



# USER'S GUIDE TO PROCUREMENT OF WORKS

## SMALL CONTRACTS

### STANDARD BIDDING DOCUMENT

March 2014

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The latest version of the standard bidding document is available at <http://www.adb.org/documents/users-guide-procurement-works-small-contracts?ref=site/business-opportunities/operational-procurement/goods>

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# Abbreviations

ADB.....	Asian Development Bank
BDF.....	Bidding Forms
BDS.....	Bid Data Sheet
COF.....	Contract Forms
ELC .....	Eligible Countries
ELI.....	Eligibility Form
EQC .....	Evaluation and Qualification Criteria
EQU .....	Equipment Form
ERQ .....	Employer's Requirements
EXP.....	Experience Form
FIN .....	Financial Data Form
GCC .....	General Conditions of Contract
ICB .....	International Competitive Bidding
IFB.....	Invitation for Bids
ITB.....	Instructions to Bidders
JV .....	Joint Venture
LIT .....	Pending Litigation Form
NCB.....	National Competitive Bidding
PCC.....	Particular Conditions of Contract
PER.....	Personnel Form
SBD.....	Standard Bidding Document

# Introduction

The Standard Bidding Document for the Procurement of Works—Small Contracts (*SBD Works-Small*) has been prepared by the Asian Development Bank (ADB) for use in contracts involving “smaller” contracts – valued at generally less than \$10 million by International Competitive Bidding (ICB), though it may also be adapted to National Competitive Bidding (NCB). It is based on the Master Document for Procurement of Small Works, prepared by the Multilateral Development Banks and International Financing Institutions. It reflects the structure and the provisions of the Master Document, except where specific considerations within the ADB have required a change.

The *SBD Works-Small* follows a postqualification procedure that requires Bidders to submit the information pertaining to their qualification together with their bids. In this event, it will be necessary to ensure that a Bidder’s risk of having its bid rejected on grounds of qualification is remote if due diligence is exercised by the Bidder during bid preparation. For that purpose, clear-cut, fail-pass qualification criteria need to be specified by the Employer in both the Invitation for Bids as well as the Bidding Document in order to enable Bidders to make an informed decision whether to pursue a specific contract and, if so, either as a single entity or in joint venture. Postqualification criteria, requirements and relevant forms for submission are covered in Section 3 (Evaluation and Qualification Criteria) and Section 4 (Bidding Forms).

The *SBD Works-Small* can also be used for the case where prequalification has been undertaken, with relatively minor modifications. However, the SBD does not address the Bidder prequalification process per se. Details of the prequalification procedure used under ADB-financed contracts are provided in the ADB’s *Standard Procurement Document, Prequalification of Bidders*.

The *SBD Works-Small* is intended, as a default, for lump sum (activity schedule) types of contract, which are the most common in civil works contracting. Lump sum contracts are used in particular for building construction and other forms of construction where the works are well defined and are unlikely to change in quantity or specification, and where it is unlikely to encounter difficult or unforeseen site conditions (for example, hidden foundation problems).

The *SBD Works-Small* can also be used for admeasurement (unit prices in a bill of quantities) contracts. The main text is applicable to both types of contracts (lump sum and admeasurement). If necessary to distinguish between the two, however, alternative texts are found in Section 2 (Bid Data Sheet) and Section 8 (Particular Conditions of Contract). Care must be exercised by Employers in selecting the alternative clauses. In admeasurement contracts, fixed prices are provided as a default, unless price adjustment is allowed and indicated in Section 2.

An important feature of the *SBD Works-Small*, which is only available in electronic format from the ADB website, is that it can be used with minimum changes, as it does not contain explanations, footnotes or examples that should not form part of the Bidding Document. The provisions in Section 1 (Instructions to Bidders) and Section 7 (General Conditions of Contract) must be used with their text unchanged.

This User’s Guide is provided for the guidance of Employers in preparing a bidding document based on the *SBD Works-Small*. This Guide includes the Bidding Process and the Invitation for Bids, which are not a part of the Bidding Document.

ADB welcomes any feedback or experiences from the use of its *SBD Works-Small* from borrowers and Bidders. For information on procurement under ADB-assisted projects, contact

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[www.adb.org](http://www.adb.org)

# The Bidding Process

The International Competitive Bidding (ICB) process includes six main phases: Advertisement and notification, Preparation and Issuing of the Bidding Document, Bid Preparation and Submission, Bid Opening, Bid Evaluation, and Contract Award.

## **Advertisement and Notification**

Following ICB procedure, the Invitation for Bids shall be advertised in the ADB website, as well as in (i) a newspaper of general circulation in the borrower's country, or (ii) an internationally known and freely accessible website in English. A copy of the Invitation for Bids shall be submitted to ADB for approval and for publication in the ADB website in accordance with the ADB's Procurement Guidelines.

## **Preparing and Issuing a Bidding Document**

The Employer is responsible for preparing and issuing the Bidding Document for a specific contract.

The Bidding Document shall be prepared by the Employer on the basis of the appropriate SBD issued by ADB, as this is a mandatory requirement for contracts to be financed by ADB. The following SBD issued by ADB and published on ADB website are:

- SBD Works (Small Contracts) Single-Stage: One Envelope; and
- SBD Works (Small Contracts) Single-Stage: Two Envelope

The Employer shall prepare the Bidding Document using the published version of the SBD without suppressing or adding text to the sections of the document that must be used without modification, which are Section 1 (Instructions to Bidders) and Section 7 (General Conditions of Contract). All information and data particular to each individual bidding process must be provided by the Employer in the following sections of the Bidding Document:

Section 2 - Bid Data Sheet  
Section 3 - Evaluation and Qualification Criteria  
Section 4 - Bidding Forms  
Section 5 - Eligible Countries  
Section 6 - Employer's Requirements  
Section 8 - Particular Conditions of Contract  
Section 9 - Contract Forms

The following directions should be observed by the Employer when finalizing the Bidding Document:

- In the preparation of the Bidding Document, the Employer should refer to this User's Guide to Procurement of Works – Small Contracts as it contain guidance and instructions for the Employer.
- Specific details, such as name of the Employer, address for bid submissions, qualification requirements, etc. should be provided in the spaces indicated by italicized notes inside the bracket.
- The "italicized notes", containing guidance and instructions for the Employer, except those applying to forms to be filled out by Bidders or instructions to Bidders, should be deleted from the actual Bidding Document.
- Where alternative Clauses or text are shown, the Employer shall select the most appropriate for the particular works and discard the alternative Clauses or text which is not used.

The Employer shall allow Bidders sufficient time (generally, not less than six weeks from the date of the invitation to bid or the date of availability of bidding documents) to study the Bidding Document, prepare complete and responsive Bids, and submit their Bids.



## **Bid Preparation and Submission**

The Bidder is solely responsible for the preparation and submission of its Bid. During this stage, the Employer shall:

- Promptly respond to requests for clarifications from Bidders and amend the Bidding Document as needed.
- Amend the Bidding Document only with prior approval of ADB.

## **Bid Opening**

The Employer is responsible for the Bid Opening, which is a critical event in the bidding process. The Employer shall appoint experienced staff to conduct the Bid Opening, as inappropriate procedures at Bid Opening are usually irreversible and may require cancellation of the bidding process with consequent delays and waste of resources.

The Employer, in observance of best practices, shall:

- Conduct the Bid Opening strictly following the procedures as specified in the Instructions to Bidders for all Bids received not later than the date and time of the bid submission deadline. The term “Bid Opening” can be misleading because a Bid for which a Bid Withdrawal or Bid Substitution notice was received on time shall not be opened, but returned unopened to the Bidder. The sequence in which Bids are handled, opened, and recorded is crucial.
- Ensure that all Bids that were received on time are accounted for, before starting the Bid Opening, as Bids that are not opened and read out at Bid Opening shall not be considered further.
- Not reject any Bid at Bid Opening, except for late bids received after the date and time of the bid submission deadline. Technically, late bids should not reach the Bid Opening, but in certain cases a Bidder may attempt to submit its bid at the Bid Opening place after the deadline.
- Examine the Bids at Bid Opening in accordance with the provisions of the Instructions to Bidders. The Employer shall, however, verify at Bid Opening the validity of the documentation such as Power of Attorney or other acceptable equivalent document as specified in the Instructions to Bidders confirming the validity of a bid modification, bid withdrawal, or bid substitution, because a withdrawn or substituted Bid shall not be opened and in consequence not read out and, therefore, not be considered by the Employer. Similarly, a bid modification shall be opened, read out, and recorded to modify a Bid that was received on time.

## **Bid Evaluation and Contract Award**

The Employer is responsible for bid evaluation and contract award. The Employer shall appoint experienced staff to conduct the evaluation of the Bids. Mistakes committed at bid evaluation may later prompt complaints from Bidders, requiring reevaluation of the Bids, with consequent delays and waste of resources.

The Employer, in observance of best practices, shall:

- Maintain the bid evaluation process strictly confidential.
- Reject any attempts or pressures to distort the outcome of the evaluation, including fraud and corruption.
- Strictly apply only and all of the evaluation and qualification criteria specified in the Bidding Document.

# Invitation for Bids

The Invitation for Bids provides information that enables potential Bidders to decide whether to participate. Apart from the essential items listed in the Standard Bidding Document, the Invitation for Bids should also indicate any important bid evaluation criteria, such as the application of a margin of preference in bid evaluation, or qualification requirements, such as a requirement for a minimum level of experience in contracts of a similar size and nature for which the Invitation for Bids is issued.

The Invitation for Bids is not a part of the Bidding Document and therefore it shall not be included in the Bidding Document.

Following ICB and NCB procedures, the Invitation for Bids shall be advertised in the ADB Website, as well as in (i) a newspaper of general circulation in the borrower's country, or (ii) an internationally known and freely accessible website in English and in a local language. A copy of the Invitation for Bids in English shall be submitted to ADB for approval and for publication in the ADB Website in accordance with the ADB's Procurement Guidelines.

## Standard Format for Invitation for Bids

**Date** .....

**Loan/Grant No. and Title** .....

**Contract No. and Title** .....

**Deadline for Submission of Bids** .....*insert closing date and time* .....

1. The . . . . . *insert name of Borrower or Recipient* . . . . . has received<sup>1</sup> financing from the Asian Development Bank (ADB) towards the cost of . . . . . *insert name of project* . . . . . Part of this financing will be used for payments under the contract<sup>2</sup> named above. Bidding is open to Bidders<sup>3</sup> from eligible source countries of the ADB.<sup>4</sup>
2. The . . . . . *insert name of Employer* . . . . . (“the Employer”) invites sealed bids from eligible Bidders<sup>3</sup> for the construction and completion of . . . . . *insert brief description of the Works and statement of the principal quantities involved*. . . . . (“the Works”).
3. International competitive bidding<sup>5</sup> will be conducted in accordance with ADB’s . . . . . *insert appropriate bidding procedure*<sup>6</sup> . . . . . procedure and is open to all Bidders from eligible countries as described in the Bidding Document<sup>7</sup>.
4. Only eligible Bidders with the following key qualifications<sup>8</sup> should participate in this bidding:
  - . . . . . *insert key experience requirement*
  - . . . . . *insert key financial requirement*
  - . . . . . *insert key equipment requirement, if any*
  - . . . . . *insert key personnel requirement*
5. To obtain further information and inspect the bidding documents, Bidders should contact:
  - . . . . . *insert Employer's office* . . . . .<sup>9</sup>
  - . . . . . *postal address or street address, include zip code*. . . . .
  - . . . . . *telephone number including country code*. . . . .
  - . . . . . *email address*. . . . .
  - . . . . . *fax no.* . . . . .
6. To purchase the bidding documents in English, eligible Bidders should:
  - write to address above requesting the bidding documents for . . . . . *insert number & title of contract* . . . . .
  - pay a non-refundable fee<sup>10</sup> of . . . . . *insert amount and currency* . . . . . by . . . . . *insert method of payment* . . . . .
7. Deliver your bid:
  - to the address above
  - on or before the deadline: . . . . . *insert closing date and time*. . . . .
  - together with a Bid Security / Bid Securing Declaration as described in the Bidding Document

Bids will be opened immediately after the deadline for bid submission in the presence of Bidders’ representatives who choose to attend.

8. When comparing Bids, ADB’s Domestic Preference Scheme will be applied in accordance with the provisions stipulated in the Bidding Document<sup>11</sup>.

**-- Note --**

- <sup>1</sup> Substitute "has applied for" if appropriate.
- <sup>2</sup> Substitute "contracts" where bids are called concurrently for multiple contracts. Add a new para. 2 and renumber paras. 2 - 8 as follows: "Bidders may bid for one or several contracts, as further defined in the bidding document. Bidders wishing to offer discounts in case they are awarded more than one contract will be allowed to do so, provided those discounts are included in the Letter of Bid."
- <sup>3</sup> Insert "prequalified" if the bidding is preceded by a prequalification exercise.
- <sup>4</sup> Add if applicable: "This contract will be jointly financed by . . . . insert name of cofinancing agency . . . .. The eligibility rules and procedures of the ADB will govern the bidding process."
- <sup>5</sup> Substitute by "National competitive bidding" if appropriate.
- <sup>6</sup> Insert one of the bidding procedures adopted by ADB, which are (a) Single-Stage: One-Envelope and (b) Single-Stage: Two-Envelope.
- <sup>7</sup> The list of eligible countries will be specified in Section 5 of the Bidding Document.
- <sup>8</sup> Insert clear-cut, fail-pass qualification criteria in order to enable Bidders to make an informed decision whether to pursue a specific contract and, if so, either as a single entity or in joint venture. Omit this paragraph and renumber the rest if the bidding is preceded by a prequalification exercise.
- <sup>9</sup> The Borrower and the Employer may be the same or different entities. The text of the Invitation for Bids and the texts of the other associated documents must indicate which agency will act as the Employer.
- <sup>10</sup> The fee chargeable should only be nominal to cover reproduction and mailing costs.
- <sup>11</sup> Include para. 8 only if Domestic Preference has been expressly provided in the Financing Agreement and is included in the Instructions to Bidders. Domestic Preference may be applied only in International Competitive Bidding.



# Section 1 - Instructions to Bidders

This Section specifies the procedures to be followed by Bidders in the preparation and submission of their Bids. Information is also provided on the submission, opening, and evaluation of bids and on the award of contract.

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# Section 1 - Instructions to Bidders

## A. General

- 1. Scope of Bid**
  - 1.1 In connection with the Invitation for Bids indicated in the Bid Data Sheet (BDS), the Employer, as indicated in the BDS, issues this Bidding Document for the procurement of the Works as specified in Section 6 (Employer'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 Borrower or Recipient (hereinafter called "Borrower") indicated in the BDS has applied for or received financing (hereinafter called "funds") from the Asian Development Bank (hereinafter called "ADB") toward the cost of the project named in the BDS. The Borrower 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 ADB will be made only at the request of the Borrower and upon approval by the ADB in accordance with the terms and conditions of the financing agreement between the Borrower and the ADB (hereinafter called the Financing Agreement), and will be subject in all respects to the terms and conditions of that Financing Agreement. No party other than the Borrower shall derive any rights from the Financing Agreement or have any claim to the funds.
- 3. Fraud and Corruption**
  - 3.1 ADB's Anticorruption Policy requires Borrowers (including beneficiaries of ADB-financed activity), as well as Bidders, suppliers, and contractors under ADB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, ADB:
    - a) defines, for the purposes of this provision, the terms set forth below as follows:
      - (i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
      - (ii) "fraudulent practice" means 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;
      - (iii) "coercive practice" means 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;
- (iv) “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
  - (v) “integrity violation” means any act, as defined under ADB’s Integrity Principles and Guidelines, which violates ADB’s Anticorruption Policy including corrupt, fraudulent, coercive, or collusive practice, abuse, and obstructive practice;
  - (vi) “obstructive practice” means (a) deliberately destroying, falsifying, altering or concealing of evidence material to an ADB investigation; (b) making false statements to investigators in order to materially impede an ADB investigation; (c) failing to comply with requests to provide information, documents or records in connection with an OAI investigation; (d) 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 (e) materially impeding ADB’s contractual rights of audit or access to information.
- 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 or other integrity violations in competing for the Contract;
  - c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the borrower or of a beneficiary of ADB-financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation;
  - d) will sanction impose remedial actions on a firm or an individual, at any time, in accordance with ADB’s Anticorruption Policy and Integrity Principles and Guidelines (both as amended from time to time), including declaring ineligible, either indefinitely or for a stated period of time, to participate<sup>1</sup> in ADB-financed, or administered or supported activities or to benefit from an ADB-financed, administered or supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations; and

---

<sup>1</sup> Whether as a contractor, nominated subcontractor, consultant, manufacturer or supplier, or service provider; or in any other capacity (different names are used depending on the particular bidding document). A nominated subcontractor is one which either has been: (i) included by the Bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that are accounted for in the evaluation of the Bidder’s pre-qualification application or the bid; or (ii) appointed by the Employer.

