contract value, etc.

**Contract signature date** refers to the signature date on which the last signature on the contract was made.

**The commencement date** of the Contract is the date when the implementation period of the Contract starts.

In the works contracts, the commencement of work is given by the Engineer to the Contractor. Usually, the commencement date shall be within 42 days after the contractor receives a letter of acceptance/notification letter by the Contracting Authority/the Employer, or as stated/amended in the Particular conditions of the contract.

**The time for completion/Implementation period** is the period between the commencement of the works and the official completion date of the whole of the works.

**Accepted Contract Amount (ACA)**, means the amount accepted in the contract for the execution and completion of the works and remedying of any defects.

**Provisional Sum/Contingency** means an allowance to provide for additional work, adjustments in cost, or supplies that are not known at the time of tender and shall be treated as a provisional sum.

**The Defects Notification Period (DNP)** is the period when the contractor needs to complete all outstanding works and remedy all the defects notified by the Engineer.







## CHAPTER 3

# ROLES AND RESPONSIBILITIES

The roles and responsibilities and the framework of cooperation between the bodies within the Operating Structure under each IPA II Programme are determined in the **Cooperation Agreement** signed between CFCU and Lead Institution.

Furthermore, within the frame of provisions of this Cooperation Agreement, on behalf of Operating Structures, the Lead Institution signs a **Protocol (Operational Agreements)** with the End Beneficiary in order to designate their role and responsibilities.

In relation to the Service Contracts, in order to ensure the smooth technical implementation of the contracts and maximize the use of EU fund, each of these institutions has the following main functions:

### A - CFCU's Role

CFCU acts as the **"Employer"** in the implementation of the Works Contracts. In the case of FIDIC type works projects in Türkiye, the Employer is the CFCU which is represented by CFCU Director and signs the works contract with the Contractor.

CFCU's responsibilities during works contracts implementation include, inter alia, the following:

- ▶ Signing the Works Contract with the Contractor
- ▶ Submission of a copy of the Contract to the Lead Institution, the End Beneficiary, and the Engineer
- ▶ Formalizing the kick-off meetings following the notification of the Lead Institution/End Beneficiary
- ▶ Approval of the visibility materials in line with the rules set in the Visibility Guidelines for European Commission Projects in Türkiye
- ▶ In case of interim payment certificates (IPCs) and final payment certificate in works contracts, provide the final approval of these documents upon inspections
- ▶ In case of interim and final payments sending the related invoice to the End Beneficiary (by keeping the Lead Institution in the information) for approval of the invoice ("Read and Approved" process)
- ▶ Making payments to the Contractor in line with the EU procedures and according to contractual provisions
- ▶ Carrying out financial checks required for making payment to the Contractor
- ▶ Conducting monitoring visits/on-the-spot checks
- ▶ Participates in meetings regarding the implementation of the contract
- ▶ Manages and evaluates contract amendments (Variation Order/ Addendum)
- ▶ Evaluates regular reports (monthly, technical, ad-hoc) submitted by the Contractor
- ▶ Makes Employer's claim when deemed necessary and evaluates the Engineer's determination upon the Contractor's claims having budget and time effects
- ▶ Informs the LI/EB regarding the need to complete the organizing the taking over of the works and issuing of performance certificate (provisional and final acceptance observers committee process)



- ▶ Requests recovery amounts (if deemed necessary) from or finalizes payments to the Contractor after the financial checks
- ▶ Terminating the contract (if deemed necessary), or imposes administrative/ financial penalties (when applicable).

## B - Lead Institution's Role

Lead Institution is in charge of the overall coordination and monitoring of all contracts under a respective IPA Programme, including the works contracts. As such, its responsibilities include, but not limited to, the following:

- ▶ Ensuring that End Beneficiary fulfilled all the requirements and conditionality stated in the IPA Programme documents and that all the conditions necessary for the implementation of the contracts are met participates in the kick-off meeting
- ▶ Asking and guiding the End Beneficiary on the time checking and approving the invoices of the Contractor provided by the CFCU before the relevant payment is executed by the CFCU ("Read and Approved" process)
- ▶ Supervising the End Beneficiary during the technical management of the contract
- ▶ Notifying the CFCU/EB about the possible needs for changes in the contracts or deficiencies in the contracts' implementation and/or reviews and provides comments/ agreement/ approval to the changes/ requests/ reports etc., where relevant, related to the contracts requested by other parties
- ▶ Participating in meetings regarding the implementation of the contracts
- ▶ Supervises the EB for sending the taking-over and performance certificates
- ▶ Asks and guides EB to nominate members, to establish competent Acceptance Committees, and to issue inspection and testing procedures for the taking-over and performance certificates (provisional and final acceptances)
- ▶ Joins the acceptance committee meetings
- ▶ After the issuance of the taking-over certificate (Provisional Acceptance), asks the EB to undertake the ownership of the buildings/plants, etc. and to make necessary accounting records
- ▶ Notifying the CFCU for non-performance of the Contractor during contract implementation
- ▶ Reporting irregularities and following-up the reported irregularities including those reported by the End Beneficiary
- ▶ Monitoring the action's outputs in order to ensure the sustainability of the programme.

## C - End Beneficiary's Role

End Beneficiary as an institution in charge of technical implementation, management, and sustainability of the projects and monitoring of the works contracts. The End Beneficiary is finally responsible for the tasks delegated to it, which include, among others, the following:

- ▶ Ensuring the national contribution funds for the related works contracts are transferred to the National Fund
- ▶ Fulfilling any requirement/conditionality stated in the programme documents and prepares necessary conditions for the Contractor stated in the Contract in a timely manner



- ▶ Participating in the kick-off meeting
- ▶ Checking and approving in a timely manner the invoices of the Contractor provided by the CFCU before the relevant payment is executed by the CFCU ("Read and Approved" process).
- ▶ Informs the CFCU/LI in case of any ineligible amount detected or any expenditure unapproved
- ▶ Notifying the CFCU/LI about the possible needs for change or deficiencies of the contract
- ▶ Reviewing and providing comments/approval to the contract amendments requests by the other parties
- ▶ Notifying the CFCU/LI for non-performance during contract implementation
- ▶ Informing the Engineer/Employer about his applicable selections (i.e. colour of the materials and paintings) for relevant site works when required as the TS stipulates/allows
- ▶ Participating in or organizing meetings regarding the implementation of the contracts
- ▶ Signs the taking-over and performance certificates
- ▶ Nominates members to establish competent Acceptance Committees and completes the inspection and testing procedures for the provisional and final acceptances
- ▶ Carries out the acceptance committee meetings
- ▶ After the issuance of the Taking over certificate (Provisional Acceptance), undertakes the ownership of the equipment/supplies/buildings/plants, etc., and makes necessary accounting records.
- ▶ Records any defects detected at the taken over equipment/supplies/buildings/plants, etc. with supporting particulars and timely notifies the Engineer/Employer for remedial actions of the Contractor during the DNP,
- ▶ Reporting on irregularities and following-up on the reported irregularities including those reported by the LI/CFCU
- ▶ Monitoring and reporting on the sustainability of the projects during and after contract completion
- ▶ Setting up procedures and fulfilling the archiving requirements in compliance with EU regulations.





## CHAPTER 4

# MONITORING AND TECHNICAL IMPLEMENTATION

Monitoring can be defined as the collection, analysis, and use of information for the purpose of management and decision-making systematically, which:

- ▶ compares the actual performance and situation with the planned or expected ones according to pre-determined targets,
- ▶ identifies the strengths and weaknesses in project implementation, thus enabling managers to recognize the problems, find solutions and adapt to changing circumstances, in order to improve the project's performance,
- ▶ provides an "early warning system", which allows for timely and appropriate intervention if a project is not adhering to the implementation plan.

