

**Republic of Albania**

**Citizen Centric Service Delivery Project  
AL-8521**

**NCB**  
**Bidding Documents**

**Vol. II**

**Procurement of “Refurbishing and furniture of the Integrated Citizen Service  
Center of Lushnje”**

**Ref. AL-8521/CW/NCB/2.01.04**

**Issued on: 10 July, 2019**

## **Content of the Bidding Documents for the Refurbishing and Furniture of ISC of Lushnje**

### **Pre-Amble**

The Detailed Design's main objective is the fulfillment of all required spaces, while achieving functional performance, fulfilling according norms and standards, finishing treatment, and required humidity, flow of light, ventilation and air-conditioning.

The detailed project consists in the refurbishment/ reconstruction of the selected premise and its adaptation into a center for the provision of public services through the establishment and management of receiving counters for the citizens (front office) and integrated public service centers (one stop shop).

For convenience the set of documents issued for bidding purposes for the project has been divided into two separate main volumes:

Volume 1: containing information which is specific to an individual contract; and

Volume 2: containing information which is standard for each contract in the project.

The two volumes must be read together and understood as a whole and one volume should not be used without the other.

Contractors wishing to participate in the bidding of more than one contract will not be required to obtain more than one copy of Volume 2 as the information in this volume is “standard” and applies to all contracts. Prospective bidders will be required to purchase a copy of Volume 1 for each individual contract in which they are interested.

| <b>Sect.</b>   | <b>Part</b>           | <b>Volume 1 (Contract Specific)</b>  | <b>Volume 2 (Standard)</b>                         |
|--|-----------------------|--|--|
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| II   |                       | Bidding Data Sheet (BDS)   |  |
| III  |                       | Evaluation and Qualification Criteria  |  |
| IV   | 1<br>2<br>3<br>4<br>5 | Letter of Bid<br>Schedules (BOQ)<br>Form of Bid Security<br>Technical Proposal<br>Bidder's Qualification |  |
| V  |                       |  | Eligible Countries                                 |
| <b>Part 2: Employer's Requirements</b>                   |                       |  |  |
|  |                       |  |  |
| VI   | 1<br>2<br>3           | Special Provisions to Specification<br>Contract Drawings<br>Supplementary Information                    | Standard Specification<br>Standard Detail Drawings |
| <b>Part 3: Conditions of Contract and Contract Forms</b> |                       |  |  |
| VII  |                       |  | General Conditions of Contract                     |
| VIII   |                       | Particular Conditions of Contract  |  |

|    |   |  |                          |
|----|---|--|--------------------------|
| IX | 1 |  | Letter of Acceptance     |
|    | 2 |  | Contract Agreement       |
|    | 3 |  | Performance Security     |
|    | 4 |  | Advance Payment Security |

Due to their size and for convenience Section VI Part 1 (Standard Specification) and Section VI (Part 2: Drawings) will be issued under separate cover.

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# Section I. Instructions to Bidders

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## Instructions to Bidders (ITB)

### A. General

1. **Scope of Bid**
  - 1.1 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 these Bidding Documents:
    - (a) the term "in writing" means communicated in written form (e.g. by mail, e-mail, fax, telex, ) with proof of receipt;
    - (b) if the context so requires, "singular" means "plural" and vice versa; 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 World Bank (hereinafter called "the Bank") 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 Bank will be made only at the request of the Borrower and upon approval by the Bank in accordance with the terms and conditions of the financing agreement between the Borrower and the Bank (hereinafter called the Loan Agreement), and will be subject in all respects to the terms and conditions of that Loan Agreement. No party other than the Borrower shall derive any rights from the Loan Agreement or have any claim to the funds..