- e) will have the right to require that a provision be included in bidding documents and in contracts financed by ADB, requiring Bidders, suppliers and contractors to permit ADB or its representative to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by ADB.

3.2 Furthermore, Bidders shall be aware of the provisions of GCC 28.3 and 73.2 (i).

#### **4. Eligible Bidders**

4.1 A Bidder may be a natural person, private entity, government-owned entity - subject to ITB 4.5 - or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Joint Venture (JV). In the case of a JV:

- a) all partners shall be jointly and severally liable, and
- b) the JV shall nominate 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.

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 be in a conflict of interest with one or more parties in this bidding process if including but not limited to:

- a) they have controlling shareholders 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 material information about or improperly influence the Bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or
- e) a Bidder participates in more than one bid in this bidding process, either individually or as a partner in a joint venture, except for alternative offers permitted under ITB Clause 13 of the Bidding Document. This will result in the disqualification of all Bids in which it is involved. However, subject to any finding of a conflict of interest in terms of ITB 4.3 (a) - (d) above, this does not limit the participation of a Bidder as a Subcontractor in another bid or of a firm as a Subcontractor in more than one bid; or

- f) a Bidder or any affiliated entity, participated as a Consultant in the preparation of the design or technical specifications of the works that are the subject of the Bid; or
- g) a Bidder was affiliated with a firm or entity that has been hired (or is proposed to be hired) by the Employer or Borrower as Engineer for the contract.

4.4 A firm shall not be eligible to participate in any procurement activities under an ADB-financed or ADB-supported project while under sanction by ADB pursuant to its Anticorruption Policy (see ITB 3), whether such sanction was directly imposed by ADB, or imposed by ADB pursuant to the Agreement for Mutual Enforcement of Debarment Decisions. A bid from a sanctioned or cross-debarred firm will be rejected.

4.5 Government-owned enterprises in the Employer's country shall be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and that they (iii) are not a dependent agency of the Employer.

4.6 Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.

4.7 Firms shall be excluded if by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of goods or contracting of works or services from that country or any payments to persons or entities in that country.

4.8 In case a prequalification process has been conducted prior to the bidding process, this bidding is open only to prequalified Bidders.

## **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 Employer'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 I, II, and III, which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITB 8.

### **PART I Bidding Procedures**

Section 1 - Instructions to Bidders (ITB)

Section 2 - Bid Data Sheet (BDS)

Section 3 - Evaluation and Qualification Criteria (EQC)

Section 4 - Bidding Forms (BDF)

Section 5 - Eligible Countries (ELC)

## **PART II Requirements**

Section 6 - Employer's Requirements (ERQ)

## **PART III Conditions of Contract and Contract Forms**

Section 7 - General Conditions of Contract (GCC)

Section 8 - Particular Conditions of Contract (PCC)

Section 9 - Contract Forms (COF)

6.2 The Invitation for Bids issued by the Employer is not part of the Bidding Document.

6.3 The Employer 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 Employer 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 Employer in writing at the Employer'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 Employer 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 Employer 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 Employer 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 advised 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 Employer 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 Employer 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 to submit any questions in writing, to reach the Employer 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 Employer 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 Employer 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 Employer 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 Employer 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 Employer 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 Employer, 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) Any other document required in the BDS.

11.2 In addition to the requirements under ITB 11.1, bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all partners. Alternatively, a Letter of Intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all partners and submitted with the bid, together with a copy of the proposed agreement.

## **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 4 (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 Employer's design as described in the Bidding Document and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, 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 Employer.

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 6 (Employer's Requirements). The method for their evaluation will be stipulated in Section 3 (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 4 (Bidding Forms). In case of admeasurement 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 Employer 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 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 Table(s) of Adjustment Data in Section 4 (Bidding Forms) and the Employer may require the Bidder to justify its proposed indices and weightings.

14.6 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 14.4, provided the bids for all contracts are submitted and opened at the same time.

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 and payment shall be as specified in the BDS.

15.2 Bidders may be required by the Employer to justify, to the Employer'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 4, 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 4 (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 3 (Evaluation and Qualification Criteria) the Bidder shall provide the information requested in the corresponding information sheets included in Section 4 (Bidding Forms).



17.2 Domestic Bidders, individually or in joint ventures, applying for eligibility for 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 Employer. A bid valid for a shorter period shall be rejected by the Employer as nonresponsive.

18.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Employer 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 twenty-eight (28) days beyond the deadline of the extended validity 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.

**19. Bid Security/Bid Securing Declaration**

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 4 (Bidding Forms). The Employer will declare a Bidder ineligible to be awarded a Contract for a specified period of time, as indicated in the BDS, if the Bid Securing Declaration is executed.

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 bank guarantee;
- b) an irrevocable letter of credit; or
- c) a cashier's or certified check;

all from a reputable source from an eligible country as described in Section 5 (Eligible Countries). In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section 4 (Bidding Forms) or another form acceptable to the Employer. 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.

19.4 Any bid not accompanied by a substantially compliant bid security in accordance with ITB 19.3, or Bid Securing Declaration in accordance with ITB 19.2, if required in accordance with ITB 19.1 shall be rejected by the Employer as non-responsive.

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;
  - (ii) furnish a performance security in accordance with ITB 41;
  - (iii) accept arithmetical corrections in accordance with ITB 31; or
  - (iv) furnish a domestic preference security, if applicable, 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 legally constituted 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.

## **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. All pages of the Bid, except for unamended printed literature, shall be signed or initialed by the person signing the bid.

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 21.2 and 21.3.

- 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 Employer as provided in BDS 22.1;
- c) bear the specific identification of this bidding process indicated in BDS 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 Employer 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 Employer at the address and no later than the date and time indicated in the BDS.

22.2 The Employer 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 Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

**23. Late Bids**

23.1 The Employer shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 22. Any bid received by the Employer 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 Employer 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 Employer 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; 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 Employer may consider appropriate. Only discounts and alternative offers read out at bid opening shall be considered for evaluation. Unless otherwise specified in the BDS, all pages of the Letter of Bid and Schedules are to be initialed by at least three representatives of the Employer attending the bid opening. No bid shall be rejected at bid opening except for late bids, in accordance with ITB 23.1.
- 25.4 The Employer 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 or a bid securing declaration, 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 postqualification 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 the Contract award is

communicated to all Bidders.

26.2 Any attempt by a Bidder to influence the Employer in the evaluation of the bids or Contract award decisions may result in the rejection of its bid.

26.3 Notwithstanding ITB 26.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Employer 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 Employer 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 Employer shall not be considered. The Employer'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 Employer 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 Employer'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 Employer'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 Employer'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 Employer 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 (Employer's Requirements) have been met without any material deviation or reservation.

29.4 If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Employer 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 Employer may waive any nonconformities in the bid that do not constitute a material deviation, reservation or omission.

30.2 Provided that a bid is substantially responsive, the Employer 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 Employer 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 3 (Evaluation and Qualification Criteria).

**31. Correction of Arithmetical Errors**

31.1 Provided that the bid is substantially responsive, the Employer 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 Employer 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;
- c) if there is a discrepancy between the bid price in the Summary of Bill of Quantities and the bid amount in item (c) of the Letter of Bid, the bid price in the Summary of Bill of Quantities will prevail and the bid amount in item (c) of the Letter of Bid will be corrected; and
- d) 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), (b) and (c) above.

31.2 If the Bidder that submitted the lowest evaluated bid does not accept the correction of errors, its bid shall be disqualified and its bid security may be forfeited, or its bid securing declaration executed.

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| <b>32. Conversion to Single Currency</b> | 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.   |
| <b>33. Margin of Preference</b>          | 33.1 Unless otherwise specified in the BDS, a margin of preference shall not apply.  |
| <b>34. Evaluation of Bids</b>            | <p>34.1 The Employer shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.</p> <p>34.2 To evaluate a bid, the Employer shall consider the following:</p> <ul style="list-style-type: none"> <li>a) the bid price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities for admeasurement contracts, or Activity Schedule for lump sum contracts, but including Daywork items, where priced competitively;</li> <li>b) price adjustment for correction of arithmetic errors in accordance with ITB 31.1;</li> <li>c) price adjustment due to discounts offered in accordance with ITB 14.4;</li> <li>d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 32;</li> <li>e) adjustment for nonconformities in accordance with ITB 30.3;</li> <li>f) application of all the evaluation factors indicated in Section 3 (Evaluation and Qualification Criteria).</li> </ul> <p>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.</p> <p>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 3 (Evaluation and Qualification Criteria).</p> <p>34.5 If the bid for an admeasurement contract, which results in the lowest Evaluated Bid Price, is seriously unbalanced, front loaded or substantially below updated estimates in the opinion of the Employer, the Employer 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 Employer may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.</p> |
| <b>35. Comparison of Bids</b>            | 35.1 The Employer shall compare all substantially responsive bids to determine the lowest evaluated bid, in accordance with ITB 34.2.  |

- 36. Qualification of the Bidder**
- 36.1 The Employer 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 3 (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 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 Employer shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's qualifications to perform satisfactorily.
- 37. Employer's Right to Accept Any Bid, and to Reject Any or All Bids**
- 37.1 The Employer 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 The Employer 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 Employer shall notify the successful Bidder, in writing, that its bid has been accepted.
- 39.2 At the same time, the Employer shall also notify all other Bidders of the results of the bidding. The Employer will publish in an English language newspaper or well-known freely accessible website 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. After publication of the award, unsuccessful bidders may request in writing to the Employer for a debriefing seeking explanations on the grounds on which their bids were not selected. The Employer shall promptly respond in writing to any unsuccessful Bidder who, after Publication of contract award, requests a debriefing.
- 39.3 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.
- 40. Signing of Contract**
- 40.1 Promptly after notification, the Employer 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 Employer.



**41. Performance Security**

- 41.1 Within twenty-eight (28) days of the receipt of notification of award from the Employer, 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 9 (Contract Forms), or another form acceptable to the Employer.
- 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 or execution of the bid securing declaration. In that event the Employer may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Employer 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.





## Section 2 - Bid Data Sheet

This Section consists of provisions that are specific to each procurement and supplement the information or requirements included in Section 1 - Instructions to Bidders.

A. General	
ITB 1.1	The number of the Invitation for Bids is: <i>[insert name and number]</i>
ITB 1.1	The Employer is: <i>[insert complete name]</i>
ITB 1.1	<p>The name of the bidding process is: <i>[insert complete name]</i></p> <p>The identification number of the bidding process is: <i>[insert identification number]</i></p> <p>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></p>
ITB 2.1	The Borrower is: <i>[insert complete name]</i>
ITB 2.1	The name of the Project is: <i>[insert name of the Project]</i>
B. Contents of Bidding Documents	
ITB 7.1	<p>For <b>clarification purposes</b> only, the Employer's address is:</p> <p>Attention: <i>[insert full name of person, if applicable]</i></p> <p>Street Address: <i>[insert street address and number]</i></p> <p>Floor/Room number: <i>[insert floor and room number, if applicable]</i></p> <p>City: <i>[insert name of city or town]</i></p> <p>ZIP Code: <i>[insert postal (ZIP) code, if applicable]</i></p> <p>Country: <i>[insert name of country]</i></p> <p>Telephone: <i>[insert telephone number, including country and city codes]</i></p> <p>Facsimile number: <i>[insert phone number, with country and city codes]</i></p> <p>Electronic mail address: <i>[insert email address, if applicable]</i></p> <p>Requests for clarification should be received by the Employer no later than: <i>[insert no. of days, between seven (7) days for NCB and other very small contracts to twenty-one (21) days for ICB contracts].</i></p>
ITB 7.4	A Pre-Bid meeting <i>[insert "shall" or "shall not "]</i> take place.

	<p><i>[... if a Pre-Bid meeting takes place, insert date, time and place below]</i></p> <p>Date:</p> <p>Time:</p> <p>Place:</p> <p>A site visit conducted by the Employer <i>[insert "will" or "will not be"]</i> organized.</p>
<b>C. Preparation of Bids</b>	
<b>ITB 10.1</b>	The language of the bid is: <i>[insert "English" for ICB, or either "English" or local language for NCB]</i> .
<b>ITB 11.1 (b)</b>	In accordance with ITB 12 and ITB 14, the following schedules shall be submitted with the bid, including the priced Bill of Quantities for admeasurement contracts and Activity Schedule for lump sum contracts: <i>[insert schedules such as schedule of equipment, key personnel and subcontractors, and data on financial resources for meeting the required financial resources requirement that must be submitted with the Bid together with the price schedules]</i> .
<b>ITB 11.1 (h)</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>	<p>Alternative times for completion <i>[insert "shall be" or "shall not be"]</i> permitted.</p> <p>If alternative times for completion are permitted, the evaluation method will be as specified in Section 3 (Evaluation and Qualification Criteria).</p>
<b>ITB 13.4</b>	<p>Alternative technical solutions shall be permitted for the following parts of the Works: <i>[insert parts of the Works]</i></p> <p>If alternative technical solutions are permitted, the evaluation method will be as specified in Section 3 (Evaluation and Qualification Criteria).</p>
<b>ITB 14.5</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>	<p><i>[Choose one of the following options as appropriate.]</i></p> <p><i>[In case of ICB]:</i></p> <p>(a) 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 Employer's country (referred to as the "foreign currency requirements") and wishing to be paid 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 Schedule of Payment Currencies included in Section 4 (Bidding Forms).</p>

	<p>(b) The rates of exchange to be used by the Bidder for currency conversion during bid preparation shall be the selling rates for similar transactions prevailing on the date 28 days prior to the deadline for submission of bids published by <i>[Employer to indicate here the source of the exchange rates, i.e., Central Bank of the Borrower's country, or commercial bank, or internationally circulated newspaper]</i>. If exchange rates are not so published for certain currencies, the Bidder shall state the rates used and the source. Bidders should note that for the purpose of payments, the exchange rates confirmed by <i>[Employer to indicate here the source of the exchange rates, i.e., Central Bank of the Borrower's country, or commercial bank, or internationally circulated newspaper]</i> as the selling rates prevailing 28 days prior to the deadline for submission of bids shall apply for the duration of the Contract so that no currency exchange risk is borne by the Bidder.</p> <p>(c) Foreign currency requirements indicated by the Bidders in the Schedule of Payment Currencies shall include but not limited to the specific requirements for:</p> <ul style="list-style-type: none"> <li>• expatriate staff and labor employed directly on the Works;</li> <li>• social, insurance, medical and other charges relating to such expatriate staff and labor, and foreign travel expenses;</li> <li>• imported materials, both temporary and permanent, including fuels, oil and lubricants required for the Works;</li> <li>• depreciation and usage of imported Plant and Contractor's Equipment, including spare parts, required for the Works;</li> <li>• foreign insurance and freight charges for imported materials, Plant and Contractor's Equipment, including spare parts; and</li> <li>• overhead expenses, fees, profit, and financial charges arising outside the Employer's country in connection with the Works.</li> </ul> <p>(d) Bidders may be required by the Employer to clarify their foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Schedule of Payment Currencies are reasonable and responsive to item (c) above, in which case a detailed breakdown of its foreign currency requirements shall be provided by the Bidder.</p> <p>(e) Bidders should note that during the progress of the Works, the foreign currency requirements of the outstanding balance of the Contract Price may be adjusted by agreement between the Employer and the Contractor in order to reflect any changes in foreign currency requirements for the Contract, in accordance with Sub-Clause 54.1 of the Conditions of Contract. Any such adjustment shall be effected by comparing the percentages quoted in the bid with the amounts already used in the Works and the Contractor's future needs for imported items.</p> <p><i>[or]</i></p> <p><i>[In case of NCB]</i></p> <p>The prices shall be quoted by the Bidder and shall be paid in: <i>[insert the local currency]</i>.</p>
<b>ITB 18.1</b>	<p>The bid validity period shall be <i>[insert the number of days deemed appropriate.]</i> days.</p> <p><i>[The period should be sufficient to permit completion of evaluation and comparison of Bids,</i></p>