Monitoring is a tool to verify that funds are used for their stated purpose in the Contract and also to ensure that the projects are implemented in compliance with the applicable rules and procedures.

Management of works contract sometimes can be a complex task; especially when complex works projects are in question.

Also, monitoring of the works contract at the same time includes monitoring of the service contract for supervision.

Therefore, Monitoring System to be set shall not only control the implementation but also support the Contractors in order to keep their projects on track.

The Monitoring System refers to all actors, tools, and procedures involved in the monitoring activities.

Taking into account that this Guideline is intended to be used by the End Beneficiaries and Lead Institutions, their tasks related to the monitoring and technical implementation of the works contracts and support to be provided to the Contractors will be elaborated step-by-step under this chapter. Moreover, this is due to the fact that the End Beneficiary has prime responsibility for the day-to-day monitoring of the performance of the works contractor, as well as has responsibilities in the technical implementation of the contract.



## A - Meetings

In works contracts, regular meetings with the Contractor are the main tool to follow the progress in the implementation of the works.

### **Kick-off Meeting**

After the signature of the Works Contract, the CFCU will transfer copies of the Contract to the End Beneficiary.

Soon after the commencement date (issued by the Engineer) or even before the commencement date (as deemed appropriate) a Kick-off Meeting with the Contractor is to be organized to confirm requirements for the contract implementation and discuss any questions on unclear issues.

Usually, there should be a separate Kick-off Meeting with the Engineer under the Service contract for supervision, that will precede the Kick-off meeting with the works contractor.

The aim of the Kick-off Meeting within the works contract is the following:

- ▶ Introduction of parties;
- ▶ Contract Scope/Project technical requirements; Presentation of the Work Programme, incl.including construction schedule;
- ▶ Rights and obligations;
- ▶ Environmental, Health, and Safety Arrangements, where applicable;
- ▶ Contract Administration/schedule of meetings/reporting; Reporting requirements/templates (if not specified in the technical specifications/ special conditions);
- ▶ Registration of the contract for VAT exemption<sup>7</sup>;
- ▶ Permits and Other Statutory Compliance Needs;
- ▶ Sub-contractor arrangements;
- ▶ Visibility rules;
- ▶ Contract monitoring arrangements;
- ▶ Invoicing and the payment procedure and other administrative issues, etc.

The meeting is organized by the CFCU and chaired by the CFCU or the End Beneficiary. The participants in the meeting usually include – End Beneficiary, Lead Institution, CFCU, EUD, representatives of the Engineer, and representatives of the Contractor. The Kick-off Meeting as a general rule is to be chaired by a high-level official from the End Beneficiary.

The Meeting shall be recorded in Minutes, taken by the Engineer. The draft Minutes are generally recommendable to be circulated within **5 working days** after the meeting to attendees.

It is recommendable for the participating parties to provide comments (if any) within **5 working days** from receiving the Minutes.

The Minutes is accordingly revised and the final version of the Minutes is distributed to all related parties.

<sup>7</sup> Detailed and up-to-date information and documents on the subject of tax exemption (VAT exemption and other tax exemptions) may be found on the page of the Revenue Administration: [https://www.gib.gov.tr/uluslararasi\\_mevzuat](https://www.gib.gov.tr/uluslararasi_mevzuat)



### **Steering Committee Meetings**

The Steering Committee can be established to follow the implementation of the investment project. However, its organization and functioning are often foreseen within the Service contract for supervision of works and shall operate in accordance with the provisions set in the Service Contract's Terms of Reference.

### **Contract Progress Meetings**

Regular Contract Progress meetings provide an opportunity to discuss the progress in project implementation and resolve any difficulties if have emerged.

The Contractor shall agree with the Engineer on dates for regular progress meetings. These meetings shall normally be held monthly, preferably not later than 10 working days after the completion of each month, but in any case, at least two/three days after the submission of the Contractor's monthly progress report. The Engineer, the Contractor, the Employer, and other stakeholders shall participate in monthly meetings. The meetings are chaired by the Engineer and officially recorded.

The Engineer will prepare Minutes of Meeting (MoM) and send them to the Contractor, the Employer, and all who attend the meeting for comments. If no comments have been given in writing to the Engineer within an agreed deadline the MoM will be considered as accepted by all parties. The Engineer will forward the agreed MoM to the Employer and other institutions and stakeholders.

### **Ad-hoc Meetings**

Meetings may take place if an issue has been raised by the Contractor, the Engineer, the End Beneficiary, or the Employer/CFCU. Meetings are likely to take place if there has been any specific matter that came up suddenly, detected any point about the progress on the contract or quality of work.

Ad hoc meetings could be organized if necessary to discuss specific issues/problems (design change, claims, etc). If needed the meetings should be organized on-site. Attendance should be kept to a minimum to ensure effective discussion. Meetings shall be recorded in Minutes, taken by the Engineer, and circulated to interested parties after the meeting.

## **B - Progress Reports**

Reporting requirements of the Contractor are specified in the works contract.

If not amended in the Particular Conditions of the works contract, the Contractor shall submit the Monthly Progress Reports no later than 7 working days after the end of each month.

The Monthly Progress Report shall be submitted both as soft and hard copies to the Engineer.

These reports shall include the following:

- ▶ Detailed descriptions of progress, including each stage of design (if any), procurement, manufacture, delivery to site, construction, testing, and commissioning;
- ▶ Overview of the works planned for realization in the next month;
- ▶ Charts showing the progress of works in comparison with the valid Work programme, including the critical path;
- ▶ For the manufacture of each main item of equipment and materials, the name of the manufacturer, percentage progress and the actual or expected dates of commencement of manufacture, Contractor's inspections, tests, and delivery;



- ▶ Records of Contractor's Personnel and Contractor's Equipment on-site;
- ▶ Copies of test results, quality assurance documents, and certificates of materials;
- ▶ Safety statistics, including details of hazardous incidents and activities relating to environmental aspects and public relations;
- ▶ Claims and notices of claims;
- ▶ Photographic report of progress.
- ▶ Any events, difficulties, and problems that arise during the reporting period.

In line with Red FIDIC General Conditions of Contract, the progress report shall be included as part of the supporting documents of the Contractor's statement or Application for Interim Payment Certificate submitted to the Engineer.

The Employer, as well as the End Beneficiary, has no obligation to approve the Progress Report submitted by the works contractor. The Engineer has obligation to review and comment on these reports.

Except for the reporting obligations of the works contractor, the Engineer has also an obligation to submit reports in line with the requirements of the Service contract for supervision of works.

## C - Monitoring Visits

Monitoring visits for works contracts **are obligatory** and the CFCU carries out visits during the implementation period. In addition to CFCU, monitoring visits during the implementation of the Contract can be conducted by the Lead Institution, EUD representatives, NAO, NIPAC, etc. In addition to these actors, on-the-spot visits of the contract implementation can be also undertaken by the auditor, such as internal auditors, Audit Authority, European Court of Auditors, OLAF, external auditors engaged by the European Commission, etc.

Prior to the monitoring visit, CFCU sends an official letter to the End Beneficiary (copy to the Contractor), in order to inform them of the planned monitoring visit date and time, the purpose of the visit and checks to be performed. The main objective of such visits is to identify if the subject contract is implemented properly and to check whether implementation of the contract is ongoing according to the documents which are provided to the Contracting Authority.

The subject of the check during the monitoring visit is not just the Contractor, but also the Engineer and the End Beneficiary. In relation to the End Beneficiary, it is checked whether the End Beneficiary has handed over all sites to the Contractor, whether the End Beneficiary regularly follows the Site visits/Monitoring meetings and is up to date with the status of the project, whether it has adequate technical staff and experience if the End Beneficiary keeps and records all the project documents in hard copy and soft version, etc.

