



Project: Al Qaeda Hospital New Laboratory

Project code: YE120_C10

Country: YEMEN

Date: 24th August 2025

ADMINISTRATIVE SPECIFICATIONS

Exhibit 3 of the works contract

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CHAPTER ONE - GENERAL

Article 1 Scope of application

The provisions of the Administrative Specifications shall apply to this Contract.

Article 2 Definitions

- **Successful bidder:** the bidder whose tender has been selected prior the approval of the Contract;
- **Bidder:** the natural or legal person who expresses an interest in participating or who is selected to participate in a procurement procedure;
- **Contractor:** the holder of the Contract or its duly authorized representative, responsible for the execution of the work;
- **Owner:** the legal entity that is the final owner of the work, technical equipment or object of the Contract;
- **Contract:** the various Enterprise contracts by which one or more persons undertake to perform a specific task for another (the Owner) in return for payment.
- **Representative of the Project owner:** the legal person who is the delegate of the Owner in the performance of its tasks, in this case [Médecins Sans Frontières Switzerland (MSF CH)];
- **Tender:** all the technical and financial elements included in the tender file;
- **Service order:** any written instruction given by MSF-CH to the Contractor concerning the execution of the Contract;
- **Work:** the result of a set of building or civil engineering works intended to fulfill an economic or technical function. It may include, in particular, construction, reconstruction, demolition, repair, rehabilitation or renovation operations, such as site preparation, earthworks, construction, installation of equipment or materials and finishing as well as services incidental to the Work, provided that the value of such services does not exceed that of the Work itself;
- **Site:** the whole of the land on which the works are to be carried out, as well as all the land necessary for site installations, special access roads and all other places specifically designated in the Contract;
- **Bidder:** the natural or legal person who participates in a call for tenders procedure by submitting a tender document and the constituent parts of his tender;
- **Submission:** the written undertaking by which a tenderer makes known its conditions and undertakes to comply with the applicable specifications;
- **Sub-contractor:** the legal or natural person(s) commissioned by the Contractor to carry out part of the work;

Article 3 Ethical Practices and Confidentiality

- 3.1 The Contractor understands and acknowledges that MSF is a humanitarian organization with an international vocation, subject to the principles set out in its Charter contained in CHAPTER VIII .
- 3.2 As such, the Contractor undertakes to respect and ensure each of its employees, auxiliaries, subcontractors and person under its responsibility and / or supervision respect the ethical practices mentioned in CHAPTER VIII .
- 3.3 The Contractor undertakes to keep strictly confidential all information that he/she knows to be confidential or that he/she should reasonably have known to be of such a nature, including in particular all information related to MSF's actions, missions and operations ("Confidential Information") and undertakes to use such Confidential Information only for the purposes of the performance of its obligations to MSF and arising from this Contract.

Article 4 Applicable law

- 4.1 For this Contract, the regulations in force in Yemen shall apply. The Contractor shall be subject to the obligations arising from the laws and regulations applicable to its activities and shall indemnify the Owner against any penalty or prosecution resulting from a breach of such rules and regulations.
- 4.2 Neither Party may assign or transfer all or part of its rights and/or obligations under the Contract to a third party without the written consent of the other Party.
- 4.3 The Parties are and shall remain independent entities, each acting on its own behalf. They acknowledge and accept that they are not authorized to use the name, logo, trademark or any other distinctive sign of the other Party, as well as any adaptation or translation thereof, without the prior written authorization of the Party concerned.
- 4.4 If one or more of the provisions of this Contract is found to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected. The Contract and its annexes, which form an integral part thereof, constitute the entire agreement between the Parties and supersede any previous agreement or practice.

- 4.5 They may be amended by either Parties, by means of a written amendment, dated and signed by both Parties.
- 4.6 In the event of any confusion or contradiction between the provisions of the Contract and those of the annexes, the provisions of the Contract shall prevail.
- 4.7 The documents referred to in Article 5 form a whole and constitute the Contract and, in the event of contradiction, shall prevail over each other in the reverse order in which they are listed.
- 4.8 The Parties undertake to act in good faith in the performance of the Contract and to use their best efforts to resolve amicably any dispute that may arise between them in connection with the Contract.

