



# **ADAMAWA STATE GOVERNMENT**

## **ADAMAWA STATE BUREAU OF PUBLIC PROCUREMENT (ADSBPP)**

### **STANDARD BIDDING DOCUMENTS**

**FOR**

### **PROCUREMENT OF SMALL WORKS**

**FOR**

**MDA's, STATE JUDICIARY, STATE ASSEMBLY,  
TERTIARY INSTITUTIONS OF LEARNING, AND LOCAL  
GOVERNMENT COUNCILS**

**DECEMBER, 2020**

*(Earlier edition of September, 2014 no longer in use)*

# Foreword

This Standard Bidding Document for Procurement of Small Works has been prepared by the ADSBPP.

# Preface

This Standard Bidding Document for Procurement of Small Works has been prepared for use in contracts financed by the Adamawa State Government [ADSG]<sup>1</sup> involving “smaller” contracts – valued at generally less than ₦60 million by National Competitive Bidding (NCB). This document is intended as a model in the award of a measurement (unit prices or unit rates in a bill of quantities) and lump sum types of contracts, which are the most common in Works contracting.

Lump sum contracts are used in particular for buildings and other forms of construction where the Works are well defined and are unlikely to change in quantity or specification, and where encountering difficult or unforeseen site conditions (for example, hidden foundation problems) is unlikely. Lump sum contracts should be used for Works that can be defined in their full physical and qualitative characteristics before bids are called, or where the risks of substantial design variations are minimal, such as bus shelters or school ablution units. In lump sum contracts, the concept of priced “activity schedules” is used, to enable payments to be made on the basis of percentage completion of each activity.

If the user has questions regarding the use of this SBD, the appropriate Project’s official should be consulted.

## Summary Description

This Standard Bidding Document for Procurement of Small Works and its User’s Guide is to be used when a prequalification process has not taken place before bidding and, therefore, post qualification applies. A brief description of these documents is given below.

### SBD for Procurement of Small Works

#### PART 1 – BIDDING PROCEDURES

##### **Section I. Instructions to Bidders (ITB)**

This Section provides relevant information to help Bidders prepare their bids. Information is also provided on the submission, opening, and evaluation of bids and on the award of Contracts. **Section I contains provisions that are to be used without modification.**

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**Section II. Bid Data Sheet (BDS)**

This Section consists of provisions that are specific to each procurement and that supplement the information or requirements included in Section I, Instructions to Bidders.

**Section III. Evaluation and Qualification Criteria**

This Section contains the criteria to determine the lowest evaluated bid and the qualifications of the Bidder to perform the contract.

**Section IV. Bidding Forms**

This Section contains the forms which are to be completed by the Bidder and submitted as part of his Bid

**Section V. Eligible Countries**

This Section contains information regarding eligible countries.

**PART 2 – MDA’S REQUIREMENTS****Section VI. MDA’s Requirements**

This Section contains the Specification, the Drawings, and supplementary information that describe the Plant and Installation Services to be procured.

**PART 3 – *CONDITIONS OF CONTRACT AND CONTRACT FORMS*****Section VII. General Conditions of Contract (GCC)**

This Section contains the general clauses to be applied in all contracts. **The text of the clauses in this Section shall not be modified.**

**Section VIII. Special Conditions of Contract (SCC)**

This Section consists of Contract Data and Specific Provisions which contains clauses specific to each contract. The contents of this Section modify or supplement the General Conditions and shall be prepared by the MDA.

**Section IX. Contract Forms**

This Section contains forms which, once completed, will form part of the Contract. The forms for **Performance Security** and **Advance Payment Security**, when required, shall only be completed by the successful Bidder after contract award.

**User’s Guide for SBD for Procurement of Small Works**

This Guide to the Bidding Document contains detailed explanations and recommendations on how to prepare a bidding document for a specific procurement of Small Works. The Guide is not a part of the Bidding Document.



**PROCUREMENT DOCUMENTS**

**Bidding Document for  
Procurement of Small  
Works**

**Procurement of:**

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**Issued on:** \_\_\_\_\_

**ICB No:** \_\_\_\_\_

**MDA:** \_\_\_\_\_

**Country:** \_\_\_\_\_





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# Standard Bidding Document

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# **PART 1 – Bidding Procedures**



# Section 1 - Instructions to Bidders

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## Section I - Instructions to Bidders

### A. General

- 1. Scope of Bid**
  - 1.1 The MDA, as **indicated in the BDS**, issues this Bidding Document for the procurement of the Works as specified in Section 6 (MDA's Requirements). The name, identification, and number of contracts of this bidding are **provided in the BDS**.
  - 1.2 Throughout this Bidding Document:
    - (a) the term "in writing" means communicated in written form and delivered against receipt;
    - (b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
    - (c) "day" means calendar day.
- 2. Source of Funds**
  - 2.1 The Ministry/Department/Project (hereinafter called "MDA") **indicated in the BDS** has applied for or received financing (hereinafter called "funds") from the Adamawa State Government (hereinafter called "the AD SG") toward the cost of the project **named in the BDS**. The MDA intends to apply a portion of the funds to eligible payments under the contract(s) for which this Bidding Document is issued.
  - 2.2 Payments by the AD SG will be made only at the request of the MDA and upon approval by the AD SG in accordance with the budgetary allocation, and will be subject in all respects to the terms and conditions. No party other than the MDA shall derive any rights from the funds.
- 3. Fraud and Corruption**
  - 3.1 It is the AD SG's policy to require that MDAs, as well as bidders, suppliers, and contractors and their agents (whether declared or not), personnel, subcontractors, sub-consultants, service providers and suppliers, under AD SG-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts.<sup>2</sup> In pursuance of this policy, the AD SG:
    - (a) defines, for the purposes of this provision, the terms set

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<sup>2</sup> *In this context, any action taken by a bidder, supplier, contractor, or any of its personnel, agents, sub-consultants, sub-contractors, service providers, suppliers and/or their employees to influence the procurement process or contract execution for undue advantage is improper.*

forth below as follows:

- (i) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party<sup>3</sup>;
- (ii) “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<sup>4</sup>;
- (iii) “collusive practice” is an arrangement between two or more parties<sup>5</sup> designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party<sup>6</sup>;
- (v) "obstructive practice" is
  - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a ADSG investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; 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
  - (bb) acts intended to materially impede the exercise of the ADSG’s inspection and audit rights

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<sup>3</sup> “Another party” refers to a public official acting in relation to the procurement process or contract execution]. In this context, “public official” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

<sup>4</sup> “Party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

<sup>5</sup> “Parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

<sup>6</sup> “Party” refers to a participant in the procurement process or contract execution.



provided for under sub-clause 3.1 (e) below.

- (b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;
- (c) will cancel the portion of the fund allocated to a contract if it determines at any time that representatives of the MDA or of a beneficiary of the fund engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the MDA having taken timely and appropriate action satisfactory to the ADSG to remedy the situation; and
- (d) will sanction a firm or an individual, at any time, in accordance with prevailing ADSG's sanctions procedures, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a ADSG-financed contract; and (ii) to be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a ADSG-financed contract

3.2 In further pursuance of this policy, Bidders shall permit the ADSG to inspect any accounts and records and other documents relating to the Bid submission and contract performance, and to have them audited by auditors appointed by the ADSG.

3.3 Furthermore, bidders shall be aware of the provision stated in GCC Sub-Clauses 22.2 and 56.2 (h).

#### 4. Eligible Bidders

4.1 A Bidder may be a natural person, private entity, or government-owned entity—subject to ITB 4.6—or any combination of them in the form of a joint venture, under an existing agreement, or with the intent to constitute a legally-enforceable joint venture. Unless otherwise **stated in the BDS**, all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms.

4.2 A Bidder, and all parties constituting the Bidder, shall have the nationality of an eligible country, in accordance with Section 5 (Eligible Countries). A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, or incorporated, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the

determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services.

- 4.3 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if :
- (a) they have a controlling partner in common; or
  - (b) they receive or have received any direct or indirect subsidy from any of them; or
  - (c) they have the same legal representative for purposes of this bid; or
  - (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder, or influence the decisions of the MDA regarding this bidding process; or
  - (e) a Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which the party is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or
  - (f) a Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid; or
  - (g) a Bidder, or any of its affiliates has been hired (or is proposed to be hired) by the MDA or MDA as Engineer for the contract.
- 4.4 A Bidder that has been sanctioned by the ADSG in accordance with the above ITB 3.1 (d), or in accordance with the Project's Guidelines on Preventing and Combating Corruption in Projects Financed by ADSG Funds, shall be ineligible to be awarded a ADSG-financed contract, or benefit from a ADSG-financed contract, financially or otherwise, during such period of time as the ADSG shall determine
- 4.5 Government-owned enterprises in the MDA's country shall be eligible only if they can establish that they are legally and financially autonomous and operate under commercial law, and that they are not a dependent Project of the MDA.

- 4.6 Bidders shall provide such evidence of their continued eligibility satisfactory to the MDA, as the MDA shall reasonably request.
- 4.7 In case a prequalification process has been conducted prior to the bidding process, this bidding is open only to prequalified Bidders.
- 4.8 Firms shall be excluded if:
- (a) as a matter of law or official regulation, the MDA's country prohibits commercial relations with that country, provided that the ADSEG is satisfied that such exclusion does not preclude effective competition for the supply of goods or related services required;

**5. Eligible Materials, Equipment and Services**

- 5.1 The materials, equipment and services to be supplied under the Contract shall have their origin in eligible source countries as defined in ITB 4.2 above and all expenditures under the Contract will be limited to such materials, equipment, and services. At the MDA's request, Bidders may be required to provide evidence of the origin of materials, equipment and services.
- 5.2 For purposes of ITB 5.1 above, "origin" means the place where the materials and equipment are mined, grown, produced or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that differs substantially in its basic characteristics or in purpose or utility from its components.

**B. Contents of Bidding Document**

**6. Sections of Bidding Document**

- 6.1 The Bidding Document consist of Parts 1, 2, and 3, which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITB 8.

**PART 1 Bidding Procedures**

Section I - Instructions to Bidders (ITB)

Section II - Bid Data Sheet (BDS)

Section III - Evaluation and Qualification Criteria

Section IV - Bidding Forms

Section V - Eligible Countries

**PART 2 Requirements**

Section VI - Works Requirements

**PART 3 Conditions of Contract and Contract Forms**

Section VII - General Conditions (GC)  
Section VIII - Special Conditions (PC)  
Section IX - Contract Forms

- 6.2 The Invitation for Bids issued by the MDA is not part of the Bidding Document.
- 6.3 The MDA is not responsible for the completeness of the Bidding Document and their Addenda, if they were not obtained directly from the source stated by the MDA in the Invitation for Bids.
- 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Document may result in the rejection of the bid.
- 7. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting**
- 7.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the MDA in writing at the MDA's address **indicated in the BDS** or raise his inquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The MDA will respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of bids, within a period **given in the BDS**. The MDA shall forward copies of its response to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. Should the MDA deem it necessary to amend the Bidding Document as a result of a request for clarification, it shall do so following the procedure under ITB 8 and ITB 22.2.
- 7.2 The Bidder is encouraged to visit and examine the Site of Works and its surroundings and obtain for itself, on its own risk and responsibility, all information that may be necessary for preparing the bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.
- 7.3 The Bidder and any of its personnel or agents will be granted permission by the MDA to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the MDA and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 7.4 The Bidder's designated representative is invited to attend a pre-bid meeting, if **provided for in the BDS**. The purpose of the

meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

- 7.5 The Bidder is requested, as far as possible, to submit any questions in writing, to reach the MDA not later than one week before the meeting.
- 7.6 Minutes of the pre-bid meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3. Any modification to the Bidding Document that may become necessary as a result of the pre-bid meeting shall be made by the MDA exclusively through the issue of an addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting.
- 7.7 Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

**8. Amendment of Bidding Document**

- 8.1 At any time prior to the deadline for submission of bids, the MDA may amend the Bidding Document by issuing addenda.
- 8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the MDA in accordance with ITB 6.3.
- 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the MDA may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 22.2

**C. Preparation of Bids**

**9. Cost of Bidding**

- 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the MDA shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

**10. Language of Bid**

- 10.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the MDA, shall be written in the language **specified in the BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language **specified in the BDS**, in which case, for purposes of interpretation of the Bid,

such translation shall govern.

**11. Documents  
Comprising the  
Bid**

11.1 The Bid shall comprise the following:

- (a) Letter of Bid;
- (b) completed Schedules, in accordance with ITB 12 and 14, or **as stipulated in the BDS**;
- (c) Bid Security or Bid Securing Declaration, in accordance with ITB 19;
- (d) alternative bids, at Bidder's option and if permissible, in accordance with ITB 13;
- (e) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2;
- (f) documentary evidence in accordance with ITB 17 establishing the Bidder's qualifications to perform the contract;
- (g) Technical Proposal in accordance with ITB 16;
- (h) In the case of a bid submitted by a joint venture (JV), the JV agreement, or letter of intent to enter into a JV including a draft agreement, indicating at least the parts of the Works to be executed by the respective partners; and
- (i) Any other document **required in the BDS**.

