STANDARD PROCUREMENT DOCUMENTS

Standard Bidding Document for Procurement of Plant Design, Supply, and Installation

&

User's Guide



The World Bank
Washington, D.C.

April 2008

revised August 2010

Revisions

August 2010

This revision dated August 2010 is, inter alia, to modify the Eligibility and Fraud and Corruption clauses to align their text with that of the May 2010 corrigendum to the Procurement Guidelines, reflecting the changes related to Fraud and Corruption as per the Agreement for Mutual Enforcement of Debarment Decisions between the Multilateral Development Banks, to which the World Bank Group is a signatory. This Standard Bidding Document is applicable to Procurement of plants, Design, Supply and Installation funded under IBRD- or IDA- financed projects whose Legal Agreement makes reference to (a) the *Guidelines for Procurement under IBRD Loans and IDA Credits*, dated May 2004, revised October 2006, or (b) the *Guidelines for Procurement under IBRD Loans and IDA Credits*, dated May 2004, revised October 2006 and May 2010.

Main amendments to the Standard Bidding Document for Procurement of Plant Design, Supply, and Installation

Structure of the document:

The new bidding document for Plant Supply, Design and Installation follows the structure of all master documents harmonized by the MDBs. One significant difference with the structure of the old document is the fact that the new one has a dedicated section (Section III) for the qualification and evaluation criteria (it is no longer included in the BDS by the Employer). In addition, each option (A, Single Stage Bidding, and B, Two-Stage Bidding) has two optional Section III (one to be used when there has been prequalification and another when not). Also, the forms have been separated into Bidding Forms (Section IV) and Contract Forms (Section IX) to avoid confusion as to whom (the Employer or the Bidder/Contractor) should complete which forms. Finally, there is a User's Guide providing guidance to the user (implementing agency) on how to use the document and complete the portions requiring the Employers input prior to issuing the document.

Section I, Instructions to Bidders:

1. ITB 1 [Scope of Bid], was added to Options A & B.

2. ITBs 14 [Documents Establishing the Eligibility of the Plant and Services], 15 [Documents establishing the Eligibility and Qualifications of the Bidder], and 16 [Documents Establishing Conformity of the Plant and Installation Services] were added to Options A & B.

3. ITBs 17.10 and 17.11, and ITBs 29.9 and 29.10, on lots and discounts were added in Options A & B, respectively.

4. "Currencies of the Bid" are now detailed in the BDS instead of the ITB Section.

5. In Options A & B, "Substitution" and its procedures were added to the ITB provisions dealing with submission and opening of "Modification and Withdrawal of Bids".

6. "Determination of Responsiveness" substituted "Preliminary Examination of Bids" in Options A & B.

7. In Options A & B, "Commercial Evaluation" changed to "Economic Evaluation."

8. "Comparison of Bids" was added in Option A & B as a step under the evaluation process.

9. "Eligibility" was added to the ITB dealing with the "Qualifications of the Bidder" in Options A & B.

10. In Options A & B, ITB 34 [Adjudicator] of the old version was removed.

11. ITB 27 in Option A and ITB 37 in Option B dealing with "Contacting the Employer" were removed.

12. Former ITB 45 [Fraud and Corruption] is now ITB 6 and renamed "Corrupt Practices."

13. ITB 4.3(e) – clarified wording in to clear up possible conflict of interest.

Section II, Bid Data Sheet:

The changes in this section are those related to the changes made in Section I.

Section VII, General Conditions:

1. New definitions were added under Clause 1, as follows: "Party," "Parties," and "Construction Manager". Consequently, the words "Party" and "Parties" appear now with capital "P" throughout the document.

2. "Plant" is now treated separately from "Equipment" (as opposed to former "Plant and Equipment"). Its definition now includes "equipment."

3. "Facilities" now excludes "Equipment" from its definition, as "Plant" already includes "Equipment".

4. "Adjudicator" was replaced with "Dispute Board" under the definitions, and former GC clause 6 [Settlement of Disputes] was deleted and replaced with Sub-Section I, Claims, Disputes and Arbitration, covering clauses 45 and 46, and the corresponding Appendix and Annex related to the General Conditions of DB Agreement and DB Guidelines, respectively.

5. A different clause on "Communications" (GC 4.1) replaced "Notices".

6. Former clause 15 [Copyright] was renamed "License/Use of Technical Information", its text was renumbered sub-clause 15.2, and a new sub-clause 15.1 on licensing was added.

7. New clause 6 [Fraud and Corruption] was added and the definitions under former GC clause 42.2.1(c), (i)-(v), were transferred there. Sub-clause 42.2.1 (c) under sub-clause 42.2 [Termination for Contractor's Default] was modified accordingly to refer to new clause 6 where prohibited unethical practices are defined.

8. Sub-clause 21.2 [Employer-Supplied Plant] now excludes from its title "Equipment and Materials", as these two are included in the definition of "Plant".

9. Former clause 22.1.3 [Labor] was replaced with a new clause 22.2 with the same name but that now includes several new paragraphs or sub-sub-clauses that also apply to the SBD-Works, dealing with:

9.1 Arrangements for the engagement of staff and labor (new first paragraph under sub-clause 22.2.1)

9.2 "Persons in the Service of the Employer" (sub-clause 22.2.2)

9.3 "Rates and Wages and Conditions of Labor" (sub-clause 22.2.4)

9.4 "Facilities for Staff and Labor" (sub-clause 22.2.6)

9.5 "Health and Safety" (sub-clause 22.2.7)

9.6 “Funeral Arrangements” (sub-clause 22.2.8)

9.7 “Records of Contractor's Personnel” (sub-clause 22.2.9)

9.8 “Supply of Foodstuffs” (sub-clause 22.2.10)

9.9 “Supply of Water” (sub-clause 22.2.11)

9.10 “Measures against Insect and Pest Nuissance” (sub-clause 22.2.12)

9.11 “Alcoholic Liquor or Drugs” (sub-clause 22.2.13)

9.12 “Arms and Ammunition” (sub-clause 22.2.14)

9.13 “Prohibition of All Forms of Forced or Compulsory Labor” (sub-clause 22.2.15)

9.14 ”Prohibition of Harmful Child Labor” (sub-clause 22.2.16).

10. New sub-clause 25.1.3 dealing with attendance to the Commissioning, was added.

11. New sub-clause 25.5 [Delayed Precommissioning and/or Guarantee Test], was added.

Section VIII, Particular Conditions:

The changes in this section are those related to the changes made in Section VII.

Foreword

This Standard Bidding Document for Procurement of Plant Design, Supply, and Installation and its User's Guide have been prepared by the International Bank for Reconstruction and Development (IBRD) and its affiliate, the International Development Association (IDA),[1] and is based on the Master Document for Procurement of Plant Design, Supply, and Installation and its User's Guide, prepared by the Multilateral Development Banks and International Financing Institutions.

The document is organized into two (2) main components:

- The Standard Bidding Document; and
- A User's Guide for Procurement of Plant Design, Supply, and Installation

This document reflects the structure and the provisions of the Master Procurement Document for the Procurement of Plant Design, Supply, and Installation, except where specific considerations within the World Bank have required a change.

[1] *IBRD and IDA are generally called the World Bank. Since the procurement requirements for IBRD and IDA are identical, "World Bank" in these Bidding Documents refers to both **IBRD** and **IDA**, and "**loan**" refers to either an **IBRD loan** or an **IDA credit**. However, for the Invitation for Bids, the distinctions are retained.*

Preface

This Standard Bidding Document for Procurement of Plant Design, Supply, and Installation has been prepared for use in contracts financed by the World Bank involving the design, supply, installation and commissioning of specially engineered plant and equipment, such as turbines, generators, boilers, switchyards, pumping stations, telecommunications, process and treatment plants, and the like for power, water, sewerage, telecommunication and similar projects. Normally, this set of documents should be used when (i) the value of the plant and equipment portion represents the major part of the estimated contract value, or (ii) the nature and complexity of the plant and equipment is such that the facilities cannot safely be taken over by the Employer without elaborate testing, precommissioning, commissioning and acceptance procedures being followed. These documents are intended to be used where the Contractor is responsible for each activity required for completion of the facilities, e.g., design, manufacture, delivery, installation, testing, commissioning, training, etc. However, these conditions may be adapted for use for single responsibility contracts where some activities, such as parts of the preliminary design or site preparation works, are done by others. If the user has questions regarding which SBD should be used in a particular case, the appropriate Bank's official should be consulted.

To obtain further information on procurement under World Bank-assisted projects, contact:

Procurement Policy and Services Group
Operations Policy and Country Services Vice Presidency

The World Bank
1818 H Street, N.W.
Washington, D.C. 20433 U.S.A.
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Summary Description

The use of this Standard Bidding Document for Procurement of Plant Design, Supply, and Installation and its User's Guide applies with or without prequalification. A brief description of these documents is given below. The text shown in Italics corresponds to institution specific clauses that each MDB will replace with provisions consistent with its respective policy.

SBD for Procurement of Plant Design, Supply, and Installation

PART 1 – BIDDING PROCEDURES

Section I: Instructions to Bidders (ITB)

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

Section II. Bid Data Sheet (BDS)

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

Section III. Evaluation and Qualification Criteria

This Section contains the criteria to determine the lowest evaluated bid and the qualifications of the Bidder to perform the contract. Two alternative Sections III, Evaluation and Qualification Criteria are provided to address the possibility of having or not having prequalification of Bidders.

Section IV: Bidding Forms

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

Section V. Eligible Countries

This Section contains information regarding eligible countries.

PART 2 – EMPLOYER'S REQUIREMENTS

Section VI. Employer's Requirements

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

PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS

Section VII. General Conditions (GC)

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

Section VIII. Particular Conditions (PC**)**

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

Section IX: Contract Forms

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

User's Guide for SBD for Procurement of Plant Design, Supply, and Installation

This Guide to the Bidding Document contains detailed explanations and recommendations on how to prepare a bidding document for a specific procurement of Plant Design, Supply, and Installation. The Guide is not a part of the Bidding Document.

PROCUREMENT DOCUMENTS

Bidding Document for Procurement of Plant Design, Supply, and Installation

Procurement of:

Issued on: _____

ICB No: _____

Employer: _____

Country: _____

Standard Bidding Document

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PART 1 – Bidding Procedures

OPTION A: Single Stage Bidding

Section I. Instructions to Bidders

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Section I. Instructions to Bidders

General

1. Scope of Bid

1.1 In connection with the Invitation for Bids **indicated in the Bid Data Sheet (BDS),** the Employer, as **indicated in the BDS,** issues this Bidding Document for the procurement of Plant and Installation Services as specified in Section VI, Employer*'s* Requirements. The name, identification, and number of lots (contracts) of the International Competitive Bidding (ICB) are **provided in the BDS.**

1.2 Unless otherwise stated, throughout this Bidding Document definitions and interpretations shall be as prescribed in the General Conditions, Section VII.

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.

2.3 The Loan Agreement prohibits a withdrawal from the loan account for the purpose of any payment to persons or entities, or for any import of equipment, plant, or materials, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

3. Fraud and Corruption

3.1 The Bank requires that Borrowers (including beneficiaries of Bank loans), as well as Bidders, Suppliers, Contractors and their agents (whether declared or not), personnel, subcontractors, sub-consultants, service providers and suppliers, under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuit of

this policy, the Bank:

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

(i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party[2];

(ii) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation[3];

(iii) "collusive practice" is an arrangement between two or more parties[4] designed to achieve an improper purpose, including to influence improperly the actions of another party;

(iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party[5] 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

[2] "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.

[3] "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.

[4] "Parties" refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

[5] "Party" refers to a participant in the procurement process or contract execution.

(bb) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under sub-clause 3.2 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 remedy the situation; and

(d) will sanction a firm or an individual, at any time, in accordance with prevailing Bank's sanctions procedures[a], including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract; and (ii) to be a nominated[b] sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract.

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

3.3 Furthermore, Bidders shall be aware of the provision stated in the General Conditions (GC 42.2.1(c)).

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[a] A firm or an individual may be declared ineligible to be awarded a Bank-financed contract upon completion of the Bank's sanctions proceedings as per its sanctions procedures, including inter alia: (i) temporary suspension in connection with an ongoing sanctions proceeding; (ii) cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks; and (iii) the World Bank Group corporate administrative procurement sanctions procedures for fraud and corruption.

[b] A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which either has been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that are accounted for in the evaluation of the bidder's pre-qualification application or the bid; or (ii) appointed by the Borrower.

4. Eligible Bidders

4.1 A Bidder may be a private entity or a government-owned entity—subject to ITB 4.5—or any combination of such entities in the form of a joint venture, or association *(*JVA*)* under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture or association:

(a) **unless otherwise specified in the BDS,** all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms, and

(b) the JVA shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the partners of the JVA during the bidding process and, in the event the JVA is awarded the Contract, during contract execution.

4.2 A Bidder, and all partners constituting the Bidder, shall have a nationality of an eligible country as defined in *Guidelines: Procurement under IBRD Loans and IDA Credits,* October 2006, (hereinafter referred to as the Guidelines),in accordance with Section V, Eligible Countries. A Bidder shall be deemed to have the nationality of a country if the Bidder is a national or is constituted, incorporated, or registered 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 submits more than one bid in this bidding process, either individually or as a partner in a joint venture, except for alternative offers permitted under ITB Clause 13. This will result in the disqualification of all such bids. However, this does not limit the participation of a Bidder as a subcontractor in another bid or of a firm as a subcontractor in more than one bid. or

(f) a Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the Plant and Installation Services that are the subject of the bid.

(g) a Bidder or any of its affiliates has been hired (or is proposed to be hired) by the Employer or the Borrower as Project Manager for the contract.

4.4 A Bidder that has been sanctioned by the Bank in accordance with the above ITB 3.1 (d), or in accordance with the Bank's Guidelines on Preventing and Combating Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants, shall be ineligible to be awarded a Bank-financed contract, or benefit from a Bank-financed contract, financially or otherwise, during such period of time as the Bank shall determine.

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

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

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

4.8 Firms shall be excluded if:

(a) as a matter of law or official regulation, the 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 Plant and Installation Services

5.1 The Plant and Installation 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 Plant and Installation Services.

5.2 For purposes of ITB 5.1 above, "origin" means the place where the plant, or component parts thereof are mined, grown, produced or manufactured, and from which the services are provided. Plant components are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that is substantially in its basic characteristics or in purpose or utility from its components.

Contents of Bidding Document

6. Sections of Bidding Document

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

PART 1 Bidding Procedures

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

PART 2 Employer**'s Requirements**

- Section VI. Employer's 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 its 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 enquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The Employer will respond to any request for clarification, provided that such request is received no later than twenty-eight (28) days prior to the deadline for submission of bids. The Employer's response shall be in writing with copies 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 23.2.

7.2 The Bidder is advised to visit and examine the site where the plant is to be installed and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for the provision of Plant and Installation Services. 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 Document

8.1 At any time prior to the deadline for submission of bids, the Employer may amend the Bidding Document by issuing addenda.

8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Employer in accordance with ITB 6.3.

8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 23.2

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 not 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 submitted by the Bidder shall comprise the following:

(a) Letter of Bid

(b) Completed schedules as required, including Price Schedules, in accordance with ITB 12 and 17;

(c) Bid Security or Bid Securing Declaration, in accordance with ITB 20;

(d) alternative bids, if permissible, in accordance with ITB 13;

(e) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 21.2;

(f) documentary evidence established in accordance with ITB 14.1 that the Plant and Installation Services offered by the Bidder in its bid or in any alternative bid, if permitted, are eligible;

(g) documentary evidence in accordance with ITB 15 establishing the Bidder's eligibility and qualifications to perform the contract if its Bid is accepted;

(h) documentary evidence established in accordance with ITB 16 that the Plant and Installation Services offered by the Bidder conform to the Bidding Document;

(i) in the case of a bid submitted by a JVA, JVA agreement, or letter of intent to enter into a JVA including a draft agreement, indicating at least the parts of the Plant to be executed by the respective partners;

(j) List of subcontractors, in accordance with ITB 16.2; and

(k) any other document **required in the BDS.**

12. Letter of Bid and Schedules

12.1 The Bidder shall complete the Letter of Bid, including the appropriate Price Schedules, using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed as instructed in each form.

13. Alternative Bids

13.1 **The BDS indicates** whether alternative bids are allowed. If they are allowed, the BDS will also indicate whether they are

permitted in accordance with ITB 13.3, **or** invited in accordance with ITB13.2 and/or ITB 13.4.

13.2 When alternatives to the Time Schedule are explicitly invited, a statement to that effect will be **included in the BDS,** and the method of evaluating different time schedules will be described in Section III, Evaluation and Qualification Criteria.

13.3 Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the Employer's requirements as described in the bidding document must also provide: (i) a price at which they are prepared to offer a plant meeting the Employer's requirements; and (ii) all information necessary for a complete evaluation of the alternatives by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed installation 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 bidders are **invited in the BDS** to submit alternative technical solutions for specified parts of the facilities, such parts shall be described in Section VI, Employer's Requirements. Technical alternatives that comply with the performance and technical criteria specified for the Plant and Installation Services shall be considered by the Employer on their own merits, pursuant to ITB 35.

14. Documents Establishing the Eligibility of the Plant and Installation Services

14.1 To establish the eligibility of the Plant and Installation Services in accordance with ITB Clause 5, Bidders shall complete the country of origin declarations in the Price Schedule Forms, included in Section IV, Bidding Forms.