Article 5 Contract documents

The contract documents constituting the Contract shall include:

- a. **The Invitation to tender** and the Instructions for bidders ;
- b. **The Tender's bidder** (bid and attachments) ;
- c. The administrative specifications or **the Administrative Specifications book** (C.C.A. General and Particular) including the MSF charter (CHAPTER VIII) ;
- d. **The time schedule** or detailed timetable for the execution of the work, drawn up in accordance with the provisions of Article 17.2 and including the start and end dates of the work;
- e. **Graphics** (Blueprints) ;
- f. the technical specifications or **the Technical Specifications book** (C.C.T. General and Particular) containing the description and characteristics of the works ;
- g. **the completed Works Quote** (unit or fixed price and quantities), or any other elements of decomposition of the Contractor's financial tender.

Article 6 Warranty - Insurance

- 6.1 The Contractor declares that he has taken out and maintained all insurance necessary and applicable in connection with this contract in accordance with the regulations imposed by the law of Yemen (including professional indemnity insurance, insurance covering the Contractor's employees, the Works, equipment and materials and construction defects or damage).
- 6.2 The Contractor undertakes to provide MSF with copies of the above mentioned insurance certificates and the related policies upon request.

CHAPTER II – PRICES AND SETTLEMENT OF ACCOUNTS

Article 7 Content and nature of the prizes

- 7.1 Prices are deemed to include all expenses resulting from the execution of the work, including overheads, taxes, duties, fees, royalties and contributions of any kind payable (in force in the country or locality where the performance of the contract takes place), and to provide the Contractor with a margin for risk and profit. However, prices are quoted in the Contract excluding value added tax (VAT). Prices are deemed to have been established on the basis that no services are to be provided by the Owner except those specifically specified in the contract documents.

7.2 Distinction between unit and fixed prices

The overall price of the contract may include either fixed prices or unit prices or a mixture of the two.

A fixed price is any price which remunerates the contractor for a specific work, part of a work or set of services defined by the contract and which is either explicitly mentioned in the contract as being lump-sum, or which applies in the contract only to a set of services which is not likely to be repeated.

A unit price is any price which is not a lump sum in the sense defined above, in particular any price which applies to a type of work or to an item of work the quantities of which are indicated in the contract only as an estimate.

Article 8 Variation in prices

Prices shall be deemed to be firm and not subject to variation.

Article 9 Remuneration of the Contractor/Settlement of the Contract Price

- 9.1 Settlement of accounts: Settlement of the contract accounts shall be by monthly instalments and a balance established and settled as set forth in Article 11.
- 9.2 Work prices:
- i) In the case of application of a fixed price, the price is due as soon as the work, part of the work or set of services to which it relates has been performed. Any differences which may be found, for each type of work, or each item of work between the quantities actually executed and the quantities indicated in the breakdown of this price, drawn up in accordance with Article 7.2, even if the latter has contractual value, may not lead to a change in this price.

- The same applies to any errors in this breakdown.7.2
- ii) In the case of application of a unit price, the determination of the sum due is obtained by multiplying this price by the quantity of types of works carried out or by the number of elements of work implemented.
 - iii) In the case of a mixed formula involving fixed prices and unit prices, the requirements for each of these methods shall apply for the calculation of the sum due to the holder.

The Contract Price shall be paid in instalments as follows: [to be specified In the contract]

- [Ten percent (10%) on signing as an advance payment]
- The remainder of the contract price according to the progress of the work in accordance with articles 11.1 and 11.2;11.111.2
- The balance, excluding the retention of guarantee, when all the reservations mentioned in the provisional acceptance report have been removed.
- Ten percent (10%) constituting the retention of the guarantee of perfect completion and returned at the end of the period specified in Article 26.1, in accordance with the terms of Article 27].

Article 10 Findings and contradictory findings

- 10.1** Contradictory findings shall be made at the request of the Contractor or MSF-CH, They shall only be admissible if submitted in writing.
- 10.2** Findings may not be made more than two (2) days after the subject of the finding.
The findings shall result in a joint report drawn up by MSF-CH with the Contractor. If the Contractor refuses to sign this report, or signs it with reservation, he shall within five (5) days, specify his observations or reservations in writing.
- 10.3** If the Contractor, duly summoned in due time, is not present or represented at the inspection, he shall be deemed to have accepted the finding without reservation.