**12. Letter of Bid and  
Schedules**

12.1 The Letter of Bid, Schedules, and all documents listed under Clause 11, shall be prepared using the relevant forms in Section IV (Bidding Forms), if so provided. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

**13. Alternative Bids**

13.1 Unless otherwise **indicated in the BDS**, alternative bids shall not be considered.

13.2 When alternative times for completion are explicitly invited, a statement to that effect will be **included in the BDS**, as will the method of evaluating different times for completion.

13.3 When **specified in the BDS** pursuant to ITB 13.1, and subject to ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the Bidding Document must first price the MDA's design as described in the Bidding Document and shall further provide all information necessary for a complete

evaluation of the alternative by the MDA, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the MDA.

13.4 When **specified in the BDS**, Bidders are permitted to submit alternative technical solutions for specified parts of the Works. Such parts will be **identified in the BDS** and described in Section VI (MDA's Requirements). The method for their evaluation will be stipulated in Section III (Evaluation and Qualification Criteria).

#### **14. Bid Prices and Discounts**

14.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Schedules shall conform to the requirements specified below.

14.2 The Bidder shall submit a bid for the whole of the works described in ITB 1.1 by filling in prices for all items of the Works, as identified in Section IV, Bidding Forms. In case of admeasurements contracts, the Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Bidder will not be paid for by the MDA when executed and shall be deemed covered by the rates for other items and prices in the Bill of Quantities.

14.3 The price to be quoted in the Letter of Bid shall be the total price of the Bid, excluding any discounts offered.

14.4 Unconditional discounts, if any, and the methodology for their application shall be quoted in the Letter of Bid, in accordance with ITB 12.1.

14.5 If so indicated in ITB 1.1, bids are invited for individual contracts or for any combination of contracts (packages). Bidders wishing to offer any price reduction for the award of more than one Contract shall specify in their bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Price reductions or discounts shall be submitted in accordance with ITB 14.3, provided the bids for all contracts are submitted and opened at the same time.

14.6 Unless otherwise **provided in the BDS** and the Conditions of Contract, the prices quoted by the Bidder shall be fixed. If the prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of

the Conditions of Contract, the Bidder shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data in Section IV (Bidding Forms) and the MDA may require the Bidder to justify its proposed indices and weightings.

14.7 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates and prices and the total bid price submitted by the Bidder.

**15. Currencies of Bid and Payment**

15.1 The currency(ies) of the bid shall be as **specified in the BDS**.

15.2 Bidders may be required by the MDA to justify, to the MDA's satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the prices shown in the appropriate form(s) of Section IV, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders.

**16. Documents Comprising the Technical Proposal**

16.1 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV (Bidding Forms), in sufficient detail to demonstrate the adequacy of the Bidders' proposal to meet the work requirements and the completion time.

**17. Documents Establishing the Qualifications of the Bidder**

17.1 To establish its qualifications to perform the Contract in accordance with Section III (Evaluation and Qualification Criteria) the Bidder shall provide the information requested in the corresponding information sheets included in Section IV (Bidding Forms).

17.2 Domestic Bidders, individually or in joint ventures, applying for eligibility for a 7½-percent margin of domestic preference shall supply all information required to satisfy the criteria for eligibility as described in ITB 33.

**18. Period of Validity of Bids**

18.1 Bids shall remain valid for the period **specified in the BDS** after the bid submission deadline date prescribed by the MDA. A bid valid for a shorter period shall be rejected by the MDA as nonresponsive.



18.2 In exceptional circumstances, prior to the expiration of the bid validity period, the MDA may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB 19, it shall also be extended for a corresponding period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid.

18.3 In the case of fixed price contracts, if the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial bid validity, the Contract price shall be adjusted by a factor specified in the request for extension. Bid evaluation shall be based on the Bid Price without taking into consideration the above correction.

## 19. Bid Security

19.1 Unless otherwise **specified in the BDS**, the Bidder shall furnish as part of its bid, in original form, either a Bid Securing Declaration or a bid security **as specified in the BDS**. In the case of a bid security, the amount shall be **as specified in the BDS**.

19.2 A Bid Securing Declaration shall use the form included in Section IV Bidding Forms.

19.3 If a bid security is specified pursuant to ITB 19.1, the bid security shall be, at the Bidder's option, in any of the following forms:

- (a) an unconditional guarantee, issued by a ADSEG *or surety*;
- (b) an irrevocable letter of credit;
- (c) a cashier's or certified check; or
- (d) another security **indicated in the BDS**.

from a reputable source from an eligible country. If the unconditional guarantee is issued by an insurance company or bonding company located outside the MDA's Country, it shall have a correspondent financial institution located in the MDA's Country. In the case of a Bank Guarantee, the bid security shall be submitted either using the Bid Security Form included in Section IV (Bidding Forms) or in another substantially similar format approved by the MDA prior to bid submission. In either case, the form must include the complete name of the Bidder. The bid security shall be valid for twenty-eight days (28) beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 18.2.

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- 19.4 Any bid not accompanied by an enforceable and substantially compliant bid security or Bid Securing Declaration, if required in accordance with ITB 19.1, shall be rejected by the MDA as nonresponsive.
- 19.5 If a bid security is specified pursuant to ITB 19.1, the bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the performance security pursuant to ITB 41.
- 19.6 If a bid security is specified pursuant to ITB 19.1, the bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required performance security.
- 19.7 The bid security may be forfeited or the Bid Securing Declaration executed:
- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid, except as provided in ITB 18.2 or
  - (b) if the successful Bidder fails to:
    - (i) sign the Contract in accordance with ITB 40; or
    - (ii) furnish a performance security in accordance with ITB 41.
- 19.8 The Bid Security or the Bid Securing Declaration of a JV shall be in the name of the JV that submits the bid. If the JV has not been constituted into a legally-enforceable JV, at the time of bidding, the Bid Security or the Bid Securing Declaration shall be in the names of all future partners as named in the letter of intent mentioned in ITB 4.1.
- 19.9 If a bid security is **not required in the BDS**, and
- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid Form, except as provided in ITB 18.2, or
  - (b) if the successful Bidder fails to: sign the Contract in accordance with ITB 40; or furnish a performance security in accordance with ITB 41;
- the MDA may, **if provided for in the BDS**, declare the Bidder disqualified to be awarded a contract by the MDA for a period of time **as stated in the BDS**.

**20. Format and Signing of Bid**

- 20.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 11 and clearly mark it "ORIGINAL". Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked "ALTERNATIVE". In addition, the Bidder shall submit copies of the bid in the number **specified in the BDS**, and clearly mark each of them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.
- 20.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as **specified in the BDS** and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature.
- 20.3 Any amendments such as interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the bid.

**D. Submission and Opening of Bids****21. Sealing and Marking of Bids**

- 21.1 Bidders may always submit their bids by mail or by hand. When so **specified in the BDS**, bidders shall have the option of submitting their bids electronically. Procedures for submission, sealing and marking are as follows:
- (a) Bidders submitting bids by mail or by hand shall enclose the original and each copy of the Bid, including alternative bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL", "ALTERNATIVE" and "COPY." These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITB sub-Clauses 22.2 and 22.3.
  - (b) Bidders submitting bids electronically shall follow the electronic bid submission procedures **specified in the BDS**.
- 21.2 The inner and outer envelopes shall:
- (a) bear the name and address of the Bidder;
  - (b) be addressed to the MDA as **provided in the BDS** pursuant to ITB 22.1;
  - (c) bear the specific identification of this bidding process

indicated in accordance with ITB 1.1; and

(d) bear a warning not to open before the time and date for bid opening.

21.3 If all envelopes are not sealed and marked as required, the MDA will assume no responsibility for the misplacement or premature opening of the bid.

**22. Deadline for Submission of Bids**

22.1 Bids must be received by the MDA at the address and no later than the date and time **indicated in the BDS**.

22.2 The MDA may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Document in accordance with ITB 8, in which case all rights and obligations of the MDA and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

**23. Late Bids**

23.1 The MDA shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 22. Any bid received by the MDA after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

**24. Withdrawal, Substitution, and Modification of Bids**

24.1 A Bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 20.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:

(a) prepared and submitted in accordance with ITB 20 and ITB 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," "MODIFICATION;" and

(b) received by the MDA prior to the deadline prescribed for submission of bids, in accordance with ITB 22.

24.2 Bids requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the Bidders.

24.3 No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereof.

**25. Bid Opening**

- 25.1 The MDA shall open the bids in public at the address, date and time **specified in the BDS** in the presence of Bidders` designated representatives and anyone who choose to attend. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 21.1, shall be as **specified in the BDS**.
- 25.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding bid being substituted, and the substituted bid shall not be opened, but returned to the Bidder. No bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked "MODIFICATION" shall be opened and read out with the corresponding bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at bid opening. Only envelopes that are opened and read out at bid opening shall be considered further.
- 25.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and the Bid Price(s), including any discounts and alternative bids and indicating whether there is a modification; the presence of a bid security or Bid securing Declaration, if required; and any other details as the MDA may consider appropriate. Only discounts and alternative offers read out at bid opening shall be considered for evaluation. No bid shall be rejected at bid opening except for late bids, in accordance with ITB 23.1.
- 25.4 The MDA shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per contract if applicable, including any discounts and alternative offers; and the presence or absence of a bid security, if one was required. The Bidders` representatives who are present shall be requested to sign the record. The omission of a Bidder`s signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

## **E. Evaluation and Comparison of Bids**

- 26. Confidentiality**
- 26.1 Information relating to the examination, evaluation, comparison, and post qualification of bids and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders.
- 26.2 Any attempt by a Bidder to influence the MDA in the evaluation of the bids or Contract award decisions may result in the rejection of its bid.
- 26.3 Notwithstanding ITB 25.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the MDA on any matter related to the bidding process, it may do so in writing.
- 27. Clarification of Bids**
- 27.1 To assist in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, the MDA may, at its discretion, ask any Bidder for a clarification of its bid. Any clarification submitted by a Bidder that is not in response to a request by the MDA shall not be considered. The MDA's request for clarification and the response shall be in writing. No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the MDA in the evaluation of the bids, in accordance with ITB 31.
- 27.2 If a Bidder does not provide clarifications of its bid by the date and time set in the MDA's request for clarification, its bid may be rejected.
- 28. Deviations, Reservations, and Omissions**
- 28.1 During the evaluation of bids, the following definitions apply:
- (a) "Deviation" is a departure from the requirements specified in the Bidding Document;
  - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and
  - (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document.
- 29. Determination of Responsiveness**
- 29.1 The MDA's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB11.

29.2 A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,

(a) if accepted, would:

(i) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or

(ii) limit in any substantial way, inconsistent with the Bidding Document, the MDA's rights or the Bidder's obligations under the proposed Contract; or

(b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.

29.3 The MDA shall examine the technical aspects of the bid submitted in accordance with ITB 16, Technical Proposal, in particular, to confirm that all requirements of Section 6 (MDA's Requirements) have been met without any material deviation, reservation or omission.

29.4 If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the MDA and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

**30. Nonconformities, Errors, and Omissions**

30.1 Provided that a bid is substantially responsive, the MDA may waive any non conformities in the bid.

30.2 Provided that a bid is substantially responsive, the MDA may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the bid. Failure of the Bidder to comply with the request may result in the rejection of its bid.

30.3 Provided that a bid is substantially responsive, the MDA shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price may be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. The adjustment shall be made using the methods indicated in Section III (Evaluation and Qualification Criteria).

**31. Correction of Arithmetical Errors**

31.1 Provided that the bid is substantially responsive, the MDA shall correct arithmetical errors on the following basis:

- (a) only for unit price contracts, if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the MDA there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
- (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

31.2 If the Bidder that submitted the lowest evaluated bid does not accept the correction of errors, its bid shall be declared non-responsive.

**32. Conversion to Single Currency**

32.1 For evaluation and comparison purposes, the currency(ies) of the bid shall be converted into a single currency as **specified in the BDS**.

**33. Margin of Preference**

33.1 A margin of preference shall not apply, **unless otherwise specified in the BDS**.

33.2 Domestic bidders shall provide all evidence necessary to prove that they meet the following criteria to be eligible for a 7½ percent margin of preference in the comparison of their bids with those of bidders who do not qualify for the preference. They should:

- (a) be registered within the country of the MDA's country ;
- (b) have majority ownership by nationals of the country of the MDA's country ;
- (c) not subcontract more than 10 percent of the Contract Price, excluding provisional sums, to foreign contractors.