15. Documents Establishing the Eligibility and Qualifications of the Bidder

15.1 To establish its eligibility and 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.

15.2 Domestic Bidders, individually or in joint ventures, applying for eligibility for domestic preference shall supply all information required to satisfy the criteria for eligibility as described in ITB 34.

16. Documents establishing conformity of the

16.1 The Bidder shall furnish the information stipulated in Section IV, in sufficient detail to demonstrate substantial responsiveness of the Bidders' proposal to the work

requirements and the completion time.

Plant and Installation Services

16.2 For major items of Plant and Installation Services as listed by the Employer in Section III, Evaluation and Qualification Criteria, which the Bidder intends to purchase or subcontract, the Bidder shall give details of the name and nationality of the proposed Subcontractors, including manufacturers, for each of those items. In addition, the Bidder shall include in its bid information establishing compliance with the requirements specified by the Employer for these items. Quoted rates and prices will be deemed to apply to whichever Subcontractor is appointed, and no adjustment of the rates and prices will be permitted.

16.3 The Bidder shall be responsible for ensuring that any Subcontractor proposed complies with the requirements of ITB 4, and that any plant, or services to be provided by the Subcontractor comply with the requirements of ITB 5 and ITB 15.1

17. Bid Prices and Discounts

17.1 Unless otherwise **specified in the BDS,** bidders shall quote for the entire Plant and Installation Services on a "single responsibility" basis such that the total bid price covers all the Contractor's obligations mentioned in or to be reasonably inferred from the bidding document in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation and completion of the plant. This includes all requirements under the Contractor's responsibilities for testing, pre-commissioning and commissioning of the plant and, where so required by the bidding document, the acquisition of all permits, approvals and licenses, etc.; the operation, maintenance and training services and such other items and services as may be specified in the Bidding Document, all in accordance with the requirements of the General Conditions. Items against which no price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed to be covered by the prices for other items.

17.2 Bidders are required to quote the price for the commercial, contractual and technical obligations outlined in the bidding document.

17.3 Bidders shall give a breakdown of the prices in the manner and detail called for in the Price Schedules included in Section IV, Bidding Forms.

17.4 Depending on the scope of the Contract, the Price Schedules

may comprise up to the six (6) schedules listed below. Separate numbered Schedules included in Section IV, Bidding Forms, from those numbered 1-4 below, shall be used for each of the elements of the Plant and Installation Services. The total amount from each Schedule corresponding to an element of the Plant and Installation Services shall be summarized in the schedule titled Grand Summary, (Schedule 5), giving the total bid price(s) to be entered in the Letter of Bid.

Schedule No. 1 Plant (including Mandatory Spare Parts) Supplied from Abroad

Schedule No. 2 Plant (including Mandatory Spare Parts) Supplied from within the Employer's Country

Schedule No. 3 Design Services

Schedule No. 4 Installation Services

Schedule No. 5 Grand Summary (Schedule Nos. 1 to 4)

Schedule No. 6 Recommended Spare Parts

Bidders shall note that the plant and equipment included in Schedule Nos. 1 and 2 above **exclude** materials used for civil, building and other construction works. All such materials shall be included and priced under Schedule No. 4, Installation Services.

17.5 In the Schedules, bidders shall give the required details and a breakdown of their prices as follows:

(a) Plant to be supplied from abroad (Schedule No. 1):

The price of the plant shall be quoted on CIP-named place of destination basis as **specified in the BDS**

(b) Plant manufactured within the Employer's country (Schedule No. 2):

(i) The price of the plant shall be quoted on an EXW Incoterm basis (such as "ex-works," "ex-factory," "ex-warehouse" or "off-the-shelf," as applicable),

(ii) Sales tax and all other taxes payable in the Employer's country on the plant if the contract is awarded to the Bidder, and

(iii) The total price for the item.

(c) Design Services (Schedule No. 3).

(d) Installation Services shall be quoted separately (Schedule No. 4) and shall include rates or prices for local transportation to named place of final destination as **specified in the BDS,** insurance and other services incidental to delivery of the plant, all labor, contractor's equipment, temporary works, materials, consumables and all matters and things of whatsoever nature, including operations and maintenance services, the provision of operations and maintenance manuals, training, etc., where identified in the Bidding Document, as necessary for the proper execution of the installation and other services, including all taxes, duties, levies and charges payable in the Employer's country as of twenty-eight (28) days prior to the deadline for submission of bids.

(e) Recommended spare parts shall be quoted separately (Schedule 6) as specified in either subparagraph (a) or (b) above in accordance with the origin of the spare parts.

17.6 The current edition of Incoterms, published by the International Chamber of Commerce shall govern.

17.7 The prices shall be either fixed or adjustable as **specified in the BDS.**

17.8 In the case of **Fixed Price**, prices quoted by the Bidder shall be fixed during the Bidder's performance of the contract and not subject to variation on any account. A bid submitted with an adjustable price quotation will be treated as non responsive and rejected.

17.9 In the case of **Adjustable Price**, prices quoted by the Bidder shall be subject to adjustment during performance of the contract to reflect changes in the cost elements such as labor, material, transport and contractor's equipment in accordance with the procedures specified in the corresponding Appendix to the Contract Agreement. A bid submitted with a fixed price quotation will not be rejected, but the price adjustment will be treated as zero. Bidders are required to indicate the source of labor and material indices in the corresponding Form in Section IV, Bidding Forms.

17.10 If so indicated in ITB 1.1, bids are being invited for individual lots (contracts) or for any combination of lots (packages).

Bidders wishing to offer any price reduction (discount) for the award of more than one Contract shall specify in their Letter of Bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package, and the manner in which the price reductions will apply.

17.11 Bidders wishing to offer any unconditional discount shall specify in their Letter of Bid the offered discounts and the manner in which price discounts will apply.

18. Currencies of Bid and Payment

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

18.2 Bidders may be required by the Employer to justify, to the Employer's satisfaction, their local and foreign currency requirements.

19. Period of Validity of Bids

19.1 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 non responsive.

19.2 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 20, the Bidder granting the request shall also extend the bid security for twenty-eight (28) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid, except as provided in ITB 19.3.

19.3 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 or factors specified in the request for extension. Bid evaluation shall be based on the Bid Price without taking into consideration the above correction.

20. Bid Security

20.1 The Bidder shall furnish as part of its bid, either a Bid-Securing Declaration or a bid security as **specified in the BDS,** in original form and in the amount **specified in the BDS.**

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

20.3 If a bid security is specified pursuant to ITB 20.1, the bid security shall be a demand guarantee in any of the following

forms at the Bidder's option:

(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 a bonding company located outside the Employer's Country, the issuer shall have a correspondent financial institution located in the Employer's Country to make it enforceable. 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 19.2.

20.4 If a bid security is specified pursuant to ITB 20.1, any bid not accompanied by a substantially responsive bid security or Bid-Securing Declaration shall be rejected by the Employer as non responsive.

20.5 If a bid security is specified pursuant to ITB 20.1, 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 42.

20.6 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.

20.7 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 or

(b) if the successful Bidder fails to**:**

(i) sign the Contract in accordance with ITB 41; or

(ii) furnish a performance security in accordance with ITB 42.

20.8 The Bid Security or the Bid Securing Declaration of a JVA shall be in the name of the JVA that submits the bid. If the JVA has not been legally constituted into a legally enforceable JVA 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 referred to in ITB 4.1.

20.9 If a Bid-Securing Declaration is executed in accordance with ITB 20.7, the Employer will declare the Bidder ineligible to be awarded a contract by the Employer for the period of time stated in the Form of Bid-Securing Declaration.

20.10 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 19.2, or

(b) if the successful Bidder fails to: sign the Contract in accordance with ITB 41; or furnish a performance security in accordance with ITB 42;

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**.

21. Format and Signing of Bid

21.1 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 them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

21.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as **specified in the BDS** and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid where entries or amendments have been made shall be signed or initialed by the person signing the bid.

21.3 A bid submitted by a JVA shall comply with the following requirements:

(a) Unless not required in accordance with ITB 4.1 (a), be

signed so as to be legally binding on all partners and

(b) Include the Representative's authorization referred to in ITB 4.1 (b), consisting of a power of attorney signed by those legally authorized to sign on behalf of the JVA.

21.4 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the bid.

Submission and Opening of Bids

22. Submission, Sealing and Marking of Bids

22.1 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**.

22.2 The inner and outer envelopes shall:

(a) bear the name and address of the Bidder;

(b) be addressed to the Employer in accordance with ITB 24.1;

(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.

22.3 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.

23. Deadline for Submission of Bids

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

23.2 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.

24. Late Bids

24.1 The Employer shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 23. Any bid received by the Employer after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

25. Withdrawal, Substitution, and Modification of Bids

25.1 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 21.2, (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 21 and ITB 22 (except that withdrawals 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 23.

25.2 Bids requested to be withdrawn in accordance with ITB 25.1 shall be returned unopened to the Bidders.

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

26. Bid Opening

26.1 The Employer shall conduct the bid opening in public, in the presence of Bidders` designated representatives and anyone who choose to attend, and at the address, date and time **specified in the BDS.** Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 22.1, shall be as **specified in the BDS.**

26.2 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 bids that are opened and read out at bid opening shall be considered further.

26.3 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 or absence of a bid security or Bid-Securing Declaration; and any other details as the Employer may consider appropriate. Only discounts and alternative bids 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 24.1.

26.4 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 lot if applicable, including any discounts and alternative bids; and the presence or absence of a bid security or a Bid-Securing Declaration. 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 who submitted bids in time, and posted online when electronic bidding is permitted.

Evaluation and Comparison of Bids

27. Confidentiality

27.1 Information relating to the evaluation 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.

27.2 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.

27.3 Notwithstanding ITB 27.2, 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 should do so in writing.

28. Clarification of Bids

28.1 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 32.

28.2 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.

29. Deviations, Reservations, and Omissions

29.1 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.

30. Determination of Responsiveness

30.1 The Employer's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB11.

30.2 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 Plant and Installation Services 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.

30.3 The Employer shall examine the technical aspects of the bid in particular, to confirm that all requirements of Section VI, Employer's Requirements have been met without any material deviation, reservation, or omission.

30.4 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.

31. Nonmaterial Nonconformities

31.1 Provided that a bid is substantially responsive, the Employer may waive any nonconformity in the bid that does not constitute a material deviation, reservation or omission.

31.2 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.

31.3 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 shall 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 method indicated in Section III, Evaluation and Qualification Criteria.

32. Correction of Arithmetical Errors

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

(a) where there are errors between the total of the amounts given under the column for the price breakdown and the

amount given under the Total Price, the former shall prevail and the latter will be corrected accordingly;

(b) where there are errors between the total of the amounts of Schedule Nos. 1 to 4 and the amount given in Schedule No. 5 (Grand Summary), the former shall prevail and the latter will be corrected accordingly; 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.

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

33. Conversion to Single Currency

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

34. Margin of Preference

34.1 No margin of domestic preference shall apply.

35. Evaluation of Bids

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

Technical Evaluation

35.2 The Employer will carry out a detailed technical evaluation of the bids not previously rejected to determine whether the technical aspects are in compliance with the Bidding Document. **The bid that does not meet minimum acceptable standards of completeness, consistency and detail, and the specified minimum (or maximum, as the case may be) requirements for specified functional guarantees, will be rejected for non responsiveness.** In order to reach its determination, the Employer will examine and compare the technical aspects of the bids on the basis of the information supplied by the bidders, taking into account the following:

(a) overall completeness and compliance with the Employer's Requirements; conformity of the Plant and Installation Services offered with specified performance criteria, including conformity with the specified minimum (or maximum, as the case may be) requirement corresponding to each functional guarantee, as indicated

in the Specification and in Section III Evaluation and Qualification Criteria; suitability of the Plant and Installation Services offered in relation to the environmental and climatic conditions prevailing at the site; and quality, function and operation of any process control concept included in the bid;

(b) type, quantity and long-term availability of mandatory and recommended spare parts and maintenance services; and

(c) other relevant factors, if any, listed in Section III, Evaluation and Qualification Criteria.

35.3 Where alternative technical solutions have been allowed in accordance with ITB 13, and offered by the Bidder, the Employer will make a similar evaluation of the alternatives. Where alternatives have not been allowed but have been offered, they shall be ignored.

Economic Evaluation

35.4 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 Price Schedules;

(b) price adjustment for correction of arithmetic errors in accordance with ITB 32.1;

(c) price adjustment due to discounts offered in accordance with ITB 17.9 or ITB17.10;

(d) price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 31.3;

(e) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 33; and

(f) the evaluation factors indicated in Section III, Evaluation and Qualification Criteria.

35.5 If price adjustment is allowed in accordance with ITB 17.6, 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.

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

35.7 If the bid, which results in the lowest Evaluated Bid Price, is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Price Schedules, to demonstrate the internal consistency of those prices with the methods and time schedule proposed. After evaluation of the price analyses, taking into consideration the terms of 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.

36. Comparison of Bids

36.1 The Employer shall compare all substantially responsive bids in accordance with ITB 35.4 to determine the lowest evaluated bid.

37. Eligibility and Qualification of the Bidder

37.1 The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid is eligible and meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

37.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 15.

37.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Employer shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's qualifications to perform satisfactorily.

37.4 The capabilities of the manufacturers and subcontractors proposed in its Bid to be used by the lowest evaluated Bidder for identified major items of supply or services will also be evaluated for acceptability in accordance with Section III, Evaluation and Qualification Criteria. Their participation should be confirmed with a letter of intent between the parties,

as needed. Should a manufacturer or subcontractor be determined to be unacceptable, the Bid will not be rejected, but the Bidder will be required to substitute an acceptable manufacturer or subcontractor without any change to the bid price. Prior to signing the Contract, the corresponding Appendix to the Contract Agreement shall be completed, listing the approved manufacturers or subcontractors for each item concerned.

38. Employer's Right to Accept Any Bid, and to Reject Any or All Bids

38.1 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.

Award of Contract

39. Award Criteria

39.1 Subject to ITB 38.1, the Employer shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be eligible and qualified to perform the Contract satisfactorily.

40. Notification of Award

40.1 Prior to the expiration of the period of bid validity, the Employer shall notify the successful Bidder, in writing, that its bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the "Letter of Acceptance") shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the Plant and Installation Services (hereinafter and in the Conditions of Contract and Contract Forms called "the Contract Price").

40.2 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 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.

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

40.4 The Employer shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 40.2, requests in writing the grounds on which its bid was not selected.

41. Signing of Contract

41.1 Promptly upon notification, the Employer shall send the successful Bidder the Contract Agreement.

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

41.3 Notwithstanding ITB 41.2 above, in case signing of the Contract Agreement is prevented by any export restrictions attributable to the Employer, to the country of the Employer, or to the use of the Plant and Installation Services to be supplied, where such export restrictions arise from trade regulations from a country supplying those Plant and Installation Services, the Bidder shall not be bound by its bid, always provided, however, that the Bidder can demonstrate to the satisfaction of the Employer and of the Bank that signing of the Contact Agreement has not been prevented by any lack of diligence on the part of the Bidder in completing any formalities, including applying for permits, authorizations and licenses necessary for the export of the Plant and Installation Services under the terms of the Contract.

42. Performance Security

42.1 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 General Conditions, subject to ITB 35.7, 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 performance security shall have a correspondent financial institution located in the Employer's Country.

42.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract 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.

