

MUNICIPAL DEVELOPMENT FUND OF GEORGIA



CONTRACT

No: EIB/WIMPII/RT/01-2017

Rehabilitation of Tsalka and Bolnisi Water Supply System (remaining works)

Water Infrastructure Modernization Project II (WIMP II)

**TBILISI
2018**

Contract Agreement

No: EIB/WIMPII/RT/01-2017

THIS AGREEMENT made the 19 day of March, 2018, between **LEPL - Municipal Development Fund of Georgia**, (hereinafter "the Employer"), of the one part, and **JV of "Cobra Instalaciones y Servicios S.A Branch Georgia" (Spain) and "IN-SI" LLC (Georgia)** (hereinafter "the Contractor"), of the other part:

WHEREAS the Employer desires that the Works known as **Rehabilitation of Tsalka and Bolnisi Water Supply System (remaining works)** should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.

- (i) the Letter of Acceptance;
- (ii) the Letter of Bid;
- (iii) the Particular Conditions;
- (iv) the General Conditions of Contract, including appendix;
- (v) the Specifications;
- (vi) the Drawings;
- (vii) Bill of Quantities;
- (viii) Environmental Management Plan (EMP); and
- (ix) the Covenant of Integrity.

3. In consideration of the payments to be made by the Employer to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.

4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract

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Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Georgia on the day, month and year specified above.

Signed from the Employer:

Mr. Galaktion Buadze

Executive Director of Municipal Development Fund of Georgia

Signed from the Contractor:

Mr. Andre Eduardo Nogueira Lopes Gaio

Authorized Representative of
General Director of Branch of Foreign Enterprise
"Cobra Instalaciones y Servicios Branch Georgia"

Mr. Zviad Toidze

Director of "IN-SI" LLC

Handwritten signatures and initials at the bottom of the page, including "C. Toidze", "5. P. 4", and "5. 3. 4".



564-გ-2-201802201703



N 564-გ

20/02/2018

Letter of Acceptance

To: Mr. Alfonso de Hoyos Perez, Director of Cobra, duly authorized representative of JV "Cobra Instalaciones y Servicios S.A" Branch Georgia and "IN-SI" LLC.

Address: #72b, Mitskevichi Str., 0194, Tbilisi, Georgia

Subject: Notification of Award Contract № EIB/WIMPII/RT/01-2017,
Rehabilitation of Tsalka and Bolnisi Water Supply System (remaining works)

Dear Mr. Alfonso de Hoyos Perez,

This is to notify you that your Bid dated on January 8, 2018, for execution of the **Rehabilitation of Tsalka and Bolnisi Water Supply System (remaining works)**, № EIB/WIMPII/RT/01-2017 for the Accepted Contract Amount of **GEL 2,961,585.72 (Two Million Nine Hundred Sixty-One Thousand Five Hundred Eighty-Five and 72/100)**, as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the of the Performance Security Form included in Section X. Contract Forms, of the Bidding Document.

Attachment: Contract Agreement – 3 pages.

Sincerely,

Galaktion Buadze
Executive Director of MDF
გალაქტიონ ბუაძე

აღმასრულებელი დირექტორი

დირექცია

6. მარტი

5. მარტი

Letter of Bid

Date: 08-January-2018
NCB No.: EIB/WIMPII/RT/01-2017
Invitation for Bid No.: DEP170000078

To: **Municipal Development Fund of Georgia**

We, the undersigned, declare that:

(a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB 8) ;

(b) We meet the eligibility requirements and have no conflict of interest in accordance with ITB 4;

(c) We have not been suspended nor declared ineligible by the Employer based on execution of a Bid Securing Declaration in the Employer's country in accordance with ITB 4.6.