33.3 The following procedure shall be used to apply the margin of preference:

- (a) Responsive bids shall be classified into the following



groups:

(i) Group A: bids offered by domestic bidders and joint ventures meeting the criteria of ITB Sub-Clause 33.2; and

(ii) Group B: all other bids.

(b) For the purpose of further evaluation and comparison of bids only, an amount equal to 7½ percent of the evaluated Bid prices determined in accordance with ITB Sub-Clause 33.2 shall be added to all bids classified in Group B.

### **34. Evaluation of Bids**

34.1 The MDA shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.

34.2 To evaluate a bid, the MDA shall consider the following:

(a) the bid price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities for measurement contracts or Schedule of Prices for lump sum contracts, but including Day work items, where priced competitively;

(b) price adjustment for correction of arithmetic errors in accordance with ITB 31.1;

(c) price adjustment due to discounts offered in accordance with ITB 14.3;

(d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 32;

(e) adjustment for nonconformities in accordance with ITB 30.3;

(f) application of all the evaluation factors indicated in Section III (Evaluation and Qualification Criteria);

34.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.

34.4 If this Bidding Document allows Bidders to quote separate prices for different contracts, and to award multiple contracts to a single Bidder, the methodology to determine the lowest evaluated price of the contract combinations, including any discounts offered in the Letter of Bid, is specified in Section III (Evaluation and Qualification Criteria).

- 34.5 If the bid for a measurement contract, which results in the lowest Evaluated Bid Price, is seriously unbalanced, front loaded or substantially below updated estimates in the opinion of the MDA, the MDA may require the Bidder to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the MDA may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the MDA against financial loss in the event of default of the successful Bidder under the Contract.
- 35. Comparison of Bids** 35.1 The MDA shall compare all substantially responsive bids in accordance with ITB 34.2 to determine the lowest evaluated bid.
- 36. Qualification of the Bidder** 36.1 The MDA shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid meets the qualifying criteria specified in Section III (Evaluation and Qualification Criteria).
- 36.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 17.1.
- 36.3 An affirmative determination of qualification shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the MDA shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's qualifications to perform satisfactorily.
- 37. MDA's Right to Accept Any Bid, and to Reject Any or All Bids** 37.1 The MDA reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.

## **F. Award of Contract**

- 38. Award Criteria** 38.1 Subject to ITB 37.1, the MDA shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be

qualified to perform the Contract satisfactorily.

**39. Notification of Award**

39.1 Prior to the expiration of the period of bid validity, the MDA shall notify the successful Bidder, in writing, via the Letter of Acceptance included in the Contract Forms, that its bid has been accepted. At the same time, the MDA shall also notify all other Bidders of the results of the bidding, and shall publish the results identifying the bid and lot numbers and the following information: (i) name of each Bidder who submitted a Bid; (ii) bid prices as read out at Bid Opening; (iii) name and evaluated prices of each Bid that was evaluated; (iv) name of bidders whose bids were rejected and the reasons for their rejection; and (v) name of the winning Bidder, and the Price it offered, as well as the duration and summary scope of the contract awarded.

39.2 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.

39.3 The MDA shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 39.1, requests in writing the grounds on which its bid was not selected.

**40. Signing of Contract**

40.1 Promptly upon notification, the MDA shall send the successful Bidder the Contract Agreement.

40.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the MDA.

**41. Performance Security**

41.1 Within twenty-eight (28) days of the receipt of notification of award from the MDA, the successful Bidder shall furnish the performance security in accordance with the conditions of contract, subject to ITB 34.5, using for that purpose the Performance Security Form included in Section IX (Contract Forms), or another form acceptable to the MDA. If the performance security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the MDA. A foreign institution providing a bond shall have a correspondent financial institution located in the MDA's Country.

41.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or to sign the Contract Agreement shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security. In that event the MDA may award the Contract to the next lowest evaluated Bidder whose offer is

substantially responsive and is determined by the MDA to be qualified to perform the Contract satisfactorily.

41.3 The above provision shall also apply to the furnishing of a domestic preference security if so required.

**42. Adjudicator**

42.1 The MDA proposes the person **named in the BDS** to be appointed as Adjudicator under the Contract, at the hourly fee **specified in the BDS**, plus reimbursable expenses. If the Bidder disagrees with this proposal, the Bidder should so state in his Bid. If, in the Letter of Acceptance, the MDA does not agree on the appointment of the Adjudicator, the MDA will request the Appointing Authority designated in the Special Conditions of Contract (SCC) pursuant to Clause 23.1 of the General Conditions of Contract (GCC), to appoint the Adjudicator.

## Section II - Bid Data Sheet (BDS)

### A. Introduction

<b>ITB 1.1</b>	The MDA is: <i>[insert complete name]</i>
<b>ITB 1.1</b>	The name of the bidding process is: <i>[insert complete name]</i> The identification number of the bidding process is: <i>[insert identification number]</i> The number and identification of lots comprising this bidding process is: <i>[insert number of lots and identification number of each lot, if applicable]</i>
<b>ITB 2.1</b>	The MDA is: <i>[insert complete name]</i>
<b>ITB 2.1</b>	The name of the Project is: <i>[insert name of the Project]</i>
<b>ITB 4.1(a)</b>	The individuals or firms in a JV, <i>[insert “shall” or “shall not”]</i> be jointly and severally liable.

### B. Bidding Documents

<b>ITB 7.1</b>	For <b>clarification purposes</b> only, the MDA’s address is: Attention: <i>[insert full name of person, if applicable]</i> Street Address: <i>[insert street address and number]</i> Floor/Room number: <i>[insert floor and room number, if applicable]</i> City: <i>[insert name of city or town]</i> ZIP Code: <i>[insert postal (ZIP) code, if applicable]</i> Country: <i>[insert name of country]</i> Telephone: : <i>[insert telephone number, including country and city codes]</i> Facsimile number: <i>[insert phone number, with country and city codes]</i> Electronic mail address: <i>[insert email address, if applicable]</i> Requests for clarification should be received by the MDA no later than: <i>[insert no. of days]</i> .
<b>ITB 7.4</b>	A Pre-Bid meeting <i>[insert “shall” or “shall not”]</i> take place. If a Pre-Bid

	<p>meeting will take place, it will be at the following date, time and place: <i>[insert date, time &amp; place below, if applicable]</i></p> <p>Time:</p> <p>Place:</p> <p>A site visit conducted by the MDA <i>[insert “shall be” or “shall not be”]</i> organized.</p>
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### C. Preparation of Bids

<b>ITB 10.1</b>	The language of the bid is: <i>[insert language]</i>
<b>ITB 11.1 (b)</b>	The following schedules shall be submitted with the bid: <i>[insert schedules that must be submitted with the Bid, including the priced Bill of Quantities for admeasurement contracts and Schedule of Prices for lump sum contracts]</i>
<b>ITB 11.1 (i)</b>	The Bidder shall submit with its bid the following additional documents: <i>[insert type of any additional documents not already listed in ITB 11.1 that must be submitted with the Bid].</i>
<b>ITB 13.1</b>	Alternative bids <i>[insert “shall be” or “shall not be”]</i> permitted.
<b>ITB 13.2</b>	Alternative times for completion <i>[insert “shall be” or “shall not be”]</i> permitted.  If alternative times for completion are permitted, the evaluation method will be as specified in Section III (Evaluation and Qualification Criteria).
<b>ITB 13.4</b>	Alternative technical solutions shall be permitted for the following parts of the Works: <i>[insert parts of the Works]</i>  If alternative technical solutions are permitted, the evaluation method will be as specified in Section III (Evaluation and Qualification Criteria).
<b>ITB 14.6</b>	The prices quoted by the Bidder <i>[insert “shall be” or “shall not be”]</i> subject to adjustment during the performance of the Contract.
<b>ITB 15.1</b>	<i>[Choose one of the following options as appropriate.]</i>  <i>[In case of ICB]</i> The prices shall be quoted by the bidder in: <i>[insert the currency]</i> A Bidder expecting to incur expenditures in other currencies for inputs to the Works supplied from outside the MDA’s country (referred to as the “foreign currency requirements”) and wishing to be paid

	<p>accordingly, shall indicate up to three foreign currencies of their choice expressed as a percentage of the bid price, together with the exchange rates used in the calculations in the appropriate form(s) included in Section IV (Bidding Forms).</p> <p><i>[or]</i></p> <p><i>[In case of NCB]</i> The prices shall be quoted by the bidder in: <i>[insert the local currency]</i></p>
<b>ITB 18.1</b>	The bid validity period shall be: <i>[insert the number of days deemed appropriate.]</i> days.
<b>ITB 19.1</b>	<p><i>[Choose one of the following options as appropriate.]</i></p> <p>- A bid security or a Bid Securing Declaration shall not be required.</p> <p><i>[or]</i></p> <p>- The Bidder shall furnish a bid security in the amount of <i>[insert amount and currency]</i>.</p> <p><i>[or]</i></p> <p>- The Bidder shall furnish a Bid Securing Declaration.</p>
<b>ITB 19.3 (d)</b>	<i>[Insert other acceptable bid security form.]</i>
<b>ITB 20.1</b>	In addition to the original of the bid, the number of copies is: <i>[insert number of copies required]</i> .
<b>ITB 20.2</b>	<p>The written confirmation of authorization to sign on behalf of the Bidder shall indicate: <i>[insert “</i></p> <p><i>(a) The name and description of the documentation required to demonstrate the authority of the signatory to sign the Bid such as a Power of Attorney; and</i></p> <p><i>(b) In the case of Bids submitted by an existing or intended JV an undertaking signed by all parties (i) stating that all parties shall be jointly and severally liable, if so required in accordance with ITB 4.1(a), and (ii) nominating a Representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.”]</i></p>

### D. Submission and Opening of Bids

<b>ITB 21.1</b>	Bidders <i>[insert “shall” or “shall not”]</i> have the option of submitting their bids electronically.
<b>ITB 21.1 (b)</b>	If bidders shall have the option of submitting their bids electronically, the electronic bidding submission procedures shall be: <i>[insert a description of the electronic bidding submission procedures]</i> .
<b>ITB 22.1</b>	<p>For <b><u>bid submission purposes</u></b> only, the MDA’s address is: <i>[insert all required and applicable information]</i></p> <p>Attention:</p> <p>Street Address:</p> <p>Floor/Room number:</p> <p>City:</p> <p>ZIP Code:</p> <p>Country:</p> <p><b>The deadline for bid submission is:</b></p> <p>Date:</p> <p>Time:</p>
<b>ITB 25.1</b>	<p>The bid opening shall take place at: <i>[insert all required and applicable information]</i></p> <p>Street Address:</p> <p>Floor/Room number:</p> <p>City:</p> <p>Country:</p> <p>Date:</p> <p>Time:</p>
<b>ITB 25.1</b>	If electronic bid submission is permitted in accordance with ITB 21.1, the specific bid opening procedures shall be: <i>[insert description of the procedures.]</i>



### E. Evaluation and Comparison of Bids

<p><b>ITB 32.1</b></p>	<p><i>[Pursuant to ITB 15.1, choose one of the following options as appropriate.]</i></p> <p><i>[In case of ICB]</i> The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is:</p> <p><i>[insert the name of the currency]</i></p> <p>The source of exchange rate shall be: <i>[insert the name of the source of the exchange rates]</i>.</p> <p>The date for the exchange rate shall be: <i>[specify date (day/month/year)]</i></p> <p><i>or</i></p> <p><b><i>[In case of NCB] Not applicable.</i></b></p>
<p><i>ITB 33.1</i></p>	<p><i>A margin of preference [insert “shall” or “shall not”] apply.</i></p> <p><i>[If a margin of preference applies insert “The application methodology shall be as stipulated in Section III (Evaluation and Qualification Criteria)”]</i></p>
<p>ITB 42.1</p>	<p>The Adjudicator proposed by the MDA is: _____ <i>[insert name and address of proposed Adjudicator]</i>. The hourly fee for this proposed Adjudicator shall be: _____ <i>[insert amount and currency]</i>. The biographical data of the proposed Adjudicator is as follows:</p> <p>_____</p> <p><i>[provide relevant information, such as education, experience, age, nationality, and present position; attach additional pages as necessary]</i></p>



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## Section III - Evaluation and Qualification Criteria

This section contains all the criteria that the MDA shall use to evaluate bids and qualify Bidders if the bidding was not preceded by a prequalification exercise and post qualification is applied. In accordance with ITB 34 and ITB 36, no other methods, criteria and factors shall be used. The Bidder shall provide all the information requested in the forms included in Section 4 (Bidding Forms).