### 3. Fraud and Corruption

3.1 It is the Bank's policy to require that Borrowers (including beneficiaries of Bank loans), as well as bidders, suppliers, and contractors and their subcontractors under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts.<sup>1</sup> In pursuance of this policy, the Bank:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

- (i) "corrupt practice"<sup>2</sup> is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) "fraudulent practice"<sup>3</sup> is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) "collusive practice"<sup>4</sup> is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) "coercive practice"<sup>5</sup> is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (v) "obstructive practice" is
  - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from

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<sup>1</sup> *In this context, any action taken by a bidder, supplier, contractor, or a sub-contractor to influence the procurement process or contract execution for undue advantage is improper.*

<sup>2</sup> *"another party" refers to a public official acting in relation to the procurement process or contract execution]. In this context, "public official" includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.*

<sup>3</sup> *a "party" refers to a public official; the terms "benefit" and "obligation" relate to the procurement process or contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.*

<sup>4</sup> *"parties" refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.*

<sup>5</sup> *a "party" refers to a participant in the procurement process or contract execution.*



pursuing the investigation; or

- (bb) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under sub-clause 3.1 (e) below.
  - (b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;
  - (c) will cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of the loan engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur;
  - (d) will sanction a firm or individual, including declaring ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed contract if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, a Bank-financed contract; and
  - (e) will have the right to require that a provision be included in bidding documents and in contracts financed by a Bank loan, requiring bidders, suppliers, and contractors and their sub-contractors to permit the Bank 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 the Bank.
- 3.2 Furthermore, bidders shall be aware of the provision stated in GCC Sub-Clauses 22.2 and 56.2 (h).

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

- 4.1 A Bidder may be a natural person, private entity, or government-owned entity—subject to ITB 4.6—or any combination of them in the form of a joint venture, under an existing agreement, or with the intent to constitute a legally-enforceable joint venture. Unless otherwise **stated in the BDS**, all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms.
- 4.2 A Bidder, and all parties constituting the Bidder, shall have the nationality of an eligible country, in accordance with Section 5 (Eligible Countries). A Bidder shall be deemed to have the

nationality of a country if the Bidder is a citizen or is constituted, or incorporated, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services

- 4.3 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if :
- a) they have a controlling partner in common; or
  - b) they receive or have received any direct or indirect subsidy from any of them; or
  - c) they have the same legal representative for purposes of this bid; or
  - d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or
  - e) a Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which the party is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or
  - f) a Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid; or
  - g) a Bidder, or any of its affiliates has been hired (or is proposed to be hired) by the Employer or Borrower as Engineer for the contract
- 4.4 A firm that is under a declaration of ineligibility by the Bank in accordance with ITB 3 or by the Employer in accordance with ITB 19.8, at the date of the deadline for bid submission or thereafter, shall be disqualified.
- 4.5 A firm that has been determined to be ineligible by the Bank in relation to the Bank Guidelines On Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants shall be not be eligible to be awarded a contract
- 4.6 Government-owned enterprises in the Employer's country shall be eligible only if they can establish that they are legally and

financially autonomous and operate under commercial law, and that they are not a dependent agency of the Employer.

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

**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 Documents

### 6. Sections of Bidding Documents

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

#### PART 1 Bidding Procedures

- Section I Instructions to Bidders (ITB)
- Section II Bid Data Sheet (BDS)
- Section III Evaluation and Qualification Forms
- Section IV Bidding Forms
- Section V Eligible Countries

#### PART 2 Employer's Requirements

- Section VI Works Requirements

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

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

- 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 encouraged to visit and examine the Site of Works

and its surroundings and obtain for itself, on its own risk and responsibility, all information that may be necessary for preparing the bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.

- 7.3 The Bidder and any of its personnel or agents will be granted permission by the 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, as far as possible, 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 Documents**

- 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 Clause 19;
  - (d) alternative bids, at Bidder's option and if permissible, in accordance with ITB 13;
  - (e) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2;
  - (f) documentary evidence in accordance with ITB 17 establishing the Bidder's qualifications to perform the contract;
  - (g) Technical Proposal in accordance with ITB 16.
  - (h) In the case of a bid submitted by a joint venture (JV), the JV agreement, or letter of intent to enter into a JV including a draft agreement, indicating at least the parts of the Works to be executed by the respective partners; and
  - (i) Any other document **required in the BDS**
- 12. Letter of Bid and Schedules**
- 12.1 The Letter of Bid, Schedules, and all documents listed under Clause 11, shall be prepared using the relevant forms in Section IV (Bidding Forms), if so provided. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information

requested.