(d) We offer to execute in conformity with the Bidding Documents the following Works:

Rehabilitation of Tsalka and Bolnisi Water Supply System (remaining works)

(e) The total price of our Bid, excluding any discounts offered in item (f) below is:

2,961,585.54 GEL

(f) The discounts offered and the methodology for their application are: NONE

i) The discounts offered are: NONE

ii) The exact method of calculations to determine the net price after application of discounts is shown below: NA

(g) Our bid shall be valid for a period of 90 days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

(h) If our bid is accepted, we commit to obtain a performance security in accordance with the Bidding Documents;

5.3.8



JV of Cobra Instalaciones y Servicios S.A. Branch Georgia and LTD IN-SI
27b Mitskevichi street, 0194, Tbilisi



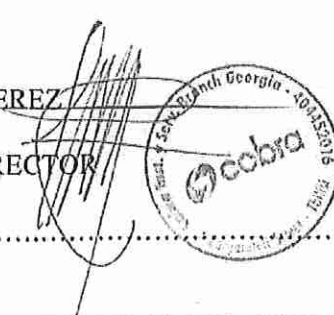
Rehabilitation of Tsalka and Bolnisi Water Supply System (remaining works)
NCB No: EIB/WIMPII/RT/01-2017

- (i) We are not participating, as a Bidder or as a subcontractor, in more than one bid in this bidding process in accordance with ITB 4.2(e);
- (j) We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by a member of the World Bank Group or a debarment imposed by the World Bank Group in accordance with the Agreement for Mutual Enforcement of Debarment Decisions between the World Bank and other development banks. Further, we are not ineligible under the Employer's country laws or official regulations or pursuant to a decision of the United Nations Security Council;
- (k) We are not a government owned entity/ We are a government owned entity but meet the requirements of ITB 4.5;12
- (l) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:
- (m) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed; and
- (n) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.
- (o) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any type of fraud and corruption.

Name ALFONSO DE HOYOS PEREZ

In the capacity of GENERAL DIRECTOR

Signed.....



Duly authorized to sign the bid for and on behalf of JV of Cobra Instalaciones y Servicios S.A.
Branch Georgia and LTD IN-SI

Date: 08-JANUARY-2018

Handwritten blue ink mark or signature at the bottom right of the page.

Attachment 1 to Letter of Tender

COVENANT OF INTEGRITY

"We declare and covenant that neither we nor anyone, including any of our directors, employees, agents, joint venture partners or sub-contractors, where these exist, acting on our behalf with due authority or with our knowledge or consent, or facilitated by us, has engaged, or will engage, in any Prohibited Conduct (as defined below) in connection with the tendering process or in the execution or supply of any works, goods or services for [specify the contract or bid invitation] (the "Contract") and covenant to so inform you if any instance of any such Prohibited Conduct shall come to the attention of any person in our organization having responsibility for ensuring compliance with this Covenant.

We shall, for the duration of the tender process and, if we are successful in our tender, for the duration of the Contract, appoint and maintain in office an officer, who shall be a person reasonably satisfactory to you and to whom you shall have full and immediate access, having the duty, and the necessary powers, to ensure compliance with this Covenant.

If (i) we have been, or any such director, employee, agent or joint venture partner, where this exists, acting as aforesaid has been, convicted in any court of any offence involving a Prohibited Conduct in connection with any tendering process or provision of works, goods or services during the five years immediately preceding the date of this Covenant, or (ii) any such director, employee, agent or a representative of a joint venture partner, where this exists, has been dismissed or has resigned from any employment on the grounds of being implicated in any Prohibited Conduct, or (iii) we have been, or any of our directors, employees, agents or joint venture partners, where these exist, acting as aforesaid has been excluded by the EU Institutions or any major Multi-lateral Development Bank (including World Bank Group, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, European Investment Bank or Inter-American Development Bank) from participation in a tendering procedure on the grounds of Prohibited Conduct, we give details of that conviction, dismissal or resignation, or exclusion below, together with details of the measures that we have taken, or shall take, to ensure that neither this company nor any of our directors, employees or agents commits any Prohibited Conduct in connection with the Contract [give details if necessary].

In the event that we are awarded the Contract, we grant the Project Owner, the European Investment Bank (EIB) and auditors appointed by either of them, as well as any authority or European Union institution or body having competence under European Union law, the right of inspection of our records and those of all our sub-contractors under the Contract. We accept to preserve these records generally in accordance with applicable law but in any case for at least six years from the date of substantial performance of the Contract."

For the purpose of this Covenant, Prohibited Conduct includes,

- Corrupt Practice is the offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.
- Fraudulent Practice is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.