Article 11 Terms of payment of the Contract Price

- 11.1** Before the end of each month, the Contractor shall submit his monthly payment request to the Project implementer, in the form of a draft interim statement of account or statement of work.
This draft interim statement establishes the total amount of the sums to which he is entitled as a result of the performance of the contract since its beginning and the sums already received.
This amount is established on the basis of the initial contract prices, but without updating or revising the prices and excluding VAT. This draft interim statement includes:
 - The works and other services of the contract;
 - Additional or amending services (as defined in Article 13);**Error! Reference source not found.**
 - The contractual deductions of [10% for the reimbursement of the advance payment] and [10% to constitute the retention of guarantee];
 - Premium and/or penalties (as defined in Article 16);**Error! Reference source not found.**
 - Advances made by the Contractor of costs incumbent on the contracting authority.
- 11.2** If MSF does not agree with, or cannot verify all or part of the invoice, the Contractor shall provide any additional information that MSF may reasonably require.
- 11.3** After validation by MSF-CH of the Contractor's invoices, payments shall be made by **bank transfer**.
- 11.4** These payments shall be initiated within a maximum of **[fifteen (15)]** days. This is followed by the time required for the transfer of funds (this period depends on the financial institutions).

Article 12 Request for final payment

Upon completion of the work, the Contractor shall prepare a draft final account showing the total amount of money to which the Contractor is entitled as a result of the performance of the Contract as a whole. This draft final account shall be drawn up on the basis of the basic prices as well as the draft interim accounts and shall contain the same parts as the latter, with the exception of supplies and advance payments. The amount of the retention money must be deducted from the total and clearly indicated.

- 12.1** The draft final account shall be submitted to MSF-CH within fifteen (15) days of the date of notification of the decision to accept the work.
- 12.2** The draft final account drawn up by the Contractor shall be accepted or corrected by MSF-CH; it shall then become the final invoice.

Article 13 Payment of the price of additional or amending services

- 13.1** This article concerns additional or modifying services, the performance of which is necessary for the proper completion of the work, which are notified by service order and for which the contract has not provided a price.
- 13.2** The new prices may be either unit prices or fixed prices. They shall be established on the same basis as the contract

- prices, in particular at the economic terms and conditions in force during the month in which the prices are established.
- 13.3** In the case of work paid for on a fixed price basis, when changes are ordered by the project implementer in the scope of the work, the new price is deemed to take account of any additional costs incurred by the holder as a result of these changes, excluding the loss compensated. If there are fixed price breakdowns or sub-details of unit prices, their elements, in particular the unit prices contained in the breakdowns, are used to establish the new prices (in the form of added value or loss).
- 13.4** The service order referred to in Article 13.1, or another service order issued no later than fifteen days later, notifies the contractor of the prices proposed for the payment of the new or modified work.

Article 14 Losses and damages

Losses resulting from external risks and causes.

The Contractor shall not be entitled to any compensation for loss, damage or injury caused by his negligence, lack of caution, poor planning, lack of means or wrongful act on his part. MSF-CH shall consider that the Contractor's insurance covers it.

14.1 Force Majeure

Force Majeure shall mean any unforeseeable, irresistible act or event beyond the control of the parties which renders the performance of the Contract impossible, such as natural disasters, fires, explosions, war, insurrection, mobilization, general strikes, earthquakes, but not acts or events which would only make the performance of an obligation more difficult or more onerous for the obligor.

In the case of an event of force majeure, the Contractor shall not be entitled to compensation for the damage suffered.

CHAPTER III – DEADLINES

Article 15 Setting and extension of deadlines

15.1 Time limits for performance

15.2 Any time limit specified in the Contract shall commence on the day following the day on which the time limit is granted. Where the time limit is fixed in days, it shall be understood to be in calendar days and shall expire at the end of the last day of the period specified.