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## **1. Evaluation**

In addition to the criteria listed in ITB 34.1 (a) – (e) the following criteria shall apply:

### **1.1 Adequacy of Technical Proposal**

Evaluation of the Bidder's Technical Proposal will include an assessment of the Bidder's technical capacity to mobilize key equipment and personnel for the contract consistent with its proposal regarding work methods, scheduling, and material sourcing in sufficient detail and fully in accordance with the requirements stipulated in Section VI (MDA's Requirements).

### **1.2 Multiple Contracts**

Pursuant to Sub-Clause 34.4 of the Instructions to Bidders, if Works are grouped in multiple contracts, evaluation will be as follows:

### **1.3 Completion Time**

An alternative Completion Time, if permitted under ITB 13.2, will be evaluated as follows:

### **1.4 Technical Alternatives**

Technical alternatives, if permitted under ITB 13.4, will be evaluated as follows:

### **1.5 Margin of Preference [Applicable for ICB only]**

If a margin of preference shall apply under ITB 33.1, the procedure will be as follows as:

## 2. Qualification

Factor	2.1 Eligibility					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner		At least one partner
2.1.1 Nationality	Nationality in accordance with ITB 4.2.	Must meet requirement	Existing or intended JV must meet requirement	Must meet requirement	N / A	Form ELI –1.1 and 1.2, with attachments
2.1.2 Conflict of Interest	No- conflicts of interests as described in ITB 4.3.	Must meet requirement	Existing or intended JV must meet requirement	Must meet requirement	N / A	Letter of Bid
2.1.3 AD SG Ineligibility	Not having been declared ineligible by the AD SG as described in ITB 4.4.	Must meet requirement	Existing JV must meet requirement	Must meet requirement	N / A	Letter of Bid
2.1.4 Government Owned Entity	Compliance with conditions of ITB 4.5	Must meet requirement	Must meet requirement	Must meet requirement	N / A	Form ELI –1.1 and 1.2, with attachments
2.1.5 Ineligibility based on a United Nations resolution or MDA’s country law	Not having been excluded as a result of the MDA’s country laws or official regulations, or by an act of compliance with UN Security Council resolution, in accordance with ITB 4.8	Must meet requirement	Existing JV must meet requirement	Must meet requirement	N / A	Letter of Bidt

Factor	2.2 Historical Contract Non-Performance					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.2.1 History of non-performing contracts	Non-performance of a contract did not occur within the last _____ ( ) years prior to the deadline for application submission, based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the Dispute Resolution Mechanism under the respective contract, and where all appeal instances available to the bidder have been exhausted.	Must meet requirement by itself or as partner to past or existing JV	N / A	Must meet requirement by itself or as partner to past or existing JV	N / A	Form CON - 2
2.2.2 Pending Litigation	All pending litigation shall in total not represent more than _____ percent ( _____ %) of the Bidder's net worth and shall be treated as resolved against the Bidder.	Must meet requirement by itself or as partner to past or existing JV	N / A	Must meet requirement by itself or as partner to past or existing JV	N / A	Form CON – 2

Factor	2.3 Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
All partners combined			Each partner	At least one partner		
2.3.1 Historical Financial Performance	Submission of audited balance sheets or if not required by the law of the bidder’s country, other financial statements acceptable to the MDA, for the last ____ [ ] years to demonstrate the current soundness of the bidders financial position and its prospective long term profitability. (criterion 1) (criterion 2)	Must meet requirement	N / A	Must meet requirement	N / A	Form FIN – 3.1 with attachments
2.3.2. Average Annual Turnover	Minimum average annual turnover of _____, calculated as total certified payments received for contracts in progress or completed, within the last _____( ) years	Must meet requirement	Must meet requirement	Must meet _____ percent (____%) of the requirement	Must meet _____ percent (____%) of the requirement	Form FIN –3.2

Factor	2.3 Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
All partners combined			Each partner	At least one partner		
2.3.3. Financial Resources	The Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet: (i) the following cash-flow requirement: ..... ..... ..... and (ii) the overall cash flow requirements for this contract and its concurrent commitments.	Must meet requirement	Must meet requirement	Must meet _____ percent (____%) of the requirement	Must meet _____ percent (____%) of the requirement	Form FIN –3.3



<b>Factor</b>	<b>2.4 Experience</b>					
<b>Sub-Factor</b>	<b>Criteria</b>					<b>Documentation Required</b>
	<b>Requirement</b>	<b>Bidder</b>				
		<b>Single Entity</b>	<b>Joint Venture, Consortium or Association</b>			
<b>All partners combined</b>			<b>Each partner</b>	<b>At least one partner</b>		
2.4.1 General Experience	Experience under contracts in the role of contractor, subcontractor, or management contractor for at least the last _____ [____] years prior to the applications submission deadline, and with activity in at least nine (9) months in each year.	Must meet requirement	N / A	Must meet requirement	N / A	Form EXP-4.1
2.4.2 Specific Experience	(a)Participation as contractor, management contractor, or subcontractor, in at least _____ (____) contracts within the last _____ (____) years , each with a value of at least _____ (____), that have been successfully and substantially completed and that are similar to the proposed Works. The similarity shall be based on the physical size, complexity, methods/technology or other characteristics as described in	Must meet requirement	Must meet requirements for all characteristics	N / A	Must meet requirement for one characteristic	Form EXP 2.4.2(a)

<b><i>Factor</i></b>	<b><i>2.4 Experience</i></b>					
<b><i>Sub-Factor</i></b>	<b><i>Criteria</i></b>					<b><i>Documentation Required</i></b>
	<b><i>Requirement</i></b>	<b><i>Bidder</i></b>				
		<b><i>Single Entity</i></b>	<b><i>Joint Venture, Consortium or Association</i></b>			
	Section VI, MDA's Requirements.			<b><i>All partners combined</i></b>	<b><i>Each partner</i></b>	<b><i>At least one partner</i></b>
2.4.2 Specific Experience	b) For the above or other contracts executed during the period stipulated in 2.4.2(a) above, a minimum experience in the following key activities: .....	Must meet requirements	Must meet requirements	N / A	Must meet requirements	Form EXP-2.4.2(b)

## 2.5 Personnel

The Bidder must demonstrate that it will have the personnel for the key positions that meet the following requirements:

No.	Position	Total Work Similar Experience (years)	In Similar Works Experience (years)
1			
2			
3			
4			
5			

The Bidder shall provide details of the proposed personnel and their experience records in the relevant Forms included in Section IV, Bidding Forms.

## 2.6 Equipment

The Bidder must demonstrate that it will have access to the key Contractor's equipment listed hereafter:

No.	Equipment Type and Characteristics	Minimum Number required
1		
2		
3		
4		
5		

The Bidder shall provide further details of proposed items of equipment using the relevant Form in Section IV.



## Section IV - Bidding Forms

### Table of Forms

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## Letter of Bid

*The Bidder must prepare the Letter of Bid on stationery with its letterhead clearly showing the Bidder's complete name and address.*

***Note: All italicized text is for use in preparing these form and shall be deleted from the final products.***

Date: \_\_\_\_\_

Bidding No.: \_\_\_\_\_

Invitation for Bid No.: \_\_\_\_\_

To:

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) Clause 8;
- (b) We offer to execute in conformity with the Bidding Documents the following Works:  
\_\_\_\_\_;
- (c) The total price of our Bid, excluding any discounts offered in item (d) below is:  
\_\_\_\_\_;
- (d) The discounts offered and the methodology for their application are: \_\_\_\_\_;
- (e) Our bid shall be valid for a period of \_\_\_\_\_ [*insert validity period as specified in ITB 18.1.*] 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;
- (f) If price adjustment provisions apply, the Table(s) of Adjustment Data shall be considered part of this Bid;<sup>7</sup>
- (g) If our bid is accepted, we commit to obtain a performance security in accordance with the Bidding Document;
- (h) Our firm, including any subcontractors or suppliers for any part of the Contract, have nationalities from eligible countries;

<sup>7</sup> *Include if price adjustment provisions apply in the Contract in accordance with PCC Sub-Clause 13.8 Adjustments for Changes in Cost.*

- (i) We, including any subcontractors or suppliers for any part of the contract, do not have any conflict of interest in accordance with ITB 4.3;
- (j) We are not participating, as a Bidder or as a subcontractor, in more than one bid in this bidding process in accordance with ITB 4.3, other than alternative offers submitted in accordance with ITB 13;
- (k) Our firm, its affiliates or subsidiaries, including any Subcontractors or Suppliers for any part of the contract, has not been declared ineligible by the ADSG, under the MDA’s country laws or official regulations or by an act of compliance with a decision of the United Nations Security Council;
- (l) We are not a government owned entity / We are a government owned entity but meet the requirements of ITB 4.5;<sup>8</sup>
- (m) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:<sup>9</sup>

Name of Recipient	Address	Reason	Amount
.....	.....	.....	.....
.....	.....	.....	.....

- (n) 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;
- (o) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive; and
- (p) If awarded the contract, the person named below shall act as Contractor’s Representative: \_\_\_\_\_

Name: .....

In the capacity of: .....

Signed: .....

Duly authorized to sign the Bid for and on behalf of: .....

Date: .....

<sup>8</sup> Use one of the two options as appropriate.  
<sup>9</sup> If none has been paid or is to be paid, indicate “none”.

## Schedules

### Bill of Quantities/ Schedules of Prices

**Schedule of Payment Currencies**

For .....insert name of Section of the Works

Separate tables may be required if the various sections of the Works (or of the Bill of Quantities) will have substantially different foreign and local currency requirements. The MDA should insert the names of each Section of the Works.

	A	B	C	D
Name of Payment Currency	Amount of Currency	Rate of Exchange to Local Currency	Local Currency Equivalent $C = A \times B$	Percentage of Net Bid Price (NBP) $\frac{100 \times C}{NBP}$
Local currency _____		1.00		
Foreign Currency #1 _____				
Foreign Currency #2 _____				
Foreign Currency #3 _____				
Net Bid Price				100.00
Provisional Sums Expressed in Local Currency		1.00		
<b>BID PRICE</b>				



## Table(s) of Adjustment Data

Table A - Local Currency

Index Code	Index Description	Source of Index	Base Value and Date	Bidder's Local Currency Amount	Bidder's Proposed Weighting
	Nonadjustable	—	—	—	A: ____ B: ____ C: ____ D: ____ E: ____
<b>Total</b>					<b>1.00</b>

Table B - Foreign Currency

Name of Currency: \_\_\_\_\_

If the Bidder wishes to quote in more than one foreign currency, this table should be repeated for each foreign currency.

Index Code	Index Description	Source of Index	Base Value and Date	Bidder's Currency in Type/Amount	Equivalent in FC1	Bidder's Proposed Weighting
	Nonadjustable	—	—	—		A: ____ B: ____ C: ____ D: ____ E: ____
<b>Total</b>						<b>1.00</b>

## Form of Bid Security (Bank Guarantee)

\_\_\_\_\_ [Financial Institution's Name, and Address of Issuing Branch or Office]

**Beneficiary:** \_\_\_\_\_ [Name and Address of MDA]

**Date:** \_\_\_\_\_

**BID GUARANTEE No.:** \_\_\_\_\_

We have been informed that \_\_\_\_\_ [name of the Bidder] (hereinafter called "the Bidder") has submitted to you its bid dated \_\_\_\_\_ (hereinafter called "the Bid") for the execution of \_\_\_\_\_ [name of contract] under Invitation for Bids No. \_\_\_\_\_ ("the IFB").

Furthermore, we understand that, according to your conditions, bids must be supported by a bid guarantee.

At the request of the Bidder, we \_\_\_\_\_ [name of ADSG] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of \_\_\_\_\_ [amount in figures] (\_\_\_\_\_) [amount in words] upon receipt by us of your first demand in writing accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder:

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Form of Bid; or
- (b) having been notified of the acceptance of its Bid by the MDA during the period of bid validity, (i) fails or refuses to execute the Contract Form, if required, or (ii) fails or refuses to furnish the performance security, in accordance with the ITB.

This guarantee will expire: (a) if the Bidder is the successful Bidder, upon our receipt of copies of the contract signed by the Bidder and the performance security issued to you upon the instruction of the Bidder; and (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy your notification to the Bidder of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of the Bidder's bid.

Consequently, any demand for payment under this guarantee must be received by us at the office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

\_\_\_\_\_  
[signature(s)]

## Form of Bid Security (Bid Bond)

BOND NO. \_\_\_\_\_

BY THIS BOND [*name of Bidder*] as Principal (hereinafter called “the Principal”), and [*name, legal title, and address of surety*], **authorized to transact business in** [*name of country of MDA*], as Surety (hereinafter called “the Surety”), are held and firmly bound unto [*name of MDA*] as Obligee (hereinafter called “the MDA”) in the sum of [*amount of Bond*]<sup>10</sup> [*amount in words*], for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has submitted a written Bid to the MDA dated the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, for the construction of [*name of Contract*] (hereinafter called the “Bid”).