### **13. Alternative Bids**

- 13.1 Unless otherwise **indicated in the BDS**, alternative bids shall not be considered.
- 13.2 When alternative times for completion are explicitly invited, a statement to that effect will be **included in the BDS**, as will the method of evaluating different times for completion.
- 13.3 When **specified in the BDS** pursuant to ITB 13.1, and subject to ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the Bidding Document must first price the 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 VI (Employer's Requirements). The method for their evaluation will be stipulated in Section III (Evaluation and Qualification Criteria)..

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

- 14.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Schedules shall conform to the requirements specified below.
- 14.2 The Bidder shall submit a bid for the whole of the works described in ITB 1.1 by filling in prices for all items of the Works, as identified in Section IV, Bidding Forms. In case of 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 If so indicated in ITB 1.1, bids are invited for individual contracts or for any combination of contracts (packages). Bidders wishing to offer any price reduction for the award of more than one Contract shall specify in their bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Price reductions or discounts shall be submitted in accordance with ITB 14.3, provided the bids for all contracts are submitted and opened at the same time.
- 14.6 Unless otherwise **provided in the BDS** and the Conditions of Contract, the prices quoted by the Bidder shall be fixed. If the prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract, the Bidder shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data in Section IV (Bidding Forms) and the Employer may require the Bidder to justify its proposed indices and weightings.
- 14.7 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates and prices and the total bid price submitted by the Bidder
- 15. Currencies of Bid and Payment**
- 15.1 The currency(ies) of the bid shall be as **specified in the BDS**.
- 15.2 Bidders may be required by the 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 IV, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders.
- 16. Documents Comprising the Technical Proposal**
- 16.1 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV (Bidding Forms), in sufficient detail to demonstrate the adequacy of the Bidders' proposal to meet the work requirements and the completion time:
- 17. Documents Establishing the Qualifications of the Bidder**
- 17.1 To establish its qualifications to perform the Contract in accordance with Section III (Evaluation and Qualification Criteria) the Bidder shall provide the information requested in the corresponding information sheets included in Section IV (Bidding Forms).
- 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 for a corresponding period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid.
- 18.3 In the case of fixed price contracts, if the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial bid validity, the Contract price shall be adjusted by a factor specified in the request for extension. Bid evaluation shall be based on the Bid Price without taking into consideration the above correction.

## **19. Bid Security**

- 19.1 Unless otherwise **specified in the BDS**, the Bidder shall furnish as part of its bid, in original form, either a Bid Securing Declaration or a bid security **as specified in the BDS**. In the case of a bid security, the amount shall be **as specified in the BDS**
- 19.2 A Bid Securing Declaration shall use the form included in Section IV Bidding Forms
- 19.3 If a bid security is specified pursuant to ITB 19.1, the bid security shall be, at the Bidder's option, in any of the following forms:
- (a) an unconditional guarantee, issued by a bank *or surety*
  - (b) an irrevocable letter of credit
  - (c) a cashier's or certified check; or
  - (d) another security **indicated in the BDS**

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

- 19.4 Any bid not accompanied by an enforceable and substantially compliant bid security or Bid Securing Declaration, if required in

accordance with ITB 19.1, shall be rejected by the Employer as nonresponsive.

19.5 If a bid security is specified pursuant to ITB 19.1, the bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the performance security pursuant to ITB 41.

19.6 If a bid security is specified pursuant to ITB 19.1, the bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required performance security.

19.7 The bid security may be forfeited or the Bid Securing Declaration executed:

(a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid, except as provided in ITB 18.2 or

(b) if the successful Bidder fails to:

(i) sign the Contract in accordance with ITB 40; or

(ii) furnish a performance security in accordance with ITB 41.