	<i>review of the recommended selection by the ADB (if so required), acquire all necessary approvals, and notify the successful Bidder of the award. Normally, the validity period should not exceed 120 days.]</i>
<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 19.2</b>	The ineligibility period will be <i>[insert number of years...]</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>	The written confirmation of authorization to sign on behalf of the Bidder shall consist of: <i>[insert the name and description of the documentation required to demonstrate the authority of the signatory to sign the Bid. Employer may wish to consider the following language: "An organizational document, board resolution or its equivalent, or power of attorney specifying the representative's authority to sign the Bid on behalf of the Bidder. If the Bidder is an intended or an existing joint venture, the power of attorney should be signed by all partners and specify the authority of the named representative of the joint venture to sign on behalf of the intended or existing joint venture. If the joint venture has not yet been formed, also include evidence from all proposed joint venture partners of their intent to enter into a joint venture in the event of a contract award."]</i>
<b>D. Submission and Opening of Bids</b>	
<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 Employer'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>

	Date: Time:
<b>ITB 25.1</b>	The bid opening shall take place at: <i>[insert all required and applicable information]</i> Street Address: Floor/Room number: City: Country: Date: Time:
<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>
<b>ITB 25.3</b>	The Letter of Bid and Schedules shall be initialed by [. . . <i>insert number of initials.</i> . .] representatives of the Employer attending Bid Opening.
<b>E. Evaluation and Comparison of Bids</b>	
<b>ITB 32.1</b>	<i>[Pursuant to ITB 15.1, choose one of the following options as appropriate.]</i> <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: <i>[insert the name of the currency]</i> The source of the selling exchange rate shall be: <i>[insert the name of the source of the exchange rates which should be the Central Bank in the Employer's country or specify another institution which carries out the function of a central bank].</i>  The date for the selling exchange rate shall be: <i>[specify any date (day/month/year) not earlier than 30 days prior to the deadline for submission of the Bids, nor later than the original date for the expiry of bid validity, which may, for example, be the date of the deadline for submission of bids].</i>  <i>Or</i> <i>[In case of NCB]</i> Not applicable.
<b>ITB 33.1</b>	A margin of preference <i>[insert "shall" or "shall not"]</i> apply.  <i>If a margin of preference applies insert "The application methodology shall be as stipulated in Section 3 (Evaluation and Qualification Criteria)".</i>



## Section 3 - Evaluation and Qualification Criteria

*This Section contains all the criteria that the Employer shall use to evaluate Bids and qualify Bidders if the bidding was not preceded by a prequalification exercise and postqualification is applied. ADB requires Bidders to be qualified by meeting predefined, precise minimum requirements. The method entails setting pass-fail criteria, which, if not met by the Bidder, results in disqualification. It will therefore be necessary to ensure that a Bidder's risk of having its bid rejected on grounds of qualification is remote if due diligence is exercised by the Bidder during bid preparation. For that purpose, clear-cut, fail-pass qualification criteria need to be defined and indicated in the Invitation for Bids and the Bidding Document in order to enable Bidders to make an informed decision whether to pursue a specific contract and, if so, whether to pursue it as a single entity or in joint venture. The criteria adopted must relate to characteristics that are essential to ensure satisfactory execution of the contract, and must be stated in unambiguous terms. 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).*

*In case the bidding was preceded by a prequalification process updating of information pertaining to a bidder's eligibility, pending litigation and arbitration (if it was indicated as an applicable criterion), and financial situation will be necessary during bidding.*

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## 1. Evaluation

In addition to the criteria listed in ITB 34.2 (a) – (e) the following criteria shall apply:

**- Note -**

*The Employer shall include only the applicable criteria from those listed below.*

### 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 6 (Employer's Requirements).

Non-compliance with equipment and personnel requirements described in Section 6 (Employer's Requirements) shall not normally be a ground for bid rejection and such non-compliance will be subject to clarification during bid evaluation and rectification prior to contract award.

**- Note -**

*The Employer shall refer to the appropriate forms in Section 4 to be filled out, if provided. The Employer shall assess whether proposed site organization, method statement, mobilization and construction schedule described in Section 4 (Bidding Forms) are presented in consistent manner and comply with requirements stipulated in Section 6 (Employer's Requirements) without material deviation, reservation, or omission.*

### 1.2 Multiple Contracts

Works are grouped in multiple contracts and pursuant to ITB 34.4, the Employer will evaluate and compare Bids on the basis of a contract, or a combination of contracts, or as a total of contracts in order to arrive at the least cost combination for the Employer by taking into account discounts offered by Bidders in case of award of multiple contracts.

If a Bidder submits several successful (lowest evaluated substantially responsive) bids, the evaluation will also include an assessment of the Bidder's capacity to meet the following aggregated requirements as presented in the bid:

- Construction Experience (value of similar contracts previously undertaken by the Bidder),
- Financial Resources Requirements,
- Equipment to be allocated, and
- Personnel to be fielded.

**- Note -**

*The Employer shall refer to the applicable qualification requirement/(s) for each contract in part 2 of this Section.*

### 1.3 Completion Time

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

**- Note -**

*The Employer shall describe how this factor will be evaluated.*

### 1.4 Technical Alternatives

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

**- Note -**

*The Employer shall describe how this factor will be evaluated.*

### 1.5 Quantifiable Nonconformities, Errors and Omissions

The evaluated cost of quantifiable nonconformities, errors and/or omissions are determined as follows:

*[Insert in bidding document: "Pursuant to ITB 30.3, the cost of all quantifiable nonmaterial nonconformities or omissions shall be evaluated. The Employer will make its own assessment of the cost of any nonmaterial nonconformities and omissions for the purpose of ensuring fair comparison of bids."]*

**- Note -**

*The cost of minor omissions or missing items should be added to the Bid Price to allow for bid comparison on an equal basis. The price adjustment should be based on a reasonable estimate of the cost by the executing agency, engineer, consultant or bid evaluation committee, taking into consideration the corresponding quoted prices from other conforming bids. The price adjustment should be based on the fair price of the omitted item. The most frequently used method is to use the price equal to the highest price quoted for the same item by the other Bidders.*

### 1.6 Margin of Preference (Applicable for ICB only)

1.6.1 In comparing domestic bids with foreign bids, a margin of preference will be granted to eligible domestic contractors, as defined below, in accordance with the following provisions.

- (a) For application of domestic preference, all responsive bids will first be classified into the following two Groups:
  - (i) Group A: bids offered by domestic contractors and joint ventures eligible for the preference in accordance with the criteria described below; and
  - (ii) Group B: bids offered by other contractors.
- (b) The lowest evaluated bid of each group will then be determined by comparing all evaluated bids in each group among themselves.
- (c) Such lowest evaluated bids will next be compared with each other and if, as a result of this comparison, a bid from Group A is found to be the lowest, it will be selected for the award of contract.

- (d) If, however, as a result of the comparison under (c) above, the lowest bid is found to be from Group B, it will be further compared with the lowest evaluated bid from Group A. For the purpose of this further comparison only an upward adjustment will be made to the lowest evaluated bid price of Group B by adding an amount equal to seven and one-half per cent (7 1/2 %) of the bid price. If, after such comparison, the Group A bid is determined to be the lowest, it will be selected for the award of contract; if not, the lowest evaluated bid from Group B will be selected
- 1.6.2 Domestic contractors and joint venture firms must meet the following minimum criteria for eligibility under the domestic preference scheme.
- (i) Domestic contractors
- are incorporated or established under the laws of the borrower's country,
  - have majority ownership by nationals of the borrower, and
  - will not subcontract more than 50 percent of the total value of the work to foreign contractors.
- (ii) A joint venture between a domestic contractor and its foreign partner is eligible for the preference only if
- the domestic partner(s) is individually eligible for the preference according to the criteria stated in 1.6.2(i);
  - the domestic partner(s) would not qualify for the work on technical or financial grounds without the foreign participation; and
  - the domestic partner(s), under the arrangements proposed, carry out at least 50 percent of the value of the work.
- 1.6.3 Contractors applying for the preference provide information with their bids, including details of ownership. This is to determine if, under the applicable criteria, a particular firm or group of firms qualifies for the preference.
- 1.6.4 If the Contract is awarded to a Bidder who has received the preference pursuant to the foregoing provisions, such contractor shall not subcontract to foreign contractors more than fifty per cent (50%) of the total value of their work.
- 1.6.5 Comparison of bids will only be between bids which conform fully to the specifications. In the event that the alternative bid not conforming to the specifications, if any, of the Bidder whose main bid which conforms with the specifications is the lowest evaluated, is considered more advantageous than its main bid, such alternative bid may be considered.
- 1.6.6 A joint venture which is awarded the Contract as a result of the application of the above domestic preference provisions, shall furnish the Employer, together with the Performance Security, a "Domestic Preference Security" to guarantee that the profit and loss distribution and work-sharing arrangements with which the joint venture satisfied the criteria of Sub-Clause 1.6.2 (ii) above will not be modified throughout the execution of the Contract. The domestic preference security shall be in the form of an unconditional on-demand bank guarantee or standby letter of credit acceptable to the Employer, for an amount in a convertible currency equivalent to the difference between the joint venture's bid price and the bid price of the lowest foreign bid. The domestic preference security shall be issued either (a) by a bank located in the country of the Employer, or (b) directly by a foreign bank acceptable to the Employer. The domestic preference security shall be valid until the Contractor has substantially completed the Works and a Certificate of Completion of the Works has been issued by the Project Manager in accordance with the provisions of GCC 69 and such security shall be returned to the Contractor together with the Certificate of Completion of the Works.

## 2. Qualification

Unless specifically indicated otherwise, it is the legal entity or entities comprising the Bidder, and not the Bidder's parent companies, subsidiaries or affiliates, that must satisfy the qualification criteria described below.

### 2.1 Eligibility

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	

#### 2.1.1 Nationality

Nationality in accordance with ITB Sub-Clause 4.2.	must meet requirement	must meet requirement	must meet requirement	not applicable	Forms ELI – 1; ELI – 2 with attachments
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#### 2.1.2 Conflict of Interest

No conflicts of interest in accordance with ITB Sub-Clause 4.3.	must meet requirement	must meet requirement	must meet requirement	not applicable	Letter of Bid
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#### 2.1.3 ADB Eligibility

Not having been declared ineligible by ADB, as described in ITB Sub-Clause 4.4.	must meet requirement	must meet requirement	must meet requirement	not applicable	Letter of Bid
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#### 2.1.4 Government-Owned Entity

Bidder required to meet conditions of ITB Sub-Clause 4.5.	must meet requirement	must meet requirement	must meet requirement	not applicable	Forms ELI – 1, ELI – 2 with attachments
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#### 2.1.5 United Nations Eligibility

Not having been excluded by an act of compliance with a UN Security Council resolution or Employer's country law, as described in ITB Sub-Clause 4.7.	must meet requirement	must meet requirement	must meet requirement	not applicable	Letter of Bid
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## 2.2 Pending Litigation

Pending Litigation criterion [shall/shall not]<sup>1</sup> apply.

### 2.2.1 Pending Litigation and Arbitration

Criteria	Compliance Requirements			Documents	
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
All pending litigation and arbitration, if any, shall be treated as resolved against the Bidder and so shall in total not represent more than . . . . . ..... <sup>2</sup> percent of the Bidder's net worth calculated as the difference between total assets and total liabilities should be positive.	must meet requirement by itself or as partner to past or existing JV	not applicable	must meet requirement by itself or as partner to past or existing JV	not applicable	Form LIT - 1

#### - Note -

<sup>1</sup> The Employer can choose to apply this criterion

-- If the Employer chooses not to apply this criterion, it shall indicate "shall not apply" and delete the table and the corresponding Form LIT-1 in Section 4 (Bidding Forms).

-- If the Employer chooses to apply this criterion, it should indicate "shall apply".

<sup>2</sup> If the criterion will be applied, the Employer should indicate a percentage within the range of 50% to 100% of a Bidder's net worth

## 2.3 Financial Requirements

### 2.3.1 Historical Financial Performance

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Submission of audited financial statements or, if not required by the law of the Bidder's country, other financial statements acceptable to the Employer, for the last ..... <sup>1</sup> years to demonstrate the current soundness of the Bidder's financial position. As a minimum, the Bidder's net worth for the last year, calculated as the difference between total assets and total liabilities should be positive.	must meet requirement	not applicable	must meet requirement	not applicable	Form FIN - 1 with attachments

**- Note -**

*The financial information provided by the Bidder should be reviewed in its entirety to allow a truly informed judgment, and the pass-fail decision on the financial position of the Bidder should be given on this basis. Any abnormal features which may lead to financial problems should alert the Employer to seek expert professional advice for further review and interpretation.*

<sup>1</sup> Indicate time period between three (3) to five (5) years.

### 2.3.2 Average Annual Construction Turnover

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Minimum average annual construction turnover of US\$ . . . . . <sup>1</sup> calculated as total certified payments received for contracts in progress or completed, within the last . . . . . <sup>2</sup> years.	must meet requirement	must meet requirement	must meet 3  of the requirement	must meet 4  of the requirement	Form FIN - 2

#### - Note -

<sup>1</sup> The amount stated should normally not be less than  $2 \times V/T$ , the estimated annual turnover in the subject contract based on a straight-line projection of the Employer's estimated cost (V), including contingencies, over the contract duration in years (T), where T for contract duration of up to one year shall be "1". The multiplier of two may be reduced for very large contracts but should not be less than 1.5.

<sup>2</sup> Insert number of years in words and figures and indicate time period between three (3) to five (5) years.

<sup>3</sup> Usually not less than 25%.

<sup>4</sup> Usually not less than 40%.

### 2.3.3 Financial Resources Requirement

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Using Forms FIN-3 and FIN-4 in Section 4 (Bidding Forms), the Bidder must demonstrate access to, or availability of, liquid assets <sup>1</sup> , lines of credit, or other financial resources (other than any contractual advance payments) to meet the Bidder's financial resources requirement indicated in Form FIN-4.	must meet requirement	must meet requirement	must meet 2  ..... of the requirement	must meet 3  ..... of the requirement	Form FIN – 3 and Form FIN - 4

#### - Note -

<sup>1</sup> Liquid Assets mean cash and cash equivalents, short-term financial instruments, short term available-for-sale-securities, marketable securities, trade receivables, short-term financing receivables and other assets that can be converted into cash within one year.

<sup>2</sup> Usually not less than 25%.

<sup>3</sup> Usually not less than 40%.

If the bid evaluation process and the decision for the award of the Contract takes more than one year from the date of bid submission, Bidders shall be asked to re-submit their current contract commitments and latest information on financial resources supported by latest audited accounts / audited financial statements, or if not required by the law of the Bidder's country, other financial statements acceptable to the Employer, and the Bidders' financial capacity shall be re-assessed on this basis.