Rehabilitation of Tsalka and Bolnisi Water Supply System (remaining works)
NCB No: EIB/WIMPII/RT/01-2017

- Coercive Practice is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party to influence improperly the actions of a party.
- Collusive Practice is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party
- Obstructive Practice is (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (b) acts intended to materially impede the exercise of the EIB's contractual rights of audit or access to information or the rights that any banking, regulatory or examining authority or other equivalent body of the European Union or of its Member States may have in accordance with any law, regulation or treaty or pursuant to any agreement into which the EIB has entered in order to implement such law, regulation or treaty;
- Money Laundering is defined in the Bank's Anti-Fraud Policy;
- Terrorist Financing is defined in the Bank's Anti-Fraud Policy;
- Project Owner means the person designated as such in the tender documents or the

Contract: Rehabilitation of Tsalka and Bolnisi Water Supply System (remaining works)
Bidder: JV of COBRA INSTALACIONES Y SERVICIOS SA BRANCH GEORGIA and LTD IN-SI
Date: 08-01-2018



Particular Conditions of Contract

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Particular Conditions of Contract

The following Particular Conditions shall supplement the GC. Whenever there is a conflict, the provisions herein shall prevail over those in the GC.

Conditions	Sub-Clause	Data
Employer's name and address	1.1.2.2 & 1.3	LEPL Municipal Development Fund of Georgia #150 David Aghmashenebeli Avenue, 0112 Tbilisi, Georgia, Tel.: (+995 32) 243 70 01/ 02/ 03 Fax: (+995 32) 243 70 77 E-mail: procurement@mdf.org.ge
Contractor's name, address and bank Details	1.1.2.3 & 1.3 & 14.7	JV of "Cobra Instalaciones y Servicios S.A Branch Georgia" (Spain) and "IN-SI" LLC (Georgia); COBRA ID: 404452016; IN-SI ID: 206278516; JSC TBC BANK; B/C: TBCBGE22; Acc # GE24TB7604336080100002
Engineer's name and address	1.1.2.4 & 1.3	JV of Temelsu International Engineering Services INC. (Leading Partner, Turkey) and Policy and Management Consulting Group (PMCG) (Partner, Georgia) Attention: Mr. Goktug Sirel, Georgia Country Director Facsimile: +90 312 442 47 20; +90 312 438 52 14; +995 322 99 55 14 E-mail: temelsu@temelsu.com.tr ; gsirel@temelsu.com.tr
Bank's name	1.1.2.11	European Investment Bank (EIB)
Borrower's name	1.1.2.12	Georgia
Time for Completion	1.1.3.3	240 day
Defects Notification Period	1.1.3.7	365 days.
Sections	1.1.5.6	<i>Not Applicable</i>
Electronic transmission systems	1.3	Electronic Mail (E-mail), fax
Governing Law	1.4	Law of Georgia
Ruling language	1.4	English
Language for communications	1.4	English and Georgian
Time for the Parties entering into a Contract Agreement	1.6	Not Modified

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Conditions	Sub-Clause	Data
Inspections and Audit by the Bank	1.15	This clause shall be amended as follows: The Contractor shall permit, and shall cause its agents (whether declared or not), sub-contractors, sub-consultants, service providers, or suppliers and any personnel thereof, to permit, the Bank and/or persons appointed by the Bank to inspect the Site and all accounts and records relating to the performance of the Contract and the submission of the bid, and to have such accounts and records audited by auditors appointed by the Bank if requested by the Bank. The Contractor's attention is drawn to Sub-Clause 15.6 [Corrupt or Fraudulent Practices] which provides, inter alia, that acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under Sub-Clause 1.15 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Bank's prevailing sanctions procedures.
Time for access to the Site	2.1	<u>No later than the Commencement Day</u>
Engineer's Duties and Authority	3.1(b)(ii)	Variations resulting in an increase of the Accepted Contract Amount in excess of <u>0</u> % shall require approval of the Employer.
Performance Security	4.2	<p>The performance security will be in the form of a "demand guarantee" in the amount(s) of <i>10 (ten)</i> percent of the Contract Price and in the same currency(ies) of the Contract Price.</p> <p>Performance Security shall be issued ONLY from local commercial Banks operating on the territory of Georgia.</p> <p>Full list of commercial Bank's operating on the territory of Georgia is available on National Bank of Georgia's website on following link: www.nbg.gov.ge/index.php?m=403&lng=eng</p>