19.8 The Bid Security or the Bid Securing Declaration of a JV shall be in the name of the JV that submits the bid. If the JV has not been constituted into a legally-enforceable JV, at the time of bidding, the Bid Security or the Bid Securing Declaration shall be in the names of all future partners as named in the letter of intent mentioned in ITB 4.1.

19.9 If a bid security is **not required in the BDS**, and

(a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid Form, except as provided in ITB 18.2, or

(b) if the successful Bidder fails to: sign the Contract in accordance with ITB 40; or furnish a performance security in accordance with ITB 41;

the Borrower may, **if provided for in the BDS**, declare the Bidder disqualified to be awarded a contract by the Employer for a period of time **as stated in the BDS**.

## **20. Format and Signing of Bid**

20.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 11 and clearly mark it "ORIGINAL". Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked "ALTERNATIVE". In addition, the Bidder shall submit copies of the bid in the number **specified in**

**the BDS**, and clearly mark each of them “COPY.” In the event of any discrepancy between the original and the copies, the original shall prevail.

- 20.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as **specified in the BDS** and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature.
- 20.3 Any amendments such as interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the bid

#### **D. Submission and Opening of Bids**

##### **21. Sealing and Marking of Bids**

- 21.1 Bidders may always submit their bids by mail or by hand. When so **specified in the BDS**, bidders shall have the option of submitting their bids electronically. Procedures for submission, sealing and marking are as follows:
- (a) Bidders submitting bids by mail or by hand shall enclose the original and each copy of the Bid, including alternative bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as “ORIGINAL”, “ALTERNATIVE” and “COPY.” These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITB sub-Clauses 22.2 and 22.3.
  - (b) Bidders submitting bids electronically shall follow the electronic bid submission procedures **specified in the BDS**
- 21.2 The inner and outer envelopes shall
- (a) bear the name and address of the Bidder;
  - (b) be addressed to the Employer as **provided in the BDS** pursuant to ITB 22.1
  - (c) bear the specific identification of this bidding process indicated in accordance with ITB 1.1; and
  - (d) bear a warning not to open before the time and date for bid opening
- 21.3 If all envelopes are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or

premature opening of the bid.

**22. Deadline for Sub-mission 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 substituted or modified after the deadline for submission of Bids.
- 24.4 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 and the Bid Price(s), including any discounts and alternative bids and indicating whether there is a modification; the presence of a bid security or Bid securing Declaration, if required; and any other details as the Employer may consider appropriate. Only discounts and alternative offers read out at bid opening shall be considered for evaluation. No bid shall be rejected at bid opening except for late bids, in accordance with ITB 23.1
- 25.4 The 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, 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 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 25.2, 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, reservation or omission.

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

**30. Non -  
conformities,  
Errors and  
omissions**

30.1 Provided that a bid is substantially responsive, the Employer may waive any nonconformities in the bid.

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 III (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; and
  - (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.
- 31.2 If the Bidder that submitted the lowest evaluated bid does not accept the correction of errors, its bid shall be declared non-responsive.
- 32. Conversion to Single Currency**
- 32.1 For evaluation and comparison purposes, the currency(ies) of the bid shall be converted into a single currency as **specified in the BDS**.
- 33. Margin of Preference**
- 33.1 A margin of preference shall not apply, unless otherwise specified in the BDS.
- 33.2 Domestic bidders shall provide all evidence necessary to prove that they meet the following criteria to be eligible for a 7½ percent margin of preference in the comparison of their bids with those of bidders who do not qualify for the preference. They should:
- (a) be registered within the country of the Employer's country ;
  - (b) have majority ownership by nationals of the country of the Employer's country ;
  - (c) not subcontract more than 10 percent of the Contract Price, excluding provisional sums, to foreign contractors.
- 33.3 The following procedure shall be used to apply the margin of preference:
- (a) Responsive bids shall be classified into the following groups:
    - (i) Group A: bids offered by domestic bidders and joint



ventures meeting the criteria of ITB Sub-Clause 33.2;  
and

(ii) Group B: all other bids.