## 2.4 Construction Experience

### 2.4.1 Contracts of Similar Size and Nature

**- Note -**

*The Employer has the option of requiring either one or two contracts of similar size and nature and should choose the appropriate language below.*

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Participation in at least one contract that has been successfully or substantially completed within the last . . . . . <sup>1</sup> years and that is similar to the proposed works, where the value of the Bidder's participation exceeds US\$ . . . . . <sup>2</sup> . The similarity of the Bidder's participation shall be based on the physical size, nature of works, complexity, methods, technology or other characteristics as described in Section 6 (Employer's Requirements).	must meet requirement	not applicable	not applicable <sup>3</sup>	must meet requirement	Form EXP-1

Or

Participation in at least two contracts that have been successfully or substantially completed within the last . . . . . <sup>1</sup> years and that are similar to the proposed works, where the value of the Bidder's participation exceeds US\$ . . . . . <sup>2</sup> . The similarity of the Bidder's participation shall be based on the physical size, nature of works, complexity, methods, technology or other characteristics as described in Section 6 (Employer's Requirements).	must meet requirement	must meet requirement as follows: Either one partner must meet requirement Or any two partners must each demonstrate one (1) successfully or substantially completed contract of similar size and nature	not applicable <sup>3</sup>	not applicable	Form EXP - 1
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**- Note -**

- <sup>1</sup> Insert number of years in words and figures. The range is normally five (5) to ten (10) years.
- <sup>2</sup> Usually 80% of the estimated value of the subject contract. In case of repetitive and contiguous works (e.g. transmission lines, water pipeline), the Employer has the option of specifying a value that is between 50% to 80% of the subject contract value.
- <sup>3</sup> In case of complex works, the Employer may require each partner to demonstrate one successfully or substantially completed contract of similar nature where such partner's value of participation exceeds 25% of the subject contract value.

**2.4.2 Construction Experience in Key Activities<sup>1</sup>** (May be complied by Specialist Subcontractors. Employer shall require evidence of subcontracting agreement from the Bidder. Specialist Subcontractor is a specialist enterprise engaged for highly specialized processes which cannot be provided by the main Contractor.)

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
For the above or other contracts executed during the period stipulated in 2.4.1 above, a minimum construction experience in the following key activities:	must meet requirements	must meet requirements <sup>2</sup>	not applicable	not applicable	Form EXP-2

**- Note -**

- <sup>1</sup> Key activities criterion should only test Bidder's experience in performing highly specialized construction activities (e.g. tunneling, dredging and bridge construction) rather than achievement of specified production rates.
- <sup>2</sup> In the case of a Joint Venture Bidder, at least one of the partners must have the experience in the key activity if it is the Bidder itself (not its subcontractor) that will carry out the relevant activity.
- These requirements for experience in key activities may be waived in simple contracts.



# Section 4 - Bidding Forms

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

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## Letter of Bid

**Note**

*The Bidder must accomplish the Letter of Bid in its letterhead clearly showing the Bidder's complete name and address.*

Date: .....

ICB/NCB 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 our bid is accepted, we commit to obtain a performance security in accordance with the Bidding Document;
- (g) Our firm, including any subcontractors or suppliers for any part of the Contract, have nationalities from eligible countries in accordance with ITB 4.2. *[insert the nationality of the Bidder, including that of all parties that comprise the Bidder if the Bidder is a consortium or association, and the nationality of each Subcontractor and Supplier]*;
- (h) 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;

- (i) We are not participating, as a Bidder in more than one bid in this bidding process in accordance with ITB 4.3(e), other than alternative offers submitted in accordance with ITB 13;
- (j) Our firm, its affiliates or subsidiaries, including any Subcontractors or Suppliers for any part of the contract, has not been declared ineligible by ADB, under the Employer's country laws or official regulations or by an act of compliance with a decision of the United Nations Security Council;
- (k) We are not a government owned entity / We are a government owned entity but meet the requirements of ITB 4.5; <sup>1</sup>
- (l) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract: <sup>2</sup>

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

- (m) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- (n) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive; and
- (o) We agree to permit ADB or its representative to inspect our accounts and records and other documents relating to the bid submission and to have them audited by auditors appointed by ADB.
- (p) If our Bid is accepted, we commit to mobilizing key equipment and personnel in accordance with the requirements set forth in Section 6 (Employer's Requirements) and our technical proposal, or as otherwise agreed with the Employer.

Name .....

In the capacity of .....

Signed .....

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

Date .....

**-- Note --**

<sup>1</sup> Use one of the two options as appropriate.

<sup>2</sup> If none has been paid or is to be paid, indicate "none".

## Schedules

### 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. In such a case, the Employer should prepare separate tables for 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	To be entered by the Employer	1.00	To be entered by the Employer	
BID PRICE				

**-- Note --**

The rates of exchange shall be the selling rates 28 days prior to the deadline for submission of bids published by the source specified in BDS 15.

## 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: 0.10 ~ 0.20 b: _____ c: _____ d: _____ e: _____
Total					1.00

*To be entered by the Employer* (points to Source of Index and Base Value and Date)

*To be entered by the Bidder* (points to Bidder's Local Currency Amount and Bidder's Proposed Weighting)

### Table B - Foreign Currency

**Name of Currency:** . . . . . insert name of currency. If the Bidder wishes to quote in more than one foreign currency, but in no case more than three, 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: 0.10 ~ 0.20 b: _____ c: _____ d: _____ e: _____
Total						1.00

*To be entered by the Bidder* (points to Source of Index, Base Value and Date, Bidder's Currency in Type/Amount, and Equivalent in FC1)

*To be entered by the Employer* (points to Bidder's Proposed Weighting)

#### -- Note --

"Base Date" means the date 28 days prior to the deadline for submission of bids.



## Activity Schedule

### [Schedules of Prices – Lump Sum Contract]

The Employer shall indicate the list of major activities comprising the works and the number of measurement units consistent with the description of works, drawings and specifications in Section 6 (Employer's Requirements). Each work item shall be described in sufficient details to provide a clear guidance to Bidders with respect to the type of works, their scope and complexity and compliance with the required standards.

Bidders are required to enter the prices against each work item on a lump sum basis. Work items against which no lump sum price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by other work items against which the lump sum prices were entered. The sum of prices entered against each work item will represent the total bid price.

The whole cost of complying with the provisions of the Contract shall be included in the Items provided in the Activity Schedule, and where no Items are provided, the cost shall be deemed to be distributed among the Amounts for the related Items of Work.

#### Sample Activity Schedule

##### Construction of Building Structure

Item no.	Description	Unit	Amount
<b>A. Substructure</b>			
1	Earth Work		
1.1	Excavation works (1,250 m3)		
1.2	Backfilling (1,415 m3)		
2	Concrete Works		
2.1	Concrete for footing (350 m3)		
2.2	Column necks (360 m3)		
3.	Waterproofing Works		
<b>B. Superstructure</b>			
4.	Ground Floor		
4.1	Ground Floor Columns (310 m3)		
4.2	Ground Floor Slab and Stairs (785 m3)		
5.	First Floor		
5.1	First Floor Columns (310 m3)		
5.2	First Floor Slab and Stairs (785 m3)		
etc...			
<b>C. Rough Finishes</b>			
6.	Ground Floor		
6.1	Masonry Works (1,055 m2)		
6.2	Ceramic Tiles (1,925 m2)		
7.	First Floor		
7.1	Masonry Works (1,055 m2)		
7.2	Ceramic Tiles (1,925 m2)		
etc...			
<b>D. Final Finishes</b>			
8.	Ground Floor		
8.1	Paint Works (3,655 m2)		
8.2	Doors and Windows (165)		

Item no.	Description	Unit	Amount
9.	First Floor		
9.1	Paint Works (3,655 m2)		
9.2	Doors and Windows (165)		
etc...			
<b>E. Electrical Works</b>			
10.	Ground Floor		
10.1	Panelboards, Wiring Devices, and Circuit Breaker Installations		
10.2	Socket Outlets, Lighting Fixtures, and Switches		
11.	First Floor		
11.1	Panelboards, Wiring Devices, and Circuit Breaker Installations		
11.2	Socket Outlets, Lighting Fixtures, and Switches		
etc.			
<b>F. Mechanical Works</b>			
12.	Ground Floor		
12.1	Pipes and Fittings (1,415 m)		
12.2	Plumbing		
12.3	Cooling System		
13	First Floor		
13.1	Pipes and Fittings (1,250 m)		
13.2	Plumbing		
13.3	Cooling System		
<b>G. Other Works</b>			
14.	Elevator System		
15.	Security System (CCTV, etc...)		
16.	Generator System		
17.	Fencing		
18.	Landscaping		
etc.			
	<b>TOTAL</b>		

**-- Note --**

*In case of Admeasurement Contract, use "Bill of Quantities".*

# Bill of Quantities

## [Admeasurement Contract]

### Objectives

The objectives of the Bill of Quantities are

- (a) to provide sufficient information on the quantities of Works to be performed to enable bids to be prepared efficiently and accurately; and
- (b) when a contract has been entered into, to provide a priced Bill of Quantities for use in the periodic valuation of Works executed.

In order to attain these objectives, Works should be itemized in the Bill of Quantities in sufficient detail to distinguish between the different classes of Works, or between Works of the same nature carried out in different locations or in other circumstances that may give rise to different considerations of cost. Consistent with these requirements, the layout and content of the Bill of Quantities should be as simple and brief as possible.

### Content

The Bill of Quantities should be divided generally into the following sections:

- (a) Preamble;
- (b) Work Items (grouped into parts);
- (c) Daywork Schedule; and
- (d) Summary.

### Preamble

The Preamble should indicate the inclusiveness of the unit prices, and should state the methods of measurement that have been adopted in the preparation of the Bill of Quantities and that are to be used for the measurement of any part of the Works.

### Rock

Where excavation, boring, or driving is included in the Works, a comprehensive definition of rock (always a contentious topic in contract administration), if not given in the Technical Specification, should be given in the Preamble, and this definition should be used for the purposes of measurement and payment.

### Work Items

The items in the Bill of Quantities should be grouped into sections to distinguish between those parts of the Works that by nature, location, access, timing, or any other special characteristics may give rise to different methods of construction, phasing of the Works, or considerations of cost. General items common to all parts of the Works may be grouped as a separate section in the Bill of Quantities. When families of Price Adjustment Formulae are used, they should relate to appropriate sections in the Bill of Quantities.

#### **-- Note --**

*In case of Lump Sum Contract, use "Activity Schedule".*

### Quantities

Quantities should be computed net from the Drawings, unless directed otherwise in the Contract, and no allowance should be made for bulking, shrinkage, or waste. Quantities should be rounded up or down where appropriate, and spurious accuracy should be avoided.

### Units of Measurement

The following units of measurement and abbreviations are recommended for use unless other national units are mandatory in the country of the Employer.

Unit	Abbreviation	Unit	Abbreviation
cubic meter	m <sup>3</sup> or cu m	millimeter	mm
hectare	ha	month	mon
hour	h	number	nr
kilogram	kg	square meter	m <sup>2</sup> or sq m
lump sum	sum	square millimeter	mm <sup>2</sup> or sq mm
meter	m	week	wk
metric ton (1,000 kg)	t		

### Ground and Excavation Levels

The commencing surface should be identified in the description of each item for work involving excavation, boring, or driving, for which the commencing surface is not also the original surface. The excavated surface should be identified in the description of each item for work involving excavation for which the excavated surface is not also the final surface. The depths of work should be measured from the commencing surface to the excavated surface, as defined.

### Daywork Schedule

A Daywork Schedule should be included if the probability of unforeseen work, outside the items included in the Bill of Quantities, is relatively high. To facilitate checking by the Employer of the realism of rates quoted by the bidders, the Daywork Schedule should normally comprise:

- (a) a list of the various classes of labor, materials, and Contractor's Equipment for which basic Daywork rates or prices are to be inserted by the bidder, together with a statement of the conditions under which the Contractor will be paid for work executed on a Daywork basis; and
- (b) a percentage to be entered by the bidder against each basic Daywork Subtotal amount for labor, materials, and plant representing the Contractor's profit, overheads, supervision, and other charges.

### Provisional Quantities and Sums

Provision for quantity contingencies in any particular item or class of work with a high expectation of quantity overrun should be made by entering specific "Provisional Quantities" or "Provisional Items" in the Bill of Quantities, and *not* by increasing the quantities for that item or class of work beyond those of the work normally expected to be required. To the extent not covered above, a general provision for physical contingencies (quantity overruns) should be made by including a "Provisional Sum" in the

Summary of the Bill of Quantities. Similarly, a contingency allowance for possible price increases should be provided as a "Provisional Sum" in the Summary of the Bill of Quantities. The inclusion of such Provisional Sums often facilitates budgetary approval by avoiding the need to request periodic supplementary approvals as future needs arise.

The estimated cost of specialized work to be carried out, or of special goods to be supplied, by a Nominated Subcontractor should be indicated in the relevant part of the Bill of Quantities as a particular Provisional Sum with an appropriate brief description. A separate bidding procedure is normally carried out by the Employer to select the specialists, who are then nominated as subcontractors to the main or prime contractor. To provide an element of competition among the main bidders (or prime contractors) in respect of any facilities, amenities, attendance, etc., to be provided by the successful bidder as prime contractor for the use and convenience of the specialist or nominated subcontractor, each related Provisional Sum should be followed by an item in the Bill of Quantities inviting a percentage (to be quoted by the main bidder) payable on the actual expenditure from the Provisional Sum.

**Summary**

The Summary should contain a tabulation of the separate parts of the Bill of Quantities carried forward, with provisional sums for Daywork, for physical (quantity) contingencies, and for price contingencies (upward price adjustment) where applicable.

## Sample Bill of Quantities

### A. Preamble

1. The Bill of Quantities shall be read in conjunction with the Instructions to Bidders, General and Particular Conditions of Contract, Technical Specifications, and Drawings.
2. The quantities given in the Bill of Quantities are estimated and provisional, and are given to provide a common basis for bidding. The basis of payment will be the actual quantities of work ordered and carried out, as measured by the Contractor and verified by the Project Manager and valued at the rates and prices bid in the priced Bill of Quantities, where applicable, and otherwise at such rates and prices as the Project Manager may fix within the terms of the Contract.
3. The rates and prices bid in the priced Bill of Quantities shall, except as otherwise provided under the Contract, include all construction equipment, labor, supervision, materials, erection, maintenance, insurance, profit, taxes, and duties, together with all general risks, liabilities, and obligations set out or implied in the Contract.
4. A rate or price shall be entered against each item in the priced Bill of Quantities, whether quantities are stated or not. The cost of Items against which the Contractor has failed to enter a rate or price shall be deemed to be covered by other rates and prices entered in the Bill of Quantities.
5. The whole cost of complying with the provisions of the Contract shall be included in the Items provided in the priced Bill of Quantities, and where no Items are provided, the cost shall be deemed to be distributed among the rates and prices entered for the related Items of Work.
6. General directions and descriptions of work and materials are not necessarily repeated nor summarized in the Bill of Quantities. References to the relevant sections of the Contract documentation shall be made before entering prices against each item in the priced Bill of Quantities.
7. Provisional Sums included and so designated in the Bill of Quantities shall be expended in whole or in part at the direction and discretion of the Project Manager in accordance with the Conditions of Contract.
8. The method of measurement of completed work for payment shall be in accordance with *[insert the name of a standard reference guide, or full details of the methods to be used. The method of measurement should be spelled out precisely in the Preamble to the Bill of Quantities, describing for example the allowances (if any) for timbering in excavation, etc. Many national standard reference guides have been prepared on the subject, and one such guide is the Standard Method of Measurement of the U.K. Institution of Civil Engineers.]*
9. Arithmetic errors will be corrected by the Employer as follows:
  - (a) 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 Employer 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;
  - (c) if there is a discrepancy between the bid price in the Summary of Bill of Quantities and the bid amount in item (c) of the Letter of Bid, the bid price in the Summary of Bill of Quantities will prevail and the bid amount in item (c) of the Letter of Bid will be corrected; and
  - (d) 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), (b) and (c) above.

10. Rock is defined as all materials that, in the opinion of the Project Manager, require blasting, or the use of metal wedges and sledgehammers, or the use of compressed air drilling for their removal, and that cannot be extracted by ripping with a tractor of at least 150 brake hp with a single, rear-mounted, heavy-duty ripper.

### B. Work Items

1. The Bill of Quantities usually contains the following part Bills, which have been grouped according to the nature or timing of the work:

Bill No. 1 - General Items;

Bill No. 2 - Earthworks;

Bill No. 3 - Culverts and Bridges;

Bill No. 4 - etc., as required;

Daywork Schedule; and

Summary Bill of Quantities.

2. Bidders shall price the Bill of Quantities in local currency only and shall indicate in the Appendix to Bid the percentage expected for payment in foreign currency or currencies. The example given illustrates one of the two alternative methods of setting up a Bill of Quantities, in which rates and prices are entered in local currency only, with bidders stating separately their proportionate requirements in different types and amounts of foreign currencies. The second method is where rates and prices are broken down for each item into local and foreign currency components. The first method is administratively more convenient and hence is more commonly used in Works contracts.