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:

- (a) withdraws its Bid during the period of bid validity specified in the Form of Bid; or
- (b) having been notified of the acceptance of its Bid by the MDA during the period of Bid validity; (i) fails or refuses to execute the Contract Form, if required; or (ii) fails or refuses to furnish the Performance Security in accordance with the Instructions to Bidders;

then the Surety undertakes to immediately pay to the MDA up to the above amount upon receipt of the MDA’s first written demand, without the MDA having to substantiate its demand, provided that in its demand the MDA shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

The Surety hereby agrees that its obligation will remain in full force and effect up to and including the date 28 days after the date of expiration of the Bid validity as stated in the Invitation to Bid or extended by the MDA at any time prior to this date, notice of which extension(s) to the Surety being hereby waived.

IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed in their respective names this \_\_\_ day of \_\_\_\_\_ 20\_\_\_.

Principal: \_\_\_\_\_

Surety: \_\_\_\_\_

Corporate Seal (where appropriate)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

<sup>10</sup> The amount of the Bond shall be denominated in the currency of the *Employer*’s country or the equivalent amount in a freely convertible currency.

## Form of Bid-Securing Declaration

Date: *[insert date (as day, month and year)]*  
 Bid No.: *[insert number of bidding process]*  
 Alternative No.: *[insert identification No if this is a Bid for an alternative]*

To: *[insert complete name of MDA]*

We, the undersigned, declare that:

We understand that, according to your conditions, bids must be supported by a Bid-Securing Declaration.

We accept that we will automatically be suspended from being eligible for bidding in any contract with the MDA for the period of time of *[insert number of months or years]* starting on *[insert date]*, if we are in breach of our obligation(s) under the bid conditions, because we:

- (a) have withdrawn our Bid during the period of bid validity specified in the Letter of Bid; or
- (b) having been notified of the acceptance of our Bid by the MDA during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITB.

We understand this Bid-Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of your notification to us of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of our Bid.

Signed: *[insert signature of person whose name and capacity are shown]*

In the capacity of *[insert legal capacity of person signing the Bid-Securing Declaration]*

Name: *[insert complete name of person signing the Bid-Securing Declaration]*

Duly authorized to sign the bid for and on behalf of: *[insert complete name of Bidder]*

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*

Corporate Seal (where appropriate)

*[Note: In case of a Joint Venture, the Bid-Securing Declaration must be in the name of all partners to the Joint Venture that submits the bid.]*

# **Technical Proposal**

## **Technical Proposal Forms**

**Personnel**

**Equipment**

**Site Organization**

**Method Statement**

**Mobilization Schedule**

**Construction Schedule**

**Others**

## Forms for Personnel

### Form PER – 1: Proposed Personnel

Bidders should provide the names of suitably qualified personnel to meet the specified requirements for each of the positions listed in Section III (Evaluation and Qualification Criteria). The data on their experience should be supplied using the Form below for each candidate.

<b>1.</b>	<b>Title of position</b>
	<b>Name</b>
<b>2.</b>	<b>Title of position</b>
	<b>Name</b>
<b>3.</b>	<b>Title of position</b>
	<b>Name</b>
<b>4.</b>	<b>Title of position</b>
	<b>Name</b>
<b>5.</b>	<b>Title of position</b>
	<b>Name</b>
<b>6.</b>	<b>Title of position</b>
	<b>Name</b>
<b>etc.</b>	<b>Title of position</b>
	<b>Name</b>



## Forms for Equipment

The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III (Evaluation and Qualification Criteria). A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder. The Bidder shall provide all the information requested below, to the extent possible. Fields with asterisk (\*) shall be used for evaluation.

<b>Type of Equipment*</b>					
<b>Equipment Information</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%; padding: 5px;"><b>Name of manufacturer</b></td> <td style="padding: 5px;"><b>Model and power rating</b></td> </tr> <tr> <td style="padding: 5px;"><b>Capacity*</b></td> <td style="padding: 5px;"><b>Year of manufacture*</b></td> </tr> </table>	<b>Name of manufacturer</b>	<b>Model and power rating</b>	<b>Capacity*</b>	<b>Year of manufacture*</b>
	<b>Name of manufacturer</b>	<b>Model and power rating</b>			
<b>Capacity*</b>	<b>Year of manufacture*</b>				
<b>Current Status</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;"><b>Current location</b></td> </tr> <tr> <td style="padding: 5px;"><b>Details of current commitments</b></td> </tr> </table>	<b>Current location</b>	<b>Details of current commitments</b>		
<b>Current location</b>					
<b>Details of current commitments</b>					
<b>Source</b>	<b>Indicate source of the equipment</b> <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured				

The following information shall be provided only for equipment not owned by the Bidder.

<b>Owner</b>	<b>Name of owner</b>	
	<b>Address of owner</b>	
	<b>Telephone</b>	<b>Contact name and title</b>
	<b>Fax</b>	<b>Telex</b>
<b>Agreements</b>	<b>Details of rental / lease / manufacture agreements specific to the project</b>	



## **Bidder's Qualification**

To establish its qualifications to perform the contract in accordance with Section III (Evaluation and Qualification Criteria) the Bidder shall provide the information requested in the corresponding Information Sheets included hereunder

**Form ELI 1.1**  
**Bidder Information Sheet**

Date: \_\_\_\_\_

Bidding No.: \_\_\_\_\_

Invitation for Bid No.: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

1. Bidder's Legal Name
2. In case of JV, legal name of each party:
3. Bidder's actual or intended Country of Registration:
4. Bidder's Year of Registration:
5. Bidder's Legal Address in Country of Registration:
6. Bidder's Authorized Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: <input type="checkbox"/> Articles of Incorporation or Registration of firm named in 1, above, in accordance with ITB Sub-Clauses 4.1 and 4.2. <input type="checkbox"/> In case of JV, letter of intent to form JV including a draft agreement, or JV agreement, in accordance with ITB Sub-Clauses 4.1 <input type="checkbox"/> In case of government owned entity from the MDA's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law, in accordance with ITB Sub-Clause 4.5.

**Form ELI 1.2**  
**Party to JV Information Sheet**

Date: \_\_\_\_\_  
Bidding No.: \_\_\_\_\_  
Invitation for Bid No.: \_\_\_\_\_  
Page \_\_\_\_\_ of \_\_\_\_\_ pages

1. Bidder's Legal Name:
2. JV's Party legal name:
3. JV's Party Country of Registration:
4. JV's Party Year of Registration:
5. JV's Party Legal Address in Country of Registration:
6. JV's Party Authorized Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: <input type="checkbox"/> <input type="checkbox"/> Articles of Incorporation or Registration of firm named in 1, above, in accordance with ITB Sub-Clauses 4.1 and 4.2. <input type="checkbox"/> In case of government owned entity from the Purchaser's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law, in accordance with ITB Sub-Clause 4.5.

**Form CON – 2**

**Historical Contract Non-Performance**

Bidder’s Legal Name: \_\_\_\_\_ Date: \_\_\_\_\_  
 JV Partner Legal Name: \_\_\_\_\_  
 Bidding No.: \_\_\_\_\_  
 Page \_\_\_\_\_ of \_\_\_\_\_ pages

Non-Performing Contracts in accordance with (Evaluation and Qualification Criteria)			
<input type="checkbox"/> Contract non-performance did not occur during the stipulated period, in accordance with Sub-Factor 2.2.1 of Section III (Evaluation and Qualification Criteria)			
<input type="checkbox"/> Contract non-performance during the stipulated period, in accordance with Sub-Factor 2.2.1 of Section III(Evaluation and Qualification Criteria).			
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, US\$ equivalent)
_____	_____	Contract Identification: Name of MDA: Address of MDA: Matter in dispute:	_____
Pending Litigation, in accordance with Section III (Evaluation and Qualification Criteria)			
<input type="checkbox"/> No pending litigation in accordance with Sub-Factor 2.2.2 of Section III(Evaluation and Qualification Criteria)			
<input type="checkbox"/> Pending litigation in accordance with Sub-Factor 2.2.2 of Section III(Evaluation and Qualification Criteria), as indicated below			
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, US\$ equivalent)
_____	_____	Contract Identification: Name of MDA: Address of MDA: Matter in dispute:	_____
_____	_____	Contract Identification: Name of MDA: Address of MDA: Matter in dispute:	_____

**Form CCC****Current Contract Commitments / Works in Progress**

Bidders and each partner to a JV should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

Name of contract	MDA, contact address/tel/fax	Value of outstanding work (current US\$ equivalent)	Estimated completion date	Average monthly invoicing over last six months (US\$/month)
1.				
2.				
3.				
4.				
5.				
etc.				

## Financial Situation

### Historical Financial Performance

Bidder's Legal Name: \_\_\_\_\_ Date: \_\_\_\_\_  
 JV Partner Legal Name: \_\_\_\_\_ Bidding No.: \_\_\_\_\_  
 Page \_\_\_\_\_ of \_\_\_\_\_ pages

To be completed by the Bidder and, if JV, by each partner

Financial information in US\$ equivalent	Historic information for previous _____ (___) years (US\$ equivalent in 000s)						
	Year 1	Year 2	Year 3	Year ...	Year n	Avg.	Avg. Ratio
<b>Information from Balance Sheet</b>							
Total Assets (TA)							
Total Liabilities (TL)							
Net Worth (NW)							
Current Assets (CA)							
Current Liabilities (CL)							
<b>Information from Income Statement</b>							
Total Revenue (TR)							
Profits Before Taxes (PBT)							

--

- Attached are copies of financial statements (balance sheets, including all related notes, and income statements) for the years required above complying with the following conditions:
- Must reflect the financial situation of the Bidder or partner to a JV, and not sister or parent companies
  - Historic financial statements must be audited by a certified accountant
  - Historic financial statements must be complete, including all notes to the financial statements
  - Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted)

**Form FIN – 3.2**  
**Average Annual Turnover**

Bidder's Legal Name: \_\_\_\_\_ Date: \_\_\_\_\_  
 JV Partner Legal Name: \_\_\_\_\_ Bidding No.: \_\_\_\_\_  
 Page \_\_\_\_\_ of \_\_\_\_\_ pages

Annual turnover data (construction only)		
Year	Amount and Currency	US\$ equivalent
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
*Average Annual Construction Turnover	_____	_____

\*Average annual turnover calculated as total certified payments received for work in progress or completed over the number of years specified in Section III (Evaluation and Qualification Criteria), Sub-Factor 2.3.2, divided by that same number of years.



**Form FIN3.3**  
**Financial Resources**

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contract or contracts as indicated in Section III (Evaluation and Qualification Criteria)

Source of financing	Amount (US\$ equivalent)
1.	
2.	
3.	
4.	

## Experience

### General Experience

Bidder's Legal Name: \_\_\_\_\_ Date: \_\_\_\_\_  
 JV Partner Legal Name: \_\_\_\_\_ Bidding No.: \_\_\_\_\_  
 Page \_\_\_\_\_ of \_\_\_\_\_ pages

Starting Month / Year	Ending Month / Year	Years*	Contract Identification	Role of Bidder
_____	_____	_____	Contract name: Brief Description of the Works performed by the Bidder: Name of MDA: Address:	_____
_____	_____	_____	Contract name: Brief Description of the Works performed by the Bidder: Name of MDA: Address:	_____
_____	_____	_____	Contract name: Brief Description of the Works performed by the Bidder: Name of MDA: Address:	_____
_____	_____	_____	Contract name: Brief Description of the Works performed by the Bidder: Name of MDA: Address:	_____
_____	_____	_____	Contract name: Brief Description of the Works performed by the Bidder: Name of MDA: Address:	_____
_____	_____	_____	Contract name: Brief Description of the Works performed by the Bidder: Name of MDA: Address:	_____

\*List calendar year for years with contracts with at least nine (9) months activity per year starting with the earliest year

**Form EXP – 2.4.2(a)**  
**Specific Experience**

Bidder’s Legal Name: \_\_\_\_\_ Date: \_\_\_\_\_  
 JV Partner Legal Name: \_\_\_\_\_ Bidding No.: \_\_\_\_\_  
 Page \_\_\_\_\_ of \_\_\_\_\_ pages

<b>Similar Contract Number: ___ [insert specific number] of ___ [insert total number of contracts required].</b>	<b>Information</b>		
Contract Identification	_____		
Award date	_____		
Completion date	_____		
Role in Contract	<input type="checkbox"/> Contractor	<input type="checkbox"/> Management Contractor	<input type="checkbox"/> Subcontractor
Total contract amount	_____		US\$ _____
If partner in a JV or subcontractor, specify participation of total contract amount	_____ %	_____	US\$ _____
MDA’s Name:	_____		
Address:	_____ _____ _____		
Telephone/fax number:	_____		
E-mail:	_____		