The works contracts will have to be checked during the implementation period and during the defect notification period and after the end of the defect notification period.

The major aim of the End Beneficiary visits is to verify that the works are implemented in line with the work plan and information provided in the reports submitted by the Contractor and the Engineer.

As the CFCU staff is likely to lack the technical expertise to check the works, it is important in due time for the End Beneficiary to nominate technical expert(s), who can verify that the works are implemented in line with the requirements of the contract.





The Monitoring Visits are conducted in order to:

- ▶ Check the status of the project activities carried out. Compare the actual realization of the Contract with the information provided in the reports (Monthly Progress Reports and Monthly/ Interim Reports by the Engineer, etc.) and IPCs;
- ▶ Check whether the project activities have been modified and if so, what are the reasons
- ▶ Availability of project documentation on-site (construction diary, design documents, permits, etc.)
- ▶ Availability of Contractor's and Engineer's staff on site
- ▶ Origin of materials and goods
- ▶ Have the Engineer acted in line with his duties, check the available documentation for approval of materials, inspections, site instructions, non-conformance reports, etc.
- ▶ Health and Safety on site
- ▶ Publicity and Visibility (Compliance with the contractual obligations on publicity and visibility)
- ▶ To detect any irregularity

If an issue is discovered that should be overcome in order to secure proper implementation of the Contract, CFCU takes an action with formal correspondence addressed to the relevant party i.e., the Contractor or the End Beneficiary. Namely, in the official letter, based on the findings of the Monitoring Visit, CFCU presents its observations and the appropriate measures/actions that should be fulfilled by the concerned party.

In works contracts, there are also Ad-hoc visits, which could be held any time on sites for the purpose of participating in meetings, inauguration organizations, etc.

## D - Taking Over Processes

Following the completion of the works defined in the contract, the Contractor will apply by notice to the Engineer for taking over certificate. The application for taking over certificate will follow the deadlines stipulated in the relevant clauses in the Particular and General conditions of the works contract.

Before applying, the Contractor shall confirm that the works have been constructed in accordance with the Technical Specifications and/or Employer's Requirements, certificates of origin provided, the works have passed all specified tests, the visibility requirements are respected, the training has been provided (if required), the Contractor provided all necessary Operation and Maintenance Manuals, together with all relevant as build drawings which must be sufficiently detailed to enable maintenance and repair of all parts of the works. The Works shall not be considered to be completed for the purpose of taking over until such manuals, certificates, and drawings have been supplied to the Contracting Authority/the Employer.

Following the application for taking over certificate by the Contractor, the Engineer shall within the dates, specified in the contract either<sup>8</sup>:

- a. write a letter (declaration) to the CFCU informing on the date on which, in his opinion, the works were completed in accordance with the contract and ready for taking over. After receiving this notice, CFCU writes a letter to the End Beneficiary in order to establish a Provisional Acceptance/Observation Team to conduct the Taking Over of the works. The team of the End

8 The procedure for Taking over certificate is taken from the CFCU Guidelines/Operational Procedure L05 Provisional Acceptance/Taking over, since it's already established and should apply to End Beneficiary as well.



Beneficiary attends the taking over studies as observers whilst the Engineer constitutes a taking over committee composed of technical experts from the Supervision contractor. The Engineer prepares and signs the Taking Over Certificate with the attachment of Taking Over Memorandum and submits it to the CFCU for endorsement with certificates of origin of the equipment installed and main construction materials or

- b.** rejects the application, giving his reasons and specifying the action which, in his opinion, is required of the Contractor for the certificate to be issued. The Contractor takes the necessary actions in accordance with the instruction of the Engineer.

In case of a) the Engineer, the Contractor, Provisional Acceptance/Observation Team comes together. First, the Engineer makes the Taking Over and signs a declaration that the works were completed as per design and specifications. Then the Engineer, Contractor, and Provisional Acceptance /Observation Team initial and sign the Taking-Over Memorandum either:

- i.** works are completed according to the declaration of the Engineer and their inspection or
- ii.** defines the minor outstanding works and defects which will not substantially affect the use of the Works or Section for their intended purpose and fixes a verification date for the outstanding works.

In case of (ii), verification of the works will be done within the period stated in the memorandum with the participation of the Engineer, Contractor, and Provisional Acceptance/Observation Team. The absence of the Contractor shall not be a bar to verification provided that the Contractor has been summoned in due forms at least the period, specified in FIDIC prior to the date of verification.

Should exceptional circumstances make it impossible to ascertain the state of the works or otherwise proceed with their acceptance during the period fixed for taking-over, a statement certifying such impossibility shall be drawn up by the Engineer, if possible after consulting the Contractor. The verification shall take place and a statement of acceptance or rejection shall be drawn up by the Engineer with the participation of the Provisional Acceptance/Observation Team within the dates, specified in FIDIC following the date on which such impossibility ceases to exist. The Contractor shall not invoke these circumstances in order to avoid his obligation to present the works in a state suitable for acceptance.

The works shall not be accepted until the prescribed verifications and tests have been carried out at the expense of the Contractor. The Contractor shall notify the Engineer of the date on which such verification and tests may commence.

After verification of the works, another memorandum is held by the acceptance members that all the outstanding/faulty works are completed/corrected as per design and specifications.

The Engineer sends the signed Taking Over Certificate with its attachments Taking Over Memorandum and Handing Over Protocol to the CFCU with a letter stating that the taking over of the works was completed.

If the issuance of the Taking Over Certificate failed or the Contractor's application within the period specified in FIDIC, is not rejected, the process will be conducted according to the relevant clauses/provisions of the Contract.

If there is more than one site in which works had been executed then for each site same procedure shall be applied and a Taking Over Memorandum shall be issued for each site, but only one Taking Over Certificate shall be prepared. The date of the last Taking Over Memorandum shall be the date of the Taking Over and this date shall be written over the Taking Over Certificate.



The ownership of the works is transferred to the End Beneficiary with the issuance of the Taking Over Certificate and signing the Handing Over Protocol, upon this the works must be registered in the accounting/inventory of the End Beneficiary in line with the provisions of the applicable legislation.



Upon the signature of the CFCU, two originals of the signed Taking-Over Certificate is submitted to the Engineer to convey one original to the Contractor, one original of the signed Taking-Over Certificate is submitted to the End Beneficiary, and two originals are kept at the CFCU.

### Visibility

One of the main tasks of the Engineers and CFCU as well to verify whether the visibility obligations under the contract are fulfilled and if they are in accordance with the visibility requirements of the EU's Communication & Visibility Manual and the visibility guidelines of the Delegation of the European Union to Türkiye, to be found on the following links:

- ▶ [https://ec.europa.eu/europeaid/funding/communication-and-visibility-manual-eu-external-actions\\_en](https://ec.europa.eu/europeaid/funding/communication-and-visibility-manual-eu-external-actions_en)
- ▶ <http://www.avrupa.info.tr/en/learn-about-eu-visibility-guidelines-16>

In order to visualize the project co-financed by the European Union, the Contractor shall erect at each workplace display panel (signboard) containing information about the project and the role of the European Union in completing this project. The signboards will be thus elaborated in order to be very visible for everyone.

Signboards shall be of durable construction capable of withstanding exposure to the weather conditions. The Contractor shall keep the signboards in good repair for the duration of the contract and shall remove them on final completion of the Contract.

It is of great importance to check that the visibility labels fixed on the equipment are durable and visibly designed.