Section II. Bid Data Sheet

A. Introduction	
ITB 1.1	The number of the Invitation for Bids is : _____
ITB 1.1	The Employer is: _____
ITB 1.1	The name of the ICB is:_____ The identification number of the ICB is: _____ The number and identification of lots (contracts) comprising this ICB is: __
ITB 2.1	The Borrower is: _____
ITB 2.1	The name of the Project is: _____
ITB 4.1 (a)	The individuals or firms in a joint venture, consortium or association _____ jointly and severally liable.
B. Bidding Document	
ITB 7.1	For **clarification purposes** only, the Employer's address is: Attention: _____ Street Address: _____ Floor/Room number: _____ City: _____ ZIP Code: _____ Country: _____ Telephone: _____ Facsimile number: _____ Electronic mail address: _____
ITB 7.4	A Pre-Bid meeting ____ take place at the following date, time and place: Date:_____ Time: _____ Place: _____ A site visit conducted by the Employer _____ organized
C. Preparation of Bids	
ITB 10.1	The language of the bid is: _____
ITB 11.1 (k)	The Bidder shall submit with its bid the following additional documents: _____ _____
ITB 13.1	Alternative bids are invited in accordance with ITB 13.2 and/or 13.4

	or Alternative bids are permitted in accordance with ITB 13.3. **or** Alternative bids are not permitted.
ITB 13.2	Alternatives to the Time Schedule_____ permitted. If alternatives to the Time Schedule are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria.
ITB 13.4	Alternative technical solutions shall be permitted for the following parts of the Plant and Installation Services: _____as further detailed in the Specification. If alternative technical solutions are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria.
ITB 17.1	Bidders shall quote for the following components or services on a single responsibility basis: _____ **and/or** The following components or services will be provided under the responsibility of the Employer:_____
ITB 17.5(a)	Named place of destination is:_____
ITB 17.5(d)	Named place of final destination is:_____
ITB 17.7	The prices quoted by the Bidder shall be: ___
ITB 18.1	The currency(ies) of the bid shall be as follows:
ITB 19.1	The bid validity period shall be _____days.
ITB 20.1	Either_____ Bid shall include a bid security (issued by bank or surety); Or Bid shall include a "Bid-Securing Declaration" If a bid security shall be required, the amount of the bid security shall be _____ or its equivalent in a convertible currency.
ITB 20.3 (d)	Other types of acceptable securities: _____

ITB 20.10	If the Bidder incurs any of the actions prescribed in subparagraphs (a) or (b) of this provision, the Borrower will declare the Bidder ineligible to be awarded contracts by the Employer for a period of _____ years.
ITB 21.1	In addition to the original of the bid, the number of copies is: _____
ITB 21.2	The written confirmation of authorization to sign on behalf of the Bidder shall consist of: _____
D. Submission and Opening of Bids	
ITB 22.1	Bidders _____ have the option of submitting their bids electronically.
ITB 22.1 (b)	If bidders shall have the option of submitting their bids electronically, the electronic bidding submission procedures shall be: _____
ITB 23.1	For **bid submission purposes** only, the Employer's address is : Attention: _____ Street Address: _____ Floor/Room number: _____ City: _____ ZIP Code: _____ Country: _____ **The deadline for bid submission is:** Date: _____ Time: _____
ITB 26.1	The bid opening shall take place at: Street Address: _____ Floor/Room number: _____ City : _____ Country:_____ Date: _____ Time: _____
ITB 26.1	If electronic bid submission is permitted in accordance with ITB 22.1, the specific bid opening procedures shall be: _____
E. Evaluation, and Comparison of Bids	
ITB 33.1	The currency(ies) of the Bid shall be converted into a single currency as follows: _____ The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: _____

	The source of exchange rate shall be: _____ The date for the exchange rate shall be: _____

Section III. Evaluation and Qualification Criteria (Following Prequalification)

This Section contains all the criteria that the Employer shall use to evaluate bids and qualify Bidders. In accordance with ITB 35 and ITB 37, no other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.

1. Evaluation

1.1 Technical Evaluation (applicable only to Option A, Single Stage Bidding Procedures).

In addition to the criteria listed in ITB 35.2 (a) – (c) the following factors shall apply:

1.2 Economic Evaluation

The following factors and methods will apply:

(a) Time Schedule:

Time to complete the Plant and Installation Services from the effective date specified in Article 3 of the Contract Agreement for determining time for completion of pre-commissioning activities is: _____. No credit will be given for earlier completion.

or

Time to complete the Plant and Installation Services from the effective date specified in Article 3 of the Contract Agreement for determining time for completion of pre-commissioning activities shall be between _____ minimum and _____ maximum. The adjustment rate in the event of completion beyond the minimum period shall be _____ (%) for each week of delay from that minimum period. No credit will be given for completion earlier than the minimum designated period. Bids offering a completion date beyond the maximum designated period shall be rejected.

(b) Operating and Maintenance Costs

Since the operating and maintenance costs of the facilities being procured form a major part of the life cycle cost of the facilities, these costs will be evaluated according to the principles given hereafter, including the cost of spare parts for the initial period of operation stated below and based on prices furnished by each Bidder in Price Schedule Nos. 1 and 2, as well as on past experience of the Employer or other employers similarly placed. Such costs shall be added to the bid price for evaluation.

Option 1: The operating and maintenance costs factors for calculation of the life cycle cost are:

(i) number of years for life cycle

(ii) operating costs

(iii) maintenance costs, including the cost of spare parts for the initial period of operation, and

(iv) rate, in percent, to be used to discount to present value all annual future costs calculated under (ii) and (iii) above for the period specified in (i).

or Option 2:

Reference to the methodology specified in the Specification or elsewhere in the Bidding Document

The price of recommended spare parts quoted in Price Schedule No. 6 shall not be considered for evaluation.

(c) Functional Guarantees of the Plant and Installation Services

The minimum (or maximum) requirements stated in the Specification for functional guarantees required in the Specification are:

Functional Guarantee	Minimum (or Maximum, as appropriate) Requirement
1.	
2.	
3.	
…	

For the purposes of evaluation, for each percentage point that the functional guarantee of the proposed Plant and Installation Services is below the norm specified in the Specification and in the above table, but above the minimum acceptable levels also specified therein, an adjustment of _____will be added to the tender price If the drop below the norm or the excess above the minimum acceptable levels is less than one percent, the adjustment will be prorated accordingly.

(d) Work, services, facilities, etc., to be provided by the Employer

Where bids include the undertaking of work or the provision of services or facilities by the Employer in excess of the provisions allowed for in the bidding document, the Employer shall assess the costs of such additional work, services and/or facilities during the duration of the contract. Such costs shall be added to the bid price for evaluation.

(e) Specific additional criteria

The relevant evaluation method, if any, shall be as follows:

_____

Any adjustments in price that result from the above procedures shall be added, for purposes of comparative evaluation only, to arrive at an "Evaluated Bid Price." Bid prices quoted by bidders shall remain unaltered.

1.3 Technical alternatives, if invited in accordance with ITB 13.4, will be evaluated as follows:

2. Qualification

2.1 Update of Information

The Bidder and any subcontractors shall meet or continue to meet the criteria used at the time of prequalification.

2.2 Financial Resources

Using the relevant Form No FIN3.3 in Section IV, Bidding Forms, the Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet:

(i) the following cash-flow requirement:

and

(ii) the overall cash flow requirements for this contract and its current works commitment.

2.3 Personnel

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

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

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

2.4 Equipment

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

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

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

2.5 Subcontractors/manufacturers

Subcontractors/manufacturers for major items of supply or services identified in the prequalification document must meet or continue to meet the minimum criteria specified therein for each item.

Subcontractors for the following additional major items of supply or services must meet the following minimum criteria, herein listed for that item:

Item No.	Description of Item	Minimum Criteria to be met
1		
2		
3		
…		

Failure to comply with this requirement will result in the rejection of the subcontractor.

In the case of a Bidder who offers to supply and install major items of supply under the contract that the Bidder did not manufacture or otherwise produce, the Bidder shall provide the manufacturer's authorization, using the form provided in Section IV, showing that the Bidder has been duly authorized by the manufacturer or producer of the related plant and equipment or component to supply and/or install that item in the Employer's country. The Bidder is responsible for ensuring that the manufacturer or producer complies with the requirements of ITB 4 and 5 and meets the minimum criteria listed above for that item.

Section III. Evaluation and Qualification Criteria (Without Prequalification)

This Section contains all the criteria that the Employer shall use to evaluate bids and qualify Bidders. In accordance with ITB 35 and ITB 37, no other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.

1. Evaluation

1.1 Technical Evaluation (applicable only to Option A, Single Stage Bidding Procedures)

In addition to the criteria listed in ITB 35.2 (a) – (c) the following factors shall apply:

1.2 Economic Evaluation

The following factors and methods will apply:

(a) Time Schedule:

Time to complete the Plant and Installation Services from the effective date specified in Article 3 of the Contract Agreement for determining time for completion of pre-commissioning activities is: _____. No credit will be given for earlier completion.

or

Time to complete the Plant and Installation Services from the effective date specified in Article 3 of the Contract Agreement for determining time for completion of pre-commissioning activities shall be between _____ minimum and _____ maximum. The adjustment rate in the event of completion beyond the minimum period shall be _____ for each week of delay from that minimum period. No credit will be given for completion earlier than the minimum designated period. Bids offering a completion date beyond the maximum designated period shall be rejected.

(b) Operating and Maintenance Costs

Since the operating and maintenance costs of the facilities being procured form a major part of the life cycle cost of the facilities, these costs will be evaluated according to the principles given hereafter, including the cost of spare parts for the initial period of operation stated below and based on prices furnished by each Bidder in Price Schedule Nos. 1 and 2, as well as on past experience of the Employer or other Employers similarly placed. Such costs shall be added to the bid price for evaluation.

Option 1: The operating and maintenance costs factors for calculation of the life cycle cost are:

(i) number of years for life cycle

(ii) operating costs

(iii) maintenance costs, including the cost of spare parts for the initial period of operation,

(iv) rate, in percent, to be used to discount to present value all annual future costs calculated under (ii) and (iii) above for the period specified in (i).

or Option 2:

Reference to the methodology specified in the Specification or elsewhere in the Bidding Document

The price of recommended spare parts quoted in Price Schedule No. 6 shall not be considered for evaluation.

(c) Functional Guarantees of the facilities

The minimum (or maximum) requirements stated in the Specification for functional guarantees required in the Specification are:

Functional Guarantee	Minimum (or Maximum, as appropriate) Requirement
1.	
2.	
3.	
…	

For the purposes of evaluation, for each percentage point that the functional guarantee of the proposed Plant and Installation Services is below the norm specified in the Specification and in the above table, but above the minimum acceptable levels also specified therein, an adjustment of _____ will be added to the tender price. If the drop below the norm or the excess above the minimum acceptable levels is less than one percent, the adjustment will be prorated accordingly.

(d) Work, services, facilities, etc., to be provided by the Employer

Where bids include the undertaking of work or the provision of services or facilities by the Employer in excess of the provisions allowed for in the bidding document, the Employer shall assess the costs of such additional work, services and/or facilities during the duration of the contract. Such costs shall be added to the bid price for evaluation.

(e) Specific additional criteria

The relevant evaluation method, if any, shall be as follows:

Any adjustments in price that result from the above procedures shall be added, for purposes of comparative evaluation only, to arrive at an "Evaluated Bid Price." Bid prices quoted by bidders shall remain unaltered.

1.3 Technical alternatives

Technical alternatives , if invited in accordance with ITB 13.4, will be evaluated as follows:

2. Qualification

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

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

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

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

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

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

2.5 Personnel

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

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

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

2.6 Equipment

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

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

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

2.7 Subcontractors

Subcontractors/manufacturers for the following major items of supply or services must meet the following minimum criteria, herein listed for that item:

Item No.	Description of Item	Minimum Criteria to be met
1		
2		
3		
…		

Failure to comply with this requirement will result in rejection of the subcontractor.
In the case of a Bidder who offers to supply and install major items of supply under the contract that the Bidder did not manufacture or otherwise produce, the Bidder shall provide the manufacturer's authorization, using the form provided in Section IV,

showing that the Bidder has been duly authorized by the manufacturer or producer of the related plant and equipment or component to supply and install that item in the Employer's country. The Bidder is responsible for ensuring that the manufacturer or producer complies with the requirements of ITB 4 and 5 and meets the minimum criteria listed above for that item.

OPTION B: Two Stage Bidding

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Section I. Instructions to Bidders

A. General

1. Scope of Bid

1.1 In connection with the Invitation for Bids indicated in the Bid Data Sheet (BDS), the Employer, as indicated in the BDS, issues this Bidding Document for the procurement of Plant and Installation Services as specified in Section VI, Employer*'s* Requirements. The name, identification, and number of lots (contracts) of the International Competitive Bidding (ICB) are **provided in the BDS.**

1.2 Unless otherwise stated, throughout this Bidding Document definitions and interpretations shall be as prescribed in the General Conditions, Section VII.

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 [insert name of financing institution] (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.

2.3 The Loan Agreement prohibits a withdrawal from the loan account for the purpose of any payment to persons or entities, or for any import of equipment, plant, or materials, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

3. Corrupt Practices

3.1 The Bank requires that Borrowers (including beneficiaries of Bank loans), as well as Bidders, Suppliers, Contractors and their agents (whether declared or not), personnel, subcontractors, sub-consultants, service providers and

suppliers, under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuit of this policy, the Bank:

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

(i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party[6];

(ii) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation[7];

(iii) "collusive practice" is an arrangement between two or more parties[8] designed to achieve an improper purpose, including to influence improperly the actions of another party;

(iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party[9] 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

[6] "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.

[7] "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.

[8] "Parties" refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

[9] "Party" refers to a participant in the procurement process or contract execution.

investigation, or

(bb) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under sub-clause 3.2 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 remedy the situation; and

(d) will sanction a firm or an individual, at any time, in accordance with prevailing Bank's sanctions procedures[a], including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract; and (ii) to be a nominated[b] sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract.

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

3.3 Furthermore, Bidders shall be aware of the provision stated in

[a] A firm or an individual may be declared ineligible to be awarded a Bank-financed contract upon completion of the Bank's sanctions proceedings as per its sanctions procedures, including inter alia: (i) temporary suspension in connection with an ongoing sanctions proceeding; (ii) cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks; and (iii) the World Bank Group corporate administrative procurement sanctions procedures for fraud and corruption.

[b] A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which either has been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that are accounted for in the evaluation of the bidder's pre-qualification application or the bid; or (ii) appointed by the Borrower.

the General Conditions (GC 42.2.1(c)).

4. Eligible Bidders

4.1 A Bidder may be a private entity or a government-owned entity—subject to ITB 4.5—or any combination of such entities in the form of a joint venture, or association (JVA) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, or association:

(a) **unless otherwise specified in the BDS,** all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms, and

(b) the JVA shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the partners of the JVA during the bidding process and, in the event the JVA is awarded the Contract, during contract execution.

4.2 A Bidder, and all partners constituting the Bidder, shall have a nationality of an eligible country, as defined in *Guidelines: Procurement under IBRD Loans and IDA Credits,* October 2006, (hereinafter referred to as the Guidelines), in accordance with Section V, Eligible Countries. A Bidder shall be deemed to have the nationality of a country if the Bidder is a national or is constituted, incorporated, or registered 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 submits more than one bid in this bidding process, either individually or as a partner in a joint venture, except for alternative offers permitted under ITB Clause 13. This will result in the disqualification of all such bids. However, this does not limit the participation of a Bidder as a subcontractor in another bid or of a firm as a subcontractor in more than one bid. or

(f) a Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the Plant and Installation Services that are the subject of the bid.

(g) A Bidder or any of its affiliates has been hired (or is proposed to be hired) by the Employer or the Borrower as Project Manager for the contract.

4.4 A Bidder that has been sanctioned by the Bank in accordance with the above ITB 3.1 (d), or in accordance with the Bank's Guidelines on Preventing and Combating Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants, shall be ineligible to be awarded a Bank-financed contract, or benefit from a Bank-financed contract, financially or otherwise, during such period of time as the Bank shall determine.

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

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

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

4.8 Firms shall be excluded if:

(a) as a matter of law or official regulation, the 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 Plant and Installation Services

5.1 The Plant and Installation 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 Plant and Installation Services

5.2 For purposes of ITB 5.1 above, "origin" means the place where the plant, or component parts thereof are mined, grown, produced or manufactured, and from which the services are provided. Plant components are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that is substantially in its basic characteristics or in purpose or utility from its components.

B. Contents of Bidding Document

6. Sections of Bidding Document

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

PART 1 Bidding Procedures

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

PART 2 Employer**'s Requirements**

- Section VI. Employer's 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 its 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 enquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The Employer will respond to any request for clarification, provided that such request is received no later than twenty-eight (28) days prior to the deadline for submission of bids. The Employer's response shall be in writing with copies 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, ITB 19.2 and ITB 35.2.

7.2 The Bidder is advised to visit and examine the site where the plant is to be installed and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for the provision of Plant and Installation Services. 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 Documents that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting.

7.7 Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

8. Amendment of Bidding Document

8.1 At any time prior to the deadline for submission of bids, the Employer may amend the Bidding Document by issuing addenda.

8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Employer in accordance with ITB 6.3.

8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 19.2 and/or ITB 35.2

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 not 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.

C1. First Stage Technical Proposals: Preparation

11. Documents Comprising the First Stage Technical Proposal

11.1 The first stage technical proposal submitted by the Bidder shall comprise the following:

(a) Letter of First Stage Bid;

(b) alternative technical proposals in accordance with ITB 13;

(c) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 17.2;

(d) documentary evidence established in accordance with ITB 14 that the Plant and Installation Services offered by the Bidder in its bid or in any alternative bid are eligible;

(e) documentary evidence in accordance with ITB 15 establishing the Bidder's eligibility and qualifications to perform the contract if its Bid is accepted;

(f) documentary evidence established in accordance with ITB 16 that the Plant and Installation Services offered by the Bidder conform to the Bidding Document;

(g) in the case of a technical proposal submitted by a JVA, JVA agreement, or letter of intent to enter into a JVA including a draft agreement, indicating at least the parts of the Plant to be executed by the respective partners;

(h) List of subcontractors, in accordance with ITB 16.3; and

(i) any other document **required in the BDS.**

First stage technical proposals are unpriced proposals and shall contain no prices or price schedules or other reference to rates and prices for completing the facilities. First stage technical proposals containing such price information will be rejected.

12. Letter of First Stage Bid and Attachments

12.1 The Letter of First Stage Bid and any attachments shall be prepared using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed as instructed in each form.

13. Alternative Technical Proposals

13.1 Bidders shall note that they are permitted to propose technical alternatives with their first stage technical proposals in addition to or in lieu of the requirements specified in the

bidding documents, provided they can document that the proposed technical alternatives are to the benefit of the Employer, that they fulfill the principal objectives of the contract, and that they meet the basic performance and technical criteria specified in the bidding documents.

13.2 Any alternative technical proposal submitted by bidders as part of their first stage technical proposal will be the subject of clarification with the Bidder, pursuant to ITB 25.