**Form EXP – 2.4.2(a) (cont.)  
Specific Experience (cont.)**

Bidder’s Legal Name: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_ pages  
 JV Partner Legal Name: \_\_\_\_\_

<b>Similar Contract No. ___[insert specific number] of ___[insert total number of contracts] required</b>	<b>Information</b>
Description of the similarity in accordance with Sub-Factor 2.4.2a) of Section III (Evaluation and Qualification Criteria):	
Amount	_____ _____
Physical size	_____ _____
Complexity	_____ _____
Methods/Technology	_____ _____
Physical Production Rate	_____ _____

**Form EXP – 2.4.2(b)****Specific Experience in Key Activities**

Bidder's Legal Name: \_\_\_\_\_ Date: \_\_\_\_\_  
 JV Partner Legal Name: \_\_\_\_\_ Bidding No.: \_\_\_\_\_  
 Subcontractor's Legal Name: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_ pages

	Information		
Contract Identification	_____		
Award date	_____		
Completion date	_____		
Role in Contract	<input type="checkbox"/> Contractor	<input type="checkbox"/> Management Contractor	<input type="checkbox"/> Subcontractor
Total contract amount	_____		US\$_____
If partner in a JV or subcontractor, specify participation of total contract amount	_____%	_____	US\$_____
MDA's Name:	_____		
Address:	_____ _____ _____		
Telephone/fax number:	_____ _____		
E-mail:	_____ _____		

**Form EXP – 2.4.2 (b) (cont.)**  
**Specific Experience in Key Activities (cont.)**

Bidder's Legal Name: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_ pages  
 JV Partner Legal Name: \_\_\_\_\_  
 Subcontractor's Legal Name: \_\_\_\_\_

	Information
Description of the key activities in accordance with Sub-Factor 2.4.2b) of Section III (Evaluation and Qualification Criteria):	

## **Section V - Eligible Countries**

### **Eligibility for the Provision of Goods, Works and Services in ADSG-Financed Procurement**

1. In accordance with the Procurement Guidelines ADSG permits firms and individuals from all countries to offer goods, works and services for ADSG-financed projects. As an exception, firms of a Country or goods manufactured in a Country may be excluded if:

Para 1.8 (a) (i): as a matter of law or official regulation, the MDA's Country prohibits commercial relations with that Country, provided that the ADSG is satisfied that such exclusion does not preclude effective competition for the supply of the Goods or Works required.

2. For the information of MDAs and bidders, at the present time firms, goods and services from the following countries are excluded from this bidding:

(a) With reference to paragraph 1.8 (a) (i) of the Guidelines:

*[insert list of countries prohibited under official regulations of the country]*

## **PART 2 – MDA’s Requirements**



## **Section VI - MDA's Requirements**

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## Specifications

A set of precise and clear Specifications is a prerequisite for bidders to respond realistically and competitively to the requirements of the MDA without qualifying or conditioning their bids. In the context of international competitive bidding, the Specifications must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the required standards of workmanship, materials, and performance of the goods and services to be procured. Only if this is done shall the objectives of economy, efficiency, and fairness in procurement be realized, responsiveness of bids be ensured, and the subsequent task of Bid evaluation facilitated. The Specifications should require that all goods and materials to be incorporated in the Works be new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the Contract.

Samples of Specifications from previous similar projects in the same country are useful in to prepare Specifications. The use of metric units is encouraged by the World ADSG. Most Specifications are normally written specially by the MDA or Project Manager to suit the Contract Works in hand. There is no standard set of Specifications for universal application in all sectors in all countries, but there are established principles and practices, which are reflected in these documents.

There are considerable advantages in standardizing General Specifications for repetitive Works in recognized public sectors, such as highways, ports, railways, urban housing, irrigation, and water supply, in the same country or region where similar conditions prevail. The General Specifications should cover all classes of workmanship, materials, and equipment commonly involved in construction, although not necessarily to be used in a particular Works Contract. Deletions or addendums should then adapt the General Specifications to apply them to the particular Works.

Care must be taken in drafting Specifications to ensure that they are not restrictive. In the Specifications of standards for goods, materials, and workmanship, recognized international standards should be used as much as possible. Where other particular standards are used, whether national standards of the MDA’s country or other standards, the Specifications should state that goods, materials, and workmanship that meet other authoritative standards, and which ensure substantially equal or higher quality than the standards mentioned, shall also be acceptable. To that effect, the following sample clause may be inserted in the Special Conditions or Specifications.

### **“Equivalency of Standards and Codes**

Wherever reference is made in the Contract to specific standards and codes to be met by the goods and materials to be furnished, and work performed or tested, the provisions of the latest current edition or revision of the relevant standards and codes in effect shall apply, unless otherwise expressly stated in the Contract. Where such standards and codes are national, or relate to a particular country or region, other authoritative standards that ensure a substantially equal or higher quality than the standards and codes specified shall be accepted subject to the Project Manager’s prior review and written consent. Differences between the

standards specified and the proposed alternative standards shall be fully described in writing by the Contractor and submitted to the Project Manager at least 28 days prior to the date when the Contractor desires the Project Manager’s consent. In the event the Project Manager determines that such proposed deviations do not ensure substantially equal or higher quality, the Contractor shall comply with the standards specified in the documents.”

These Notes for Preparing Specifications are intended only as information for the MDA or the person drafting the bidding documents. They should not be included in the final documents.

## **Drawings**

*Insert here a list of Drawings. The actual Drawings, including site plans, should be attached to this section or annexed in a separate folder.*

## **Supplementary Information**



## **PART 3 – Conditions of Contract and Contract Forms**





## **Section VII. General Conditions of Contract**

These General Conditions of Contract (GCC), read in conjunction with the Special Conditions of Contract (SCC) and other documents listed therein, should be a complete document expressing fairly the rights and obligations of both parties.

These General Conditions of Contract have been developed on the basis of considerable international experience in the drafting and management of contracts, bearing in mind a trend in the construction industry towards simpler, more straightforward language.

The GCC can be used for both smaller measurement contracts and lump sum contracts.

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## General Conditions of Contract

### A. General

#### 1. Definitions

1.1 Boldface type is used to identify defined terms.

- (a) The Accepted Contract Amount means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.
- (b) The Activity Schedule is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity, which is used for valuations and for assessing the effects of Variations and Compensation Events.
- (c) The Adjudicator is the person appointed jointly by the MDA and the Contractor to resolve disputes in the first instance, as provided for in GCC 23.
- (d) AD SG means the financing institution **named in the SCC**.
- (e) Bill of Quantities means the priced and completed Bill of Quantities forming part of the Bid.
- (f) Compensation Events are those defined in GCC Clause 41 hereunder.
- (g) The Completion Date is the date of completion of the Works as certified by the Project Manager, in accordance with GCC Sub-Clause 52.1.
- (h) The Contract is the Contract between the MDA and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in GCC Sub-Clause 2.3 below.
- (i) The Contractor is the party whose Bid to carry out the Works has been accepted by the MDA.
- (j) The Contractor's Bid is the completed bidding document submitted by the Contractor to the MDA.
- (k) The Contract Price is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the Contract.
- (l) Days are calendar days; months are calendar months.

- (m) Day works are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.
- (n) A Defect is any part of the Works not completed in accordance with the Contract.
- (o) The Defects Liability Certificate is the certificate issued by Project Manager upon correction of defects by the Contractor.
- (p) The Defects Liability Period is the period **named in the SCC** pursuant to Sub-Clause 33.1 and calculated from the Completion Date.
- (q) Adjudicator means the single person appointed under Clause 23.
- (r) Drawings means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the MDA in accordance with the Contract, include calculations and other information provided or approved by the Project Manager for the execution of the Contract.
- (s) The MDA is the party who employs the Contractor to carry out the Works, **as specified in the SCC**.
- (t) Equipment is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
- (u) "In writing" or "written" means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (v) The Initial Contract Price is the Contract Price listed in the MDA's Letter of Acceptance.
- (w) The Intended Completion Date is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is **specified in the SCC**. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
- (x) Materials are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- (y) Plant is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.

- (z) The Project Manager is the person **named in the SCC** (or any other competent person appointed by the MDA and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.
- (aa) SCC means Special Conditions of Contract
- (bb) The Site is the area **defined as such in the SCC**.
- (cc) Site Investigation Reports are those that were included in the bidding documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- (dd) Specification means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.
- (ee) The Start Date is **given in the SCC**. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
- (ff) A Subcontractor is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.
- (gg) Temporary Works are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- (hh) A Variation is an instruction given by the Project Manager which varies the Works.
- (ii) The Works are what the Contract requires the Contractor to construct, install, and turn over to the MDA, **as defined in the SCC**.

## 2. Interpretation

- 2.1 In interpreting these GCC, words indicating one gender include all genders. Words indicating the singular also include the plural and words indicating the plural also include the singular. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC.
- 2.2 If sectional completion is **specified in the SCC**, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion

Date for the whole of the Works).

- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:
- (a) Agreement,
  - (b) Letter of Acceptance,
  - (c) Contractor’s Bid,
  - (d) Special Conditions of Contract,
  - (e) General Conditions of Contract,
  - (f) Specifications,
  - (g) Drawings,
  - (h) Bill of Quantities,<sup>11</sup> and
  - (i) any other document **listed in the SCC** as forming part of the Contract.
- 3. Language and Law** 3.1 The language of the Contract and the law governing the Contract are **stated in the SCC**.
- 4. Project Manager’s Decisions** 4.1 Except where otherwise specifically stated, the Project Manager shall decide contractual matters between the MDA and the Contractor in the role representing the MDA.
- 5. Delegation** 5.1 Otherwise specified in the SCC, the Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may revoke any delegation after notifying the Contractor.
- 6. Communications** 6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.
- 7. Subcontracting** 7.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the MDA in writing. Subcontracting shall not alter the Contractor’s obligations.
- 8. Other Contractors** 8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the MDA between the dates given in the Schedule of Other Contractors, as **referred to in the SCC**. The Contractor shall also provide facilities and

<sup>11</sup> In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule.”

services for them as described in the Schedule. The MDA may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.

- 9. Personnel and Equipment**
- 9.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.
- 9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.
- 10. MDA's and Contractor's Risks**
- 10.1 The MDA carries the risks which this Contract states are MDA's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.
- 11. MDA's Risks**
- 11.1 From the Start Date until the Defects Liability Certificate has been issued, the following are MDA's risks:
- (a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to
    - (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or
    - (ii) negligence, breach of statutory duty, or interference with any legal right by the MDA or by any person employed by or contracted to him except the Contractor.
  - (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the MDA or in the MDA's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.
- 11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an MDA's risk except loss or damage due to



- (a) a Defect which existed on the Completion Date,
- (b) an event occurring before the Completion Date, which was not itself an MDA's risk, or
- (c) the activities of the Contractor on the Site after the Completion Date.

**12. Contractor's Risks**

12.1 From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not MDA's risks are Contractor's risks.

**13. Insurance**

13.1 The Contractor shall provide, in the joint names of the MDA and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles **stated in the SCC** for the following events which are due to the Contractor's risks:

- (a) loss of or damage to the Works, Plant, and Materials;
- (b) loss of or damage to Equipment;
- (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
- (d) personal injury or death.

13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

13.3 If the Contractor does not provide any of the policies and certificates required, the MDA may effect the insurance which the Contractor should have provided and recover the premiums the MDA has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.

13.4 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.

13.5 Both parties shall comply with any conditions of the insurance policies.

**14. Site Data**

14.1 The Contractor shall be deemed to have examined any Site Data

**referred to in the SCC**, supplemented by any information available to the Contractor.

- |  |  |
|--|--|
| <b>15. Contractor to Construct the Works</b>                         | 15.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.  |
| <b>16. The Works to Be Completed by the Intended Completion Date</b> | 16.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.  |
| <b>17. Approval by the Project Manager</b>                           | <p>17.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, for his approval.</p> <p>17.2 The Contractor shall be responsible for design of Temporary Works.</p> <p>17.3 The Project Manager’s approval shall not alter the Contractor’s responsibility for design of the Temporary Works.</p> <p>17.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.</p> <p>17.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.</p> |
| <b>18. Safety</b>  | 18.1 The Contractor shall be responsible for the safety of all activities on the Site.   |
| <b>19. Discoveries</b>   | 19.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the MDA. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager’s instructions for dealing with them.  |
| <b>20. Possession of the Site</b>                                    | 20.1 The MDA shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date <b>stated in the SCC</b> , the MDA shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.   |
| <b>21. Access to the Site</b>  | 21.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.   |

**22. Instructions, Inspections and Audits**

22.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.