#### Bill No. 1: General Items

Item no.	Description	Unit	Quantity	Rate	Amount
101	Performance Bond/Guarantee	sum	item	—	
102	Insurance of the Works	sum	item	—	
103	Insurance of Contractor's Equipment	sum	item	—	
104	Third-Party Insurance	sum	item	—	
105	Allow for maintenance of Works for 12 months after completion	month	12		
106	—etc.—				
112	Provide and equip Project Manager's offices	nr	2		
113	Maintain Project Manager's offices for 24 months, including services	month	24		
114	—etc.—				
121	Provide diversion road	sum	item	—	
122	Provide for traffic control and maintenance of diversion road	month	24	—	
123	—etc.—				
132	Provide for cleaning up the Site on completion	sum	item	—	
	—etc.—				
Total for Bill No. 1					_____
(carried forward to Summary, p. ____)					



**Bill No. 2: Earthworks**

Item no.	Description	Unit	Quantity	Rate	Amount
201	Excavate topsoil to maximum depth 25 cm and stockpile for reuse, maximum haul distance 1 km	m <sup>3</sup>	95,000		
202	Excavate topsoil to maximum depth 25–50 cm, and dispose	m <sup>3</sup>	15,000		
203	—etc.—				
206	Excavate fill material from cuttings or approved borrow pits, haul up to 1 km, deposit, shape, and compact to fill	m <sup>3</sup>	258,000		
207	Excavate rock in cuttings and dispose, any depth	m <sup>3</sup>	25,000		
208	—etc.—				
Total for Bill No. 2 _____ (carried forward to Summary, p. ____)					

**Bill No. 3: Culverts and Bridges**

Item no.	Description	Unit	Quantity	Rate	Amount
301	Excavate in all materials other than rock from ground level to underside of foundations, maximum depth 5 m, and dispose	m <sup>3</sup>	18,500		
302	Excavate in all materials other than rock, depth 5 m to 7.5 m	m <sup>3</sup>	2,500		
303	Provisional Item As Item 302, depth 7.5 m to 10 m	m <sup>3</sup>	500		
304	—etc.—				
311	Concrete class B in abutments	m <sup>3</sup>	18,500		
312	—etc.—				
318	Mild steel reinforcement in abutments and piers up to 20 mm diameter	t	370		
319	—etc.—				
Total for Bill No. 3 _____ (carried forward to Summary, p. ____)					

### C. Daywork Schedule

#### - Note -

*A "Daywork Schedule" is commonly found in contracts where the likely incidence of unforeseen work cannot be covered by definitive descriptions and approximate quantities in the Bill of Quantities. The preferred alternative is to value the additional work in accordance with the provisions of Sub-Clause 47.6 and Clause 60 of the General Conditions of Contract. A Daywork Schedule normally has the disadvantage of not being competitive among bidders, who may therefore load the rates assigned to some or all the items. If a Daywork Schedule is to be included at all in the bidding documents, it is preferable to include nominal quantities against the items most likely to be used, and to carry the sum of the extended amounts forward into the Bid Summary in order to make the basic Schedule of Daywork Rates competitive.*

*The total amount assigned to such competitive daywork is normally 3-5 percent of the estimated base Contract Price and is regarded as a Provisional Sum for contingencies to be expended under the direction and at the discretion of the Project Manager. A limitation on quantity should not apply, and the unit rate quoted should be invariable whatever quantities of work are ordered.*

#### General

1. Work shall not be executed on a daywork basis except by written order of the Project Manager. Bidders shall enter basic rates for daywork items in the Schedules, which rates shall apply to any quantity of daywork ordered by the Project Manager. Nominal quantities have been indicated against each item of daywork, and the extended total for Daywork shall be carried forward as a Provisional Sum to the Summary Total Bid Amount. Unless otherwise adjusted, payments for daywork shall be subject to price adjustment in accordance with the provisions in the Conditions of Contract.

#### Daywork Labor

2. In calculating payments due to the Contractor for the execution of daywork, the hours for labor will be reckoned from the time of arrival of the labor at the job site to execute the particular item of daywork to the time of return to the original place of departure, but excluding meal breaks and rest periods. Only the time of classes of labor directly doing work ordered by the Project Manager and for which they are competent to perform will be measured. The time of gangers (charge hands) actually doing work with the gangs will also be measured but not the time of foremen or other supervisory personnel.

3. The Contractor shall be entitled to payment in respect of the total time that labor is employed on daywork, calculated at the basis rates entered by him in the **Schedule of Daywork Rates: 1. Labor**. The rates for labor shall be deemed to cover all costs to the Contractor including (but not limited to) the amount of wages paid to such labor, transportation time, overtime, subsistence allowances, and any sums paid to or on behalf of such labor for social benefits in accordance with (Country of Borrower) law, as well as Contractor's profit, overheads, superintendence, liabilities and insurance and allowance to labor, timekeeping and clerical and office work, the use of consumable stores water, lighting and power; the use and repair of stagings, scaffolding workshops and stores portable power tools, manual plant and tools; supervision by the Contractor's staff, foremen and other supervisory personnel; and charges incidental to the foregoing. The rates shall be stated in the local currency, but payments will be made in the following currency proportions:

- (i) foreign: \_\_\_\_\_ percent *[The bidder shall state the percentage in a common foreign currency equivalent required for payment and the exchange rates and official sources used]*
- (ii) local: \_\_\_\_\_ percent *[To be stated by bidder].*

**Daywork Materials**

4. The Contractor shall be entitled to payment in respect of materials used for daywork (except for materials for which the cost is included in the percentage addition to labor costs as detailed heretofore), at the rates entered by him in the **Schedule of Daywork Rates: 2. Materials** and shall be deemed to include overhead charges and profit as follows;

(a) the rates for materials shall be calculated on the basis of the invoiced price, freight, insurance, handling expenses, damage, losses, etc., and shall provide for delivery to store for stockpiling at the Site. The rates shall be stated in local currency but payment will be made in the following currency proportions:

(i) foreign: \_\_\_\_ percent [*The bidder shall state the percentage in a common foreign currency equivalent required for payment and the exchange rates and official sources used*]

(ii) local: \_\_\_\_\_ percent [*To be stated by bidder*].

(b) the cost of hauling materials for use on work ordered to be carried out as daywork from the store or stockpile on the Site to the place where it is to be used will be paid in accordance with the terms for Labor and Constructional Plant in this Schedule.

**Daywork Contractor's Equipment**

5. The Contractor shall be entitled to payments in respect of Contractor's Equipment already on Site and employed on daywork at the basic rental rates entered by him in the **Schedule of Daywork Rates: 3. Contractor's Equipment**. The said rates shall be deemed to include due and complete allowance for depreciation, interest, indemnity and insurance, repairs, maintenance, supplies, fuel, lubricants, and other consumable, and all overhead profit and administrative costs related to the use of such equipment. The cost of drivers, operators and assistants will be paid for separately as described under the section on Daywork Labor.

6. In calculating the payment due to the Contractor's Equipment employed on daywork, only the actual number of working hours will be eligible for payment, except that where applicable and agreed with the Project Manager, the traveling time from the part of the Site where the Construction Plant was located when ordered by the Project Manager to be employed on daywork and the time for return journey thereto shall be included for payment.

7. The basic rental rates for Contractor's Equipment employed on daywork shall be stated in local currency but payments to the Contractor will be made in currency proportions as follows:

(i) foreign: \_\_\_\_\_ percent [*The bidder shall state the percentage in a common foreign currency equivalent required for payment and the exchange rates and official sources used*]

(ii) local: \_\_\_\_\_ percent [*To be stated by bidder*].

**Schedule of Daywork Rates: 1. Labor**

Item no.	Description	Unit	Nominal Quantity	Rate	Extended Amount
D100	Ganger	hour	500		
D101	Laborer	hour	5,000		
D102	Bricklayer	hour	500		
D103	Mason	hour	500		
D104	Carpenter	hour	500		
D105	Steelwork Erector	hour	500		
D106	—etc.—	hour			
D113	Driver for vehicle up to 10 tons	hour	1,000		
D114	Operator for excavator, dragline, shovel, or crane	hour	500		
D115	Operator for tractor with dozer blade or ripper	hour	500		
D116	—etc.—	hour			
<p style="text-align: right;"><b>Total for Daywork: Labor</b> _____</p> <p style="text-align: center;">(carried forward to Daywork Summary, p. _____)</p>					

**Schedule of Daywork Rates: 2. Materials**

Item no.	Description	Unit	Nominal Quantity	Rate	Extended Amount
D201	Cement, ordinary Portland, or equivalent in bags	t	200		
D202	Mild steel reinforcing bar up to 16 mm diameter to BS 4449 or equivalent	t	100		
D203	Fine aggregate for concrete as specified in Clause _____	m <sup>3</sup>	1,000		
D204	—etc.—				
D222	Gelignite (Nobel Special Gelatine 60%, or equivalent) including caps, fuse, wire, and requisite accessories	t	10		
<p style="text-align: right;"><b>Total for Daywork: Materials</b> _____</p> <p style="text-align: center;">(carried forward to Daywork Summary, p. _____)</p>					

### Schedule of Daywork Rates: 3. Contractor's Equipment

Item no.	Description	Nominal quantity (hours)	Basic Hourly Rental Rate	Extended Amount
D301	Excavator, face shovel, or dragline:			
.1	Up to and including 1 m <sup>3</sup>	500		
.2	Over 1 m <sup>3</sup> to 2 m <sup>3</sup>	400		
.3	Over 2 m <sup>3</sup>	100		
D302	Tractor, including bull or angle dozer:			
.1	Up to and including 150 kW	500		
.2	Over 150 kW to 200 kW	400		
.3	Over 200 kW to 250 kW	200		
D303	Tractor with ripper:			
.1	Up to and including 200 kW	400		
.2	Over 200 kW to 250 kW	200		
D304	—etc.—			
<p style="text-align: right;"><b>Total for Daywork: Contractor's Equipment</b> _____            (carried forward to Daywork Summary, p. _____)</p>				

### Daywork Summary

	Amount [local currency]	% Foreign
1. Total for Daywork: Labor		
2. Total for Daywork: Materials		
3. Total for Daywork: Contractor's Equipment		
<p style="text-align: right;"><b>Total for Daywork (Provisional Sum)</b>            (carried forward to Bid Summary, p. _____)</p>	_____	_____

### Summary of Specified Provisional Sums

Bill no.	Item no.	Description	Amount
1			
2	2.8	Supply and install equipment in pumping station	1,250,000
3			
4	4.32	Provide for ventilation system in subway tunnel	3,500,000
etc.			
Total for Specified Provisional Sums (carried forward to Grand Summary (B), p. _____)			4,750,000

### Summary of Bill of Quantities

General Summary	Page	Amount
Bill No. 1: Preliminary Items		
Bill No. 2: Earthworks		
Bill No. 3: Drainage Structures		
—etc.—		
<b>Subtotal of Bills</b>	<b>(A)</b>	
Total for Daywork (Provisional Sum)	<b>(B)</b>	
Specified Provisional Sums included in Subtotal of Bills	<b>(C)</b>	4,750,000
<b>Total of Bills plus Provisional Sums (A + B + C)</b>	<b>(D)</b>	
Add Provisional Sum for Contingency	<b>(E)</b>	
<b>Bid Price (D + E) Carried forward to Letter of Bid</b>	<b>(F)</b>	

#### - Note -

*All Provisional Sums are to be expended in whole or in part at the direction and discretion of the Project Manager in accordance with the Conditions of Contract.*

*The amount for (C) Specified Provisional Sums included in Subtotal of Bills, if any, is to be entered by the Employer.*

*The amount for (B) Daywork needs to be included only when the Daywork Schedule is made competitive by the introduction of nominal quantities of work to be extended at the rates quoted. Otherwise it should be included in (E) Provisional Sum for Contingencies.*

*For (E) Provisional Sum for Contingency, covering unforeseen physical quantities of work, it is recommended to insert a predetermined percentage to provide for unforeseen physical quantities of work (usually 5-15 per cent of base cost, that is of the Subtotal of Bills) and, if included in the Contract, for price escalation adjustments (commonly 6-12 percent per annum on estimated annual payments). The resulting total Bid Price is then a more realistic estimated final Contract value for the purposes of budgetary approval. As an alternative to the percentage addition for contingencies, a fixed amount can be predetermined by the Employer, based on the estimated Contract amount, and inserted as a common figure in the "Amount" column.*

# Bid Security

## Bank Guarantee

*Bank's Name, and Address of Issuing Branch or Office*

**Beneficiary:** ..... *name and address of Employer* .....

**Date:** .....

**Bid Security 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 Bank*. .... 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 Letter of Bid; or
- (b) does not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter "the ITB"); or
- (c) having been notified of the acceptance of its Bid by the Employer during the period of bid validity, (i) fails or refuses to execute the Contract Agreement, or (ii) fails or refuses to furnish the performance security, in accordance with the ITB, or (iii) fails or refuses to furnish the domestic preference security, if required.

This guarantee will expire: (a) if the Bidder is the successful Bidder, upon our receipt of copies of the Contract Agreement signed by the Bidder and the performance security issued to you upon the instruction of the Bidder; or (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy of your notification to the Bidder of the name of the successful Bidder; or (ii) twenty-eight days (28) 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<sup>1</sup>.

..... *Bank's seal and authorized signature(s)* .....

### **Note**

*All italicized text is for use in preparing this form and shall be deleted from the final document.*

<sup>1</sup> Or 758 as applicable.

## 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 Employer]*

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 Borrower for the period of time of *[insert the number of months or years indicated in ITB 19.2 of the BDS]* starting on the date that we receive a notification from the Employer, 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) do not accept the correction of errors in accordance with the Instruction to Bidders (hereinafter "the ITB"); or
- (c) having been notified of the acceptance of our Bid by the Employer during the period of bid validity, (i) fail or refuse to execute the Contract, if required, (ii) fail or refuse to furnish the Performance Security, in accordance with the ITB, or (iii) fail or refuse to furnish the Domestic Preference Security, if required.

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 (28) 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 \_\_\_\_\_, \_\_\_\_\_

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 - Personnel

### Form PER – 1: Proposed Personnel

Bidder shall provide the details of the proposed personnel and their experience records in the relevant Information Forms below for each candidate:

1.	Title of position*
	Name
2.	Title of position*
	Name
3.	Title of position*
	Name
4.	Title of position*
	Name
5.	Title of position*
	Name
etc.	Title of position*
	Name

#### -- Note --

\*As listed in Section 6 - Employer's Requirements

**Form PER – 2: Resume of Proposed Personnel**

The Bidder shall provide all the information requested below.

<b>Position</b>		
<b>Personnel information</b>	<b>Name</b>	<b>Date of birth</b>
	<b>Professional qualifications</b>	
<b>Present employment</b>	<b>Name of employer</b>	
	<b>Address of employer</b>	
	<b>Telephone</b>	<b>Contact (manager / personnel officer)</b>
	<b>Fax</b>	<b>E-mail</b>
	<b>Job title</b>	<b>Years with present employer</b>

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

<b>From</b>	<b>To</b>	<b>Company / Project / Position / Relevant Technical and Management Experience</b>

## Technical Proposal - Equipment

### Form EQU: Equipment

The Bidder shall provide adequate information and details to demonstrate clearly that it has the capability to meet the equipment requirements indicated in Section 6 (Employer's Requirements), using the Forms below. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder.