14. Documents Establishing the Eligibility of Plant and Installation Services

14.1 To establish the eligibility of the Plant and Installation Services in accordance with ITB Clause 5, Bidders shall provide documentary evidence consisting of a statement on the country of origin of the Plant and Installation Services offered.

15. Documents Establishing the Eligibility and Qualifications of the Bidder

15.1 To establish its eligibility and 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.

15.2 Domestic Bidders, individually or in joint ventures, applying for eligibility for domestic preference shall supply all information required to satisfy the criteria for eligibility as described in ITB 46.

16. Documents Establishing Conformity of the Plant and Installation Services

16.1 The Bidder shall furnish a first stage technical proposal including the information stipulated in Section IV, in sufficient detail to demonstrate substantial responsiveness of the Bidders' proposal to the Employer's requirements and the completion time.

16.2 The documentary evidence of the conformity of the Plant and Installation Services with the bidding documents may be in the form of literature, drawings and data, and shall include:

(a) detailed description of the essential technical and performance characteristics of the Plant and Installation Services, including the functional guarantees of the proposed Plant and Installation Services, in response to the Specification. The functional guarantees of the proposed Plant and Installation Services shall be stated in the applicable form in Section IV Bidding Forms;

(b) a list giving full particulars, including available sources, of all spare parts, special tools, etc., necessary for the proper and continuing functioning of the plant for the

period **named in the BDS,** following completion of Plant and Installation Services in accordance with provisions of contract; and

(c) Adequate evidence demonstrating the substantial responsiveness of the Plant and Installation Services to those specifications. Bidders shall note that standards for workmanship, materials and equipment designated by the Employer in the Bidding Document are intended to be descriptive (establishing standards of quality and performance) only and not restrictive. The Bidder may substitute alternative standards, brand names and/or catalog numbers in its technical proposal, provided that it demonstrates to the Employer's satisfaction that the substitutions are substantially equivalent or superior to the standards designated in the Specification.

16.3 For major items of supply or services as listed by the Employer in Section III, Evaluation and Qualification Criteria, which the Bidder intends to purchase or subcontract, the Bidder shall give details of the name and nationality of the proposed Subcontractors, including manufacturers, for each of those items. In addition, the Bidder shall include in its technical proposal information establishing compliance with the requirements specified by the Employer for these items.

16.4 The Bidder shall be responsible for ensuring that any Subcontractor proposed complies with the requirements of ITB 4, and that any Plant or Installation Services to be provided by the Subcontractor comply with the requirements of ITB 5 and 15.1.

17. Format and Signing of First Stage Technical Proposal

17.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 11 and clearly mark it "FIRST STAGE TECHNICAL PROPOSAL - ORIGINAL." Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked "FIRST STAGE TECHNICAL PROPOSAL - ALTERNATIVE". In addition, the Bidder shall submit copies of the bid, in the number **specified in the BDS** and clearly mark them "FIRST STAGE TECHNICAL PROPOSAL - COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

17.2 The original and all copies of the first stage technical proposal 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 first stage

technical proposal. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the first stage technical proposal where entries or amendments have been made shall be signed or initialed by the person signing the bid.

17.3 A bid submitted by a JVA shall be signed so as to be legally binding on all partners.

17.4 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the bid.

C2. First Stage Technical Proposals: Submission and Opening

18. Submission, Sealing and Marking of First Stage Technical Proposals

18.1 Bidders may always submit their first stage technical proposals by mail or by hand. When so **specified in the BDS**, bidders shall have the option of submitting their first stage technical proposals electronically.

(a) Bidders submitting first stage technical proposals by mail or by hand, shall enclose the original and each copy of the technical proposal, including alternative technical proposals, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as "FIRST STAGE TECHNICAL PROPOSAL - ORIGINAL", "FIRST STAGE TECHNICAL PROPOSAL - ALTERNATIVE" and "FIRST STAGE TECHNICAL PROPOSAL - COPY." These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITB 21.2 and 21.3.

(b) Bidders submitting first stage technical proposals electronically shall follow the electronic submission procedures **specified in the BDS.**

18.2 The inner and outer envelopes shall:

(a) bear the name and address of the Bidder;

(b) be addressed to the Employer in accordance with ITB 19.1;

(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.

18.3 If all envelopes are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the technical proposal.

19. Deadline for Submission of First Stage Technical Proposals

19.1 First stage technical proposals must be received by the Employer at the address and no later than the date and time **indicated in the BDS.** Any first stage technical proposal received by the Employer after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

19.2 The Employer may, at its discretion, extend the deadline for the submission of first stage technical proposals 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.

20. Substitution and Modification of First Stage Technical Proposals

20.1 In case a Bidder wishes to substitute or modify its first stage technical proposal after it has been submitted and prior to the deadline for first stage technical proposal submission, it may do so by sending a written notice, as per ITB 19.1 and its substituted or modified first stage technical proposal will be opened as per ITB 21.

21. Opening of First Stage Technical Proposals by Employer

21.1 The Employer shall conduct the bid opening of the first stage technical proposals in public, in the presence of Bidders` designated representatives and anyone who choose to attend, and at the address, date and time s**pecified in the BDS.** Any specific procedures required if electronic bidding is permitted in accordance with ITB 18.1 shall be as **specified in the BDS.**

21.2 The names of all bidders who submitted first stage technical proposals will be read out, and other such details as the Employer, at its discretion, may consider appropriate, will be announced at the opening.

21.3 The Employer shall prepare a record of the first stage technical proposal opening that shall include, as a minimum: the name of the Bidder, including any alternative bids. 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 who submitted technical proposals in time, and posted online when electronic bidding is permitted.

C3. First Stage Technical Proposals: Evaluation

22. Determination of Responsiveness of First Stage Technical Proposals

22.1 The Employer will examine the first stage technical proposals to determine whether they are complete, whether the documents have been properly signed and whether the bids are generally in order. Any bids found to be non responsive or not meeting the minimum levels of the performance or other criteria specified in the bidding document will be rejected by the Employer and not included for further consideration. The Employer will also carry out a preliminary examination of any alternative bids submitted by bidders.

22.2 The Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial omissions in the first stage technical proposal related to documentation requirements. Failure of the Bidder to comply with the request may result in the rejection of its technical proposal.

23. Technical Evaluation of First Stage Technical Proposals

23.1 The Employer will carry out a detailed evaluation of the first stage technical proposals in order to determine whether the technical aspects are in compliance with the Bidding Document. In order to reach such a determination, the Employer will examine and compare the technical proposals on the basis of the information supplied by the bidders, taking into account the following:

(a) overall completeness and compliance with the Employer's Requirements; the technical merits of alternatives offered; conformity of the Plant and Installation Services offered with specified performance criteria, including conformity with the specified minimum (or maximum, as the case may be) requirement corresponding to each functional guarantee, as indicated in the Specification and in Section III Evaluation and Qualification Criteria; suitability of the Plant and Installation Services offered in relation to the environmental and climatic conditions prevailing at the site; and quality, function and operation of any process control concept included in the bid;

(b) compliance with the time schedule called for in the corresponding Appendix to the Contract Agreement and any alternative time schedules offered by bidders, as evidenced by a milestone schedule provided in the technical proposal;

(c) type, quantity and long-term availability of mandatory

and recommended spare parts and maintenance services;

(d) other relevant factors, if any, listed in Section III, Evaluation and Qualification Criteria; and

(e) any deviations to the commercial and contractual provisions stipulated in the bidding documents.

23.2 The Employer will also review complete alternative technical proposals, if any, offered by the Bidder, pursuant to ITB 13, to determine whether such alternatives may constitute an acceptable basis for a Second Stage bid to be submitted on its own merits.

24. Eligibility and Qualification of the Bidder

24.1 The Employer shall determine to its satisfaction whether Bidders determined as having submitted responsive First Stage Technical Proposals are eligible and meet the qualification criteria specified in Section III, Evaluation and Qualification Criteria.

24.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 15, and on any additional information which the Employer may request from the Bidder to support such evidence.

24.3 An affirmative determination will be a prerequisite for the Employer to invite the Bidder to a clarification meeting in accordance with ITB 25. A negative determination will result in rejection of the Bidder's first stage technical proposal.

24.4 The capabilities of the manufacturers and subcontractors proposed to be used by the Bidders for Employer-identified major items of supply or services will also be evaluated for acceptability in accordance with Section III, Evaluation and Qualification Criteria. Should a manufacturer or subcontractor be determined to be unacceptable, if invited to submit a Second Stage Bid, the Bidder will be required to substitute an acceptable manufacturer or subcontractor.

D. Clarification of First Stage Technical Proposals

25. Clarification Procedures

25.1 The Employer may conduct clarification meetings with each or any Bidder to clarify any aspects of its First Stage technical proposal that require explanation and to review any Bidder's proposed alternative solutions or reservations to the commercial or contractual provisions of the bidding documents. The Employer may also seek clarifications in

writing.

25.2 The Employer may bring to the attention of the Bidder any amendments or changes which the Employer may require to be made to the First Stage technical proposal; however the Employer may not require amendments or changes at variance from the Employers' requirements unless the Employer intends to amend the Bidding Document in accordance with ITB 26.1(a).

25.3 The Employer will advise the Bidder of any deviations to the commercial or contractual provisions of the bidding documents in the First Stage technical proposal, that are unacceptable and that are to be withdrawn in the Second Stage bid.

25.4 The Employer will also advise the Bidder whether the proposed alternative technical proposal, if any, is acceptable, and will identify the degree (if any) to which such an alternative bid may be incorporated in the Bidder's Second Stage bid.

25.5 The Employer will issue a Memorandum titled ***"Changes Required Pursuant to First Stage Evaluation,"*** documenting the clarifications made in writing and/or in a meeting, if any, and including an Annex listing all decisions, and required amendments or changes resulting from the clarification of the First Stage technical proposal. The Memorandum will be communicated to the Bidder as part of the invitation to submit the Second Stage bid.

26. Invitation to Submit Second Stage Bids

26.1 At the end of the clarification process pursuant to ITB 25, conducted as necessary:

(a) the Employer may need to issue an amendment to the Bidding Document resulting from the First Stage evaluation and clarification process, with the objective of clarifying the requirements and improving competition without compromising essential project objectives and/or

(b) in regard to all bidders, the Employer will either:

(i) invite the Bidder to submit a final updated technical and a commercial Second Stage bid based on its First Stage technical proposal taking into account the Bidding Document, if and as amended, and any other modifications as recorded in the Annex to the Memorandum entitled "Changes Required Pursuant to First Stage Evaluation". Bidders will be allowed

to submit only one Second Stage Bid, or

(ii) notify the Bidder that its bid has been rejected on the grounds of being substantially non-responsive, or that the Bidder does not meet the minimum qualification requirements set forth in the Bidding Document.

26.2 The deadline, for submission of Second Stage bids will be specified in the invitation to submit Second Stage bids, pursuant to ITB 35.1.

26.3 Bidders are not allowed to form JVA(s) with other bidders, nor change the partner or structure of the JVA if the Bidder in the First Stage was a JVA.

E1. Second Stage Bid Preparation

27. Documents Comprising the Bid

27.1 The Second Stage Bid submitted by the Bidder shall comprise the following:

(a) Letter of Bid

(b) Completed schedules as required, including Price Schedules, in accordance with ITB 28 and 29;

(c) Bid Security, in accordance with ITB 32;

(d) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 33.2;

(d) the updated first stage technical proposal, comprising any modifications required to the first stage technical proposal as recorded in the Memorandum entitled "Changes Required Pursuant to First Stage Evaluation";

(f) documentary evidence established in accordance with ITB 14 that any additional or varied Plant and Installation Services offered by the Bidder, and not included in the first stage technical proposal, are eligible;

(g) documentary evidence regarding any changes that may have occurred between the time of submitting the First and Second Stage bids that have any material effect on the Bidder's eligibility and qualifications to perform the Contract.

(h) documentary evidence establishing that any additional or varied facilities to be supplied and installed by the

Bidder, in accordance with the requirements of the Memorandum entitled "Changes Required Pursuant to First Stage Evaluation", are technically acceptable. The documentary evidence of the conformity of the Plant and Installation Services to the requirements of the Memorandum entitled "Changes Required Pursuant to First Stage Evaluation" may be in the form of literature, drawings and data. The functional guarantees of any additional or varied Plant and Installation Services shall be stated in the applicable form in Section IV Bidding Forms.

(i) If the Bidder proposes to engage any Subcontractors additional to or different from those named in its first stage technical proposal for major items of supply or services as listed by the Employer in Section III, Evaluation and Qualification Criteria, which the Bidder intends to purchase or subcontract, the Bidder shall give details of the name and nationality of the proposed Subcontractors, including manufacturers, for each of those items. In addition, the Bidder shall include in its bid information establishing compliance with the requirements specified by the Employer for these items. Quoted rates and prices will be deemed to apply to whichever Subcontractor is appointed, and no adjustment of the rates and prices will be permitted.

(j) other documentation and information which may be **specified in the BDS.**

28. Letter of Bid, and Schedules

28.1 The Bidder shall complete the Letter of Bid and Schedules, including the appropriate Price Schedules, using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed as instructed in each form.

29. Bid Prices and Discounts

29.1 Unless otherwise **specified in the BDS,** bidders shall quote for the entire Plant and Installation Services on a "single responsibility" basis such that the total bid price covers all the Contractor's obligations mentioned in or to be reasonably inferred from the bidding document in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation and completion of the plant. This includes all requirements under the Contractor's responsibilities for testing, pre-commissioning and commissioning of the plant and, where so required by the bidding document, the acquisition of all permits, approvals and licenses, etc.; the operation, maintenance and training services and such other items and services as may be specified

in the Bidding Document, all in accordance with the requirements of the General Conditions. Items against which no price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed to be covered by the prices for other items.

29.2 Bidders shall give a breakdown of the prices in the manner and detail called for in the Price Schedules included in Section IV, Bidding Forms.

29.3 Depending on the scope of the Contract, the Price Schedules may comprise up to the six (6) schedules listed below. Separate numbered Schedules included in Section IV, Bidding Forms, from those numbered 1-4 below, shall be used for each of the elements of the Plant and Installation Services. The total amount from each Schedule corresponding to an element of the Plant and Installation Services shall be summarized in the schedule titled Grand Summary (Schedule 5) giving the total bid price(s) to be entered in the Letter of Bid.

Schedule No. 1 Plant (including Mandatory Spare Parts) Supplied from Abroad

Schedule No. 2 Plant (including Mandatory Spare Parts) Supplied from within the Employer's Country

Schedule No. 3 Design Services

Schedule No. 4 Installation Services

Schedule No. 5 Grand Summary (Schedule Nos. 1 to 4)

Schedule No. 6 Recommended Spare Parts

Bidders shall note that the plant and equipment included in Schedule Nos. 1 and 2 above **exclude** materials used for civil, building and other construction works. All such materials shall be included and priced under Schedule No. 4, Installation Services.

29.4 In the Schedules, bidders shall give the required details and a breakdown of their prices as follows:

(a) Plant to be supplied from abroad (Schedule No. 1):

(i) The price of the plant shall be quoted CIP-named place of destination basis as **specified in the BDS**

(b) Plant manufactured within the Employer's country

(Schedule No. 2):

(i) The price of the plant shall be quoted on an EXW Incoterm basis (such as "ex-works," "ex-factory," "ex-warehouse" or "off-the-shelf," as applicable),

(ii) Sales Sales tax and all other taxes payable in the Employer's country on the plant if the contract is awarded to the Bidder, and

(iii) the total price for the item.

(c) Design Services (Schedule No. 3).

(d) Installation and other Services shall be quoted separately (Schedule No. 4) and shall include rates or prices for local transportation to named place of final destination as **specified in the BDS,** insurance and other services incidental to delivery of the plant, all labor, contractor's equipment, temporary works, materials, consumables and all matters and things of whatsoever nature, including operations and maintenance services, the provision of operations and maintenance manuals, training, etc., where identified in the bidding documents, as necessary for the proper execution of the installation and other services, including all taxes, duties, levies and charges payable in the Employer's country as of twenty-eight (28) days prior to the deadline for submission of bids.

(e) Recommended spare parts shall be quoted separately (Schedule 6) as specified in either subparagraph (a) or (b) above in accordance with the origin of the spare parts.

29.5 The current edition of Incoterms, published by the International Chamber of Commerce shall govern.

29.6 The prices shall be either fixed or adjustable as **specified in the BDS.**

29.7 In the case of **Fixed Price**, prices quoted by the Bidder shall be fixed during the Bidder's performance of the contract and not subject to variation on any account. A bid submitted with an adjustable price quotation will be treated as non responsive and rejected.

29.8 In the case of **Adjustable Price**, prices quoted by the Bidder shall be subject to adjustment during performance of the contract to reflect changes in the cost elements such as labor, material, transport and contractor's equipment in accordance with the procedures specified in the corresponding Appendix

to the Form of Contract Agreement. A bid submitted with a fixed price quotation will not be rejected, but the price adjustment will be treated as zero. Bidders are required to indicate the source of labor and material indexes in the corresponding Form in Section IV, Bidding Forms.

29.9 If so indicated in ITB 1.1, bids are being invited for individual lots (contracts) or for any combination of lots (packages). Bidders wishing to offer any price reduction (discount) for the award of more than one Contract shall specify in their Letter of Bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package, and the manner in which the price reductions will apply.