22.2 The Contractor shall permit, and shall cause its Subcontractors and sub-consultants to permit, the AD SG and/or persons appointed by the AD SG to inspect the Site and/or the accounts and records of the Contractor and its sub-contractors 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 AD SG if requested by the AD SG. The Contractor's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 57.1 which provides, inter alia, that acts intended to materially impede the exercise of the AD SG's inspection and audit rights provided for under Sub-Clause 22.2 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the AD SG's prevailing sanctions procedures).

**23. Appointment of the Adjudicator**

23.1 The Adjudicator shall be appointed jointly by the MDA and the Contractor, at the time of the MDA's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the MDA does not agree on the appointment of the Adjudicator, the MDA will request the Appointing Authority **designated in the SCC**, to appoint the Adjudicator within 14 days of receipt of such request.

23.2 Should the Adjudicator resign or die, or should the MDA and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the MDA and the Contractor. In case of disagreement between the MDA and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority **designated in the SCC** at the request of either party, within 14 days of receipt of such request.

**24. Procedure for Disputes**

24.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.

24.2 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.

24.3 The Adjudicator shall be paid by the hour at the **rate specified in the SCC**, together with reimbursable expenses of the types **specified in the SCC**, and the cost shall be divided equally between the MDA and the Contractor, whatever decision is

reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision shall be final and binding.

- 24.4 The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and in the place specified **in the SCC**.

## **B. Time Control**

### **25. Program**

- 25.1 Within the time **stated in the SCC**, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.
- 25.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- 25.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period **stated in the SCC**. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount **stated in the SCC** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted. In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within 14 days of being instructed to by the Project Manager.
- 25.4 The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.

### **26. Extension of the Intended Completion Date**

- 26.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.

- 26.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.
- 27. Acceleration**
- 27.1 When the MDA wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the MDA accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the MDA and the Contractor.
- 27.2 If the Contractor's priced proposals for an acceleration are accepted by the MDA, they are incorporated in the Contract Price and treated as a Variation.
- 28. Delays Ordered by the Project Manager**
- 28.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.
- 29. Management Meetings**
- 29.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 29.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the MDA. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.
- 30. Early Warning**
- 30.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
- 30.2 The Contractor shall cooperate with the Project Manager in

making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

### **C. Quality Control**

- 31. Identifying Defects** 31.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.
- 32. Tests** 32.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.
- 33. Correction of Defects** 33.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is **defined in the SCC**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- 33.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.
- 34. Uncorrected Defects** 34.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

### **D. Cost Control**

- 35. Contract Price** 35.1 In the case of a measurement contract, the Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.
- 35.2 In the case of a lump sum contract, the Activity Schedule shall contain the priced activities for the Works to be performed by the Contractor. The Activity Schedule is used to monitor and control the performance of activities on which basis the Contractor will

be paid. If payment for Materials on Site shall be made separately, the Contractor shall show delivery of Materials to the Site separately on the Activity Schedule.

### **36. Changes in the Contract Price**

36.1 In the case of a measurement contract:

- (a) If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change.
- (b) The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the MDA.
- (c) If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.

36.2 In the case of a lump sum contract, the Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor's own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule.

### **37. Variations**

37.1 All Variations shall be included in updated Programs, and, in the case of a lump sum contract, also in the Activity Schedule, produced by the Contractor.

37.2 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.

37.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.

37.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

37.5 The Contractor shall not be entitled to additional payment for

costs that could have been avoided by giving early warning.

37.6 In the case of a measurement contract, if the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in Sub-Clause 38.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.

**38. Cash Flow  
Forecasts**

38.1 When the Program, or, in the case of a lump sum contract, the Activity Schedule, is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.

**39. Payment  
Certificates**

39.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.

39.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.

39.3 The value of work executed shall be determined by the Project Manager.

39.4 The value of work executed shall comprise:

(a) In the case of a measurement contract, the value of the quantities of work in the Bill of Quantities that have been completed; or

(b) In the case of a lump sum contract, the value of work executed shall comprise the value of completed activities in the Activity Schedule.

39.5 The value of work executed shall include the valuation of Variations and Compensation Events.

39.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.



**40. Payments**

- 40.1 Payments shall be adjusted for deductions for advance payments and retention. The MDA shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If the MDA makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.
- 40.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 40.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.
- 40.4 Items of the Works for which no rate or price has been entered in shall not be paid for by the MDA and shall be deemed covered by other rates and prices in the Contract.

**41. Compensation Events**

- 41.1 The following shall be Compensation Events:
- (a) The MDA does not give access to a part of the Site by the Site Possession Date pursuant to GCC Sub-Clause 20.1.
  - (b) The MDA modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
  - (c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
  - (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
  - (e) The Project Manager unreasonably does not approve a subcontract to be let.
  - (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders

(including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.

- (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the MDA, or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the MDA does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- (i) The advance payment is delayed.
- (j) The effects on the Contractor of any of the MDA's Risks.
- (k) The Project Manager unreasonably delays issuing a Certificate of Completion.

41.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

41.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager shall assume that the Contractor shall react competently and promptly to the event.

41.4 The Contractor shall not be entitled to compensation to the extent that the MDA's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.

## **42. Tax**

42.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a

result of GCC Clause 44.

**43. Currencies** 43.1 Where payments are made in currencies other than the currency of the MDA’s country **specified in the SCC**, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor’s Bid.

**44. Price Adjustment** 44.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC**. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_c = A_c + B_c \text{ Imc/Ioc}$$

where:

$P_c$  is the adjustment factor for the portion of the Contract Price payable in a specific currency “c.”

$A_c$  and  $B_c$  are coefficients<sup>12</sup> **specified in the SCC**, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency “c;” and

$Imc$  is the index prevailing at the end of the month being invoiced and  $Ioc$  is the index prevailing 28 days before Bid opening for inputs payable; both in the specific currency “c.”

44.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

**45. Retention** 45.1 The MDA shall retain from each payment due to the Contractor the proportion **stated in the SCC** until Completion of the whole of the Works.

45.2 Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC 51.1, half the total amount retained shall be repaid to the Contractor and half when

<sup>12</sup> *The sum of the two coefficients  $A_c$  and  $B_c$  should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulae for all currencies, since coefficient A, for the nonadjustable portion of the payments, is a very approximate figure (usually 0.15) to take account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency are added to the Contract Price. [To be transferred to the User Guide]*

the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected. The Contractor may substitute retention money with an “on demand” Bank Guarantee.

#### **46. Liquidated Damages**

46.1 The Contractor shall pay liquidated damages to the MDA at the rate per day **stated in the SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the SCC**. The MDA may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities.

46.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Sub-Clause 40.1.

#### **47. Bonus**

47.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day **stated in the SCC** for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.

#### **48. Advance Payment**

48.1 The MDA shall make advance payment to the Contractor of the amounts **stated in the SCC** by the date **stated in the SCC**, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a ADSG acceptable to the MDA in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.

48.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.

48.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor,

following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

**49. Securities**

49.1 The Performance Security shall be provided to the MDA no later than the date specified in the Letter of Acceptance and shall be issued in an amount **specified in the SCC**, by a ADSG or surety acceptable to the MDA, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.

**50. Day-works**

50.1 If applicable, the Day-works rates in the Contractor's Bid shall be used only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.

50.2 All work to be paid for as Day-works shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.

50.3 The Contractor shall be paid for Day-works subject to obtaining signed Day-works forms.

**51. Cost of Repairs**

51.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

**E. Finishing the Contract****52. Completion**

52.1 The Contractor shall request the Project Manager to issue a Certificate of Completion of the Works, and the Project Manager shall do so upon deciding that the whole of the Works is completed.

**53. Taking Over**

53.1 The MDA shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.

**54. Final Account**

54.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable

under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

**55. Operating and Maintenance Manuals**

55.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates **stated in the SCC**.

55.2 If the Contractor does not supply the Drawings and/or manuals by the dates **stated in the SCC** pursuant to GCC Sub-Clause 55.1, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount **stated in the SCC** from payments due to the Contractor.

**56. Termination**

56.1 The MDA or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

56.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:

- (a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
- (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;
- (c) the MDA or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) a payment certified by the Project Manager is not paid by the MDA to the Contractor within 84 days of the date of the Project Manager's certificate;
- (e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
- (f) the Contractor does not maintain a Security, which is required;
- (g) the Contractor has delayed the completion of the Works by

the number of days for which the maximum amount of liquidated damages can be paid, as **defined in the SCC**; or

- (h) if the Contractor, in the judgment of the MDA, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract, pursuant to GCC Clause 57.1.

56.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC Sub-Clause 56.2 above, the Project Manager shall decide whether the breach is fundamental or not.

56.4 Notwithstanding the above, the MDA may terminate the Contract for convenience.

56.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

## **57. Fraud and Corruption**

57.1 If the MDA determines that the Contractor and/or any of its personnel, or its agents, or its Subcontractors, sub consultants, services providers, suppliers and/or their employees has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the MDA may, after giving 14 days notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of Clause 56 shall apply as if such expulsion had been made under Sub-Clause 56.5 [Termination by MDA].

57.2 Should any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Works, then that employee shall be removed in accordance with Clause 9.

57.3 For the purposes of this Sub-Clause:

- (i) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party<sup>13</sup>;
- (ii) “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

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<sup>13</sup> “Another party” refers to a public official acting in relation to the procurement process or contract execution]. In this context, “public official” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

benefit or to avoid an obligation<sup>14</sup>;

- (iii) “collusive practice” is an arrangement between two or more parties<sup>15</sup> designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party<sup>16</sup>;
- (v) “obstructive practice” is
  - (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a ADSG investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; 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 ADSG’s inspection and audit rights provided for under Sub-Clause 22.2.

## 58. Payment upon Termination

58.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as **indicated in the SCC**. Additional Liquidated Damages shall not apply. If the total amount due to the MDA exceeds any payment due to the Contractor, the difference shall be a debt payable to the MDA.

58.2 If the Contract is terminated for the MDA’s convenience or because of a fundamental breach of Contract by the MDA, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor’s personnel employed solely on the Works, and the Contractor’s costs of protecting and

<sup>14</sup> “Party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

<sup>15</sup> “Parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

<sup>16</sup> “Party” refers to a participant in the procurement process or contract execution.



securing the Works, and less advance payments received up to the date of the certificate.

**59. Property**

59.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the MDA if the Contract is terminated because of the Contractor's default.

**60. Release from Performance**

60.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the MDA or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

**61. Suspension of ADSG Fund or Credit**

61.1 In the event that the ADSG suspends the Fund or Credit to the MDA, from which part of the payments to the Contractor are being made:

- (a) The MDA is obligated to notify the Contractor of such suspension within 7 days of having received the ADSG's suspension notice.
- (b) If the Contractor has not received sums due it within the 28 days for payment provided for in Sub-Clause 40.1, the Contractor may immediately issue a 14-day termination notice.