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

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

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

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

- (a) the bid price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities for admeasurement contracts or Schedule of Prices for lump sum contracts, but including Daywork items, where priced competitively;
- (b) price adjustment for correction of arithmetic errors in accordance with ITB 31.1;
- (c) price adjustment due to discounts offered in accordance with ITB 14.3;
- (d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 32;
- (e) adjustment for nonconformities in accordance with ITB 30.3;
- (f) application of all the evaluation factors indicated in Section III (Evaluation and Qualification Criteria);

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

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

34.5 If the bid for 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.

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| <b>35. Comparison of Bids</b>   | 35.1 The Employer shall compare all substantially responsive bids in accordance with ITB 34.2 to determine the lowest evaluated bid.   |
| <b>36. Qualification of the Bidder</b>                                      | <p>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 III (Evaluation and Qualification Criteria).</p> <p>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.</p> <p>36.3 An affirmative determination of qualification shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Employer shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's qualifications to perform satisfactorily.</p> |
| <b>37. Employer's Right to Accept Any Bid and to Reject Any or All Bids</b> | 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

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|----------------------------------|--|
| <b>38. Award Criteria</b>        | 38.1. Subject to ITB 37.1, 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.  |
| <b>39. Notification of Award</b> | 39.1 Prior to the expiration of the period of bid validity, the Employer shall notify the successful Bidder, in writing, via the Letter of Acceptance included in the Contract Forms, that its bid has been accepted. At the same time, the Employer shall also notify all other Bidders of the results of the bidding, and shall publish in UNDB online and in the dgMarket the results identifying the bid and lot numbers and the following information: (i) name of each |

Bidder who submitted a Bid; (ii) bid prices as read out at Bid Opening; (iii) name and evaluated prices of each Bid that was evaluated; (iv) name of bidders whose bids were rejected and the reasons for their rejection; and (v) name of the winning Bidder, and the Price it offered, as well as the duration and summary scope of the contract awarded.

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

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

#### **40. Signing of Contract**

40.1 Promptly upon notification, the 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 IX (Contract Forms), or another form acceptable to the Employer. If the performance security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Employer. A foreign institution providing a bond shall have a correspondent financial institution located in the Employer's Country.

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

#### **42. Adjudicator**

42.1 The Employer proposes the person **named in the BDS** to be appointed as Adjudicator under the Contract, at the hourly fee **specified in the BDS**, plus reimbursable expenses. If the Bidder disagrees with this proposal, the Bidder should so state in his Bid. If, in the Letter of Acceptance, the Employer does not agree on the

appointment of the Adjudicator, the Employer will request the Appointing Authority designated in the Particular Conditions of Contract (PCC) pursuant to Clause 23.1 of the General Conditions of Contract (GCC), to appoint the Adjudicator

## **Section II. Bidding Data Sheet**

Information contained in the Bidding Data Sheet is given in Volume 1 (Contract Specific Documentation) of the Bidding Documents.

## **Section III: Evaluation and Qualification Criteria**

Information for this section is contained and may be found in Volume 1 of these bidding documents.

## **Section IV: Bidding Forms**

Bidding Forms are contained and may be found in Volume 1 of these bidding documents.

## Section V: Eligible Countries

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

1. In accordance with Para 1.8 of the Guidelines: Procurement under IBRD Loans and IDA Credits, dated May 2004, the Bank permits firms and individuals from all countries to offer goods, works and services for Bank-financed projects. As an exception, firms of a Country or goods manufactured in a Country may be excluded if:

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

Para 1.8 (a) (ii): 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 from that Country or any payments to persons or entities in that Country.

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

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

**None**

- (b) With reference to paragraph 1.8 (a) (ii) of the Guidelines:

**None**



## **Section VI: Employer's Requirements**

### **Specifications**

The Specifications are contained in two parts as described below:

#### **Standard Specifications**

The Standard Specifications for this project are issued under separate cover. The Standard Specifications document forms part of the bidding documents and as such bidders are required to purchase the document.