15.3 Extension of Time for Completion

- i) The time for performance of the Work as set forth in the Contract shall apply to the completion of all the Contractor's planned work, including the removal of site facilities and the restoration of the land and premises. The time limit begins on the date of notification of the Contract, which is then deemed to be an order to commence work.
- ii) If there is a delay in the execution of the Contract, the Contractor must inform MSF-CH in writing as soon as possible.
- iii) The extent of the extension of the deadlines is discussed by MSF-CH with the Contractor. The proposal shall be submitted to MSF-CH for approval and the decision taken by MSF-CH shall be notified to the Contractor by means of a service order or in the construction report.

Article 16 Late payment penalties, bonuses and deductions

16.1 Failure to complete the work on the scheduled date or after the additional time allowed by MSF-CH will result in the Contractor being liable to pay a delay fee for each additional calendar day. The daily delay premium is 1/200 of the total cost of the Contract.

16.2 The maximum amount of the compensation shall be 10% of the original contract total or the equivalent of [14 working days, whichever is less, after which MSF may terminate the contract.

CHAPTER IV – IMPLEMENTATION OF THE WORKS

Article 17 Preparation of the work

17.1 A period of three (3) days will be provided for the preparation of the site. This period shall be included in the execution period.

17.2 A time schedule for the execution of the works shall be included in the tender submitted by the Contractor. This schedule shall serve as a reference for monitoring the execution of this Contract.

17.3 If at any time it appears to MSF-CH that the progress of the work does not correspond to the approved execution programme, the Contractor shall provide, upon request by MSF-CH, a revised program presenting the modifications

necessary to ensure completion of the work within the execution period.

Article 18 Working drawings – Detailed design

- 18.1 The Contractor shall draw up the documents necessary for the realization of the works (execution plan, study of details, etc.). These documents shall be submitted to and validated by MSF-CH before the start of relevant works.
- 18.2 If the Contractor detects an error, an omission or an inconsistency in the documents provided by MSF-CH, he must immediately inform MSF-CH in writing.

Article 19 Installation, organisation, safety and hygiene of construction sites

- 19.1 The Contractor is obliged to respect the locations defined and made available by MSF-CH for the storage of the construction installation and materials.
- 19.2 The Contractor shall take all measures for order, safety and hygiene in order to avoid accidents, both to personnel and to third parties. The Contractor shall observe all regulations and instructions of the competent authority.
- 19.3 The Contractor shall allow access to the site to other Contractors employed by MSF-CH and to personnel designated by MSF-CH.
- 19.4 The work shall not impede access to other structures and the proper functioning of the site/activities.
- 19.5 In the event of non-compliance with the above requirements, MSF-CH may take, at the Contractor's expense, the necessary measures after a formal notice has remained without effect. In case of emergency or danger, these measures may be taken without prior notice. The intervention of the competent authorities or MSF-CH does not relieve the Contractor of its responsibility.
- 19.6 Dismissal of personnel, On the grounds of insubordination, incapacity or professional misconduct, MSF-CH may require the Contractor to remove from the works any person employed by it.

Article 20 Layout of works and Contractor's responsibility

- 20.1 The general layout plan of the works is an oriented plan which specifies the position of the works, in planimetry and in altimetry, if applicable, in relation to fixed benchmarks. This plan shall be communicated to the Contractor within eight days of notification of the Contract.
- 20.2 The Contractor shall be responsible for the accurate positioning, levelling, and alignment of all parts of the Works, as well as for providing all instruments, accessories, and labour necessary for the execution of this Contract. The Contractor shall also be responsible for ensuring the final quality and precision of the executed Works. Miscellaneous damage or deterioration caused during the work
- 20.3 The Contractor must use all reasonable means to prevent damage or deterioration of the site. The same applies to public roads providing access to the work site.
- 20.4 In the event of damage to the site or the public roads by the Contractor or any of its subcontractors, the Contractor shall repair the damage at its own expense.

Article 21 Removal of equipment and materials not in use

As the work progresses, the Contractor shall clear, clean and restore the sites placed at its disposal for the execution of the work.