EU contributions to the construction of permanent structures such as houses, clinics, factories, institutions, training centers, roads, and bridges must be acknowledged by permanent commemorative plaques. These must be placed, for example during the opening ceremony, in the most visible part of the structure, such as the main entrance, or in front of the building.<sup>9</sup>

### Origin

All Goods purchased under the contract must originate in any eligible source country as defined in the works contract.<sup>10</sup> However, in case it is specified in the contract, there may be derogations and the goods to be purchased may originate from any country, whenever the total price of the estimated quantity of those goods, as reflected in a separate item of the Bill of Quantities is below EUR 100.000.

The term "origin" is defined in the relevant EU legislation on rules of origin for custom purposes<sup>11</sup>



9 [https://ec.europa.eu/europeaid/funding/communication-and-visibility-manual-eu-external-actions\\_en](https://ec.europa.eu/europeaid/funding/communication-and-visibility-manual-eu-external-actions_en)

10 "Eligible Source Countries" means; all countries eligible for Instrument for Pre-Accession Assistance-2 (IPA-2) (Council Regulation (EC) No 231/2014 of 11 March 2014 establishing an instrument for pre-accession assistance (IPA II))

11 Please see PRAG (Version 2020.0 – 1 August 2020) Section 2.3.7



The Contractor must certify that the goods comply with the origin requirement specifying the country or countries of origin. The official Certificates of Origin must be submitted latest before Taking Over. Failing this, the Contracting Authority cannot release any funds to the Contractor in payment for such goods.

The Contractor must submit official Certificates of Origin or Turkish Goods Certificates (Türk Mali Belgesi) issued by the authorized institution of the countries in accordance with the relevant articles of the contracts. For detailed information and documents regarding the issuance and approval of the Turkish Goods Certificate, please refer to the following link:

<http://www.tobb.org.tr/DisTicaretMudurlugu/Sayfalar/IPATurkMaliBelgesi.php>

During the Taking over the compliance of the origin of the products must be checked and confirmed by the Provisional Acceptance/Observation Team.

## E - Defect Notification Period – DNP

The Defect Notification Period (DNP) is defined by the Red FIDIC contract conditions and shall begin on the date of issuance of the Taking Over Certificate.

The duration of the DNP is stipulated in the works contract Appendix to tender and is expressed in calendar days.

As soon as the Taking over certificate is signed, the End Beneficiary becomes the owner of the building, and the usage of the same shall start. During the DNP the Contractor shall complete any work which is outstanding and notified in the "Snag list"/"Punch list" part of the Taking over the certificate. The outstanding work must be completed within a reasonable time as instructed by the Engineer.

Also, the Contractor shall remedy defects or damage notified by the Engineer/Employer by the end of the DNP.

Except the Engineer's obligation to conduct inspection during DNP (on a quarterly, semi-annual basis, or as defined) and accordingly report, it is the End Beneficiary's responsibility to officially inform the Contracting Authority, on any problems (malfunction, delay, maintenance, repair, etc.) that arise during use of the building.

The End Beneficiary shall notify the Contracting Authority thereof, whether the Contractor has fulfilled its obligations during DNP.

If the contractor fails to fulfill his obligations during DNP, the Engineer/the Employer shall proceed in line with the contract conditions (be entitled to an extension of the DNP subject to Employer's claim, do the remedy of defect at the contractor's costs, require the Engineer to determine reducing the contract price, terminate the contract).

## F - Performance Certificate<sup>12</sup>

Performance Certificate studies will be done in line with Particular Conditions and General Conditions of the Contract.

Upon expiry of DNP or where there is more than one such period, upon expiry of the last period, and when all defects or damage have been rectified, the CFCU writes a letter to the End Beneficiary that DNP was finalized and Performance Certificate Committee needs to be established for the Performance Certificate studies of the works.

<sup>12</sup> The procedure for Performance certificate is taken from the CFCU Guidelines/Operational Procedure L06 Final Acceptance/Performance certificate, since its already established and should apply to End Beneficiary as well.



The Engineer carries out the Performance Certificate studies and signs a declaration that either the DNP was completed without any defects or all the defects were remedied. After committee members have their investigation with the latest version of the design and technical specifications if needed, relevant tests are held by the committee for testing of the system. After completion of the Performance Certificate studies, the committee signs a memorandum that either:

- i. works are completed according to the declaration of the Engineer and their inspection and signs the memorandum or
- ii. fixes a verification date for the defective works

In case of (ii), verification of the works by the Performance Certificate with a view to Performance Certificate studies shall take place in the presence of the Contractor. The absence of the Contractor shall not be a bar to verification, provided that the Contractor has been summoned in due form at least the period, specified in FIDIC prior to the date of verification.

Should exceptional circumstances make it impossible to ascertain the state of the works or otherwise proceed with their acceptance during the period fixed for Performance Certificate, a statement certifying such impossibility shall be drawn up by the Engineer, if possible after consulting with the Contractor. The verification shall take place and a statement of acceptance or rejection shall be drawn up by the Acceptance Committee within the period, specified in FIDIC, following the date on which such impossibility ceases to exist. The Contractor shall not invoke these circumstances in order to avoid his obligation to present the works in a state suitable for acceptance.

The works shall not be accepted until the above verifications and tests have been carried out at the expense of the Contractor. The Contractor shall notify the Engineer of the date on which such verification and tests may commence.

Works which do not satisfy the terms and conditions of the contract or which, in the absence of such terms and conditions, are not carried out in accordance with trade practices in the state where the works are located shall, if necessary, be demolished and rebuilt by the Contractor or repaired to the satisfaction of the Engineer. Otherwise, this shall be done as of right after due notice, at the expense of the Contractor, by order of the Engineer. The Engineer may also require the Contractor to demolish and reconstruct, or to repair to the Engineer's satisfaction, works in which unacceptable materials have been used or works carried out in the periods of suspension.

After verification of the works, the process will be executed as per the Contract Conditions.

The Engineer sends the initialed and signed Performance Certificate to the CFCU with the attached Performance Memorandum with a letter stating the Performance Certificate studies of the works were completed.

The Performance Certificate shall be issued by the Engineer within the period, specified in FIDIC, of the expiry of the DNP if no defects are found by the Acceptance Committee or as soon as any works ordered under provisions of the Contract have been completed to the satisfaction of the Engineer. Please refer to the General Conditions of FIDIC.

## **G - Claims/Disputes/Arbitration**

In terms of FIDIC Red Book conditions, there are two types of claims:

- 1. Contractor's Claims,**
- 2. Employer's Claims.**



### **Contractors' Claims**

When the Contractor considers that is entitled to any extension of time and/or additional costs shall give notice to the Engineer, describing the circumstances giving rise to the claim.

After the Contractor becomes aware of the event or circumstances has to submit a Notice of Claim to the Engineer, followed by a full detailed claim, until the defined time limits in the contract conditions.

The Engineer shall respond to the Contractor with approval or rejection of the claim through declaring his Determination to both parties: The Employer and the Contractor in line with the contract conditions.

The Engineer shall obtain the specific comment of the Employer in writing before agreeing or determining for any matter, which will prolong the Extension of Time for Completion and/or change the Accepted Contract Amount.

Before, issuing a determination, the Engineer shall consult each party with the endeavour to reach an agreement.

If the Contractor disagrees with the Engineer's determination, he shall proceed with obtaining Dispute Adjudication Board (DAB) decision.

The contract conditions define the appointment of the DAB. DAB is appointed jointly by the contractual parties, and it may consist of one or three members. The Appendix to tender specifies the conditions for the appointment of DAB.

If one of the parties is not satisfied with the DAB decision; the dispute, by a notice of dissatisfaction, will continue to Arbitration.



**The End Beneficiary has to support the Employer in the DAB procedure.**

### **Employer's Claims**

Not only the Contractor but also the Employer (or the Engineer on behalf of the Employer) can issue Employer's claims if considers himself entitled to any payment and/or any extension of the DNP.