<b>Item of Equipment</b>		
<b>Equipment Information</b>	<b>Name of manufacturer</b>	<b>Model and power rating</b>
	<b>Capacity</b>	<b>Year of manufacture</b>
<b>Current Status</b>	<b>Current location</b>	
	<b>Details of current commitments</b>	
<b>Source</b>	Indicate source of the equipment <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured	

Omit the following information for equipment 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>	

## Technical Proposal – Site Organization

## Technical Proposal – Method Statement

## Technical Proposal – Mobilization Schedule

## Technical Proposal – Construction Schedule

**Note-**

*The Employer shall assess whether proposed site organization, method statement, mobilization and construction schedule described in Section 4 (Bidding Forms) are presented in consistent manner and comply with requirements stipulated in Section 6 (Employer's Requirements) without material deviation, reservation, or omission.*

## **Bidder's Qualification**

To establish its qualifications to perform the contract in accordance with Section 3 (Evaluation and Qualification Criteria) the Bidder shall provide the information requested in the corresponding Information Sheets included hereunder

**Form ELI - 1: Bidder's Information Sheet**

<b>Bidder's Information</b>	
<b>Bidder's legal name</b>	
<b>In case of JV, legal name of each partner</b>	
<b>Bidder's country of constitution</b>	
<b>Bidder's year of constitution</b>	
<b>Bidder's legal address in country of constitution</b>	
<b>Bidder's authorized representative</b> (name, address, telephone numbers, fax numbers, e-mail address)	
<b>Attached are copies of the following original documents.</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> 1. In case of single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2.</li> <li><input type="checkbox"/> 2. Authorization to represent the firm or JV named above, in accordance with ITB 20.2.</li> <li><input type="checkbox"/> 3. In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1.</li> <li><input type="checkbox"/> 4. In case of a government-owned entity, any additional documents not covered under 1 above required to comply with ITB 4.5.</li> </ul>	

**Form ELI - 2: JV Information Sheet**

Each member of a JV and Specialist Subcontractor must fill in this form

<b>JV / Specialist Subcontractor Information</b>	
<b>Bidder's legal name</b>	
<b>JV Partner's or Specialist Subcontractor's legal name</b>	
<b>JV Partner's or Specialist Subcontractor's country of constitution</b>	
<b>JV Partner's or Specialist Subcontractor's year of constitution</b>	
<b>JV Partner's or Specialist Subcontractor's legal address in country of constitution</b>	
<b>JV Partner's or Specialist Subcontractor's authorized representative information</b> (name, address, telephone numbers, fax numbers, e-mail address)	
<p><b>Attached are copies of the following original documents.</b></p> <p><input type="checkbox"/> 1. Articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2.</p> <p><input type="checkbox"/> 2. Authorization to represent the firm named above, in accordance with ITB 20.2.</p> <p><input type="checkbox"/> 3. In the case of government-owned entity, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.5.</p>	

Specialist Subcontractor is a specialist enterprise engaged for highly specialized processes which cannot be provided by the main Contractor.

**Form LIT - 1: Pending Litigation and Arbitration**

Each Bidder or member of a JV must fill in this form if so required under Criterion 2.2 of Section 3 (Evaluation and Qualification Criteria).

<b>Pending Litigation and Arbitration</b>			
<p><b>Choose one of the following:</b></p> <p><input type="checkbox"/> No pending litigation and arbitration.</p> <p><input type="checkbox"/> Below is a description of all pending litigation and arbitration involving the Bidder (or each JV member if Bidder is a Joint Venture).</p>			
<b>Year</b>	<b>Matter in Dispute</b>	<b>Value of Pending Claim in US\$ Equivalent</b>	<b>Value of Pending Claim as a Percentage of Net Worth</b>



**Form FIN - 1: Historical Financial Performance**

Each Bidder or member of a JV must fill in this form

Financial Data for Previous 3 Years <sup>1</sup> [US\$ Equivalent]		
Year 1:	Year 2:	Year 3:

**Information from Balance Sheet**

Total Assets			
Total Liabilities			
Net Worth			
Current Assets			
Current Liabilities			

**Information from Income Statement**

Total Revenues			
Profits Before Taxes			
Profits After Taxes			

- ☐ Attached are copies of financial statements (balance sheets, including all related notes, and income statements) for the last three years<sup>2</sup>, as indicated above, complying with the following conditions:
- Unless otherwise required by Section 3 of the Bidding Document, all such documents reflect the financial situation of the legal entity or entities comprising the Bidder and not the Bidder's parent companies, subsidiaries or affiliates.
  - 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).

**- Note -**

<sup>1</sup> If the time period indicated under Criterion 2.3.1 of Section 3 (Evaluation and Qualification Criteria) is either four or five years, then the table columns above should be expanded accordingly.

<sup>2</sup> The time period stated here should be the same as the time period indicated under Criterion 2.3.1 of Section 3 (Evaluation and Qualification Criteria).

**Form FIN - 2: Average Annual Construction Turnover**

Each Bidder or member of a JV must fill in this form

The information supplied should be the Annual Turnover of the Bidder or each member of a JV in terms of the amounts billed to clients for each year for work in progress or completed, converted to US Dollars at the rate of exchange at the end of the period reported.

<b>Annual Turnover Data for the Last ..... Years<sup>1</sup> (Construction only)</b>			
<b>Year</b>	<b>Amount Currency</b>	<b>Exchange Rate</b>	<b>US\$ Equivalent</b>

**Average Annual Construction Turnover<sup>2</sup>**

**- Note -**

<sup>1</sup> The Employer should insert the period described in Criterion 2.3.2 of Section 3 (Evaluation and Qualification Criteria).

<sup>2</sup> To determine the AACT the Employer shall divide the sum of each year's Annual Turnover by the number of years, for which such information was requested.

**Form FIN-3: Availability of Financial Resources**

Specify proposed sources of financing, such as liquid assets<sup>a</sup>, lines of credit, and other financial resources (other than any contractual advance payments) available to meet the financial resources requirement indicated in Form FIN-4.

Financial Resources		
No.	Source of financing	Amount (US\$ equivalent)
1		
2		
3		

- a Liquid Assets mean cash and cash equivalents, short-term financial instruments, short term available-for-sale-securities, marketable securities, trade receivables, short-term financing receivables and other assets that can be converted into cash within one year.*

**Form FIN-4: Financial Resources Requirement**

Bidder (or each JV partner) should provide information indicated below in order to calculate the aggregated financial resources requirement, which equals the sum of: (i) the Bidder's (or each JV partner's) 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 and (ii) financial resources requirement for subject contract as determined by the Employer. Bidder must also disclose any other financial obligations that could materially affect the implementation of subject contract if such contract were to be awarded to the Bidder.

Financial Resources Requirement						
No.	Name of Contract	Employer's Contact (Address, Tel, Fax)	Contract Completion Date	Remaining Contract Period in months (A) <sup>1</sup>	Outstanding Contract Value (B) <sup>2</sup>	Monthly Financial Resources Requirement (B / A)
1						
2						
3						
4						
A. Cumulative Financial Resources Requirement for Current Contract Commitments <sup>3</sup>						US\$ .....
B. Financial Resources Requirement for Subject Contract (Employer to specify)						US\$ .....*
<b>Financial Resources Requirement (Sum of A and B)</b>						<b>US\$ .....</b>

<sup>1</sup> Remaining contract period to be calculated from 28 days prior to bid submission deadline.

<sup>2</sup> Remaining Outstanding Contract Values to be calculated from 28 days prior to the bid submission deadline (US\$ equivalent based on the foreign exchange rate as of the same date).

<sup>3</sup> Bidder should calculate this amount based on the sum of Monthly Financial Resources Requirements for Each Current Works Contract based on the following calculation:

Estimated Contract Value (Inclusive of Taxes and Duties)  
Completion Period in Months

**- Note -**

\* The Employer shall specify financial resources requirement for the subject contract based on the following calculation:

3 x Estimated Contract Value (Inclusive of Taxes and Duties)  
Completion Period in Months

### Form EXP – 1: Contracts of Similar Size and Nature

Fill up one (1) form per contract.

Contract of Similar Size and Nature		
Contract No . . . . . of . . . . .	Contract Identification	
Award Date		Completion Date
Total Contract Amount	US\$	
If partner in a JV or subcontractor, specify participation of total contract amount	Percent of Total	Amount
Employer's Name Address Telephone/Fax Number E-mail		
Description of the similarity in accordance with Criteria 2.4.1 of Section 3		
<div style="border: 1px solid black; padding: 5px;"> <p><b>-- Note --</b></p> <p><i>The Employer should insert here contract size, complexity, methods, technology or other characteristics as described in Criterion 2.4.1 of Section 3 against which the Bidder demonstrates similarity in the box on the right-hand-side.</i></p> </div>		

**Form EXP - 2: Construction Experience in Key Activities**

Fill up one (1) form per contract

Contract with Similar Key Activities		
Contract No . . . . . of . . . . .	Contract Identification	
Award Date		Completion Date
Total Contract Amount	US\$	
If partner in a JV or subcontractor, specify participation of total contract amount	Percent of Total	Amount
Employer's Name Address Telephone Number Fax Number E-mail		
Description of key activities in accordance with Criteria 2.4.2 of Section 3		
<b>-- Note --</b> <i>The Employer should insert here the highly specialized construction activities listed under Criterion 2.4.2 of Section 3.</i>		



# Section 5 - Eligible Countries

This Section shall contain the list of eligible countries. Please choose one of the following cases and follow its instruction as appropriate.

**- Note -**

**For Contracts to be financed by loans/grants from:**

**A. the ADB's ordinary capital resources, with or without cofinancing resources:** Unless a waiver of ADB member country procurement eligibility restrictions was approved by ADB's Board of Directors, please insert the most recent list of ADB member countries obtainable from the ADB Business Opportunities or the ADB's webpage at [www.adb.org/about/members](http://www.adb.org/about/members).

**B. Asian Development Fund (ADF) resources, without cofinancing resources:** Unless a waiver of ADB member country procurement eligibility restrictions was approved by ADB's Board of Directors, please insert the most recent list of ADB developed member countries that have contributed to the ADB resources, and all developing member countries.

**C. Asian Development Fund (ADF) resources AND cofinancing resources from anyone of the Asian Clean Energy Fund, Japan Fund for Poverty Reduction, Japan Fund for Public Policy Training, Japan Fund for Information and Communication Technology, the Investment Climate Facilitation Fund and the e-Asia and Knowledge Partnership Fund:** Unless a waiver of ADB member country procurement eligibility restrictions was approved by ADB's Board of Directors, please insert the most recent list of ADB developed member countries that have contributed to the ADF resources, and all developing member countries.

**D. Asian Development Fund (ADF) resources AND any other cofinancing (or joint financing) resources than those listed in the preceding paragraph: please state** "No nationality restrictions apply, other than any restrictions arising from ITB 4.7."





# Section 6 - Employer's Requirements

This Section contains the Specifications, the Drawings, and supplementary information that describe the Works to be procured, Personnel Requirements and Equipments Requirements.

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# Specifications

## **Note**

1. *Precise and clear Specifications are a prerequisite for Bidders to respond realistically and competitively to the requirements of the Employer 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 materials, Plant, other supplies, and workmanship to be provided. Only if this is done will the objectives of economy, efficiency, and equality in procurement be realized, responsiveness of bids be ensured, and the subsequent task of bid evaluation facilitated. The Specifications should require that all materials, Plant, and other supplies to be incorporated in the Works are new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the Contract. A clause setting out the scope of the Works is often included at the beginning of the Specifications, and it is customary to give a list of the Drawings. Where the Contractor is responsible for the design of any part of the Permanent Works, the extent of his obligations must be stated. (Ref. GCC Sub-Clause 23.1 Designs by Contractor and Approval by the Project Manager)*
2. *Samples of Specifications from previous similar projects in the same country are useful in this respect. ADB encourages the use of metric units. Most Specifications are normally written specially by the Employer or Project Manager to suit the contracts for the Works in hand. There are no standard Specifications for universal application in all sectors in all countries, but there are established principles and practices that are reflected in these documents.*
3. *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 addenda should then adapt the General Specifications to the particular Works.*
4. *Care must be taken in drafting Specifications to ensure that they are not restrictive. In the specification of standards for materials, plant, other supplies, and workmanship, recognized international standards should be used as much as possible. Where other particular standards are used, whether national standards of the Borrower's country or other standards, the Specifications should state those materials, plant, other supplies, and workmanship meeting other authoritative standards, and which ensure substantially equal performance, as the standards mentioned, will also be acceptable.*
5. *Employers should decide whether alternative technical solutions to specified parts of the Works are to be permitted. Alternatives are appropriate in cases where obvious (and potentially less costly) alternative solutions are possible to the technical solutions indicated in the bidding documents for certain elements of the Works, taking into consideration the comparative specialized advantage of potential Bidders. For example:*
  - *pile foundations (proprietary methods and different material)*
  - *bridge foundations (open well, caissons, piles, etc.)*
  - *columns, beams, decking (reinforced concrete, prestressed concrete, steel, etc.)*
  - *proprietary methods for post-tensioning concrete*
  - *lining of canals*
  - *pipeline materials, coating, jointing*
  - *road surfacing (asphalt, concrete, etc.)*
  - *transmission tower design and erection*
  - *street lighting*
  - *offshore foundations*
  - *offshore trestle spans*
6. *The Employer should provide a description of the selected parts of the Works with appropriate references to Drawings, Specifications, Bill of Quantities, and Design or Performance criteria, stating that the alternative solutions shall be at least structurally and functionally equivalent to the basic design parameters and specifications.*
7. *Such alternative solutions shall be accompanied by all information necessary for a complete evaluation by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, proposed construction methodology, and other relevant details.*

## Drawings

**- Note -**

1. *It is customary to bind the drawings in a separate volume, which is often larger than other volumes of the Contract documents. The size will be dictated by the scale of the drawings, which must not be reduced to the extent that details are rendered illegible.*
2. *A simplified map showing the location of the Site in relation to the local geography, including major roads, posts, airports, and railroads, is helpful.*
3. *The construction drawings, even if not fully developed, must show sufficient details to enable Bidders to understand the type and complexity of the work involved and to price the Bill of Quantities or Activity Schedule.*

## **Supplementary Information Regarding Works To Be Procured**

## Personnel Requirements

Using Form PER-1 and PER-2 in Section 4 (Bidding Forms), the Bidder must demonstrate it has personnel that meet the following requirements:

No.	Position	Total Work Experience [years]	Experience In Similar Work [years]
1			
2			
3			
4			
5			

### - Note -

*The managerial and technical competence of a Contractor is largely related to key personnel on site. The extent to which the Bidder should demonstrate having staff with extensive experience should be limited to those requiring critical operational or technical skills. The personnel requirement should therefore refer to a limited number of such key personnel, for instance, the project or contract manager and those superintendents working under the project manager who will be responsible for major components (e.g., superintendents specialized in dredging, piling, tunneling, or earthworks, as required for each particular project). Requirement should specify:*

- (a) a minimum number of years of experience in similar position; and*
- (b) a minimum number of years of experience and/or number of comparable projects carried out in a specified number of preceding years.*

*The requirement of specified education and academic qualifications is normally unnecessary for such positions, as contractors often employ competent staff who have learned their profession "on the job" rather than through academic training. It is appropriate to specify that certain positions are filled by individuals who have held posts of comparable authority for, say, three years with the Bidder, so that key staff in executive site positions have sufficient knowledge of the Bidder's management, policy, procedures, and practices to act with confidence and authority within that framework.*

## Equipment Requirements

Using Form EQU in Section 4 (Bidding Forms), the Bidder must demonstrate it has the key equipment listed below:

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

**- Note -**

*Employer should only specify bulky or specialized items that are critical for the type of project to be implemented, and that may be difficult for the Contractor to obtain quickly. Examples may include items such as heavy lift cranes and piling barges, dredgers, tunnel boring machines, or asphalt mixing plant.*

# Section 7 - General Conditions of Contract

The General Conditions of Contract (GCC), read in conjunction with the Particular Conditions of Contract (PCC) and other documents listed therein should be a complete document expressing fairly the rights and obligations of both parties. The standard text of the GCC must be retained intact to facilitate its reading and interpretation by Bidders and its review by the Bank. Any amendments and additions to the GCC, specific to the contract in hand, should be introduced in Section 8 – PCC.

The use of standard conditions of contract for all building and civil works throughout a country will ensure comprehensiveness of coverage, general acceptability of its provisions, savings in cost and time in bid preparation and review, and the development of a solid background of legal case histories.

The form of *Conditions of Contract* that follows has 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 in this bidding document provide for the usual arrangement where the Contractor constructs the Works in accordance with design provided by the Employer, and also for contracts that include, or wholly comprise, contractor-designed civil, mechanical or electrical works. Section 7 is generally based on the Conditions of Contract of the World Bank's *Standard Bidding Documents for Procurement of Works, Smaller Contracts, December 2012*.