29.10 Bidders wishing to offer any unconditional discount shall specify in their Letter of Bid the offered discounts and the manner in which price discounts will apply.

30. Currencies of Bid and Payment

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

30.2 Bidders may be required by the Employer to justify, to the Employer's satisfaction, their local and foreign currency requirements.

31. Period of Validity of Bids

31.1 Second Stage Bids shall remain valid for the period specified in the BDS after the bid submission deadline date prescribed by the Employer pursuant to ITB 35.1. A bid valid for a shorter period shall be rejected by the Employer as non responsive.

31.2 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 32, the Bidder granting the request shall also extend the bid security for twenty-eight (28) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid, except as provided in ITB 31.3.

31.3 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 or factors specified in the request for extension. Bid evaluation shall be based on the Bid Price without taking into consideration the above correction.

32. Bid Security

32.1 The Bidder shall furnish as part of its bid, either a Bid-

Securing Declaration or a bid security as specified in the BDS, in original form and in the amount **specified in the BDS.**

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

32.3 If a bid security is specified pursuant to ITB 32.1, the bid security shall be a demand guarantee in any of the following forms at the Bidder's option,:

(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 a bonding company located outside the Employer's Country, the issuer shall have a correspondent financial institution located in the Employer's Country to make it enforceable. 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 31.2.

32.4 If a bid security is specified pursuant to ITB 32.1, any bid not accompanied by a substantially responsive bid security or Bid-Securing Declaration shall be rejected by the Employer as non responsive.

32.5 If a bid security is specified pursuant to ITB 32.1, 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 54.

32.6 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.

32.7 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, or

(b) if the successful Bidder fails to**:**

(i) sign the Contract in accordance with ITB 53; or

(ii) furnish a performance security in accordance with ITB 54.

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

32.9 If a Bid-Securing Declaration is executed in accordance with ITB 32.7, the Employer will declare the Bidder ineligible to be awarded a contract by the Employer for the period of time stated in the Form of Bid-Securing Declaration.

32.10 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 32.2, or

(b) if the successful Bidder fails to: sign the Contract in accordance with ITB 53; or furnish a performance security in accordance with ITB 54;

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**.

33. Format and Signing of Second Stage Bid

33.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 27 and clearly mark it "SECOND STAGE BID - ORIGINAL." In addition, the Bidder shall submit copies of the bid, in the number **specified in the BDS** and clearly mark them "SECOND STAGE BID - COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

33.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as **specified in the BDS** and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid where entries

or amendments have been made shall be signed or initialed by the person signing the bid.

33.3 A bid submitted by a JVA shall comply with the following requirements:

(a) Unless not required in accordance with ITB 4.1 (a), be signed so as to be legally binding on all partners and

(b) Include the Representative's authorization referred to in ITB 4.1 (b), consisting of a power of attorney signed by those legally authorized to sign on behalf of the JVA.

33.4 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the bid.

E2. Second Stage Bids: Submission and Opening

34. Submission, Sealing and Marking of Second Stage Bids

34.1 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:

34.2 Bidders submitting bids by mail or by hand shall enclose the original and each copy of the Bid, in separate sealed envelopes, duly marking the envelopes as "SECOND STAGE BID - ORIGINAL", and "SECOND STAGE BID - 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 34.2 and 34.3.

34.3 Bidders submitting bids electronically shall follow the electronic bid submission procedures **specified in the BDS**.

34.4 The inner and outer envelopes shall:

(a) bear the name and address of the Bidder;

(b) be addressed to the Employer in accordance with ITB 35.1;

(c) bear the specific identification of this bidding process indicated in the BDS 1.1; and

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

34.5 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.

35. Deadline for Submission of Second Stage Bids

35.1 Second Stage bids must be received by the Employer at the address and no later than the date and time indicated in the Letter of Invitation to submit Second Stage Bids.

35.2 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.

36. Late Bids

36.1 The Employer shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 35. Any bid received by the Employer after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

37. Withdrawal, Substitution, and Modification of Second Stage Bids

37.1 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 33.2, (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 33 and ITB 34 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked "SECOND STAGE BID - WITHDRAWAL," "SECOND STAGE BID - SUBSTITUTION," "SECOND STAGE BID - MODIFICATION;" and

(b) received by the Employer prior to the deadline prescribed for submission of bids, in accordance with ITB 35

37.2 Bids requested to be withdrawn in accordance with ITB 37.1 shall be returned unopened to the Bidders.

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

38. Second Stage Bid Opening

38.1 The Employer shall conduct the Second Stage bid opening in public, in the presence of Bidders` designated representatives and anyone who choose to attend, and at the address, date and time specified in the Letter of Invitation to submit Second

Stage Bids. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 34.1, shall be as **specified in the BDS.**

38.2 First, envelopes marked "SECOND STAGE BID - 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 "SECOND STAGE BID - 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 "SECOND STAGE BID - 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 bids that are opened and read out at bid opening shall be considered further.

38.3 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 indicating whether there is a modification; the presence or absence of a bid security or a Bid-Securing Declaration; and any other details as the Employer may consider appropriate. Only discounts 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 36.1.

38.4 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 lot if applicable, including any discounts; and the presence or absence of a bid security or a Bid-Securing Declaration. 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 who submitted bids in time, and posted online when electronic bidding is permitted.

E3. Second Stage Bids: Evaluation and Comparison

39. Confidentiality

39.1 Consistent with the requirements of transparency and intellectual property rights, in revising the Second Stage Technical Proposal, information contained in the Bidder's Technical Proposal reviewed in the first stage 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,.

39.2 Any attempt by a Bidder to influence the Employer in the evaluation of the first and second stage bids or Contract award decisions may result in the rejection of its bid.

39.3 Notwithstanding ITB 39.2, from the time of First Stage technical proposal opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it should do so in writing.

40. Clarification of Bids

40.1 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 44.1.

40.2 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.

41. Deviations, Reservations, and Omissions

41.1 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.

42. Determination of Responsiveness

42.1 The Employer's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB 27.

42.2 A substantially responsive bid is one that meets the requirements of the Bidding Document and has properly incorporated all modifications listed in the Memorandum *entitled "Changes Required Pursuant to First Stage Evaluation"*, 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 Plant and Installation Services 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.

42.3 A Second Stage bid containing technical or commercial alternatives not submitted as part of the first stage technical proposal will be treated as non responsive.

42.4 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.

43. Nonmaterial Nonconformities

43.1 Provided that a bid is substantially responsive, the Employer may waive any nonconformities in the bid that do not constitute a material deviation, reservation or omission.

43.2 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 quantifiable 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.

43.3 Provided that a bid is substantially responsive, the Employer shall rectify nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall 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 method indicated in Section III, Evaluation and Qualification Criteria.

44. Correction of Arithmetical Errors

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

(a) where there are errors between the total of the amounts given under the column for the price breakdown and the amount given under the Total Price, the former shall prevail and the latter will be corrected accordingly;

(b) where there are errors between the total of the amounts of Schedule Nos. 1 to 4 and the amount given in Schedule No. 5 (Grand Summary), the former shall prevail and the latter will be corrected accordingly; 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.

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

45. Conversion to Single Currency

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

46. Margin of Preference

46.1 No margin of domestic preference shall apply.

47. Evaluation of Second Stage Bids

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

Technical Evaluation

47.2 The Employer will carry out a detailed evaluation of the Second Stage bids not previously rejected to determine whether the technical aspects concerning the modifications to the technically acceptable base or alternative bid detailed in the Memorandum entitled “Changes Required Pursuant to First Stage Evaluation”, pursuant to ITB 26.1, have been

properly addressed and are substantially responsive to the requirements set forth in the Bidding Document.

Economic Evaluation

47.3 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 Price Schedules;

(b) price adjustment for correction of arithmetic errors in accordance with ITB 44.1;

(c) price adjustment due to discounts offered in accordance with ITB 29.9;

(d) price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 29.10;

(e) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 45; and

(f) the evaluation factors indicated in Section III, Evaluation and Qualification Criteria.

47.4 If price adjustment is allowed in accordance with ITB 29.5, 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.

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

47.6 If the bid, which results in the lowest Evaluated Bid Price, is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Price Schedules, to demonstrate the internal consistency of those prices with the methods and time schedule proposed. After evaluation of the price analyses, taking into consideration the terms of 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.

48. Comparison of Bids

48.1 The Employer shall compare all substantially responsive bids in accordance with ITB 47.3 to determine the lowest evaluated bid,.

49. Qualification of the Bidder

49.1 The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid still meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

49.2 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Employer shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's qualifications to perform satisfactorily.

49.3 The participation of the manufacturers and subcontractors proposed in its Bid to be used by the lowest evaluated Bidder should be confirmed with a letter of intent between the parties, as needed. The capabilities of additional or different manufacturers and subcontractors proposed in its Bid to be used by the lowest evaluated Bidder will also be evaluated for acceptability in accordance with Section III, Evaluation and Qualification Criteria. Should any additional or substitute manufacturer or subcontractor be determined to be unacceptable, the Bid will not be rejected, but the Bidder will be required to substitute an acceptable manufacturer or subcontractor without any change to the bid price. Prior to signing the Contract, the corresponding Appendix to the Contract Agreement shall be completed, listing the approved manufacturers or subcontractors for each item concerned.

50. Employer's Right to Accept Any Bid, and to Reject Any or All Bids

50.1 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

51. Award Criteria

51.1 Subject to ITB 50.1, 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 eligible and qualified to perform the Contract satisfactorily.

52. Notification of Award

52.1 Prior to the expiration of the period of bid validity, the Employer shall notify the successful Bidder, in writing, that its bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the "Letter of Acceptance") shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the Plant and Installation Services (hereinafter and in the Conditions of Contract and Contract Forms called "the Contract Price").

52.2 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.

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

52.4 The Employer shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 52.1, requests in writing the grounds on which its bid was not selected.

53. Signing of Contract

53.1 Promptly upon notification, the Employer shall send the successful Bidder the Contract Agreement.

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

53.3 Notwithstanding ITB 53.2 above, in case signing of the Contract Agreement is prevented by any export restrictions attributable to the Employer, to the country of the Employer, or to the use of the Plant and Installation Services to be supplied, where such export restrictions arise from trade regulations from a country supplying those Plant and Installation Services, the Bidder shall not be bound by its bid,

always provided, always provided, however, that the Bidder can demonstrate to the satisfaction of the Employer and of the Bank that signing of the Contact Agreement has not been prevented by any lack of diligence on the part of the Bidder in completing any formalities, including applying for permits, authorizations and licenses necessary for the export of the Plant and Installation Services under the terms of the Contract.

54. Performance Security

54.1 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 General Conditions of Contract, subject to ITB 47.6, 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.

54.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract 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.

Section II. Bid Data Sheet

A. Introduction	
ITB 1.1	The number of the Invitation for Bids is : _____
ITB 1.1	The Employer is: _____
ITB 1.1	The name of the ICB is:_____ The identification number of the ICB is: _____ The number and identification of lots (contracts) comprising this ICB is: __
ITB 2.1	The Borrower is: _____
ITB 2.1	The name of the Project is: _____
ITB 4.1 (a)	The individuals or firms in a joint venture, consortium or association _____ jointly and severally liable.
B. Bidding Document	
ITB 7.1	For **clarification purposes** only, the Employer's address is: Attention: _____ Street Address: _____ Floor/Room number: _____ City: _____ ZIP Code: _____ Country: _____ Telephone: _____ Facsimile number: _____ Electronic mail address: _____
ITB 7.4	A Pre-Bid meeting ____ take place at the following date, time and place: Date:_____ Time: _____ Place: _____ A site visit conducted by the Employer _____ organized
ITB 10.1	The language of the bid is: _____
C1. First Stage Technical Proposals: Preparation	
ITB 11.1 (i)	The Bidder shall submit with its bid the following additional documents: _____ _____
ITB 16.2 (b)	Spares required for operation; number of years following completion
ITB 17.1	In addition to the original of the bid, the number of copies is: _____

ITB 17.2	The written confirmation of authorization to sign on behalf of the Bidder shall consist of: _____
C2. First Stage Technical Proposals: Submission and Opening	
ITB 18.1	Bidders_____ have the option of submitting their bids electronically.
ITB 18.1 (b)	If bidders shall have the option of submitting their bids electronically, the electronic bidding submission procedures shall be: _____
ITB 19.1	For First Stage Technical Proposal **bid submission purposes** only, the Employer's address is : Attention: _____ Street Address: _____ Floor/Room number: _____ City: _____ ZIP Code: _____ Country: _____ **The deadline for bid submission is:** Date: _____ Time: _
ITB 21.1	The bid opening shall take place at: Street Address: _____ Floor/Room number: _____ City : _____ Country:_____ Date: _____ Time: _
ITB 21.1	If electronic bid submission is permitted in accordance with ITB 19.1, the specific bid opening procedures shall be: _____
	E1. Second Stage Bid Preparation
ITB 27.1 (j)	The Bidder shall submit with its bid the following additional documents: _____ ____
ITB 29.1	Bidders shall quote for the entire Plant and Installation Services on a single responsibility basis **or** Bidders shall quote for the following components or services on a single responsibility basis: _____ **and/or** The following components or services will be provided under the

	responsibility of the Employer
ITB 29.4(a)	Named place of destination is:_____
ITB 29.4(d)	Named place of final destination is:_____
ITB 29.6	The prices quoted by the Bidder shall be: ___
ITB 30.1	The currency(ies) of the bid shall be as follows:
ITB 31.1	The bid validity period shall be _____days.
ITB 32.1	Either Bid shall include a bid security (issued by bank or surety); Or Bid shall include a "Bid-Securing Declaration" The amount and currency of the bid security shall be _____
ITB 32.10	If the Bidder incurs any of the actions prescribed in subparagraphs (a) or (b) of this provision, the Borrower will declare the Bidder ineligible to be awarded contracts by the Employer for a period of _____ years.
ITB 32.3 (d)	Other types of acceptable securities: _____
ITB 33.1	In addition to the original of the bid, the number of copies is: _____
ITB 33.2	The written confirmation of authorization to sign on behalf of the Bidder shall consist of: _____
E2. Second Stage Bids: Submission and Opening	
ITB 34.1	Bidders _____ have the option of submitting their bids electronically.
ITB 34.1 (b)	If bidders shall have the option of submitting their bids electronically, the electronic bidding submission procedures shall be:_____
ITB 38.1	If electronic bid submission is permitted in accordance with ITB 34.1, the specific bid opening procedures shall be_____
E2. Second Stage Bids: Evaluation and Comparison	
ITB 45.1	The currency(ies) of the Bid shall be converted into a single currency as follows: _____ The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: _____ The source of exchange rate shall be: _____

	The date for the exchange rate shall be: _____

Section III. Evaluation and Qualification Criteria (Following Prequalification)

This Section contains all the criteria that the Employer shall use to evaluate bids and qualify Bidders. In accordance with ITB 23, ITB 47 and ITB 49, no other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.

First Stage Technical Proposals

1. Evaluation

In addition to the criteria listed in ITB 23.1 (a) – (c) the following factors shall apply:

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2. Qualification

2.1 Update of Information

The Bidder and any subcontractors shall meet or continue to meet the criteria used at the time of prequalification.

2.2 Financial Resources

Using the relevant Form No FIN 3.3 in Section IV, Bidding Forms, the Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet:

(i) the following cash-flow requirement:

……

and

(ii) the overall cash flow requirements for this contract and its current works commitment.

2.3 Personnel

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

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

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

2.4 Equipment

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

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

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

2.5 Subcontractors/Manufacturers

Subcontractors/manufacturers for major items of supply or services identified in the prequalification document must meet or continue to meet the minimum criteria specified therein for each item.

Subcontractors for the following additional major items of supply or services must meet the following minimum criteria, herein listed for that item:

Item No.	Description of Item	Minimum Criteria to be met
1		
2		
3		
…		

Failure to comply with this requirement will result in rejection of the subcontractor.

In the case of a Bidder who offers to supply and/or install plant and equipment under the contract that the Bidder did not manufacture or otherwise produce and/or install, the Bidder shall provide the manufacturer's authorization, using the form provided in Section IV, showing that the Bidder has been duly authorized by the manufacturer or producer of the related plant and equipment or component to supply and/or install that item in the Employer's country. The Bidder is responsible for ensuring that the manufacturer or producer complies with the requirements of ITB 4 and 5 and meets the minimum criteria listed above for that item.

Second Stage Bids

1. Evaluation

1.1 Economic Evaluation

The following factors and methods will apply under ITB 47.3(e):

(In addition to the criteria listed in ITB 47.3 (a) – (d) the following factors shall apply:

(a) Time Schedule:

Time to complete the Plant and Installation Services from the effective date specified in Article 3 of the Contract Agreement for determining time for completion of pre-commissioning activities is: _____. No credit will be given for earlier completion. **or**

Time to complete the Plant and Installation Services from the effective date specified in Article 3 of the Contract Agreement for determining time for completion of pre-commissioning activities shall be between _____ minimum and _____ maximum. The adjustment rate in the event of completion beyond the minimum period shall be _____ for each week of delay from that minimum period. No credit will be given for completion earlier than the minimum designated period. Bids offering a completion date beyond the maximum designated period shall be rejected.