#### **Special Provisions to the Standard Specifications**

Special Provisions to the Standard Specifications required for individual contracts are contained in Section VI of Volume 1 of these bidding documents.

### **Drawings**

The Tender Drawings applicable to the Works for this Contract and Standard Detail Drawings are issued under separate cover in two separate documents.

The Bidder is required to obtain a full set of the Tender Drawings particular for this contract together with a full set of Standard Detail Drawings. Bidders are required to purchase one set of Standard Detail Drawings only regardless of the number of contracts for which they intend to bid.

### **Supplementary Information**

Supplementary Information for this project is contained in Section VI of Volume 1 of these Bidding documents.

## Section VII: General Conditions of Contract

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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 23.
- (d) **Bank** means the financing institution **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 Clause 41 hereunder.
- (g) The **Completion Date** is the date of completion of the Works as certified by the Project Manager, in accordance with GCC Sub-Clause 52.1.
- (h) The **Contract** is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in GCC Clause 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 price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of 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 **named in the PCC** Sub-Clause 33.1 and calculated from the Completion Date.
- (q) **Drawings** means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the Contract, 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) **GCC** means General Conditions of Contract
- (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 SCC**. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
- (x) **Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- (y) **Plant** is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- (z) The **Project Manager** is the person **named in the 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.

- (aa) **PCC** means Particular Conditions of Contract
- (bb) The **Site** is the area **defined as such in the PCC**.
- (cc) **Site Investigation Reports** are those that were included in the bidding documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- (dd) **Specification** means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.
- (ee) The **Start Date** is **given in the 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.
- (ff) A **Subcontractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.
- (gg) **Temporary Works** are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- (hh) A **Variation** is an instruction given by the Project Manager which varies the Works.
- (ii) The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the 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) Agreement,
- (b) Letter of Acceptance,
- (c) Contractor's Bid,
- (d) Particular Conditions of Contract,
- (e) General Conditions of Contract,
- (f) Specifications,
- (g) Drawings,
- (h) Bill of Quantities, and
- (i) any other document **listed in the PCC** as forming part of the Contract.

- |                                       |  |
|---------------------------------------|--|
| <b>3. Language and Law</b>            | 3.1 The language of the Contract and the law governing the Contract are <b>stated in the PCC</b> .   |
| <b>4. Project Manager's Decisions</b> | 4.1 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>5. Delegation</b>                  | 5.1 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>6. Communications</b>              | 6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.  |
| <b>7. Subcontracting</b>              | 7.1 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>8. Other Contractors</b>           | 8.1 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 <b>referred to in the 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>9. Personnel and Equipment</b>     | 9.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or   |

characteristics are substantially equal to or better than those proposed in the Bid.

- 9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

**10. Employer's  
and  
Contractor's  
Risks**

- 10.1 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.

**11. Employer's  
Risks**

- 11.1 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.

- 11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an 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.

**12. Contractor's  
Risks**

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



are Contractor's risks.

### **13. Insurance**

13.1 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 SCC** for the following events which are due to the Contractor's risks:

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

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

13.3 If the Contractor does not provide any of the policies and certificates required, the 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.

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

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

### **14. Site Data**

14.1 The Contractor shall be deemed to have examined any Site Data **referred to in the PCC**, supplemented by any information available to the Contractor.

### **15. Contractor to Construct the Works**

15.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.

### **16. The Works to Be Completed by the Intended Completion Date**

16.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.