The GCC can be used for lump sum contracts and, with the modifications recommended in the PCC, also for small unit price contracts. Design work by the contractor is also provided for in these Conditions.

For relatively simple contracts, the *Short Form of Contract*, First Edition, 1999 prepared by the Fédération Internationale des Ingénieurs-Conseils (FIDIC) is recommended to be used.



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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 Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC 29.1 [Appointment of Adjudicator] hereunder.
  - (d) **Bank** means the financing institutions named in the **PCC**.
  - (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 51.1 [Compensation Events] hereunder.
  - (g) The **Completion Date** is the date of completion of the Works as certified by the Project Manager, in accordance with GCC 69.1 [Completion].
  - (h) The **Contract** is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in GCC 2.3 below.
  - (i) The **Contractor** is the party whose Bid to carry out the Works has been accepted by the Employer.
  - (j) The **Contractor's Bid** is the completed bidding document submitted by the Contractor to the Employer.
  - (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) **Dayworks** 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 calculated from the Completion Date where the Contractor remains responsible for

remedying defects.

- (q) **Drawings** include calculations and other information provided or approved by the Project Manager for the execution of the Contract.
- (r) The **Employer** is the party who employs the Contractor to carry out the Works, as specified in the **PCC**.
- (s) **Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
- (t) **Force Majeure** means an exceptional event or circumstance: which is beyond a Party's control; which such Party could not reasonably have provided against before entering into the Contract; which, having arisen, such Party could not reasonably have avoided or overcome; and, which is not substantially attributable to the other Party.
- (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 Employer'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 **PCC**. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
- (x) **Letter of Acceptance** means the formal acceptance by the Employer of the Bid and denotes the formation of the Contract at the date of acceptance.
- (y) **Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- (z) **Party** means the Employer or the Contractor, as the context requires.
- (aa) **PCC** means Particular Conditions of Contract
- (bb) **Plant** is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- (cc) The **Project Manager** is the person named in the **PCC** (or any other competent person appointed by the Employer 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.
- (dd) **Retention Money** means the aggregate of all monies retained by the Employer pursuant to GCC 55.1 [Retention].
- (ee) **Schedules** means the document(s) entitled schedules, completed by the Contractor and submitted with the Letter of Tender, as included in the Contract. Such document may include the Bill of Quantities, data, lists, and schedules of rates and/or prices.
- (ff) The **Site** is the area defined as such in the **PCC**.

- (gg) **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.
- (hh) **Specification** means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.
- (ii) The **Start Date** is given in the **PCC**. 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.
- (jj) 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.
- (kk) **Temporary Works** are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- (ll) A **Variation** is an instruction given by the Project Manager which varies the Works.
- (mm) The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the **PCC**.

## 2. Interpretation

- 2.1 In interpreting these GCC, singular also means plural, male also means female or neuter, and the other way around. 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 **PCC**, 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) Contract Agreement,
  - (b) Letter of Acceptance,
  - (c) Letter of Bid,
  - (d) Particular Conditions of Contract,
  - (e) the List of Eligible Countries that was specified in Section 5 of the bidding document,
  - (f) General Conditions of Contract,
  - (g) Specifications,
  - (h) Drawings,
  - (i) Completed Activity Schedules or Bill of Quantities, and

- (j) any other document listed in the **PCC** 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 **PCC**.
  - 3.2 Throughout the execution of the Contract, the Contractor shall comply with the import of goods and services prohibitions in the Employer's country when
    - (a) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Employer's Country prohibits any import of goods from, or any payments to, a particular country, person, or entity. Where the borrower's country prohibits payments to a particular firm or for particular goods by such an act of compliance, that firm may be excluded.
- 4. Contract Agreement**
  - 4.1 The Parties shall enter into a Contract Agreement within 28 days after the Contractor receives the Letter of Acceptance, unless the Particular Conditions establish otherwise. The Contract Agreement shall be based upon the attached Contract forms in Section 8. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Employer.
- 5. Assignment**
  - 5.1 Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party:
    - (a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and
    - (b) may, as security in favor of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.
- 6. Care and Supply of Documents**
  - 6.1 The Specification and Drawings shall be in the custody and care of the Employer. Unless otherwise stated in the Contract, two copies of the Contract and of each subsequent Drawing shall be supplied to the Contractor, who may make or request further copies at the cost of the Contractor.
  - 6.2 Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until taken over by the Employer. Unless otherwise stated in the Contract, the Contractor shall supply to the Engineer six copies of each of the Contractor's Documents.
  - 6.3 The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Specification, the Contractor's Documents (if any), the Drawings and Variations and other communications given under the Contract. The Employer's Personnel shall have the right of access to all these documents at all reasonable times.
  - 6.4 If a Party becomes aware of an error or defect in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.
- 7. Confidential Details**
  - 7.1 The Contractor's and the Employer's Personnel shall disclose all such confidential and other information as may be reasonably required in

order to verify the Contractor's compliance with the Contract and allow its proper implementation.

- 7.2 Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the Works prepared by the other Party without the previous agreement of the other Party. However, the Contractor shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects.
- 7.3 Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this Clause.

## **8. Compliance with Laws**

- 8.1 The Contractor shall, in performing the Contract, comply with applicable Laws.
- 8.2 Unless otherwise stated in the Particular Conditions:
- (a) the Employer shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the Employer's Country; country where the Site is located] which (i) such authorities or undertakings require the Employer to obtain in the Employer's name, and (ii) are necessary for the execution of the Contract, including those required for the performance by both the Contractor and the Employer of their respective obligations under the Contract;
  - (b) the Contractor shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the [...Employer's Country or country where the Site is located] which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Employer under Sub-Clause 8.2(a) hereof and that are necessary for the performance of the Contract. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Employer or its personnel, including the Subcontractors and their personnel, but without prejudice to Sub-Clause 8.1 hereof.

## **9. Joint and Several Liability**

- 9.1 If the Contractor is a joint venture, consortium, or association (JVCA) of two or more persons, all such persons shall be jointly and severally

liable to the Employer for the fulfillment of the provisions of the Contract, unless otherwise specified in the **PCC**, and shall designate one of such persons to act as a leader with authority to bind the JVCA. The composition or the constitution of the JVCA shall not be altered without the prior consent of the Employer.

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| <b>10. Project Manager's Decisions</b>       | 10.1 Except where otherwise specifically stated, the Project Manager shall decide contractual matters between the Employer and the Contractor in the role representing the Employer.   |
| <b>11. Delegation</b>                        | 11.1 The Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.   |
| <b>12. Communications</b>                    | 12.1 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.   |
| <b>13. Subcontracting</b>                    | 13.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.  |
| <b>14. Other Contractors</b>                 | 14.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as referred to in the <b>PCC</b> . The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.  |
| <b>15. Personnel and Equipment</b>           | <p>15.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid, to carry out the functions stated in the Schedule 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.</p> <p>15.2 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.</p> <p>15.3 If the Employer, Project Manager or Contractor determines, that any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or other prohibited practices during the execution of the Works, then that employee shall be removed in accordance with Clause 15.2 above.</p> |
| <b>16. Employer's and Contractor's Risks</b> | 16.1 The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.   |



## 17. Employer's Risks

- 17.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Employer'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 Employer 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 Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.
- 17.2 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 Employer'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 Employer's risk, or
  - (c) the activities of the Contractor on the Site after the Completion Date.

## 18. Contractor's Risks

- 18.1 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 Employer's risks are Contractor's risks.

## 19. Insurance

- 19.1 The Contractor shall provide, in the joint names of the Employer 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 **PCC** 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.
- 19.2 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.
- 19.3 If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor

should have provided and recover the premiums the Employer 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.

- 19.4 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.
- 19.5 Both parties shall comply with any conditions of the insurance policies.
- 20. Site Investigation Reports** 20.1 The Contractor, in preparing the Bid, shall rely on any Site Investigation Reports referred to in the **PCC**, supplemented by any information available to the Contractor.
- 21. Contractor to Construct the Works** 21.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.
- 22. The Works to be Completed by the Intended Completion Date** 22.1 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.
- 23. Designs by Contractor and Approval by the Project Manager** 23.1 The Contractor shall carry out design to the extent specified in the **PCC**. The Contractor shall promptly submit to the Employer all designs prepared by him. Within 14 days of receipt, the Employer shall notify any comments. The Contractor shall not construct any element of the permanent work designed by him within 14 days after the design has been submitted to the Employer or where the design for that element has been rejected. Design that has been rejected shall be promptly amended and resubmitted. The Contractor shall resubmit all designs commented on taking these comments into account as necessary.
- 23.2 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.
- 23.3 The Contractor shall be responsible for design of Temporary Works.
- 23.4 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.
- 23.5 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.
- 23.6 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.
- 24. Safety** 24.1 The Contractor shall be responsible for the safety of all activities on the Site.
- 25. Discoveries** 25.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such

discoveries and carry out the Project Manager's instructions for dealing with them.

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| <b>26. Possession of the Site</b>               | 26.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the <b>PCC</b> , the Employer shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.  |
| <b>27. Access to the Site</b>                   | 27.1 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.  |
| <b>28. Instructions, Inspections and Audits</b> | <p>28.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.</p> <p>28.2 The Contractor shall keep, and shall make all reasonable efforts to cause its Subcontractors and subconsultants to keep accurate and systematic accounts and records in respect of the Works in such form and details as will clearly identify relevant time changes and costs.</p> <p>28.3 The Contractor shall permit ADB to inspect the Contractor's accounts, records and other documents relating to the submission of bids and contract performance and to have them audited by auditors appointed by ADB. The Contractor shall maintain all documents and records related to the Contract for a period of three (3) years after completion of the Works. The Contractor shall provide any documents necessary for the investigation of allegations of fraud, collusion, coercion, or corruption and require its employees or agents with knowledge of the Contract to respond to questions from ADB.</p> |
| <b>29. Appointment of the Adjudicator</b>       | <p>29.1 The Adjudicator shall be appointed jointly by the Employer and the Contractor, at the time of the Employer's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Employer does not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority designated in the <b>PCC</b>, to appoint the Adjudicator within 14 days of receipt of such request.</p> <p>29.2 Should the Adjudicator resign or die, or should the Employer 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 Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority at the request of either party, within 14 days of receipt of such request.</p>   |
| <b>30. Procedure for Disputes</b>               | <p>30.1 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.</p> <p>30.2 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.</p>  |

- 30.3 The Adjudicator shall be paid by the hour at the rate specified in the **PCC**, together with reimbursable expenses of the types specified in the **PCC**, and the cost shall be divided equally between the Employer 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.
- 30.4 The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and in the place specified in the **PCC**.

### **B. Staff and Labor**

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| <b>31. Forced Labor</b>                             | 31.1 The Contractor shall not employ forced labor, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty. This covers any kind of involuntary or compulsory labor, such as indentured labor, bonded labor or similar labor–contracting arrangements.   |
| <b>32. Child Labor</b>                              | 32.1 The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Where national laws have provisions for employment of minors, the Contractor shall follow those laws applicable to the Contractor. Children below the age of 18 years shall not be employed in dangerous work.  |
| <b>33. Workers' Organizations</b>                   | 33.1 In countries where national law recognizes workers' rights to form and to join workers' organizations of their choosing without interference and to bargain collectively, the Contractor shall comply with national law. Where national law substantially restricts workers' organizations, the Contractor shall enable alternative means for the Contractor's Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. In either case described above, and where national law is silent, the Contractor shall not discourage the Contractor's Personnel from forming or joining workers' organizations of their choosing or from bargaining collectively, and shall not discriminate or retaliate against the Contractor's Personnel who participate, or seek to participate, in such organizations and bargain collectively. The Contractor shall engage with such workers representatives. Worker organizations are expected to fairly represent the workers in the workforce. |
| <b>34. Non-Discrimination and Equal Opportunity</b> | 34.1 The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. In countries where national law provides for non-discrimination in employment, the Contractor shall comply with national law. When  |

national laws are silent on non-discrimination in employment, the Contractor shall meet this Sub-Clause's requirements. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination.

### C. Time Control

- |  |   |
|--|---|
| <b>35. Program</b>                                   | <p>35.1 Within the time stated in the <b>PCC</b>, 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.</p> <p>35.2 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.</p> <p>35.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period stated in the <b>PCC</b>. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount stated in the <b>PCC</b> 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.</p> <p>35.4 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.</p> |
| <b>36. Extension of the Intended Completion Date</b> | <p>36.1 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.</p> <p>36.2 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.</p>   |
| <b>37. Acceleration</b>                              | <p>37.1 When the Employer 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 Employer accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Employer and the Contractor.</p>  |

- 37.2 If the Contractor's priced proposals for an acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.
- 38. Delays Ordered by the Project Manager**
- 38.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.
- 39. Management Meetings**
- 39.1 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.
- 39.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. 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.
- 40. Early Warning**
- 40.1 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.
- 40.2 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.

#### **D. Quality Control**

- 41. Identifying Defects**
- 41.1 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.
- 42. Tests**
- 42.1 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.
- 43. Correction of Defects**
- 43.1 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 **PCC**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

- 43.2 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.

**44. Uncorrected Defects**

- 44.1 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.

**E. Cost Control**

**45. Contract Price**

- 45.1 In the case of an admeasurement 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.
- 45.2 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.

**46. Changes in the Contract Price**

- 46.1 In the case of an admeasurement 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 Employer.
  - (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.
- 46.2 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.

**47. Variations**

- 47.1 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.
- 47.2 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.



47.3 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.

47.4 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.

47.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.

47.6 In the case of an admeasurement 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 GCC 46.1 [Changes in the Contract Price] 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.

**48. Cash Flow  
Forecasts**

48.1 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.

**49. Payment  
Certificates**

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

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

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

49.4 The value of work executed shall comprise:

- (a) In the case of an admeasurement 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.

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

49.6 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.

## **50. Payments**

- 50.1 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If the Employer 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.
- 50.2 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.
- 50.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.
- 50.4 Items of the Works for which no rate or price has been entered in shall not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

## **51. Compensation Events**

- 51.1 The following shall be Compensation Events:
- (a) The Employer does not give access to a part of the Site by the Site Possession Date pursuant to GCC 26.1 [Possession of the Site].
  - (b) The Employer 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 Employer, or additional work required for safety or other reasons.
  - (h) Other contractors, public authorities, utilities, or the Employer 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 Employer's Risks.
- (k) The Project Manager unreasonably delays issuing a Certificate of Completion.

51.2 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.

51.3 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.

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

## 52. Tax

52.1 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 54.1 [Price Adjustment].

## 53. Currencies

53.1 Where payments are made in currencies other than the currency of the Employer's country specified in the **PCC**, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Bid.

## 54. Price Adjustment

54.1 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the **PCC**. 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:

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

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>2</sup> specified in the **PCC**, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency “c;” and

$I_{mc}$  is a consolidated index prevailing at the end of the month being invoiced and  $I_{oc}$  is the same consolidated index prevailing 28 days before Bid opening for inputs payable; both in the specific currency “c.”

54.2 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.

## 55. Retention

55.1 The Employer shall retain from each payment due to the Contractor the proportion stated in the **PCC** until Completion of the whole of the Works.

55.2 Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC 69.1 [Completion], half the total amount retained shall be repaid to the Contractor and half when 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.

## 56. Liquidated Damages

56.1 The Contractor shall pay liquidated damages to the Employer at the rate per day stated in the **PCC** 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 **PCC**. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

56.2 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 50.1 [Payments].

## 57. Bonus

57.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day stated in the **PCC** 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.

<sup>2</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  $A_c$ , for the nonadjustable portion of the payments, is a very approximate figure (usually 0.10 ~ 0.20) 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.

**58. Advance Payment**

- 58.1 The Employer shall make advance payment to the Contractor of the amounts stated in the **PCC** by the date stated in the **PCC**, against provision by the Contractor of an unconditional bank guarantee in a form and by a bank acceptable to the Employer 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.
- 58.2 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.
- 58.3 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.

**59. Securities**

- 59.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount specified in the **PCC**, by a bank acceptable to the Employer, 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.

