






Ten CLARIFICATIONS for Service “Lump Sum” Contracts



Early Warning to Consulting firms, Free Lancers, and Individual Independent Engineers – caused by practical experiences in a Gulf Country (Persian Gulf) -

1	Lumpsum SERVICE Contract? Fixed Price for no changes!	
	If Consultants join the competition for a Service Contract, identify the principal approach in the Tender Dossier TIME-BOUND or LUMP SUM Conditions of Contract. Watch out S/C – FL.	
2	Does the TOR reflect a Log frame Approach + LF Matrix?	
	Scrutinize TOR structure & content. Does TOR indicate a proper Logframe exercise ? Analyse & evaluate the competence, knowhow, and experience of the drafter to judge the quality and certainty of the scope of services, indicative resource input and time frames.	www.GuB21.de/Logframe.pdf /LogframeClock1.pdf
3	Interim Milestones MS, final delivery date & penalty, avoiding disputes.	
	Lump sum Contracts provide a level of effort / estimated resource input , but leave open the apportion for home-based, field survey and training periods (to specify!) of time frames. It is also important for Sub-C/Freelancers to define their “scope of services” for their payments.	
4	Variations / Claims ahead of award and afterwards based on Docs !!!	
	Explore the Conditions of Contract for Variations & Claims due to exceptional / unforeseeable circumstances to claim prolonged time of MS + completion against financial compensation.	
5	Fairness & Good faith	
	Every Party act in good faith & respects the rights of others and will adopt to all reasonable measures to ensure the realization of the Contract`s objectives . The principle “pacta sunt servanda” (agreements must be kept) shall be a paramount primate to complete the project, and not breaching the contract by the other party. Doners should stop disbursements to faulty beneficiaries/ministries/entities like the WB list of ineligible firms and individuals .	
6	Performance and Deliveries	
	If Tender Documents have been delivered and “compensation” have NOT fully been done, the International Intellectual Property Right IIPR rests with the drafters/producers. The ministry is hence NOT ALLOWED to USE prepared Tender Documents with the fact gathered contents by the service providers (main / sub-consultant, individual consultant, free lancers).	
7	Client’s Judgement grid about rendered MS-deliveries and time frames.	
	The Client is entitled to request “remedies of failures” apparently for each (12) Milestones !!! Can you see legal PROVISIONs (assessment grid) to rectify objectively verifiable (?) faults within 30 calendar days: report submitted + Client’s response days? + remedy period. Clarify. Note: Vague wordings in the procurement docs indicate lucky chances for fraudulent practices to blackmail service providers or shows incompetence of drafter of the TOR.	
8	Communication / Notice Requirements	
	Check form of communication for NOTICES i.e. inspections by electronic means but ensure that essential legal consequences are notified in written form + language English + delivered in person to an authorized representative : “specify the nature of failure +30 cd rectification”.	

9	Formal Suspension > Remedy periods 30 cd + Termination 60 cd !
	Notice-to-suspend payments must include the itemized nature of failure of the service provider with a request to rectify the defect within 30 calendar days . If the Consultant fails to remedy the failure, the Client is allowed to terminate the Contract within a two-month period (60 days) obeying the formal written notice delivered in person. Breach of Contracts by Ministries to treat service providers (MC/SC/FL) in a discriminating way should be sanctioned .
10	Donor Aid given as Loan or as Fund to the Government/Ministry?
	Is the Aid given by Loan? Some Clients are reluctant and not honest to pay the Consultants / Individual Consultants in due time or try to find subjective obstacles to fulfil their financial obligations , esp. if the Government has to pay back the loans to their Banks. Does it indicate beneficiaries / Governments chopped monies and utilized for unexplainable wealth ?
Risk Management to minimize unfortunate events and maximize the realization of opportunities based on the a.m. ten issues to consider to (i) clarify complete scope of services (nature and extent), (ii) not properly expressed expectation of the Client deliberately - , (iii) time-based issues / milestones with fixed time periods , (iv) not defined remedy procedures in the Conditions of Service Contract, and (v) imbalanced rights and obligations of the Parties (SCC), laid down in the Special Conditions of Contract.	
Counteractions of Consultants, Independent consultants/Free Lancers	
	Indicative scope of works / nature and extent: Reduce risk by proper and intelligent CLARIFICATION requests during tender / procurement period. esp if you recognize the TOR is miserable structured – not in line with Log frame approach / Logframe matrixes: www.GuB21.de/Logframe.pdf www.GuB21.de/LogframeClock1.pdf AVAILABLE Documents?
	Tentative fixed Time frame of the Terms of Reference TOR, e.g. extent of tasks + remedy actions of “subjective judgements of the Client” for all milestones >>> Add 25% to “exceptional” input by increasing the time input / basic fee / honorarium excluding per diem
	Fixed time frames require OVERTIME due to unforeseeable extent of the scope of works and remedy actions due to “subjective judgement of the Client” to catch up by overtime, nighttime with 50% surcharge on the prolonged daily service hours. Hence add a risk provision of 25% * 50% night time = 12,5% Contract Price/daily service fee – honorarium excl. per diem increase.
	Preventions to avoid, reduce, share or (retain) risks in context with “LUMPSUM” service contract: (i) add 25% more time input / fee increase . If the time frame cannot be prolonged (ii) a surcharge of 50 % night works is required catch up the scope for the fixed time period. It requires additional 25% time input * 50% increase. >>> Total Remuneration: Basic Service fee say 650 Euro/8h-day + 25% (=162,50 E) + 25%*50% (=81,25 E) sums up to 893,75 Euro per service day plus per diem (meal allowance min 3000 Euro LS and housing / house-keeping 3000 Euro p m LS). EU Rate >250 Euro/pd. Consultants do not let screw you down with long payment periods and low per diems. Seven (7) days payment deadlines help to reduce non-payment, !!! countdown starts with e-mail access + scanned docs (time sheets, invoices, receipts). Do not trust in good faith.
	If you have doubts – without proper timely advances and without pecuniary risk coverage – leave it and search for another riskless opportunity. Inquire: Katharina@GuB21.de