- |   |   |
|---|---|
| <b>17. Approval by the Project Manager</b>      | <p>17.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.</p> <p>17.2 The Contractor shall be responsible for design of Temporary Works.</p> <p>17.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.</p> <p>17.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.</p> <p>17.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.</p>  |
| <b>18. Safety</b>                               | <p>18.1 The Contractor shall be responsible for the safety of all activities on the Site.</p>   |
| <b>19. Discoveries</b>                          | <p>19.1 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.</p>   |
| <b>20. Possession of the Site</b>               | <p>20.1 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 <b>stated in the PCC</b>, the Employer shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.</p>  |
| <b>21. Access to the Site</b>                   | <p>21.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.</p>   |
| <b>22. Instructions, Inspections and Audits</b> | <p>22.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.</p> <p>22.2 The Contractor shall permit the Bank and/or persons appointed by the Bank to inspect the Site and/or the accounts and records of the Contractor and its sub-contractors relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the Bank if required by the Bank. The Contractor's attention is drawn to Sub-Clause 57.1 which provides, inter alia, that acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under Sub-Clause 22.2 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility</p> |

under the Procurement Guidelines).

- 23. Appointment of the Adjudicator**
- 23.1 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 PCC**, to appoint the Adjudicator within 14 days of receipt of such request
- 24. Procedure for Disputes**
- 24.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.
- 24.2 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
- 24.3 The Adjudicator shall be paid by the hour at the **rate specified in PCC**, together with reimbursable expenses of the types specified in the Contract Data, 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.
- 24.4 The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and in the place specified **in the SCC**.

## **B. Time Control**

- 25. Program**
- 25.1 Within the time **stated in the PCC**, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.
- 25.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- 25.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period **stated**

**in the PCC.** If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount **stated in the PCC** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted. In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within 14 days of being instructed to by the Project Manager.

25.4 The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.

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

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

26.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

**27. Acceleration**

27.1 When the 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.

27.2 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.

**28. Delays Ordered by the Project Manager**

28.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.

**29. Management Meetings**

29.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early

warning procedure.

29.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the 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.

**30. Early Warning**

30.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.

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

## **C. Quality Control**

**31. Identifying Defects**

31.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.

**32. Tests**

34.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.

**33. Correction of Defects**

35.1 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.

33.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.

**34. Uncorrected**

34.1 If the Contractor has not corrected a Defect within the time

**Defects**

specified in the Project Manager's notice, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

**D. Cost Control**

- 35. Contract Price** 35.1 In the case of 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.
- 35.2 In the case of a lump sum contract, the Activity Schedule shall contain the priced activities for the Works to be performed by the Contractor. The Activity Schedule is used to monitor and control the performance of activities on which basis the Contractor will be paid. If payment for Materials on Site shall be made separately, the Contractor shall show delivery of Materials to the Site separately on the Activity Schedule.
- 36. Changes in the Quantities** 36.1 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
- 36.2 In the case of a lump sum contract, the Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor's own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule.
- 37. Variations** 37.1 All Variations shall be included in updated Programs produced by the Contractor.
- 37.2 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the

quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.

- 37.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.
- 37.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.
- 37.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 37.6 In the case of 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 Sub-Clause 38.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.

### **38. Cash Flow Forecasts**

- 38.1 When the Program is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.

### **39. Payment Certificates**

- 39.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 39.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.
- 39.3 The value of work executed shall be determined by the Project Manager.
- 39.4 The value of work executed shall comprise:
  - (a) In the case of 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

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

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

#### **40. Payments**

41.1 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.

40.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.

40.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.

40.4 Items of the Works for which no rate or price has been entered in shall not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

#### **41. Compensation Events**

41.1 The following shall be Compensation Events:

- (a) The Employer does not give access to a part of the Site by the Site Possession Date pursuant to GCC Sub-Clause 20.1.
- (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.

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

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

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

## **42. Tax**

42.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days

before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC Clause 44.

#### 43. Currencies

43.1 Where payments are made in currencies other than the currency of the 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.

#### 44. Price Adjustment

44.1 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:

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

where:

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

$A_c$  and  $B_c$  are coefficients<sup>6</sup> **specified in the PCC**, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency "c;" and

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

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

#### 45. Retention

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

45.2 Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC 51.1, half the total

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<sup>6</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 0.15) to take account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency are added to the Contract Price.