Article 22 Construction defects

- 22.1 If MSF-CH suspects that there is a construction defect, it may, until the expiry of the guarantee period, prescribe measures by service order to detect the defect.
These measures may include, if necessary, the partial or total demolition of the work. These operations must be carried out by the Contractor in the presence of MSF.
- 22.2 If a constructional defect is found, the expenses incurred shall be borne by the Contractor without prejudice to the compensation to which MSF-CH may then be entitled.
- 22.3 If no construction defect is found, the Contractor shall be reimbursed for the expenses defined in Article 23.1, if any were incurred.

CHAPTER V – RECEIPTS AND WARRANTY PERIOD

Article 23 Intermediate or partial acceptance

- 23.1 MSF-CH may use an intermediate acceptance to confirm the completion of a work or part of a work at an intermediate stage in order to allow the start of another phase of the work or the intervention of a subcontractor or another company.
- 23.2 These intermediate acceptances shall be notified in the minutes of the site meeting.
- 23.3 If reservations are expressed by the Contractor or MSF-CH, they must be clearly stated in the minutes when the

minutes are drawn up.

- 23.4** If certain works or parts of works do not fully comply with the Contract specifications, the interim acceptance cannot be validated. The Contractor shall be obliged to remedy these imperfections within the period agreed between the two parties and a new inspection must be scheduled.

Article 24 Provisional acceptance

- 24.1** The purpose of provisional acceptance is to check that the work complies with all the obligations of the Contract and in particular with the technical specifications.
- 24.2** Provisional acceptance shall be notified by means of a jointly signed report between MSF-CH and the Contractor.
- 24.3** If reservations are expressed by the Contractor or MSF-CH, they must be clearly stated in the minutes when the minutes are drawn up.
- 24.4** If individual works or parts of works do not fully comply with the Contract Specifications, the provisional acceptance cannot be validated. The Contractor shall be obliged to remedy such deficiencies within five (5) working days.
- 24.5** Any taking of possession of the works by MSF-CH shall be preceded by their provisional acceptance.
- 24.6** If the Contractor does not attend these acceptance operations, this shall be noted in the minutes and the Contractor shall be deemed to have accepted the provisional acceptance as a whole, by location, or by separate work packages.
- 24.7** Only a report countersigned by MSF, signifying the acceptance of the repairs and the lifting of the reservations, may trigger a request for payment.
- 24.8** The date of this provisional acceptance constitutes the starting point of the guarantee period, the duration of which is specified in Article 26.1. During this period, the Contractor shall be bound by the contractual warranty obligation in accordance with Article 26.
- 24.9** In addition, at the latest [one (1) month] before the end of the period of perfect completion, MSF-CH shall send the Contractor a detailed list of the defects found, with the exception of those resulting from normal wear and tear, misuse or damage caused by third parties. The Contractor shall have a period of [one (1) month] in which to remedy such defects in accordance with the terms of the Contract.
- 24.10** If the Contractor does not repair the defects within this period, MSF-CH shall be entitled to declare the end of the guarantee period and to have the work carried out by any company of its choice at the Contractor's expense and risk. In this case, the retention of guarantee shall be retained by the Owner.

Article 25 Period of warranty, or period of perfect completion

- 25.1** The period of warranty, also called the period of perfect completion, is one (1) year. This period begins after the date of the provisional acceptance report.
- 25.2** For parts of the works that have given rise to an intermediate (or "partial") acceptance as defined in Article 24, the guarantee period shall run from the effective date of this intermediate acceptance.
- 25.3** During the guarantee period, the Contractor is bound by the obligation of "perfect completion", and must therefore:
- a) Carry out any finishing work or services provided for in Article 25.9 ;
 - b) Remedy all deficiencies reported by the Employer or the Project Implementer so that the work is in the same condition as it was at the time of acceptance or after correction of imperfections noted at the time of acceptance;
 - c) Carry out, where appropriate, any remedial or amending work which may be required as a result of the tests carried out in accordance with the provisions of the individual contract documents;
 - d) Deliver to the project implementer the as-built drawings of the works in accordance with the conditions specified in Article 18.
- 25.4** The obligation of perfect completion shall not extend to any work necessary to remedy the effects of use or normal wear and tear.