(b) Operating and Maintenance Costs

Since the operating and maintenance costs of the facilities being procured form a major part of the life cycle cost of the facilities, these costs will be evaluated according to the principles given hereafter, including the cost of spare parts for the initial period of operation stated below and based on prices furnished by each Bidder in Price Schedule Nos. 1 and 2, as well as on past experience of the Employer or other Employers similarly placed. Such costs shall be added to the bid price for evaluation.

Option 1: The operating and maintenance costs factors for calculation of the life cycle cost are:

(i) number of years for life cycle: _____

(ii) operating costs: _____

(iii) maintenance costs, including the cost of spare parts for the initial period of operation,

(iv) rate, in percent, to be used to discount to present value all annual future costs calculated under (ii) and (iii) above for the period specified in (i)

or Option 2:

Reference to the methodology specified in the Specification or elsewhere in the bidding documents

The price of recommended spare parts quoted in Price Schedule No. 6 shall not be considered for evaluation.

Functional Guarantees of the Plant and Installation Services

For the purposes of evaluation, for each percentage point in performance or efficiency below the norm specified in the Specification but above the minimum acceptable levels also specified there, an adjustment of _____ will be added to the tender price.

(c) Work, services, facilities, etc., to be provided by the Employer

Where bids include the undertaking of work or the provision of services or facilities by the Employer in excess of the provisions allowed for in the bidding document, the Employer shall assess the costs of such additional work, services and/or facilities during the duration of the contract. Such costs shall be added to the bid price for evaluation.

(d) Specific additional criteria

The following additional criteria will be used in the evaluation:

_____

The relevant evaluation method shall be detailed below and/or in the Specification:

_____

_____

Any adjustments in price that result from the above procedures shall be added, for purposes of comparative evaluation only, to arrive at an "Evaluated Bid Price." Bid prices quoted by bidders shall remain unaltered.

Section III. Evaluation and Qualification Criteria (Without Prequalification)

This Section contains all the criteria that the Employer shall use to evaluate bids and qualify Bidders. In accordance with ITB 23, ITB 47 and ITB 49, no other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.

First Stage Technical Proposals

1. Evaluation

In addition to the criteria listed in ITB 23.1 (a) – (c) the following factors shall apply:

2. Qualification

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

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

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

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

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

Factor	2.4 Experience					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium, or Association			
			All partners combined	Each partner	At least one partner	
2.4.2 Specific Experience	b) For the above or other contracts executed during the period stipulated in 2.4.2(a) above, a minimum construction experience in the following key activities: **1. …..**	Must meet requirements	Must meet requirements	N / A	Must meet requirements	Form EXP-2.4.2(b)

2.5 Personnel

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

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

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

2.6 Equipment

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

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

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

2.7 Subcontractors/manufacturers for the following major items of supply or services must meet the following minimum criteria, herein listed for that item:

Item No.	Description of Item	Minimum Criteria to be met
1		
2		
3		
4		

Failure to comply with this requirement will result in rejection of the subcontractor.

In the case of a Bidder who offers to supply and install major items of supply under the contract that the Bidder did not manufacture or otherwise produce, the Bidder shall provide the

manufacturer's authorization, using the form provided in Section IV, showing that the Bidder has been duly authorized by the manufacturer or producer of the related plant and equipment or component to supply and install that item in the Employer's country. The Bidder is responsible for ensuring that the manufacturer or producer complies with the requirements of ITB 4 and 5 and meets the minimum criteria listed above for that item.

Second Stage Bids

1. Evaluation

1.1 Economic Evaluation

The following factors and methods will apply under ITB 47.3(e):

(In addition to the criteria listed in ITB 47.3 (a) – (d) the following factors shall apply:)

(a) Time Schedule:

Time to complete the Plant and Installation Services from the effective date specified in Article 3 of the Contract Agreement for determining time for completion of pre-commissioning activities is: _____. No credit will be given for earlier completion.

or

Time to complete the Plant and Installation Services from the effective date specified in Article 3 of the Contract Agreement for determining time for completion of pre-commissioning activities shall be between _____ minimum and _____ maximum. The adjustment rate in the event of completion beyond the minimum period shall be _____ for each week of delay from that minimum period. No credit will be given for completion earlier than the minimum designated period. Bids offering a completion date beyond the maximum designated period shall be rejected.

(b) Operating and Maintenance Costs

Since the operating and maintenance costs of the facilities being procured form a major part of the life cycle cost of the facilities, these costs will be evaluated according to the principles given hereafter, including the cost of spare parts for the initial period of operation stated below and based on prices furnished by each Bidder in Price Schedule Nos. 1 and 2, as well as on past experience of the Employer or other Employers similarly placed. Such costs shall be added to the bid price for evaluation.

Option 1: The operating and maintenance costs factors for calculation of the life cycle cost are:

(i) number of years for life cycle _____

(ii) operating costs _____,

(iii) maintenance costs, including the cost of spare parts for the initial period of operation, and

(iv) rate, in percent, to be used to discount to present value all annual future costs calculated under (ii) and (iii) above for the period specified in (i).

or Option 2:

Reference to the methodology specified in the Specification or elsewhere in the bidding documents

The price of recommended spare parts quoted in Price Schedule No. 6 shall not be considered for evaluation.

(c) Functional Guarantees of the facilities

For the purposes of evaluation, for each percentage point in performance or efficiency below the norm specified in the technical Specifications but above the minimum acceptable levels also specified there, an adjustment of *[amount in the currency of bid evaluation]* will be added to the tender price.

(d) Work, services, facilities, etc., to be provided by the Employer

Where bids include the undertaking of work or the provision of services or facilities by the Employer in excess of the provisions allowed for in the bidding document, the Employer shall assess the costs of such additional work, services and/or facilities during the duration of the contract. Such costs shall be added to the bid price for evaluation.

(e) Specific additional criteria

The following additional criteria will be used in the evaluation:

_____

The relevant evaluation method shall be detailed below and/or in the Specification:

_____

_____

Any adjustments in price that result from the above procedures shall be added, for purposes of comparative evaluation only, to arrive at an "Evaluated Bid Price." Bid prices quoted by bidders shall remain unaltered.

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Letter of Bid

Letter of Bid – Single Stage Bidding

Date: _____
ICB No.: _____
Invitation for Bid No.: _____

To: _____

We, the undersigned, declare that:

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

(b) We offer to _____, in conformity with the Bidding Document, the following Plant and Installation Services: _____

(c) The price of our Bid, excluding any discounts offered in item (d) below is the sum of: _____, (_____), **and** _____, (_____)

(d) The discounts offered and the methodology for their application are: _____
_____
_____
_____
_____;

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

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

(g) We, including any subcontractors or manufacturers for any part of the contract , have or will have nationalities from eligible countries, in accordance with ITB-4.2;

(h) We, including any subcontractors or manufacturers for any part of the contract, do not have any conflict of interest in accordance with ITB-4.3;

(i) We are not submitting more than one bid in this bidding process as a Bidder, either individually or as a partner in a joint venture, in accordance with ITB-4.3, except for alternative offers permitted under ITB Clause 13;

(j) We, including any of our subcontractors or manufacturers for any part of the contract, have not been declared ineligible by the Bank, under the Employer's country laws or official regulations or by an act of compliance with a decision of the United Nations Security Council;

(k) We are not a government owned entity/ We are a government owned entity but meet the requirements of ITB-4.5;[10]

(l) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:

Name of Recipient	Address	Reason	Amount

(If none has been paid or is to be paid, indicate "none.")

(m) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed; and

(n) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

Name _____ In the capacity of _____

Signed _____

Duly authorized to sign the bid for and on behalf of _____

Dated on _____ day of _____, _____

[10] *Bidder to use as appropriate*

Letter of Bid – Two Stage Bidding, First Stage Bid

Date: _____
ICB No.: _____
Invitation for Bid No.: _____

To: _____

We, the undersigned, declare that:

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

(b) We offer to _____, in conformity with the Bidding Document, the following Plant and Installation Services: _____

(c) We, including any subcontractors or manufacturers for any part of the contract , have or will have nationalities from eligible countries, in accordance with ITB-4.2;

(d) We, including any subcontractors or manufacturers for any part of the contract, do not have any conflict of interest in accordance with ITB-4.3;

(e) We are not submitting more than one bid in this bidding process as a Bidder, either individually or as a partner in a joint venture, in accordance with ITB-4.3, except for alternative offers permitted under ITB Clause 13;

(f) We, including any of our subcontractors or manufacturers for any part of the contract, have not been declared ineligible by the Bank, under the Employer's country laws or official regulations or by an act of compliance with a decision of the United Nations Security Council;

(g) We are not a government owned entity/ We are a government owned entity but meet the requirements of ITB-4.5;[11]

(h) We further undertake, if invited to do so by you, and at our own cost, to attend a clarification meeting at a place of your choice, for the purpose of reviewing our First Stage Bid and duly noting all amendments and additions thereto, and noting omissions therefrom that you may require.

(i) We further undertake, upon receiving your written invitation, to proceed with the preparation of our Second Stage Bid, updating our First Stage Bid in accordance with

[11] *Bidder to use as appropriate*

the requirements from the Memorandum of the clarification meeting, and completing our Second Stage bid for supplying the Plant and Installation Services.

(j) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:

Name of Recipient	Address	Reason	Amount

(If none has been paid or is to be paid, indicate "none.")

Name _____ In the capacity of _____

Signed _____

Duly authorized to sign the bid for and on behalf of _____

Dated on _____ day of _____, _____

Letter of Bid – Two Stage Bidding, Second Stage Bid

Date: _____
ICB No.: _____
Invitation for Bid No.: _____

To: _____

We, the undersigned, declare that:

(a) We have examined and have no reservations to the Bidding Document, including Addenda issued in accordance with Instructions to Bidders (ITB) 8, and your requirements incorporated in the Memorandum of the clarification meeting held between us on *[date]*, _____;

(b) We offer to _____, in conformity with the Bidding Document the following Plant and Installation Services: _____
_____;

(c) The price of our Bid, excluding any discounts offered in item (d) below is the sum of: _____, *(_____)*, **and** _____, *(_____)*.

The discounts offered and the methodology for their application are: _____;

(d) Our bid shall be valid for a period of _____ days from the date fixed for the submission deadline for the Second Stage bids as stipulated in the Letter if Invitation to submit a Second Stage Bid, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

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

(f) We, including any subcontractors or manufacturers for any part of the contract , have or will have nationalities from eligible countries, in accordance with ITB-4.2;

(g) We, including any subcontractors or manufacturers for any part of the contract, do not have any conflict of interest in accordance with ITB-4.3;

(h) We are not submitting more than one bid in this bidding process as a Bidder, either individually or as a partner in a joint venture, in accordance with ITB-4.3, except for alternative offers permitted under ITB Clause 13;

(i) We, including any of our subcontractors or manufacturers for any part of the contract, have not been declared ineligible by the Bank, under the Employer's country laws or

official regulations or by an act of compliance with a decision of the United Nations Security Council;

(j) We are not a government owned entity/ We are a government owned entity but meet the requirements of ITB-4.5;[12]

(k) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:

Name of Recipient	Address	Reason	Amount

(If none has been paid or is to be paid, indicate "none.")

(l) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed; and

(m) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

Name _____ In the capacity of _____

Signed _____

Duly authorized to sign the bid for and on behalf of _____

Dated on _____ day of _____, _____

[12] *Bidder to use as appropriate*

Schedules of Rates and Prices

Schedule No. 1. Plant and Mandatory Spare Parts Supplied from Abroad

Item	Description	Code[1]	Qty.	Unit Price[2]		Total Price[2]
					CIP	
			(1)	*(2)*	*(3)*	*(1) x (3)*
TOTAL (to Schedule No. 5. Grand Summary)						

Name of Bidder _____

Signature of Bidder _____

[1] Bidders shall enter a code representing the country of origin of all imported plant and equipment.
[2] Specify currency. Create and use as many columns for Unit Price and Total Price as there are currencies.

Country of Origin Declaration Form

Item	Description	Code	Country

Schedule No. 2. Plant and Mandatory Spare Parts Supplied from Within the Employer's Country

Item	Description	Qty. *(1)*	EXW Unit Price[1] *(2)*	EXW Total Price[1] *(1) x (2)*
TOTAL (to Schedule No. 5. Grand Summary)				

Name of Bidder _____

Signature of Bidder _____

[1] Specify currency in accordance with specifications in Bid Data Sheet under ITB 18.1 in Single Stage Bid, or ITB 30.1 in Two Stage Bid.

Schedule No. 3. Design Services

Item	Description	Qty.	Unit Price[1]		Total Price[1]
			Local Currency Portion	Foreign Currency Portion	
		(1)	*(2)*	*(optional)*	*(1) x (2)*
TOTAL (to Schedule No. 5. Grand Summary)					

Name of Bidder _____

Signature of Bidder _____

[1] Specify currency in accordance with specifications in Bid Data Sheet under ITB 18.1 in Single Stage Bid, or ITB 30.1 in Two Stage Bid.

Schedule No. 4. Installation and Other Services

Item	Description	Qty.	Unit Price[1]		Total Price[1]	
			Foreign Currency Portion	Local Currency Portion	Foreign	Local
		(1)	*(2)*	*(3)*	*(1) x (2)*	*(1) x (3)*
TOTAL (to Schedule No. 5. Grand Summary)						

Name of Bidder _____

Signature of Bidder _____

[1] Specify currency in accordance with specifications in Bid Data Sheet under ITB 18.1 in Single Stage Bid, or ITB 30.1 in Two Stage Bid.

Schedule No. 5. Grand Summary

Item	Description	Total Price[1]	
		Foreign	Local
	Total Schedule No. 1. Plant, and Mandatory Spare Parts Supplied from Abroad		
	Total Schedule No. 2. Plant, and Mandatory Spare Parts Supplied from Within the Employer's Country		
	Total Schedule No. 3. Design Services		
	Total Schedule No. 4. Installation and Other Services		
	TOTAL (to Bid Form)		

Name of Bidder _____

Signature of Bidder _____

[1] Specify currency in accordance with specifications in Bid Data Sheet under ITB 18.1 in Single Stage Bid, or ITB 30.1 in Two Stage Bid. Create and use as many columns for Foreign Currency requirement as there are foreign currencies

Schedule No. 6. Recommended Spare Parts

Item	Description	Qty. *(1)*	Unit Price		Total Price *(1) x (2) or(3)*
			CIF or CIP (foreign parts) *(2)*	EXW (local parts) *(3)*	

Price Adjustment

Where the Contract Period (excluding the Defects Liability Period) exceeds eighteen (18) months, it is normal procedure that prices payable to the Contractor shall be subject to adjustment during the performance of the Contract to reflect changes occurring in the cost of labor and material components. In such cases the bidding documents shall include in this form a formula of the following general type, pursuant to PC Sub-Clause 11.2.

Where Contracts are of a shorter duration than eighteen (18) months or in cases where there is to be no Price Adjustment, the following provision shall not be included. Instead, it shall be indicated under this form that the prices are to remain firm and fixed for the duration of the Contract.

Sample Price Adjustment Formula

Prices payable to the Contractor, in accordance with the Contract, shall be subject to adjustment during performance of the Contract to reflect changes in the cost of labor and material components, in accordance with the following formula:

$$P_1 = P_0 \times (a + b\frac{L_1}{L_0} + c\frac{M_1}{M_0}) - P_0$$

in which:

P_1 = adjustment amount payable to the Contractor

P_0 = Contract price (base price)

a = percentage of fixed element in Contract price (a = _ %)

b = percentage of labor component in Contract price (b = _%)

c = percentage of material and equipment component in Contract price (c = _%)

L_0, L_1 = labor indices applicable to the appropriate industry in the country of origin on the base date and the date for adjustment, respectively

M_0, M_1= material and equipment indices in the country of origin on the base date and the date for adjustment, respectively

N.B. a+b+c= 100%.

Conditions Applicable To Price Adjustment

The Bidder shall indicate the source of labor and materials indices and the base date indices in its bid.

Item	Source of Indices Used	Base Date Indices

The base date shall be the date thirty (30) days prior to the Bid closing date.

The date of adjustment shall be the mid-point of the period of manufacture or installation of component or Plant.

The following conditions shall apply:

(a) No price increase will be allowed beyond the original delivery date unless covered by an extension of time awarded by the Employer under the terms of the Contract. No price increase will be allowed for periods of delay for which the Contractor is responsible. The Employer will, however, be entitled to any price decrease occurring during such periods of delay.

(b) If the currency in which the Contract price, P_0, is expressed is different from the currency of the country of origin of the labor and/or materials indices, a correction factor will be applied to avoid incorrect adjustments of the Contract price. The correction factor shall correspond to the ratio of exchange rates between the two currencies on the base date and the date for adjustment as defined above.

(c) No price adjustment shall be payable on the portion of the Contract price paid to the Contractor as an advance payment.

Technical Proposal

- Site Organization
- Method Statement
- Mobilization Schedule
- Construction Schedule
- Plant
- Contractor’s Equipment
- Personnel
- Proposed Subcontractors for Major Items of Plant and Installation Services
- Others

Site Organization

Method Statement

Mobilization Schedule

Construction Schedule

Plant

Contractor's Equipment

Form EQU

The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key Contractor's equipment listed in Section III, Evaluation and Qualification Criteria. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder.

Item of equipment		
Equipment information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current status	Current location	
	Details of current commitments	
Source	Indicate source of the equipment ☐ Owned ☐ Rented ☐ Leased ☐ Specially manufactured	

Omit the following information for equipment owned by the Bidder.