The Employer has to follow the same steps, i.e. first to give the Notice of Claim, and then full claim with particulars, however there are no time limits for Employer's claims.

The Engineer has to issue a determination for the Employer's claims as well.



**The End Beneficiary shall support the Employer and the Engineer in providing particulars/justification for the Employer's claims.**

### **Dispute Adjudication Board**

The contract conditions define the appointment of the DAB. DAB is appointed jointly by the contractual parties, and it may consist of one or three members. The Appendix to tender specifies the conditions for the appointment of DAB.

It is essential that the candidate for the position of DAB member is not imposed by one party to the other, but rather selection is made by an impartial entity. The candidates should be selected from the list of persons published on FIDIC website. If the parties cannot agree on a certain candidate, then the FIDIC president will appoint a person/s from the list.



It is preferable for the DAB member to be agreed before the issuance of the Letter of acceptance, or at a specified period thereafter, indicated in the Appendix to tender. Also, the DAB member may be agreed and appointed at the time the dispute has arisen.

When the DAB member is appointed, the tripartite Dispute Adjudication Agreement (DAA) should be signed. The Red FIDIC contract includes as an appendix the template of the DAA and the General Conditions of the DAA.

The remuneration for the DAB is paid by two parties. Each party pays one-half of the remuneration.

The DAB shall be deemed to be not acting as arbitrator/s.

The DAB decision shall be given within 84 days after receipt of reference (referral), or such other period as proposed by DAB and agreed by both parties.

If one of the parties is not satisfied with the DAB decision, the letter of dissatisfaction shall be sent to the other party 28 days after receipt of the DAB decision. If there is no notice of dissatisfaction given by either party, then the DAB decision becomes final and binding upon the parties.

Where notice to dissatisfaction is given, both parties shall attempt to settle the dispute amicably, before the commencement of the arbitration.

**The End Beneficiary has to support the Employer in the DAB procedure.**



### **Arbitration**

Unless settled amicably, any dispute in respect of which the DAB decision has not become final and binding shall be finally settled by international arbitration.

The contract includes the provisions for the resolution by the international arbitration. The Rules of Arbitration of the International Chamber of Commerce are most frequently applied in international contracts.

The dispute shall be settled by three arbitrators appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce.

The Engineer will be invited to participate as a witness and giving evidence in front of the arbitrators.

The arbitration may be commenced prior to or after the completion of works.

The process of arbitration may be a long-lasting process, and the Employer will need legal support.

In some works contracts, the arbitration clause is not existed, i.e. following the DAB; if the disputes are not solved, the parties may directly apply to the court.



of the Client provides...  
for the Client's...  
the part of the Service...  
have the right at any time to...  
provided.

**2. Term.** The term of this Contract...  
execution by the Provider or until the...  
of Work, whichever is later.

---

Signature







## CHAPTER 5

# AMENDMENTS TO THE CONTRACT

Works Contractor and the Employer, as well as all the parties involved, should make an effort to implement the project as originally planned. Nonetheless, there might be a situation where some events will cause the need for minor or major changes that will imply an Amendment to the contract.

The procedures for amendment of the works contract can be categorized into three groups depending on the type of change that should be made:

- ▶ **Variations or Variation Orders (VO)**
- ▶ **Value Engineering**
- ▶ **Addendum to the Contract** to be signed by all parties before implementing the change. Addendum requires prior approval of the CFCU and endorsement of the EUD.

### A - Important Principles Related to Contract Amendments

- ▶ Requests for contract amendment **must be sent in writing** by the party requesting the amendment. Also, the amendment must be confirmed in writing through Variation Order or Addendum signed.
- ▶ Contracts cannot be amended after the **execution period** ends.
- ▶ The amendment shall be in accordance with the programming documents, i.e., shall comply with the Action Document.
- ▶ The amendment may not have the purpose or the effect of making changes to the contract that would call into question the **award conditions** prevailing at the time the contract was awarded. This means that major changes such as a radical change in the scope of works, which will affect the tendering conditions, cannot be made through an addendum or a VO.
- ▶ The Contractor/Employer/End Beneficiary must duly **justify and substantiate** its request for amendment. In particular, must include all information necessary for the Contracting Authority to take an informed decision on the matter including (but not limited to): the reasons behind the amendment, and, the impact of the amendment on the implementation of the contract (i.e., on the activities and on the budget). Requests with insufficient or no justification can be rejected.
- ▶ An amendment must be requested early enough not to jeopardize the implementation of the works. However, it may take longer for all the involved parties to assess the amendment, thus it is recommended to send a request for amendment, as early as possible. Late submission can result in its rejection.
- ▶ Any amendment for the extension of the contract shall consider the implementation to be completed before the **operational implementation period deadline** of the relevant Financing Agreement.
- ▶ The amendments are not acceptable if: the changes result from non-performance of the Contractor or are not needed for the efficient/effective implementation of the contract (changes because of savings, with no benefit for the Employer), or proposed modification threatens the successful project implementation.



- ▶ The amendments are not acceptable if it is required due to a default or breach of contract by the contractor, any additional cost attributable to such amendment shall be borne by the contractor.
- ▶ Any amendment carried out by the contractor without a variation order or without an addendum to the contract is not allowed and made at the contractor's own financial risk.
- ▶ **Unless authorized, the End Beneficiary shall have no authority to amend or to issue instructions under the Contract, either on behalf of the Employer or the Engineer.**

## B - Variations/Variation Order

The Engineer may initiate Variations at any time prior to the Taking over the certificate for the works is issued, either by instruction or by request for Contractor's proposal.

The contractor shall execute the Variation unless he has specific justified reasons that cannot implement/comply with the instructed Variation.

The VOs may be used when the amendment is not considered to be 'substantial' i.e., does not affect the object or scope of the contract.

Examples of this would include:

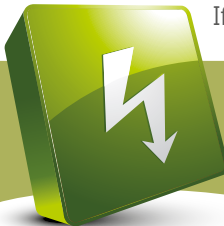
- ▶ Changes in the quantities of the items included in the contract
- ▶ Changes of the quality or other characteristics of any item of work
- ▶ Changes of the levels, positions, or dimensions of any part of the works
- ▶ Omission of any work, unless is to be carried out by others
- ▶ Any additional work, plant, materials, or services necessary for the permanent works, including any associated tests on completion, boreholes and other testing and exploratory work
- ▶ Changes to the sequence or timing of the execution of works

The request for such variation/modification can come either from the Contractor or from the Employer/Contracting Authority (CFCU), or in some cases from the End Beneficiary. If the modification is at the request of CFCU, the Project Manager shall notify the Engineer of nature and the form of the proposed amendment.

The Engineer requests the Contractor to submit a written proposal with a detailed programme for execution of works, implication of the variation to the contractor's programme of work and time for completion, and contractor's proposal for evaluation of the Variation.

The Contractor shall submit the Variation proposal to the Engineer, who after its evaluation will submit to CFCU as the Employer. The CFCU sends the Variation proposal to the End Beneficiary for its opinion and consent in terms of technical concerns. If the End Beneficiary and CFCU provide comments, the Engineer/Contractor shall revise the written proposal for amendment accordingly and resubmit it to the CFCU.

If the Variation proposal is accepted, then it is signed by the CFCU/Employer.



**End Beneficiary shall thoroughly check the written amendment proposal of the Contractor and shall timely and clearly provide its comments and consent to the CFCU.**



If the Contractor receives any communication from the End Beneficiary, the Contractor shall give notice to the Employer of the End Beneficiary's communication, with a copy to the Engineer indicating if it considers the End Beneficiary's communication to be a Variation or amendment to the Contract. The Contractor shall not amend or vary the Works based on any communication from the End Beneficiary, unless and until it receives an instruction from the Engineer to vary the Work or it enters into an agreement with the Employer to amend the Contract.