Article 26 Final (or definitive) acceptance

- 26.1** Final acceptance shall be pronounced after the period of perfect completion specified in Article 26.1.
- 26.2** The final acceptance will be pronounced when any defects found have been repaired. This final acceptance is recorded and dated in a final acceptance report.
- 26.3** The final acceptance will mark the end of the performance of the Contract and will release the contracting parties from their obligations.

CHAPTER VI – TERMINATION OF THE CONTRACT - INTERRUPTION OF WORK

Article 27 General principles

- 27.1** The performance of the works covered by the Contract may be terminated before completion by a decision of the

Contract to terminate the Contract and to fix the effective date.

27.2 In the event of termination, the Contractor shall be duly summoned to inspect the works and parts of the works carried out, the inventory of materials supplied and the descriptive inventory of equipment and site facilities. A report of these operations shall be drawn up.

27.3 The Contractor is obliged to evacuate the premises within the time limit set by MSF-CH.

In the event of the Contractor's death or civil incapacity, the Contract is terminated.

The termination takes effect on the date of death or civil incapacity. It does not entitle the Contractor or its beneficiaries to any compensation.

27.4 In the event of judicial settlement or liquidation of the Contractor's assets, the Contract shall be terminated.

Article 28 Bribery and fraudulent manoeuvres

If the Contractor has engaged in duly established acts of bribery or fraudulent manoeuvres during the award or performance of the Contract, MSF-CH may, after having notified the Contractor, terminate the Contract.

For the purposes of this paragraph, the following terms are defined as follows:

1) "Corruption" means offering, giving, soliciting, inducing or accepting any advantage in order to influence the action of MSF-CH or any person involved in the process of awarding or performing a Contract;

"Fraudulent manoeuvres" means any act which distorts or misrepresents facts in order to influence the award or performance of a Contract in a manner prejudicial to MSF-CH or agrees or attempts to agree with other bidders (before or after submission of tenders) to set prices at an artificial and non-competitive level and thereby deprive MSF-CH of the benefits of an open call for tenders.

Any attempt by a bidder to influence the evaluation of tenders or the award decisions, including by offering bribes, gifts or any other pecuniary advantage, will result in the cancellation of its tender.

Any bribe, gift, gratuity or commission offered by the supplier, contractor or service provider to induce MSF-CH or any person involved in the process to do or refrain from doing something under the Contract or to reward him for having acted in accordance with what was requested is grounds for termination of the Contract.

Article 29 Postponement and interruption of work

If, as a result of a postponement or successive postponements, the work has been interrupted for more than three (3) weeks, the Contractor shall have the right to terminate the Contract.

CHAPTER VII DISPUTES AND LITIGATION

Article 30 Settlement of disputes

The Contractor shall have the right to seek amicable settlement of any dispute or difference between the Contractor and the person responsible for the Contract during the performance of the Contract.

If a dispute arises between the Owner and the Contractor, whether in the form of a reservation to a service order or in any other form, the Contractor shall submit to the Owner, for transmission to the person responsible for the Contract, a memorandum setting out the reasons for and the amounts of his claims;

The person responsible for the Contract shall notify or cause to be notified the Contractor of its proposal for the settlement of the dispute within seven (7) days from the date of receipt of the memorandum. Failure to submit a proposal within this period shall constitute a rejection of the Contractor's claim.

CHAPTER VIII – THE MÉDECINS SANS FRONTIÈRES CHARTER

Médecins sans Frontières is a private international association. The association is made up mainly of doctors and health sector workers and is also open to all other professions which might help in achieving its aims. All of its members agree to honour the following principles:

Charter of Médecins Sans Frontières:

- Médecins Sans Frontières provides assistance to populations in distress, to victims of natural or man-made disasters and to victims of armed conflict. They do so irrespective of race, religion, creed or political convictions.

- Médecins Sans Frontières observes neutrality and impartiality in the name of universal medical ethics and the right to humanitarian assistance and claims full and unhindered freedom in the exercise of its functions.
- Members undertake to respect their professional code of ethics and to maintain complete independence from all political, economic, or religious powers.
- As volunteers, members understand the risks and dangers of the missions they carry out and make no claim for themselves or their assigns for any form of compensation other than that which the association might be able to afford them.