## Section VIII. Special Conditions of Contract

*Except where otherwise indicated, all SCC should be filled in by the MDA prior to issuance of the Bidding Documents. Schedules and reports to be provided by the MDA should be annexed.*

<b>A. General</b>	
<b>GCC 1.1 (d)</b>	The financing institution is:
<b>GCC 1.1 (s)</b>	The MDA is <i>[insert name, address, and name of authorized representative]</i> .
<b>GCC 1.1 (v)</b>	The Intended Completion Date for the whole of the Works shall be <i>[insert date]</i>  <i>[If different dates are specified for completion of the Works by section (“sectional completion” or milestones), these dates should be listed here]</i>
<b>GCC 1.1 (y)</b>	The Project Manager is <i>[insert name, address, and name of authorized representative]</i> .
<b>GCC 1.1 (aa)</b>	The Site is located at <i>[insert address of Site ]</i> and is defined in drawings No. <i>[insert numbers]</i>
<b>GCC 1.1 (dd)</b>	The Start Date shall be <i>[insert date]</i> .
<b>GCC 1.1 (hh)</b>	The Works consist of <i>[insert brief summary, including relationship to other contracts under the Project]</i> .
<b>GCC 2.2</b>	Sectional Completions are: <i>[insert nature and dates, if appropriate]</i>
<b>GCC 2.3(i)</b>	The following documents also form part of the Contract: <i>[list documents]</i>
<b>GCC 3.1</b>	The language of the contract is <i>[insert name of the language. The language shall be that of the bid]</i> .  The law that applies to the Contract is the law of <i>[insert name of Country]</i> .
<b>GCC 5.1</b>	The Project manager <i>[may or may not]</i> delegate any of his duties and responsibilities.
<b>GCC 8.1</b>	Schedule of other contractors: <i>[insert Schedule of Other Contractors, if appropriate]</i>
<b>GCC 13.1</b>	The minimum insurance amounts and deductibles shall be:  (a) for loss or damage to the Works, Plant and Materials: <i>[insert</i>

	<p><i>amounts</i>].</p> <p>(b) For loss or damage to Equipment: <i>[insert amounts]</i>.</p> <p>(c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract <i>[insert amounts]</i>.</p> <p>(d) for personal injury or death:</p> <p>(i) of the Contractor’s employees: <i>[amount]</i>.</p> <p>(ii) of other people: <i>[amount]</i>.</p>
<b>GCC 14.1</b>	Site Data are: <i>[list Site Data]</i>
<b>GCC 20.1</b>	The Site Possession Date(s) shall be: <i>[insert location(s) and date(s)]</i>
<b>GCC 23.1 &amp; GCC 23.2</b>	Appointing Authority for the Adjudicator: <i>[insert name of Authority]</i> .
<b>GCC 24.3</b>	Hourly rate and types of reimbursable expenses to be paid to the Adjudicator: <i>[insert hourly fees and reimbursable expenses]</i> .
<b>GCC 24.4</b>	<p><i>[For smaller contracts, the institution is usually from the MDA’s country. For larger contracts, and contracts that are likely to be awarded to international contractors, it is recommended that the arbitration procedure of an international institution]</i></p> <p>Institution whose arbitration procedures shall be used: .....</p> <p><i>[For larger contracts with international contractors, it is recommended to select one institution among those listed below; insert the corresponding wording]</i></p> <p><b>“United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules:</b></p> <p>Any dispute, controversy, or claim arising out of or relating to this Contract, or breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.”</p> <p>or</p> <p><b>“Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC):</b></p> <p>All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.”</p>

	<p>or</p> <p><b><i>“Rules of Arbitration Institute of the Stockholm Chamber of Commerce:</i></b></p> <p>Any dispute, controversy, or claim arising out of or in connection with this Contract, or the breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.”</p> <p>or</p> <p><b><i>“Rules of the London court of International Arbitration:</i></b></p> <p>Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity, or termination shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference to this clause.”</p> <p>The place of arbitration shall be: <i>[Insert city and country]</i></p>
<b>B. Time Control</b>	
<b>GCC 25.1</b>	The Contractor shall submit for approval a Program for the Works within <i>[number]</i> days from the date of the Letter of Acceptance.
<b>GCC 25.3</b>	<p>The period between Program updates is <i>[insert number]</i> days.</p> <p>The amount to be withheld for late submission of an updated Program is <i>[insert amount]</i>.</p>
<b>C. Quality Control</b>	
<b>GCC 33.1</b>	<p>The Defects Liability Period is: <i>[insert number]</i> days.</p> <p><i>[The Defects Liability Period is usually limited to 12 months, but could be less in very simple cases]</i></p>
<b>D. Cost Control</b>	
<b>GCC 43.1</b>	The currency of the MDA’s country is: <i>[insert name of currency of the MDA’s country]</i> .
<b>GCC 44.1</b>	<p>The Contract <i>[insert “is” or “is not”]</i> subject to price adjustment in accordance with GCC Clause 44, and the following information regarding coefficients <i>[specify “does” or “does not”]</i> apply.</p> <p><i>[Price adjustment is mandatory for contracts which provide for time of completion exceeding 18 months]</i></p>

	<p>The coefficients for adjustment of prices are:</p> <p>(a) For currency <i>[insert name of currency]</i>:</p> <p>(i) <i>[insert percentage]</i> percent non adjustable element (coefficient A).</p> <p>(ii) <i>[insert percentage]</i> percent adjustable element (coefficient B).</p> <p>(b) For currency <i>[insert name of currency]</i>:</p> <p>(i) <i>[insert percentage]</i> percent non adjustable element (coefficient A).</p> <p>(ii) <i>[insert percentage]</i> percent adjustable element (coefficient B).</p> <p>The Index I for local currency shall be <i>[insert index]</i>.</p> <p>The Index I for the specified international currency shall be <i>[insert index]</i>.</p> <p><i>[These proxy indices shall be proposed by the Contractor, subject to acceptance by the MDA]</i></p> <p>The Index I for currencies other than the local currency and the specified international currency shall be <i>[insert index]</i>.</p> <p><i>[These proxy indices shall be proposed by the Contractor, subject to acceptance by the MDA.]</i></p>
<b>GCC 45.1</b>	<p>The proportion of payments retained is: <i>[insert percentage]</i></p> <p><i>[The retention amount is usually close to 5 percent and in no case exceeds 10 percent.]</i></p>
<b>GCC 46.1</b>	<p>The liquidated damages for the whole of the Works are <i>[insert percentage of the final Contract Price]</i> per day. The maximum amount of liquidated damages for the whole of the Works is <i>[insert percentage]</i> of the final Contract Price.</p> <p><i>[Usually liquidated damages are set between 0.05 percent and 0.10 percent per day, and the total amount is not to exceed between 5 percent and 10 percent of the Contract Price. If Sectional Completion and Damages per Section have been agreed, the latter should be specified here]</i></p>
<b>GCC 47.1</b>	<p>The Bonus for the whole of the Works is <i>[insert percentage of final Contract Price]</i> per day. The maximum amount of Bonus for the whole of the Works is <i>[insert percentage]</i> of the final Contract Price.</p> <p><i>[If early completion would provide benefits to the MDA, this clause should remain; otherwise delete. The Bonus is usually numerically equal to the liquidated damages.]</i></p>

<b>GCC 48.1</b>	The Advance Payments shall be: <i>[insert amount(s)]</i> and shall be paid to the Contractor no later than <i>[insert date(s)]</i> .
<b>GCC 49.1</b>	<p>The Performance Security amount is <i>[insert amount(s) denominated in the types and proportions of the currencies in which the Contract Price is payable, or in a freely convertible currency acceptable to the MDA]</i></p> <p>(a) Bank Guarantee: <i>[insert percentage and amount(s)]</i>.</p> <p>(b) Performance Bond: <i>[insert percentage and amount(s)]</i>.</p> <p><i>[A <b>Bank Guarantee</b> shall be unconditional (on demand) (see Section X. Security Forms). An amount of 5 to 10 percent of the Contract Price is commonly specified for Performance Bank Guarantees. A <b>Performance Bond</b> is an undertaking by a bonding or insurance company (surety) to complete the construction in the event of default by the Contractor, or to pay the amount of the Bond to the MDA. An amount of 30 percent of the Contract Price is commonly used internationally for this type of security (see Section X. Security Forms).]</i></p>
<b>E. Finishing the Contract</b>	
<b>GCC 55.1</b>	<p>The date by which operating and maintenance manuals are required is <i>[insert date]</i>.</p> <p>The date by which “as built” drawings are required is <i>[insert date]</i>.</p>
<b>GCC 55.2</b>	The amount to be withheld for failing to produce “as built” drawings and/or operating and maintenance manuals by the date required in GCC 58.1 is <i>[insert amount in local currency]</i> .
<b>GCC 56.2 (g)</b>	The maximum number of days is: <i>[insert number; consistent with clause 41.1 on liquidated damages]</i> .
<b>GCC 58.1</b>	The percentage to apply to the value of the work not completed, representing the MDA’s additional cost for completing the Works, is <i>[insert percentage]</i> .





## **Section IX - Contract Forms**

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful Bidder after contract award.

### **Table of Forms**

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# Letter of Acceptance

*[ on letterhead paper of the MDA]*

..... *[date]* .....

To: ..... *[ name and address of the Contractor]* .....

Subject: ..... *[Notification of Award Contract No.]* .....

This is to notify you that your Bid dated . . . . *[insert date]* . . . . for execution of the . . . .  
. . . . *[insert name of the contract and identification number, as given in the Appendix to Bid]* . . . .  
. . . . for the Accepted Contract Amount of the equivalent of . . . . . *[insert amount in  
numbers and words and name of currency]*, as corrected and modified in accordance with the  
Instructions to Bidders is hereby accepted by our Project.

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 IX (Contract Forms) of the Bidding Document.

***[Choose one of the following statements:]***

We accept that \_\_\_\_\_ *[insert the name of Adjudicator proposed by  
the Bidder]* be appointed as the Adjudicator.

***[or]***

We do not accept that \_\_\_\_\_ *[insert the name of the Adjudicator  
proposed by the Bidder]* be appointed as the Adjudicator, and by sending a copy of this  
Letter of Acceptance to \_\_\_\_\_ *[insert name of  
the Appointing Authority]*, the Appointing Authority, we are hereby requesting such  
Authority to appoint the Adjudicator in accordance with ITB 42.1 and GCC 23.1.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Project: .....

Attachment: Contract Agreement

## Contract Agreement

THIS AGREEMENT made the . . . . .day of . . . . ., . . . . ., between . . . . .  
[name of the MDA]. . . . . (hereinafter “the MDA”), of the one part, and . . . . . [name of  
the Contractor]. . . . .(hereinafter “the Contractor”), of the other part:

WHEREAS the MDA desires that the Works known as . . . . . [name of the Contract]. . . .  
. . . . .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 MDA 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.
  - (a) the Letter of Acceptance
  - (b) the Bid
  - (c) the Addenda Nos . . . . . [insert addenda numbers if any]. . . . .
  - (d) the Special Conditions
  - (e) the General Conditions;
  - (f) the Specification
  - (g) the Drawings; and
  - (h) the completed Schedules,
3. In consideration of the payments to be made by the MDA to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the MDA to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The MDA hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract 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 . . . . . [name of the MDA country]. . . . .on the day, month and year indicated above.

Signed by: \_\_\_\_\_  
for and on behalf of the MDA

Signed by: \_\_\_\_\_  
for and on behalf the Contractor

in the  
presence of: \_\_\_\_\_  
Witness, Name, Signature, Address, Date

in the  
presence of: \_\_\_\_\_  
Witness, Name, Signature, Address, Date

# Performance Security

*[Bank’s Name, and Address of Issuing Branch or Office]*

**Beneficiary:** ..... *[Name and Address of MDA]* .....

**Date:** .....

**Performance Guarantee No.:** .....

We have been informed that . . . . . *[name of the Contractor]*. . . . . (hereinafter called “the Contractor”) has entered into Contract No. . . . . *[reference number of the Contract]*. . . . . dated . . . . . with you, for the execution of . . . . . *[name of contract and brief description of Works]*. . . . . (hereinafter called “the Contract”).

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Contractor, we . . . . . *[name of the Bank]*. . . . . hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of . . . . . *[name of the currency and amount in figures]* <sup>1</sup>. . . . . (*[amount in words]*. . . . .) such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the . . . . . Day of . . . . . , . . . . . <sup>2</sup>, and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

.....  
*[Seal of Bank and Signature(s)]*

**Note –**

*All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.*

<sup>1</sup> *The Guarantor shall insert an amount representing the percentage of the Contract Price specified in the Contract and denominated either in the currency(ies) of the Contract or a freely convertible currency acceptable to the MDA.*

<sup>2</sup> *Insert the date twenty-eight days after the expected completion date. The MDA should note that in the event of an extension of the time for completion of the Contract, the MDA would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date*

*established in the guarantee. In preparing this guarantee, the MDA might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the MDA's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."*

# Advance Payment Security

*[Bank’s Name, and Address of Issuing Branch or Office]*

**Beneficiary:** ..... *[Name and Address of MDA]* .....

**Date:** .....

**Advance Payment Guarantee No.:** .....

We have been informed that . . . . . *[name of the Contractor]*. . . . . (hereinafter called “the Contractor”) has entered into Contract No. . . . . *[reference number of the Contract]*. . . . . dated . . . . . with you, for the execution of . . . . . *[name of contract and brief description of Works]*. . . . . (hereinafter called “the Contract”).

Furthermore, we understand that, according to the Conditions of the Contract, an advance payment in the sum . . . . . *[name of the currency and amount in figures]*<sup>1</sup>. . . . . (. . . . . *[amount in words]*. . . . . ) is to be made against an advance payment guarantee.

At the request of the Contractor, we . . . . . *[name of the Bank]*. . . . . hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of . . . . . *[name of the currency and amount in figures]*\*. . . . . (. . . . . *[amount in words]*. . . . . ) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the Works.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Contractor on its account number . . . . . *[Contractor’s account number]*. . . . . at . . . . . *[name and address of the Bank]*. . . . .

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that eighty (80) percent of the Contract Price has been certified for payment, or on the . . . day of . . . . . , . . . . .<sup>2</sup>, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

..... *[Seal of Bank and Signature(s)]*. . . . .

**Note –**

*All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.*

*1 The Guarantor shall insert an amount representing the amount of the advance payment denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the MDA.*

2 *Insert the expected expiration date of the Time for Completion. The MDA should note that in the event of an extension of the time for completion of the Contract, the MDA would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the MDA might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the MDA’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.*