If the Contractor takes any action pursuant to an End Beneficiary's communication without first obtaining confirmation of the communication from the Employer and/or Engineer, the Contractor shall not be entitled to additional payment or an extension of the Time for Completion, and the Employer shall be discharged from all liability in connection with any claim in respect of the End Beneficiary's communication.

### **Steps to be followed in case of Variation Order for amendment**

STEP NO.	ACTIVITY	RESPONSIBLE BODIES
1	The justification for the certain modifications elaborated	CFCU=Employer/ End Beneficiary/ Engineer/ Contractor
2	Engineer requests a proposal from the Contractor prior to instructing a Variation	Engineer
3	Prepare written proposal for amendment with revised work programme, modification to time for completion, and financial implications and submit it to the Engineer	Contractor
4	Engineer evaluates the Variation proposal and if agrees send the signed document to CFCU/ Employer or reject it	Engineer
5	Revise the written proposal and together with the supporting documents re-submit it to the Engineer	Contractor
6	Variation proposal is accepted and issued by the Engineer, and sent as signed VO to CFCU	Engineer
7	CFCU submits the VO to the End Beneficiary for technical assessments and approval	CFCU=Employer
8	EB reviews the VO and sends his assessment to the CFCU via an official letter	EB
9	Checks the VO and signs if the amendment is approved or rejects it	CFCU=Employer
10	If approved, the Engineer instructs the Variation to the Contractor	Engineer

The VO preparation is the responsibility of the Engineer. Copy of the approved VO is sent to the End Beneficiary by the Employer.

The End Beneficiary shall scrutinize the VO and it's all technical particulars attentively in terms of technical and administrative aspects, and inform the Employer about his assessment as soon as practicable.



The works contract defines for which actions/authority the Engineer shall obtain the pre-approval or specific comment of the Employer in writing before proceeding as per Sub-Clause (SC) 3.1 of the Particular/General Conditions (P/GC) of the Works contract. The same Clause also reads that **“The Employer shall, within 21 days after receiving the Engineer’s application, confirm or reject the application providing the reasons of rejection”**. Therefore, timely actions/responses of all stakeholders becomes crucial.

Usually, the works contract foresees the Engineer to obtain specific comment from the Employer for the following actions:

- a. agreeing or determining for any matter, which will prolong the Extension of Time for Completion and/or change the Accepted Contract Amount
- b. approval of a subcontractor which is different than the named in the Contract
- c. Instructing Variations affecting Accepted Contract Amount, Time for Completion or substantial changes to the scope of this contract.

The Engineer should maintain a register of Variations which would form part of the contract file. The impact of variations, either in relation to financial or other issues, should be described in each Progress Report.

Although modifications are allowed, the Contracting Authority has the right to refuse the changes, if it finds that the conditions listed in the General Conditions of the Contract have not been respected. In such cases, the proposed amendment must have no effect and any cost relating to this amendment must be considered ineligible.

It is, therefore, in the interest of the Contractor, who bears the financial responsibility, to inform the End Beneficiary and the Contracting Authority as soon as the need for amendment is identified and if possible, prior to any intended changes taking effect to avoid incurring ineligible costs.

#### ***Extension of the time for completion***

The extension of the Time for Completion (EoT) is always done through a Variation Order in accordance with SC 3.1 and SC 13.3 of the P/GC. In the Works contract the evaluation of the entitlement of the Contractor for EoT is done by the Engineer through his Determination as per SC 3.5 of the P/GC.

The Engineer should assess the Contractor’s claim/request for EoT and make a determination in line with the contract provisions. EoT does not automatically mean the entitlement of the Contractor to additional costs. Whether the EoT will cause additional costs depends on the particulars/justification of the Contractor’s claim/request.

Following the Engineer’s determination, it is the CFCU as the Contracting Authority/the Employer to make the final decision regarding the request for extension requested by the Contractor. The End Beneficiary’s responsibility is to technically evaluate the requests for change and inform the CFCU accordingly.

The most important issue to take into account in the case of EoT, is that it shall not go beyond the operational implementation period of the respective financing agreement under which the contract is financed.



## C - Value Engineering

According to the General Conditions of Red FIDIC, the Contractor may at any time submit to the Engineer a written proposal which if adopted will a) reduce the cost to the Employer of executing, maintaining, or operating of works, ii) improve the efficiency or value of the works or iii) otherwise benefit to the Employer.

Usually, this procedure is used by the Contractor when the proposal includes the change in the design of part of the permanent works.

The Engineer shall evaluate if the Employer will have the benefit of Contractor's proposal and proceed with approval or rejection.

## D - Addendum to the Contract

It is strongly advised to avoid making changes to the Contract that would require an Addendum. The addendum procedure can be long and complicated and should be initiated only if absolutely necessary.

An amendment to the contract shall be formalized through an Addendum of the contract in case the change affects the object or scope of the contract, such as:

- ▶ amendment to the accepted contract amount if additional EU financing is eligible;
- ▶ change of legal name of the Contractor.

The Contractor bears the financial risk of any costs incurred before the addendum has been issued because the Contracting Authority has the right to refuse to sign the addendum. Only once the addendum enters into force the Contractor can claim payments for the costs.

**The addendum takes effect on the date of the last signature.  
The Contractor cannot implement the change before  
the signature of the Addendum.**



The role of the End Beneficiary in the procedure of preparing an addendum to the contract is of crucial importance. Taking into account that the process is long-lasting, as there are many actors involved (Contractor, Engineer, End Beneficiary, CFCU, EUD), a well-prepared request for addendum can significantly facilitate and accelerate the whole procedure.

Thus, the CFCU is the first filter for the eligibility of the requests for an addendum from the Contractor. The End Beneficiary bears the responsibility towards the CFCU for giving consent to the requested addendum. Therefore, the comments provided from the End Beneficiary, in the early stage of preparation of the request, can only contribute to better preparation and justification of the request and subsequently to its approval.

In addition to the assessment of the justification for the request, the End Beneficiary is responsible to make an assessment of the annexes of the Contract that are affected by the Addendum and cross-check whether the Contractor has duly reflected the changes in all of them.



### Steps to be followed in case of Addendum

STEP NO.	ACTIVITY	RESPONSIBLE	DURATION (RECOMMENDED)
1	Request addendum to the contract (3 originals) with justification and appropriate modifications of the BoQ, drawings, etc. and submit to Engineer	Contractor	As soon as practicable, preferable 60 days before the amendment or before project completion
2	Reviews the proposal and if appropriate submit the proposal to the Employer for comments or approval	Engineer	As soon as possible
3	Following the receipt of the proposal, CFCU submits the proposal to the End Beneficiary for comments or approval in terms of technical aspects	CFCU	As soon as possible
4	Provides comments on the Contractor's addendum request, or provides its consent or reject it	EB	Within 5 days following the delivery of the addendum request
5	Assess addendum request, and: 1. Provides consolidated comments to Engineer (a procedure to be restarted from step 1), or 2. If approved submit it to the EUD for endorsement	CFCU	Preferably within 30 days upon receiving the request
6	1. Reject the request, or; 2. Provide comments (a procedure to be restarted from step 1), or; 3. If acceptable, provides endorsement to the addendum	EUD	
7	If endorsed, CFCU sends the addendum (3 originals) to the Contractor for the last signature	CFCU	As soon as possible
8	Keep one original of the signed addendum and sends the other two originals and their annexes back to the CFCU	Contractor	As soon as possible
9	Send one copy of the signed Addendum to EB and one original to EUD	CFCU	As soon as possible
10	Implement project according to the final decision (approval/ rejection) of addendum	Contractor	As soon as possible

### Amendment to the accepted contract amount

The amendment of the accepted contract amount is generally done through an addendum to the Contract if additional EU financing is eligible. In some cases, where EU financing is not eligible, additional national resources are required to compensate the additional amount need. In such cases, the budget increase is realized via VO. The increase of the amount of the contract is one of the most challenging types of activity. Namely, the increase of the contract amount requires thorough justification and allocating additional funds.