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.

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

- 46.1 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.
- 46.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Sub-Clause 40.1.

#### **47. Bonus**

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

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

- 48.1 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.
- 48.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.
- 48.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on

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

- 49. Securities**      49.1 The Performance Security shall be provided to the 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 or surety 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, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.
- 50. Dayworks**      50.1 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.
- 50.2 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.
- 50.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.
- 51. Cost of Repairs**      51.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

## **E. Finishing the Contract**

- 52. Completion**      52.1 The Contractor shall request the Project Manager to issue a certificate of Completion of the Works, and the Project Manager shall do so upon deciding that the work is completed.
- 53. Taking Over**      53.1 The Employer shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.

- 54. Final Account**      54.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.
- 55. Operating and Maintenance Manuals**      55.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates **stated in the PCC**.
- 55.2 If the Contractor does not supply the Drawings and/or manuals by the dates **stated in the PCC**, 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.
- 56. Termination**      56.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 56.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:
- (a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
  - (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;
  - (c) the 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 Contractor does not maintain a Security, which is

required;

- (g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as **defined in the PCC**; or
- (h) 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 Clause 57.1

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

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

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

## **57. Corrupt or Fraudulent Practices**

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

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

57.3 For the purposes of this Sub-Clause:

- (i) “corrupt practice”<sup>7</sup> is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) “fraudulent practice”<sup>8</sup> is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other

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<sup>7</sup> “another party” refers to a public official acting in relation to the procurement process or contract execution]. In this context, “public official” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

<sup>8</sup> a “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

benefit or to avoid an obligation;

- (iii) “collusive practice”<sup>9</sup> is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) “coercive practice”<sup>10</sup> is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (v) “obstructive practice” is
  - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
  - (bb) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under Clause 22.2.

## **58. Payment upon Termination**

- 58.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as **indicated in the 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.
- 58.2 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.

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<sup>9</sup> “parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

<sup>10</sup> a “party” refers to a participant in the procurement process or contract execution.

- 59 Property**                      59.1 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.
- 60. Release from Performance**                      63.1 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.
- 61. Suspension of World Bank Loan or Credit**                      61.1 In the event that the World Bank 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 of such suspension within 7 days of having received the World Bank's suspension notice.
  - (b) If the Contractor has not received sums due it within the 28 days for payment provided for in Sub-Clause 40.1, the Contractor may immediately issue a 14-day termination notice.



## **Section VIII: Particular Conditions of Contract**

Particular Conditions of Contract are contained in Section VIII of Volume 1 of the Bidding Documents.

## **Section IX: Contract Forms**

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

### **Contents**

**Letter of Acceptance**

**Contract Agreement**

**Performance Security**

**Advance payment Security**

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

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

*[Choose one of the following statements:]*

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

*[or]*

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

Authorized Signature: .....

Name and Title of Signatory: .....

Name of 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 prevail over all other Contract documents.*
  - (a) the Letter of Acceptance
  - (b) the Bid
  - (c) the Addenda Nos . . . . . *[insert addenda numbers if any]*. . . . .
  - (d) the Particular Conditions
  - (e) the General Conditions;
  - (f) the Specification
  - (g) the Drawings; and
  - (h) the completed Schedules,
3. *In consideration of the payments to be made by the 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

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

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

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

## Performance Security

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

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

The Guarantor agrees to extend this guarantee 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. The request shall state that the Contractor has been granted an extension of time in which to complete the Works and shall indicate the required, adjusted guarantee expiry date which shall be 28 days after the revised intended Completion Date.

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

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

**Note –**

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

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



## 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]*\*. . . . . ( . . . . . *[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 the whole of the Advance payment has been repaid, 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.

The Guarantor agrees to extend this guarantee 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. The request shall state that the Contractor has been granted an extension of time in which to complete the Works and shall indicate the required, adjusted guarantee expiry date which shall be 28 days after the revised intended Completion Date.

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

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

**Note –**

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

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

*2 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.*