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

Form FUNC

The Bidder shall copy in the left column of the table below, the identification of each functional guarantee required in the Specification and stated by the Employer in para. 1.2 (c) of Section III. Evaluation and Qualification Criteria, and in the right column, provide the corresponding value for each functional guarantee of the proposed plant and equipment.

Required Functional Guarantee	**Value of Functional Guarantee of the Proposed Plant and Equipment**
1.	
2.	
3.	
…	

Personnel

Form PER -1

Proposed Personnel

Bidders should provide the names of suitably qualified personnel to meet the specified requirements stated in Section III. The data on their experience should be supplied using the Form below for each candidate.

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

*As listed in Section III.

Form PER-2

Resume of Proposed Personnel

Name of Bidder

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

Summarize professional experience over the last 20 years, in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

From	To	Company / Project / Position / Relevant technical and management experience

Proposed Subcontractors for Major Items of Plant and Installation Services

A list of major items of Plant and Installation Services is provided below.

The following Subcontractors and/or manufacturers are proposed for carrying out the item of the facilities indicated. Bidders are free to propose more than one for each item

Major Items of Plant and Installation Services	Proposed Subcontractors/Manufacturers	Nationality

Others - Time Schedule

(to be used by Bidder when alternative Time for **Completion is invited in ITB 13.2 – Single Stage Bidding only)**

Others – Commercial or contractual aspects of the bidding documents that the Bidder would like to discuss with the Employer during clarifications (to be used by Bidder – Two Stage Bidding only)

Form ELI 1.1

Bidder Information Sheet

Date: _____
ICB No.: _____
Invitation for Bid No.: _____
Page _____ of _____ pages

1. Bidder's Legal Name
2. In case of JVA, legal name of each party:
3. Bidder's actual or intended Country of Registration:
4. Bidder's Year of Registration:
5. Bidder's Legal Address in Country of Registration:
6. Bidder's Authorized Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: ☐ Articles of Incorporation or Registration of firm named in 1, above, in accordance with ITB Sub-Clauses 4.1 and 4.2. ☐ In case of JVA, letter of intent to form JVA including a draft agreement, or JVA agreement, in accordance with ITB Sub-Clauses 4.1 and 11.1(i) Single Stage Bidding or 11.1(g) Two Stage Bidding. ☐ In case of government owned entity from the Employer's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law, in accordance with ITB Sub-Clause 4.5.

Please note that a written authorization needs to be attached to this sheet as required by ITB 21.2 Single Stage Bidding) or ITB 17.2 Two Stage Bidding

Form ELI 1.2

Party to JVA Information Sheet

Date: _____
ICB No.: _____
Invitation for Bid No.:_____
Page _____ of_ _____ pages

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

Form CON – 2

Historical Contract Non-Performance

In case a prequalification process was conducted this form should be used only if the information submitted at the time of prequalification requires updating

Bidder's Legal Name: _____ Date: _____

JVA Partner Legal Name: _____ _____

ICB No.: _____

Page _____ of _____ pages

Non-Performing Contracts in accordance with Section III, Evaluation Criteria			
☐ Contract non-performance did not occur during the stipulated period, in accordance with Sub- Factor 2.2.1 of Section III, Evaluation Criteria			
Pending Litigation, in accordance with Section III, Evaluation Criteria			
☐ No pending litigation in accordance with Sub-Factor 2.2.2 of Section III, Evaluation Criteria ☐ Pending litigation in accordance with Sub-Factor 2.2.2 of Section III, Evaluation Criteria, as indicated below			
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, US$ equivalent)
_____	_____	Contract Identification: Name of Employer: Address of Employer: Matter in dispute:	_____
_____	_____	Contract Identification: Name of Employer: Address of Employer: Matter in dispute:	_____

Form CCC

Current Contract Commitments / Works in Progress

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

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

Form FIN – 3.1

Financial Situation

Historical Financial Performance

Bidder's Legal Name: _____ Date: _____
JVA Partner Legal Name: _____ ICB No.: _____
Page _____ of _____ pages

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

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

□ Attached are copies of financial statements (balance sheets, including all related notes, and income statements) for the years required above complying with the following conditions:

(a) Must reflect the financial situation of the Bidder or partner to a JVA, and not sister or parent companies

(b) Historic financial statements must be audited by a certified accountant

(c) Historic financial statements must be complete, including all notes to the financial statements

(d) Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted)

Form FIN – 3.2

Average Annual Turnover

Bidder's Legal Name: _____ Date: _____
JVA Partner Legal Name: _____ ICB No.: _____
Page _____ of _____ pages

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

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

Form FIN 3.3

Financial Resources

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

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

Form EXP 2.4.1

Experience - General Experience

Bidder's Legal Name: _____ Date: _____
JVA Partner Legal Name: _____ICB No.: _____
Page _____ of _____ pages

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

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

Form EXP – 2.4.2(a)

Specific Experience

Bidder's Legal Name: _____ Date: _____
JVA Partner Legal Name: _____ ICB No.: _____

Page _____ of _____ pages

Similar Contract Number: ___ of ___ required.	**Information**		
Contract Identification	_____		
Award date Completion date	_____ _____		
Role in Contract	☐ Contractor	☐ Management Contractor	☐ Subcontractor
Total contract amount	_____		US$_____
If partner in a JVA or subcontractor, specify participation of total contract amount	_____%	_____	US$_____
Employer's Name:	_____		
Address: Telephone/fax number: E-mail:	_____ _____ _____ _____		

Form EXP – 2.4.2(a) (cont.)

Specific Experience (cont.)

Bidder's Legal Name: _____ Page _____ of _____ pages
JVA Partner Legal Name: _____

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

Form EXP – 2.4.2(b)

Specific Experience in Key Activities

Bidder's Legal Name: _____ Date: _____
JVA Partner Legal Name: _____ ICB No.: _____
Subcontractor's Legal Name: _____ Page _____ of _____ pages

	Information		
Contract Identification	_____		
Award date Completion date	_____ _____		
Role in Contract	☐ Contractor	☐ Management Contractor	☐ Subcontractor
Total contract amount	_____		US$_____
If partner in a JVA or subcontractor, specify participation of total contract amount	_____%	_____	US$_____
Employer's Name:	_____		
Address: Telephone/fax number: E-mail:	_____ _____ _____ _____		

Form EXP – 2.4.2 (b)(cont.)

Specific Experience in Key Activities (cont.)

Bidder's Legal Name: _____ Page _____ of _____ pages
JVA Partner Legal Name: _____
Subcontractor's Legal Name: _____

	Information
Description of the key activities in accordance with Sub-Factor 2.4.2b) of Section III:	

Form of Bid Security (Bank Guarantee)

_____

Beneficiary: _____

Date: _____

BID GUARANTEE No.: _____

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

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

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

(a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Form of Bid; or

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

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

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

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

_____

[signature(s)]

Form of Bid Security (Bid Bond)

BOND NO. _____

BY THIS BOND _____ as Principal (hereinafter called "the Principal"), and _____, **authorized to transact business in** _____, as Surety (hereinafter called "the Surety"), are held and firmly bound unto _____ as Obligee (hereinafter called "the Employer") in the sum of _____[13] (_____), for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has submitted a written Bid to the Employer dated the ___ day of _____, 20__, for the construction of _____ (hereinafter called the "Bid").

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

(a) withdraws its Bid during the period of bid validity specified in the Form of Bid; or

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

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

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

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

Principal: _____	Surety: _____ Corporate Seal (where appropriate)
_____ *(Signature)*	_____ *(Signature)*
(Printed name and title)	*(Printed name and title)*

[13] The amount of the Bond shall be denominated in the currency of the *Employer*'s country or the equivalent amount in a freely convertible currency.

Form of Bid-Securing Declaration

Date: _____
Bid No.: _____
Alternative No.: _____

To: _____

We, the undersigned, declare that:

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

We accept that we will automatically be suspended from being eligible for bidding in any contract with the Borrower for the period of time of _____, starting on _____, if we are in breach of our obligation(s) under the bid conditions, because we:

(a) have withdrawn our Bid during the period of bid validity specified in the Letter of Bid; or

(b) having been notified of the acceptance of our Bid by the Employer during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITB.

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

Signed: _____
In the capacity of _____

Name: _____

Duly authorized to sign the bid for and on behalf of: _____

Dated on _____ day of _____, _____
_____

Corporate Seal (where appropriate)

Manufacturer's Authorization

Date: _____
ICB No.: _____

To: _____

WHEREAS

We _____, who are official manufacturers of _____, having factories at _____, do hereby authorize _____ to submit a bid the purpose of which is to provide the following goods, manufactured by us _____, and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 27 of the General Conditions, with respect to the goods offered by the above firm.

Signed: _____

Name: _____

Title:_____

Duly authorized to sign this Authorization on behalf of:
_____

Dated on _____ day of _____, _____

Section V. Eligible Countries

Insert header

(Institution Specific)

PART 2 –Employer's Requirements

Section VI. Employer's Requirements

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Scope of Supply of Plant and Installation Services by the Contractor

Specification

Forms and Procedures

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Form of Completion Certificate

Date: _____
Loan/Credit N^{o}: _____
IFB N^{o}: _____

_____

To: _____

Dear Ladies and/or Gentlemen,

Pursuant to GC Clause 24 (Completion of the Facilities) of the General Conditions of the Contract entered into between yourselves and the Employer dated _____, relating to the _____, we hereby notify you that the following part(s) of the Facilities was (were) complete on the date specified below, and that, in accordance with the terms of the Contract, the Employer hereby takes over the said part(s) of the Facilities, together with the responsibility for care and custody and the risk of loss thereof on the date mentioned below.

1. Description of the Facilities or part thereof: _____

2. Date of Completion: _____

However, you are required to complete the outstanding items listed in the attachment hereto as soon as practicable.

This letter does not relieve you of your obligation to complete the execution of the Facilities in accordance with the Contract nor of your obligations during the Defect Liability Period.

Very truly yours,

_____
Title
(Project Manager)

Form of Operational Acceptance Certificate

Date: _____
Loan/Credit N^{o}: _____
IFB N^{o}: _____

_____

To: _____

Dear Ladies and/or Gentlemen,

Pursuant to GC Sub-Clause 25.3 (Operational Acceptance) of the General Conditions of the Contract entered into between yourselves and the Employer dated _____, relating to the _____, we hereby notify you that the Functional Guarantees of the following part(s) of the Facilities were satisfactorily attained on the date specified below.

1. Description of the Facilities or part thereof: _____

2. Date of Operational Acceptance: _____

This letter does not relieve you of your obligation to complete the execution of the Facilities in accordance with the Contract nor of your obligations during the Defect Liability Period.

Very truly yours,

_____
Title
(Project Manager)

Change Order Procedure and Forms

Date: _____
Loan/Credit N°: _____
IFB N°: _____

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1. General
2. Change Order Log
3. References for Changes

ANNEXES

Annex 1 Request for Change Proposal
Annex 2 Estimate for Change Proposal
Annex 3 Acceptance of Estimate
Annex 4 Change Proposal
Annex 5 Change Order
Annex 6 Pending Agreement Change Order
Annex 7 Application for Change Proposal

Change Order Procedure

1. General

This section provides samples of procedures and forms for implementing changes in the Facilities during the performance of the Contract in accordance with GC Clause 39 (Change in the Facilities) of the General Conditions.

2. Change Order Log

The Contractor shall keep an up-to-date Change Order Log to show the current status of Requests for Change and Changes authorized or pending, as Annex 8. Entries of the Changes in the Change Order Log shall be made to ensure that the log is up-to-date. The Contractor shall attach a copy of the current Change Order Log in the monthly progress report to be submitted to the Employer.

3. References for Changes

(1) Request for Change as referred to in GC Clause 39 shall be serially numbered CR-X-nnn.

(2) Estimate for Change Proposal as referred to in GC Clause 39 shall be serially numbered CN-X-nnn.

(3) Acceptance of Estimate as referred to in GC Clause 39 shall be serially numbered CA-X-nnn.

(4) Change Proposal as referred to in GC Clause 39 shall be serially numbered CP-X-nnn.

(5) Change Order as referred to in GC Clause 39 shall be serially numbered CO-X-nnn.

Note: (a) Requests for Change issued from the Employer's Home Office and the Site representatives of the Employer shall have the following respective references:

Home Office	CR-H-nnn
Site	CR-S-nnn

(b) The above number "nnn" is the same for Request for Change, Estimate for Change Proposal, Acceptance of Estimate, Change Proposal and Change Order.

Annex 1. Request for Change Proposal

(Employer's Letterhead)

To: _____ Date: _____

Attention: _____

Contract Name: _____
Contract Number: _____

Dear Ladies and/or Gentlemen:

With reference to the captioned Contract, you are requested to prepare and submit a Change Proposal for the Change noted below in accordance with the following instructions within _____ days of the date of this letter _____.

1. Title of Change: _____

2. Change Request No. _____

3. Originator of Change: Employer: _____
   Contractor (by Application for Change Proposal No. _____[14]:

4. Brief Description of Change: _____

5. Facilities and/or Item No. of equipment related to the requested Change: _____

6. Reference drawings and/or technical documents for the request of Change:

   Drawing No./Document No. Description

7. Detailed conditions or special requirements on the requested Change: _____

8. General Terms and Conditions:

   (a) Please submit your estimate to us showing what effect the requested Change will have on the Contract Price.

   (b) Your estimate shall include your claim for the additional time, if any, for completion of the requested Change.

_____

(c) If you have any opinion negative to the adoption of the requested Change in connection with the conformability to the other provisions of the Contract or the safety of the Plant or Facilities, please inform us of your opinion in your proposal of revised provisions.

(d) Any increase or decrease in the work of the Contractor relating to the services of its personnel shall be calculated.

(e) You shall not proceed with the execution of the work for the requested Change until we have accepted and confirmed the amount and nature in writing.

_____

(Employer's Name)

_____

(Signature)

_____

(Name of signatory)

_____

(Title of signatory)

Annex 2. Estimate for Change Proposal

(Contractor's Letterhead)

To: _____ Date: _____

Attention: _____

Contract Name: _____
Contract Number: _____

Dear Ladies and/or Gentlemen:

With reference to your Request for Change Proposal, we are pleased to notify you of the approximate cost of preparing the below-referenced Change Proposal in accordance with GC Sub-Clause 39.2.1 of the General Conditions. We acknowledge that your agreement to the cost of preparing the Change Proposal, in accordance with GC Sub-Clause 39.2.2, is required before estimating the cost for change work.

1. Title of Change: _____

2. Change Request No./Rev.: _____

3. Brief Description of Change: _____

4. Scheduled Impact of Change: _____

5. Cost for Preparation of Change Proposal: _____[15]

(a) Engineering (Amount)

(i) Engineer _____ hrs x _____ rate/hr = _____
(ii) Draftsperson _____ hrs x _____ rate/hr = _____
Sub-total _____ hrs _____

Total Engineering Cost _____

(b) Other Cost _____

Total Cost (a) + (b) _____

[15] Costs shall be in the currencies of the Contract.

_____

(Contractor's Name)

_____

(Signature)

_____

(Name of signatory)

_____

(Title of signatory)

Annex 3. Acceptance of Estimate

(Employer's Letterhead)

To: _____ Date: _____

Attention: _____

Contract Name: _____
Contract Number: _____

Dear Ladies and/or Gentlemen:

We hereby accept your Estimate for Change Proposal and agree that you should proceed with the preparation of the Change Proposal.

1. Title of Change: _____

2. Change Request No./Rev.: _____

3. Estimate for Change Proposal No./Rev.: _____

4. Acceptance of Estimate No./Rev.: _____

5. Brief Description of Change: _____

6. Other Terms and Conditions: In the event that we decide not to order the Change accepted, you shall be entitled to compensation for the cost of preparation of Change Proposal described in your Estimate for Change Proposal mentioned in para. 3 above in accordance with GC Clause 39 of the General Conditions.

_____
(Employer's Name)

_____
(Signature)

_____
(Name and Title of signatory)

Annex 4. Change Proposal

(Contractor's Letterhead)

To: _____ Date: _____

Attention: _____

Contract Name: _____
Contract Number: _____

Dear Ladies and/or Gentlemen:

In response to your Request for Change Proposal No. _____, we hereby submit our proposal as follows:

1. Title of Change: _____

2. Change Proposal No./Rev.: _____

3. Originator of Change: Employer: *[*_____
Contractor: _____

4. Brief Description of Change: _____

5. Reasons for Change: _____

6. Facilities and/or Item No. of Equipment related to the requested Change: _____

7. Reference drawings and/or technical documents for the requested Change:

Drawing/Document No.	Description

8. Estimate of increase/decrease to the Contract Price resulting from Change Proposal:[16]

	(Amount)
(a) Direct material	_____
(b) Major construction equipment	_____

[16] Costs shall be in the currencies of the Contract.