Sign Here

Keep yo





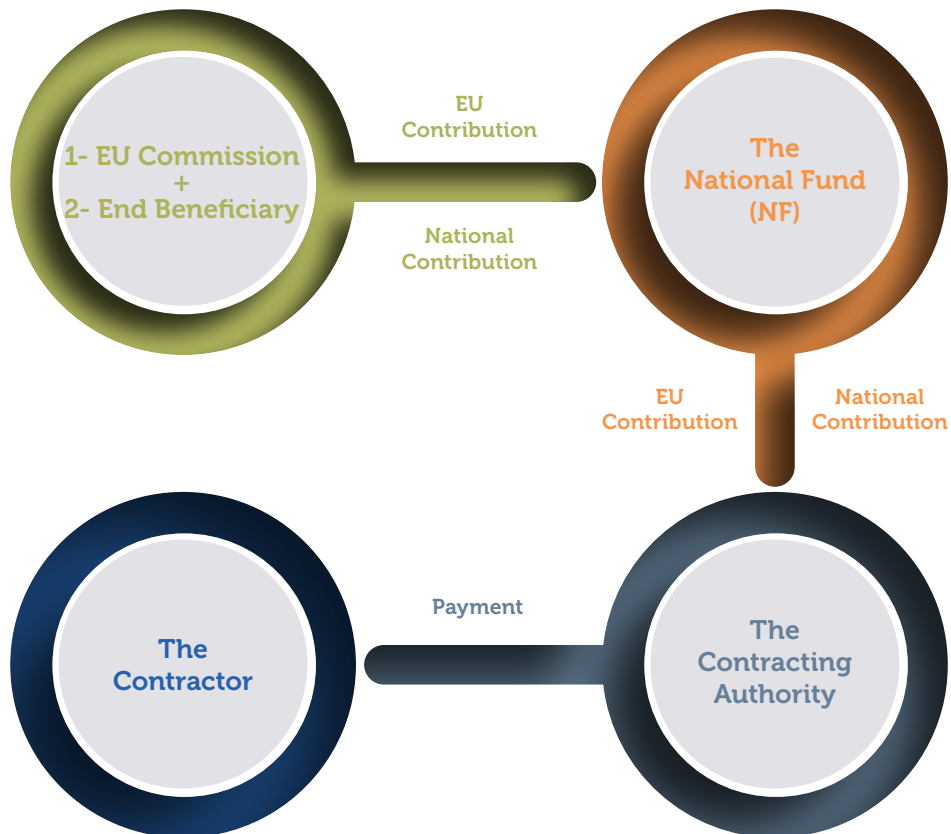


## CHAPTER 6

# FINANCIAL ISSUES

### A - National Contribution

The majority of the projects (so the contracts) require financial contribution from the Beneficiary in addition to the European Union. For the projects requiring national contribution, the End Beneficiary is responsible for providing the necessary national contribution. In this context, the National Fund requests the national contribution from the End Beneficiary taking into account the fund requests/forecasts made by the CFCU. Following the transmission of the requested amount to the National Fund by the Beneficiaries, the National Fund transfers the national contribution amounts to the relevant accounts. CFCU becomes to be able to make payments to the Contractors only after the transfer is made by the National Fund (please see below the table showing the fund flow).



In order to avoid any delay in the payment process of a contract, the End Beneficiary is expected to transfer the contribution requested by the National Fund in a timely manner.






## B - Role of the End Beneficiary in the Payment Process

In works contracts, the payments to the Contractor are defined in the General and Particular Conditions of Contract and in the Appendix to Tender. The minimum amount for the Interim Payment Certificate (IPC) is specified in the Appendix to Tender.

Upon approval of the IPC by the Employer (CFCU); a copy of the approved IPC, copy of the invoice (which is issued by the Contractor to the Contracting Authority after approval of IPC), and Invoice Checklist are sent to the End Beneficiary and approval of the End Beneficiary is requested with an official letter.

Within the period specified in the CFCU's letter, the End Beneficiary's authorized representative and one more authorized End Beneficiary's employee shall provide approval ("read and approved") and send it to the Contracting Authority. If an invoice cannot be approved by the End Beneficiary, the CFCU must be informed of the reasons in writing without any delay. This shall be done in order for the Contracting Authority to be able to execute the payment within the deadline, otherwise, the Contractor is entitled to late payment interest in case the payment is not executed within the period specified in the Contract.



**It is important the End Beneficiary to submit the requested information and documents by the Contracting Authority in due time, correct and complete, in order to ensure smooth payment process.**







## CHAPTER 7

# SUSTAINABILITY OF PROJECTS

The importance of the **sustainability issue** of the EU assistance under IPA II has been emphasized and underlined.

Namely, the Common Implementing Regulation stipulates the following: *“The longer-term outcomes and impacts and the sustainability of effects of the Instruments shall be evaluated in accordance with the monitoring, evaluation and reporting rules and procedures applicable at that time”.*

In addition to this, the IPA II Implementing Regulation states: *“The sectoral monitoring committee shall report to the IPA monitoring committee and may make proposals on any corrective action to ensure the achievement of the objectives of the actions and enhance the efficiency, effectiveness, impact, and sustainability of the assistance provided”.*

The use of the term sustainability is broad and it is difficult to be defined precisely. **Sustainability is the ability to exist constantly.** Sustainability relates to whether the positive impact of the project at the purpose level is likely to continue after the end of the external funding.

**Sustainability of a project implies the continuation of project activities and sustenance of project outcomes after the contract finalization.**



The monitoring of the sustainability is launched with the completion of the contract and following the approval of the Final Report.

The responsibilities related to monitoring for ensuring sustainability are as follows:

1. NIPAC has an overall responsibility to monitor and ensure the sustainability of the projects/actions financed under the IPA framework.
2. Lead Institution has a responsibility to monitor and ensure the sustainability of the project/actions within the relevant IPA programmes under its responsibility and acts as a liaison between NIPAC office and End Beneficiary.
3. End Beneficiary has the final responsibility to ensure and maintain the sustainability of the completed projects.



## Responsibilities related to sustainability of the contracts

LEAD INSTITUTION	END BENEFICIARY
Prepares and submits the evaluation plan to the NIPAC (copy to CFCU) in compliance with the Framework Agreement by 15 November each year	Helps the LI in preparation of the evaluation plan which shall be submitted to the NIPAC in compliance with the Framework Agreement
Asks and supervises the EB, particularly for the monitoring of sustainability of the projects	Ensures sustainability of project results to be used in the scope of the contracts and in line with the action objectives
Monitors the action's outputs in order to ensure the sustainability of the action/programme	Helps LI for monitoring the action's outputs in order to ensure the sustainability of the action/ programme

The ownership of the constructed works according to the Contract is vested to the Contracting Authority. However, they shall be transferred to the End Beneficiary as a final owner of the works/object under the Contract. Therefore, the End Beneficiary shall ensure the sustainability of the completed projects in a long term.