Conditions	Sub-Clause	Data
		Please note that mentioned link is for the purpose of facilitating process of identification of suitable local Bank and under no-circumstances commit the Employer to undertake responsibility regarding credibility of any and/or all commercial Bank's on the list.
Normal working hours	6.5	According to Georgian Labour Laws. The Contractor may request the Engineer to extend the normal working hours. If the Contractor is able to demonstrate the necessity the Contractor is allowed even to work on site 24 hours per day.
Delay damages for the Works	8.7 & 14.15(b)	<u>0.1 (one tenth)</u> % of the Contract Price per day
Maximum amount of delay damages	8.7	10 (ten) % of the Contract Price.
Provisional Sums	13.5.(b)(ii)	10 (ten) %
Adjustments for Changes in Cost	13.8	Not Applicable
Total advance payment	14.2	<p>The Advance Payments shall be: up to 20% (twenty percent) of the Contract Price and shall be paid to the Contractor no later than 28 days after submission of the Bank Guarantee issued by a Bank for the same amount, acceptable to the Employer.</p> <p>Advance Payment Security (guarantee) shall be issued ONLY from local commercial Banks operating on the territory of Georgia and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.</p>

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Conditions	Sub-Clause	Data
Repayment amortization rate of advance payment	14.2(b)	<p>Formula:</p> $Z = \frac{A * (X\% - Y\%)}{90\% - 30\%}$ <p>where</p> <p>Z = The amount to be deducted in the calculated period</p> <p>A = Advance Payment Received</p> <p>X = Cumulative value of works performed in the calculated period divided by the initial contract amount expressed in percentage. This value shall not exceed 90%.</p> <p>Y = The same as above but for the previous period</p>
Percentage of Retention	14.3	10 (ten) %
Limit of Retention Money	14.3	10 (ten) % of the Contract Price
Plant and Materials	14.5(b)(i)	Not Applicable
	14.5(c)(i)	Plant and Materials for payment when delivered to the Site – PE pipes.
Minimum Amount of Interim Payment Certificates	14.6	Not Applicable
Publishing source of commercial interest rates for financial charges in case of delayed payment	14.8	National Bank of Georgia (www.nbg.ge)
Maximum total liability of the Contractor to the Employer	17.6	<i>Contract Price</i>
Periods for submission of insurance: a. evidence of insurance. b. relevant policies	18.1	14 days
		21 days
Maximum amount of deductibles for insurance of the Employer's risks	18.2(d)	<i>GEL 10,000 (Ten Thousand)</i>

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Conditions	Sub-Clause	Data
Minimum amount of third party insurance	18.3	GEL 100,000 (One Hundred Thousand)
Date by which the DB shall be appointed	20.2	28 days after the Commencement date
The DB shall be comprised of	20.2	One sole Member
List of potential DB sole members	20.2	1. Paata Salia, 2. Irakli Kordzakhia, and 3. Daduna Kokhreidze
Appointment (if not agreed) to be made by	20.3	Dispute Resolution Center Ltd. (the DRC) Address: 71 Vajha-Pshavela ave., Tbilisi, Georgia Tel: (995 32) 2207327 E-mail: info@drc-arbitration.ge Web-site: http://www.drc-arbitration.ge/
Rules of arbitration	20.6(a)	Contracts with domestic contractors: in accordance with the law of the Employer's Country Contracts with foreign contractors: International arbitration shall be: (i) Administered by: International Chamber of Commerce. (ii) Conducted in accordance with the rules of: the International Chamber of Commerce. Place of arbitration: Paris.

Table: Summary of Sections

Section Name/Description (Sub-Clause 1.1.5.6)	Time for Completion (Sub-Clause 1.1.3.3)	Damages for Delay (Sub-Clause 8.7)
Not Applicable	240 day	<u>0.1 (one tenth)</u> % of the Contract Price per day