**60. Dayworks**

- 60.1 If applicable, the Dayworks rates in the Contractor's Bid shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.
- 60.2 All work to be paid for as Dayworks 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.
- 60.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

**61. Cost of Repairs**

- 61.1 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.

**F. Force Majeure****62. Definition of Force Majeure**

- 62.1 In this Clause, "Force Majeure" means an exceptional event or circumstance:
- (a) which is beyond a Party's control,

- (b) which such Party could not reasonably have provided against before entering into the Contract,
- (c) which, having arisen, such Party could not reasonably have avoided or overcome, and
- (d) which is not substantially attributable to the other Party.

62.2 Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (b) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war,
- (c) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel,
- (d) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
- (e) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

#### **63. Notice of Force Majeure**

63.1 If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

63.2 The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.

63.3 Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

#### **64. Duty to Minimize Delay**

64.1 Each Party shall at all times use all reasonable endeavours to minimize any delay in the performance of the Contract as a result of Force Majeure.

64.2 A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

#### **65. Consequences of Force Majeure**

65.1 If the Contractor is prevented from performing its substantial obligations under the Contract by Force Majeure of which notice has been given under GCC Sub-Clause 63 [Notice of Force Majeure], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to GCC Sub-Clause 30.1 [Procedure for

Disputes] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under GCC Sub-Clause 36 [Extension of the Intended Completion Date], and
- (b) if the event or circumstance is of the kind described in sub-paragraphs (a) to (d) of GCC Sub-Clause 62.2 [Definition of Force Majeure] and, in the case of sub-paragraphs (b) to (d), occurs in the Country, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destructed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in GCC Sub-Clause 19 [Insurance].

65.2 After receiving this notice, the Project Manager shall proceed in accordance with GCC Sub-Clause 10 [Project Manager's Decisions] to agree or determine these matters.

**66. Force Majeure  
Affecting  
Subcontractor**

66.1 If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

**67. Optional  
Termination,  
Payment and  
Release**

67.1 If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under GCC Sub-Clause 63 [Notice of Force Majeure], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with GCC Sub-Clause 73.5 [Termination].

67.2 Upon such termination, the Project Manager shall determine the value of the work done and issue a Payment Certificate which shall include:

- (a) the amounts payable for any work carried out for which a price is stated in the Contract;
- (b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;
- (c) other Costs or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractor in the expectation of completing the Works;
- (d) the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and
- (e) the Cost of repatriation of the Contractor's staff and labor employed wholly in connection with the Works at the date of

termination.

- 68. Release from Performance**
- 68.1 Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:
- (a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
  - (b) the sum payable by the Employer to the Contractor shall be the same as would have been payable under GCC Sub-Clause 67 [Optional Termination, Payment and Release] if the Contract had been terminated under GCC Sub-Clause 67.

### **G. Finishing the Contract**

- 69. Completion**
- 69.1 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 work is completed.
- 70. Taking Over**
- 70.1 The Employer shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.
- 71. Final Account**
- 71.1 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.
- 72. Operating and Maintenance Manuals**
- 72.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the **PCC**.
- 72.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the **PCC** pursuant to GCC 72.1, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount stated in the **PCC** from payments due to the Contractor.
- 73. Termination**
- 73.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 73.2 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 Employer 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 Employer 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 Project Manager gives two consecutive Notices to update the Program and accelerate the works to ensure compliance with GCC Sub-Clause 22.1 [The Works to be Completed by the Intended Completion Date] and the Contractor fails to update the Program and demonstrate acceleration of the works within a reasonable period of time determined by the Project Manager;
- (g) the Contractor does not maintain a Security, which is required;
- (h) 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 **PCC**; and
- (i) if the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract, pursuant to GCC 74.1 [Fraud and Corruption].

73.3 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 73.2 above, the Project Manager shall decide whether the breach is fundamental or not.

73.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.

73.5 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.

#### **74. Fraud and Corruption**

74.1 ADB's Anticorruption Policy requires that Borrowers (including beneficiaries of ADB-financed activity), as well as Contractors, Subcontractors, manufacturers, and Consultants under ADB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, ADB:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
  - (ii) "fraudulent practice" means 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;

- (iii) “coercive practice” means 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;
  - (iv) “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
  - (v) “integrity violation” means any act, as defined under ADB’s Integrity Principles and Guidelines, which violates ADB’s Anticorruption Policy including corrupt, fraudulent, coercive, or collusive practice, abuse, and obstructive practice.
  - (vi) “obstructive practice” means (a) deliberately destroying, falsifying, altering or concealing of evidence material to an ADB investigation; (b) making false statements to investigators in order to materially impede an ADB investigation; (c) failing to comply with requests to provide information, documents or records in connection with an OAI investigation; (d) 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 (e) materially impeding ADB’s contractual rights of audit or access to information.
- (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 or other integrity violations in competing for the Contract;
  - (c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the borrower or of a beneficiary of ADB-financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation; and
  - (d) will sanction impose remedial actions on a firm or an individual, at any time, in accordance with ADB’s Anticorruption Policy and Integrity Principles and Guidelines (both as amended from time to time), including declaring ineligible, either indefinitely or for a stated period of time, to participate<sup>3</sup> in ADB-financed, or administered or supported activities or to benefit from an ADB-financed, administered or supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations.

<sup>3</sup> Whether as a contractor, nominated subcontractor, consultant, manufacturer or supplier, or service provider; or in any other capacity (different names are used depending on the particular bidding document). A nominated subcontractor is one which either has been: (i) included by the Bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that are accounted for in the evaluation of the Bidder’s pre-qualification application or the bid; or (ii) appointed by the Employer.

- 75. Payment upon Termination**
- 75.1 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 **PCC**. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.
- 75.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, 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 securing the Works, and less advance payments received up to the date of the certificate.
- 76. Property**
- 76.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor's default.
- 77. Release from Performance**
- 77.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer 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.
- 78. Suspension of ADB Loan or Credit**
- 78.1 In the event that the ADB suspends the Loan or Credit to the Employer, from which part of the payments to the Contractor are being made:
- (a) The Employer is obligated to notify the Contractor, with copy to the Project Manager, of such suspension within 7 days of having received the ADB's suspension notice.
  - (b) If the Contractor has not received sums due it within the 28 days for payment provided for in GCC 50.1 [Payments], the Contractor may immediately issue a 14-day termination notice.
- 79. Eligibility**
- 79.1 The Contractor shall have the nationality of an eligible country as specified in Section 5 [Eligible Countries] of the bidding document. The Contractor shall be deemed to have the nationality of a country if the Contractor 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.
- 79.2 The materials, equipment and services to be supplied under the Contract shall have their origin in eligible source countries as specified in Section 5 [Eligible Countries] of the bidding document and all expenditures under the Contract will be limited to such materials,

equipment, and services. At the Employer's request, the Contractor may be required to provide evidence of the origin of materials, equipment and services.

- 79.3 For purposes of GCC 79.2, "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.

## Section 8 - Particular Conditions of Contract

The *Particular Conditions of Contract* (PCC) complement the *General Conditions of Contract* (GCC) to specify data and contractual requirements linked to the special circumstances of the country, the Employer, the Project Manager, the sector, the overall project, and the Works. The PCC complement the GCC in a manner similar to the way in which the Bid Data Sheet complements the Instructions to Bidders.

The PCC are more detailed terms and conditions that the Employer will apply in administering the specific contract. These provisions do not constitute a complete standard set of provisions. Employers should prepare country- or project-specific provisions for the PCC, and these should be developed into standard provisions.

Whoever drafts the PCC should be thoroughly familiar with the provisions of the GCC and with any specific requirements of the Contract. Legal advice is recommended when amending provisions or drafting new ones. Note that clause numbers in the PCC correspond to those in the GCC, but the PCC provisions take precedence over those in the GCC.

## Particular Conditions of Contract

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

<b>A. General</b>	
<b>GCC 1.1 (d)</b>	The financing institution is: <i>[insert Asian Development Bank]</i>
<b>GCC 1.1 (r)</b>	The Employer is <i>[insert name, address, and name of authorized representative]</i> .
<b>GCC 1.1 (w)</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 (cc)</b>	The Project Manager is <i>[insert name, address, and/or name of authorized representative]</i> .
<b>GCC 1.1 (ff)</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 (ii)</b>	The Start Date shall be <i>[insert date]</i> .
<b>GCC 1.1 (mm)</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 (j)</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 11.1</b>	The Project Manager <i>[insert "may" or "may not"]</i> delegate any of his duties and responsibilities.
<b>GCC 14.1</b>	Schedule of other contractors: <i>[insert Schedule of Other Contractors, if appropriate]</i>
<b>GCC 19.1</b>	The minimum insurance amounts and deductibles shall be: (a) for loss or damage to the Works, Plant and Materials: <i>[insert amounts]</i> . (b) for loss or damage to Equipment: <i>[insert amounts]</i> . (c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract <i>[insert amounts]</i> . (d) for personal injury or death: (i) of the Contractor's employees: <i>[insert amount]</i> . (ii) of other people: <i>[insert amount]</i> .

<b>GCC 20.1</b>	Site Investigation Reports are: <i>[list Site Investigation Reports]</i>
<b>GCC 23.1</b>	The following shall be designed by the Contractor: <i>[list if appropriate]</i>
<b>GCC 26.1</b>	The Site Possession Date(s) shall be: <i>[insert location(s) and date(s)]</i>
<b>GCC 29.1</b>	Appointing Authority for the Adjudicator: <i>[insert name of authority]</i> <i>[The appointing authority should be a person or an entity that is independent of the Employer/Project Executing Agency/Project Implementing Agency.]</i>
<b>GCC 30.3</b>	The Adjudicator shall be paid by the hour at the rate of: <i>[insert rate]</i> . The reimbursable expenses are: <i>[insert reimbursable expenses]</i>
<b>GCC 30.4</b>	Institution whose arbitration procedures shall be used: <i>[select from below]</i>  (a) <b>Contracts with foreign contractors:</b>  International arbitration shall be conducted in accordance with the rules of <i>[insert here the preferred international arbitration rules]</i> . If no rules have been specified, then Rules of the Singapore International Arbitration Centre (SIAC) shall apply.  Arbitration shall be administered by <i>[insert institution here]</i> If no institution has been specified, then SIAC shall be the institution to administer the arbitration.  The place of arbitration shall be: the place of the institution administering the arbitration.  (b) <b>Contracts with domestic contractors:</b>  Arbitration shall be conducted in accordance with the laws of the Employer's country.
<b>C. Time Control</b>	
<b>GCC 35.1</b>	The Contractor shall submit for approval a Program for the Works within <i>[insert number]</i> days from the date of the Letter of Acceptance.
<b>GCC 35.3</b>	The period between Program updates is <i>[insert number]</i> days.  The amount to be withheld for late submission of an updated Program is <i>[insert amount]</i> .
<b>D. Quality Control</b>	
<b>GCC 43.1</b>	The Defects Liability Period is: <i>[insert number]</i> days.  <i>[The Defects Liability Period is usually limited to 12 months, but could be less in very simple cases]</i>
<b>E. Cost Control</b>	
<b>GCC 53.1</b>	The currency of the Employer's country is: <i>[insert name of currency of the Employer's country]</i> .

<b>GCC 54.1</b>	<p>The Contract <i>[insert "is" or "is not"]</i> subject to price adjustment in accordance with GCC Clause 54, 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 and indices for adjustment of prices in local and international currencies shall be as specified in the Table(s) of Adjustment Data submitted together with the Letter of Bid.</p>
<b>GCC 55.1</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 56.1</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 57.1</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 Employer, this clause should remain; otherwise delete. The Bonus is usually numerically equal to the liquidated damages.]</i></p>
<b>GCC 58.1</b>	<p>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>.</p>
<b>GCC 58.3</b>	<p>Repayment of the Advance Payments shall be: <i>[insert percentage]</i> from each payment certificate. <i>[An amount of 10-15 percent of each payment certificate may be appropriate for admeasurement contracts. Higher percentage shall be considered for lump sum contracts with activity schedules taking into account the estimated number of payment certificates.]</i></p>
<b>GCC 59.1</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 Employer]</i></p> <p><i>[An amount of 5 to 10 percent of the Contract Price is commonly specified for Performance Bank Guarantees.]</i></p>
<b>G. Finishing the Contract</b>	
<b>GCC 72.1</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 72.2</b>	<p>The amount to be withheld for failing to produce "as built" drawings and/or operating and maintenance manuals by the date required in GCC 72.1 is <i>[insert amount in local currency]</i>.</p>
<b>GCC 73.2 (h)</b>	<p>The maximum number of days is: <i>[insert number; consistent with Clause 56.1 on liquidated</i></p>

	<i>damages</i> ].
<b>GCC 75.1</b>	The percentage to apply to the value of the work not completed, representing the Employer's additional cost for completing the Works, is <i>[insert percentage]</i> .





# Section 9 - 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 Employer ----

..... date.....

To: ..... name and address of the Contractor .....

Subject: ..... Notification of Award Contract No. ....

This is to notify you that your Bid dated .... date .... for execution of the ..... name of the contract and identification number, as given in the Bid Data Sheet ..... for the Accepted Contract Amount of the equivalent of ..... amount in figures and words and name of currency ..... as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included in Section 9 (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 GCC 29.1.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Agency: .....

Attachment: Contract Agreement

## Contract Agreement

THIS AGREEMENT made the . . . . . day of . . . . ., between . . . . . *name of the Employer*. . . . . (hereinafter "the Employer"), of the one part, and . . . . . *name of the Contractor*. . . . . (hereinafter "the Contractor"), of the other part:

WHEREAS the Employer 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 Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall be interpreted in the following order of priority and shall prevail over all other Contract documents.
  - a) the Contract Agreement,
  - b) the Letter of Acceptance,
  - c) the Letter of Bid,
  - d) the Particular Conditions of Contract,
  - e) the List of Eligible Countries that was specified in Section 5 of the bidding document,
  - f) the General Conditions of Contract,
  - g) the Specification,
  - h) the Drawings,
  - i) the Completed Activity Schedules or Bill of Quantities, and
  - j) any other document listed in the **PCC** as forming part of the Contract.
3. In consideration of the payments to be made by the Employer to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract 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 borrowing country*. . . . . on the day, month and year indicated above.

Signed by .....  
for and on behalf of the Employer

in the presence of:

Witness, Name, Signature, Address, Date

Signed by .....  
for and on behalf the Contractor

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 Employer* .....

**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<sup>3</sup>, 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 Employer. If the bank issuing the performance security is located outside the country of the Employer, it shall have a correspondent financial institution located in the country of the Employer.*

<sup>2</sup> *Insert the date twenty-eight days after the expected completion date. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer 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 Employer 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 Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."*

<sup>3</sup> *Or 758 as applicable.*

### -- Note to Bidder --

*If the institution issuing the performance security is located outside the country of the Employer, it shall have a correspondent financial institution located in the country of the Employer to make it enforceable.*

## Advance Payment Security

*Bank's Name, and Address of Issuing Branch or Office*

**Beneficiary:** ..... *Name and Address of Employer* .....

**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* <sup>1</sup> ..... (*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 percent (80%) 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<sup>3</sup>.

.....

*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 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 Employer.*

<sup>2</sup> *Insert the expected expiration date of the Time for Completion. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer 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 Employer 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 Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.*

<sup>3</sup> *Or 758 as applicable.*

**-- Note to Bidder --**

*If the institution issuing the advance payment security is located outside the country of the Employer, it shall have a correspondent financial institution located in the country of the Employer to make it enforceable.*

## User's Guide to Procurement of Works—Small Contracts

This User's Guide is intended to provide guidance to borrowers on how to prepare a bidding document for unit price or lump sum types of small works contracts that incorporate postqualification, and how to evaluate bids and award contracts based on ADB's *Standard Bidding Document for the Procurement of Works, Small Contracts*.

### About the Asian Development Bank

ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries reduce poverty and improve the quality of life of their people. Despite the region's many successes, it remains home to approximately two-thirds of the world's poor: 1.6 billion people who live on less than \$2 a day, with 733 million struggling on less than \$1.25 a day. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

Based in Manila, ADB is owned by 67 members, including 48 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.