### The monitoring of the Works contracts in relation to sustainability should provide answers to the following questions:

- ▶ Has the capital and infrastructure assets and equipment been fully put into operation?
- ▶ What is the immediate change happened?
- ▶ Is the investment/capital and infrastructure assets and equipment provided fully used for the same purpose that was designed and by the beneficiary designed for?
- ▶ Is the appropriate cost of maintenance covered by the End Beneficiary?
- ▶ What is the immediate change happened?
- ▶ Has sustainable capacity been created in the beneficiary institutions to manage policy challenges and future assistance?
- ▶ Describe the elements of the visibility actions and possible effects produced?
- ▶ Were the identified impacts sustainable?
- ▶ What are the other mid-term and long-term impact(s) expected?
- ▶ Does the investment/capital and infrastrucre assets and equipment provide better economic and social protection services to the public?
- ▶ Were the achieved results sustainable, especially in terms of maintenance of provided investment?
- ▶ What are the prospects for the financing of possible follow up projectsand what are the risks that can endanger sustainability of the achieved project's results?
- ▶ Was the relevant project/contract documentation kept properly?





The Lead Institution can also perform monitoring visits for verification of sustainability. Lead Institution shall report to NIPAC on the sustainability of all the projects within the relevant IPA Programme under its responsibility on a consolidated basis before each Sectoral Monitoring Committee.

List of situations considered to be a breach of project sustainability requirements:

- ▶ The assets in the ownership of the End Beneficiary are not maintained appropriately and used for the intended purpose;
- ▶ Change of legal status of the End Beneficiary without rightful takeover of the assets by the legal successor;
- ▶ Change in ownership of the assets;
- ▶ Change of legal status or reorganization of the End Beneficiary without notification;
- ▶ Assets are not registered in the End Beneficiary inventory book and/or other equivalent database and taxes and administrative fees are not paid;
- ▶ The changes to the condition of the End Beneficiary or the Asset have not been duly reported;
- ▶ Non-compliance with the visibility rules;
- ▶ Any other situations that have or might have a negative impact on the sustainability requirements.

In case of any situation stated above arise sanctions shall be imposed on the End Beneficiary. The NAO has the right to recover the funds partially or in full from the End Beneficiary.







## CHAPTER 8

# OTHER ISSUES

### A • Value Added Tax (VAT) Exemption and Application

Contractors will be exempted from VAT for services rendered and/or goods supplied and/or works carried out under the European Community (EC) contract. Goods provided or services rendered or works performed by the sub-contractor are also exempt from VAT. This exemption applies only to the goods provided or services rendered by the Contractor under the EC contract or to the works or services performed or works performed in connection with the goods provided. The term "Contractor" will also include members of the consortium or joint venture.

An application must be made to the Turkish Revenue Administration or the relevant Tax Office by the contractor. In order to benefit from the VAT Exemption Certificate, the following documents must be submitted during the application:

- a. A copy of the contract signed between the Contracting Authority and the Contractor, initialed by the authorized representative of the applicant firm and stamped as "same as the original",
- b. A copy of the Project budget clearly indicating which part of the budget will be used by the partners (members of the consortium or joint venture) or a statement from the Beneficiary indicating which part of the Project budget will be used by the Partner. This issue should also be specified in the Information Form to be signed by the Contracting Authority.
- c. First of all, the VAT Exemption Information Form prepared by the Contractor and submitted for the approval of the Contracting Authority and approved and sealed by the Contracting Authority.

Detailed and up-to-date information and documents on the subject of tax exemption (VAT exemption and other tax exemptions) can be found on the Revenue Administration page: [https://www.gib.gov.tr/uluslararasi\\_mevzuat](https://www.gib.gov.tr/uluslararasi_mevzuat)





## B - Irregularity Reporting

The End Beneficiary shall inform when an irregularity of fraud has been detected.

According to EU regulations, an irregularity is any infringement of a provision of EU law resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the European Union or budgets administered by the EU by charging an unjustified item of expenditure, reducing or losing revenue collected on behalf of the EU from national sources.

The Irregularity Report shall be prepared in case of suspicion of the existence or in case of detection of situations that may harm funds of EU and Republic of Türkiye.

CFCU should be notified about irregularities without any delay upon its suspicion or detection.

## C - Audit Trail

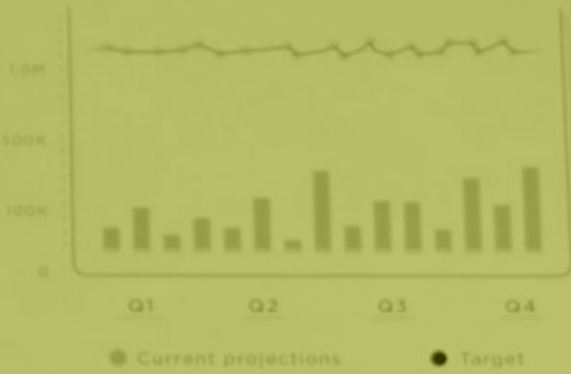
The End Beneficiary shall ensure at all times a sufficiently detailed audit trail. In order to create adequate audit trails and in order to facilitate the retrieval of documents at any given point of time by any authorized person a proper filing and archiving system shall be established and maintained.

The End Beneficiary will ensure that:

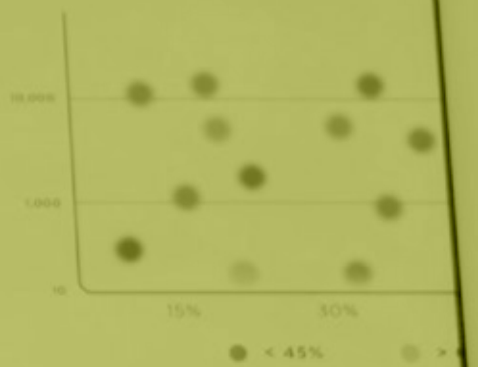
- ▶ For each Contract, a file is opened and the respective documents are archived in it
- ▶ Keep the following record in an accurate and reliable manner:
  - Copy of the Contract and all amendments (Addendums and Variation Orders),
  - Programme of implementation of the tasks,
  - Taking over the certificate, Performance certificate,
  - Copies of Monitoring Visit Reports,
  - Checklists and amendment request,
  - Correspondence with CFCU on corrective measures,
  - Irregularity Reports,
  - All correspondence related to the respective Contract.

In accordance with the Framework Agreement, the documents must be kept for **at least six (6) years** after the closure of the respective IPA programme under which the contracts have been financed.

### Current projections & Expected targets



### Market density and control

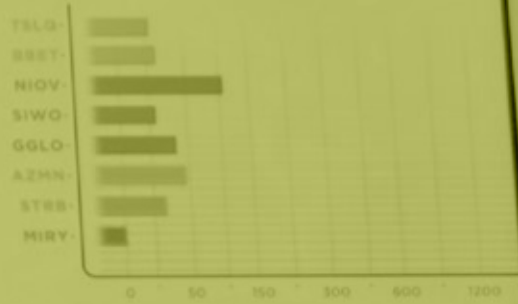


Market coverage

Income streams percentage

BBET • TSLQ • MIRY  
AZMN

### Company's Assets and their



# References

- ▶ FIDIC- (Fédération Internationale des Ingénieurs-Conseils) contract conditions for Construction - RED FIDIC
- ▶ CFCU Operational Guidelines for works contracts
- ▶ DEVCO Companion to financial and contractual procedures (Version 11.0 - February 2021)
- ▶ Presidential Circular numbered 2019/20 regulating the distribution of roles and responsibilities of the relevant institutions in Türkiye entered into force on 4 October 2019
- ▶ Cooperation Agreement between the Central Finance and Contracts Unit and the Lead Institution on the functions and the responsibilities of the Operating Structure - template



REPUBLIC OF TÜRKİYE  
MINISTRY OF TREASURY AND FINANCE  
**CENTRAL FINANCE AND CONTRACTS UNIT**

T.C. Hazine ve Maliye Bakanlığı Kampüsü  
İnönü Bulvarı No: 36 E Blok  
06490 Emek / ANKARA

**T:** +90 312 295 49 00

**F:** +90 312 286 70 72