(c) Direct field labor (Total ____ hrs) _____

(d) Subcontracts _____

(e) Indirect material and labor _____

(f) Site supervision _____

(g) Head office technical staff salaries

Process engineer	_____ hrs @	_____ rate/hr	_____
Project engineer	_____ hrs @	_____ rate/hr	_____
Equipment engineer	_____ hrs @	_____ rate/hr	_____
Procurement	_____ hrs @	_____ rate/hr	_____
Draftsperson	_____ hrs @	_____ rate/hr	_____
Total	_____ hrs		_____

(h) Extraordinary costs (computer, travel, etc.) _____

(i) Fee for general administration, _____ % of Items _____

(j) Taxes and customs duties _____

Total lump sum cost of Change Proposal _____
(Sum of items (a) to (j))

Cost to prepare Estimate for Change Proposal _____
(Amount payable if Change is not accepted)

9. Additional time for Completion required due to Change Proposal

10. Effect on the Functional Guarantees

11. Effect on the other terms and conditions of the Contract

12. Validity of this Proposal: within *[Number]* days after receipt of this Proposal by the Employer

13. Other terms and conditions of this Change Proposal:

(a) You are requested to notify us of your acceptance, comments or rejection of this detailed Change Proposal within _____ days from your receipt of this Proposal.

(b) The amount of any increase and/or decrease shall be taken into account in the adjustment of the Contract Price.

(c) Contractor's cost for preparation of this Change Proposal:[2]

_____

(Contractor's Name)

_____

(Signature)

_____

(Name of signatory)

_____

(Title of signatory)

[2] Specify where necessary.

Annex 5. Change Order

(Employer's Letterhead)

To: _____ Date: _____

Attention: _____

Contract Name: _____
Contract Number: _____

Dear Ladies and/or Gentlemen:

We approve the Change Order for the work specified in the Change Proposal (No. _____), and agree to adjust the Contract Price, Time for Completion and/or other conditions of the Contract in accordance with GC Clause 39 of the General Conditions.

1. Title of Change: _____

2. Change Request No./Rev.: _____

3. Change Order No./Rev.: _____

4. Originator of Change: Employer: _____
   Contractor: _____

5. Authorized Price:

   Ref. No.: _____ Date: _____
   Foreign currency portion _____ plus Local currency portion _____

6. Adjustment of Time for Completion

   None Increase _____ days Decrease _____ days

7. Other effects, if any

Authorized by: _____ Date: _____
(Employer)

Accepted by: _____ Date: _____
(Contractor)

Annex 6. Pending Agreement Change Order

(Employer's Letterhead)

To: _____ Date: _____

Attention: _____

Contract Name: _____
Contract Number: *[*_____

Dear Ladies and/or Gentlemen:

We instruct you to carry out the work in the Change Order detailed below in accordance with GC Clause 39 of the General Conditions.

1. Title of Change: _____

2. Employer's Request for Change Proposal No./Rev.: _____ dated: _____

3. Contractor's Change Proposal No./Rev.: _____ dated: _____

4. Brief Description of Change: _____

5. Facilities and/or Item No. of equipment related to the requested Change: _____

6. Reference Drawings and/or technical documents for the requested Change:

Drawing/Document No.	Description

7. Adjustment of Time for Completion:

8. Other change in the Contract terms:

9. Other terms and conditions:

_____

(Employer's Name)

_____

(Signature)

_____

(Name of signatory)

_____

(Title of signatory)

Annex 7. Application for Change Proposal

(Contractor's Letterhead)

To: _____ Date: _____

Attention: _____

Contract Name: _____
Contract Number: _____

Dear Ladies and/or Gentlemen:

We hereby propose that the below-mentioned work be treated as a Change in the Facilities.

1. Title of Change: _____
2. Application for Change Proposal No./Rev.: _____ dated: _____
3. Brief Description of Change: _____
4. Reasons for Change:
5. Order of Magnitude Estimation (in the currencies of the Contract):
6. Scheduled Impact of Change:
7. Effect on Functional Guarantees, if any:
8. Appendix:

_____
(Contractor's Name)

_____
(Signature)

_____
(Name of signatory)

_____
(Title of signatory)

Drawings

Supplementary Information

PART 3 – Conditions of Contract and Contract Forms

Section VII. General Conditions (GC)

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General Conditions

Contract and Interpretation

1. Definitions 1.1 The following words and expressions shall have the meanings hereby assigned to them:

"Contract" means the Contract Agreement entered into between the Employer and the Contractor, together with the Contract Documents referred to therein; they shall constitute the Contract, and the term "the Contract" shall in all such documents be construed accordingly.

"Contract Documents" means the documents listed in Article 1.1 (Contract Documents) of the Contract Agreement (including any amendments thereto).

"GC" means the General Conditions hereof.

"PC" means the Particular Conditions.

"day" means calendar day .

"year" means 365 days.

"month" means calendar month.

"Party" means the Employer or the Contractor, as the context requires, and "Parties" means both of them.

"Employer" means the person **named as such in the PC** and includes the legal successors or permitted assigns of the Employer.

"Project Manager" means the person appointed by the Employer in the manner provided in GC Sub-Clause 17.1 (Project Manager) hereof and **named as such in the PC** to perform the duties delegated by the Employer.

"Contractor" means the person(s) whose bid to perform the Contract has been accepted by the Employer and is named as Contractor in the Contract Agreement, and includes the legal successors or permitted assigns of the Contractor.

"Contractor's Representative" means any person nominated by the Contractor and approved by the Employer in the manner provided in GC Sub-Clause 17.2 (Contractor's Representative and Construction Manager) hereof to perform the duties delegated by the Contractor.

"Construction Manager" means the person appointed by the Contractor's Representative in the manner provided in GC Sub-Clause 17.2.4.

"Subcontractor," including manufacturers, means any person to whom execution of any part of the Facilities, including preparation of any design or supply of any Plant, is sub-contracted directly or indirectly by the Contractor, and includes its legal successors or permitted assigns.

"Dispute Board" (DB) means the person or persons named as such in the PC appointed by agreement between the Employer and the Contractor to make a decision with respect to any dispute or difference between the Employer and the Contractor referred to him or her by the Parties pursuant to GC Sub-Clause 46.1 (Dispute Board) hereof.

"The Bank" means the financing institution **named in the PC.**

"Contract Price" means the sum specified in Article 2.1 (Contract Price) of the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.

"Facilities" means the Plant to be supplied and installed, as well as all the Installation Services to be carried out by the Contractor under the Contract.

"Plant" means permanent plant, equipment, machinery, apparatus, materials, articles and things of all kinds to be provided and incorporated in the Facilities by the Contractor under the Contract (including the spare parts to be supplied by the Contractor under GC Sub-Clause 7.3 hereof), but does not include Contractor's Equipment.

"Installation Services" means all those services ancillary to the supply of the Plant for the Facilities, to be provided by the Contractor under the Contract, such as transportation and provision of marine or other similar insurance, inspection, expediting, site preparation works (including the provision and use of Contractor's Equipment and the supply of all construction materials required), installation, testing, precommissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training, etc… as the case may require.

"Contractor's Equipment" means all facilities, equipment, machinery, tools, apparatus, appliances or things of every kind required in or for installation, completion and maintenance of

Facilities that are to be provided by the Contractor, but does not include Plant, or other things intended to form or forming part of the Facilities.

"Country of Origin" means the countries and territories eligible under the rules of the Bank as further **elaborated in the PC.**

"Site" means the land and other places upon which the Facilities are to be installed, and such other land or places as may be specified in the Contract as forming part of the Site.

"Effective Date" means the date of fulfillment of all conditions stated in Article 3 (Effective Date) of the Contract Agreement, from which the Time for Completion shall be counted.

"Time for Completion" means the time within which Completion of the Facilities as a whole (or of a part of the Facilities where a separate Time for Completion of such part has been prescribed) is to be attained, as referred to in GC Clause 8 and in accordance with the relevant provisions of the Contract.

"Completion" means that the Facilities (or a specific part thereof where specific parts are specified in the Contract) have been completed operationally and structurally and put in a tight and clean condition, that all work in respect of Precommissioning of the Facilities or such specific part thereof has been completed, and that the Facilities or specific part thereof are ready for Commissioning as provided in GC Clause 24 (Completion) hereof.

"Precommissioning" means the testing, checking and other requirements specified in the Employer's Requirements that are to be carried out by the Contractor in preparation for Commissioning as provided in GC Clause 24 (Completion) hereof.

"Commissioning" means operation of the Facilities or any part thereof by the Contractor following Completion, which operation is to be carried out by the Contractor as provided in GC Sub-Clause 25.1 (Commissioning) hereof, for the purpose of carrying out Guarantee Test(s).

"Guarantee Test(s)" means the test(s) specified in the Employer's Requirements to be carried out to ascertain whether the Facilities or a specified part thereof is able to attain the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees, in accordance with the provisions of GC Sub-Clause 25.2 (Guarantee Test) hereof.

"Operational Acceptance" means the acceptance by the Employer of the Facilities (or any part of the Facilities where the Contract provides for acceptance of the Facilities in parts), which certifies the Contractor's fulfillment of the Contract in respect of Functional Guarantees of the Facilities (or the relevant part thereof) in accordance with the provisions of GC Clause 28 (Functional Guarantees) hereof and shall include deemed acceptance in accordance with GC Clause 25 (Commissioning and Operational Acceptance) hereof.

"Defect Liability Period" means the period of validity of the warranties given by the Contractor commencing at Completion of the Facilities or a part thereof, during which the Contractor is responsible for defects with respect to the Facilities (or the relevant part thereof) as provided in GC Clause 27 (Defect Liability) hereof.

2. Contract Documents

2.1 Subject to Article 1.2 (Order of Precedence) of the Contract Agreement, all documents forming part of the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole.

3. Interpretation

3.1 In the Contract, except where the context requires otherwise:

(a) words indicating one gender include all genders;

(b) words indicating the singular also include the plural and words indicating the plural also include the singular;

(c) provisions including the word "agree," "agreed," or "agreement" require the agreement to be recorded in writing;

(d) the word "tender" is synonymous with "bid," "tenderer," with "bidder," and "tender documents" with "bidding documents," and

(e) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

3.2 Incoterms

Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of Parties thereunder shall be as prescribed by *Incoterms*.

Incoterms means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1er, 75008 Paris, France.

3.4 Entire Agreement

Subject to GC Sub-Clause 16.4 hereof, the Contract constitutes the entire agreement between the Employer and Contractor with respect to the subject matter of Contract and supersedes all communications, negotiations and agreements (whether written or oral) of Parties with respect thereto made prior to the date of Contract.

3.5 Amendment

No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each Party hereto.

3.6 Independent Contractor

The Contractor shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the Parties hereto. Subject to the provisions of the Contract, the Contractor shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Subcontractors engaged by the Contractor in connection with the performance of the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of the Employer, and nothing contained in the Contract or in any subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees, representatives or Subcontractors and the Employer.

3.7 Non-Waiver

3.7.1 Subject to GC Sub-Clause 3.7.2 below, no relaxation, forbearance, delay or indulgence by either Party in enforcing any of the terms and conditions of the Contract or the granting of time by either Party to the other shall prejudice, affect or restrict the rights of that Party under the Contract, nor shall any waiver by either Party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

3.7.2 Any waiver of a Party's rights, powers or remedies under the Contract must be in writing, must be dated and signed by an authorized representative of the Party granting such

waiver, and must specify the right and the extent to which it is being waived.

3.8 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

3.9 Country of Origin

"Origin" means the place where the plant and component parts thereof are mined, grown, produced or manufactured, and from which the services are provided. Plant components are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that is substantially in its basic characteristics or in purpose or utility from its components.

4. Communications

4.1 Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:

(a) in writing and delivered against receipt; and

(b) delivered, sent or transmitted to the address for the recipient's communications as stated in the Contract Agreement.

When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Project Manager, a copy shall be sent to the Project Manager or the other Party, as the case may be.

5. Law and Language

5.1 The Contract shall be governed by and interpreted in accordance with laws of the country **specified in the PC.**

5.2 The ruling language of the Contract shall be that **stated in the PC.**

5.3 The language for communications shall be the ruling language unless otherwise **stated in the PC.**

6. Fraud and Corruption

6.1 If the Employer determines that the Contractor and/or any of its personnel, or its agents, or its Subcontractors, subconsultants, services providers, suppliers and/or their employees has engaged in corrupt, fraudulent, collusive coercive, or obstructive practices, in competing for or in executing the Contract, then the 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 42 shall apply as if such expulsion had been made under Sub-Clause 42.2.1 (c).

For the purposes of this Sub-Clause,

(i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party[17];

(ii) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation[18];

(iii) "collusive practice" is an arrangement between two or more parties[19] designed to achieve an improper purpose, including to influence improperly the actions of another party;

(iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party[20] 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

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17 "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.

18 "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.

19 "Parties" refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

20 "Party" refers to a participant in the procurement process or contract execution.

provided for under Sub-Clause 9.8.

Subject Matter of Contract

7. Scope of Facilities

7.1 Unless otherwise expressly limited in the Employer's Requirements, the Contractor's obligations cover the provision of all Plant and the performance of all Installation Services required for the design, and the manufacture (including procurement, quality assurance, construction, installation, associated civil works, Precommissioning and delivery) of the Plant, and the installation, completion and commissioning of the Facilities in accordance with the plans, procedures, specifications, drawings, codes and any other documents as specified in the Section, Employer's Requirements. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labor, materials, equipment, spare parts (as specified in GC Sub-Clause 7.3 below) and accessories; Contractor's Equipment; construction utilities and supplies; temporary materials, structures and facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site); and storage, except for those supplies, works and services that will be provided or performed by the Employer, as set forth in the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer.

7.2 The Contractor shall, unless specifically excluded in the Contract, perform all such work and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Completion of the Facilities as if such work and/or items and materials were expressly mentioned in the Contract.

7.3 In addition to the supply of Mandatory Spare Parts included in the Contract, the Contractor agrees to supply spare parts required for the operation and maintenance of the Facilities for the period **specified in the PC** and the provisions, if any, **specified in the PC.** However, the identity, specifications and quantities of such spare parts and the terms and conditions relating to the supply thereof are to be agreed between the Employer and the Contractor, and the price of such spare parts shall be that given in Price Schedule No. 6, which shall be added to the Contract Price. The price of such spare parts shall include the purchase price therefor and other costs and expenses (including the Contractor's fees) relating to the supply

of spare parts.

8. Time for Commence-ment and Completion

8.1 The Contractor shall commence work on the Facilities within the period **specified in the PC** and without prejudice to GC Sub-Clause 26.2 hereof, the Contractor shall thereafter proceed with the Facilities in accordance with the time schedule specified in the Appendix to the Contract Agreement titled Time Schedule.

8.2 The Contractor shall attain Completion of the Facilities or of a part where a separate time for Completion of such part is specified in the Contract, within the time **stated in the PC** or within such extended time to which the Contractor shall be entitled under GC Clause 40 hereof.

9. Contractor's Responsibilities

9.1 The Contractor shall design, manufacture including associated purchases and/or subcontracting, install and complete the Facilities in accordance with the Contract. When completed, the Facilities should be fit for the purposes for which they are intended as defined in the Contract.

9.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Facilities including any data as to boring tests provided by the Employer, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site if access thereto was available and of other data readily available to it relating to the Facilities as of the date twenty-eight (28) days prior to bid submission. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Facilities.

9.3 The Contractor shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Employer under GC Sub-Clause 10.3 hereof and that are necessary for the performance of the Contract.

9.4 The Contractor shall comply with all laws in force in the

country where the Facilities are to be implemented. The laws will include all local, state, national or other laws that affect the performance of the Contract and bind upon the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to GC Sub-Clause 10.1 hereof.

9.5 Any Plant and Installation Services that will be incorporated in or be required for the Facilities and other supplies shall have their origin as specified under GC Clause 1 (Country of Origin). Any subcontractors retained by the Contractor shall be from a country as specified in GC Clause 1 (Country of Origin).

9.6 The Contractor shall permit the Bank to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the Bank, if so required by the Bank.

9.7 If the Contractor is a joint venture, or association (JVA) of two or more persons, all such persons shall be jointly and severally bound to the Employer for the fulfillment of the provisions of the Contract, unless otherwise specified in the PC, and shall designate one of such persons to act as a leader with authority to bind the JVA. The composition or the constitution of the JVA shall not be altered without the prior consent of the Employer.

9.8 The Contractor shall permit, and shall cause its Subcontractors and subconsultants to permit, the Bank and/or persons appointed by the Bank to inspect the Site and all accounts and records relating to the performance of the Contract and the submission of the Bid, and to have such accounts and records audited by auditors appointed by the Bank if requested by the Bank. The Contractor's and its Subcontractors' and subconsultants' attention is drawn to Sub-Clause 6.1 [Fraud and Corruption] 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 9.8 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Bank's prevailing sanctions procedures).

10. Employer's

10.1 All information and/or data to be supplied by the Employer as described in the Appendix to the Contract Agreement titled

Responsibilities

Scope of Works and Supply by the Employer, shall be deemed to be accurate, except when the Employer expressly states otherwise.

10.2 The Employer shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer. The Employer shall give full possession of and accord all rights of access thereto on or before the date(s) specified in that Appendix.

10.3 The Employer shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which (a) such authorities or undertakings require the Employer to obtain in the Employer's name, (b) are necessary for the execution of the Contract, including those required for the performance by both the Contractor and the Employer of their respective obligations under the Contract, and (c) are specified in the Appendix (Scope of Works and Supply by the Employer).

10.4 If requested by the Contractor, the Employer shall use its best endeavors to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Contract from all local, state or national government authorities or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.

10.5 Unless otherwise specified in the Contract or agreed upon by the Employer and the Contractor, the Employer shall provide sufficient, properly qualified operating and maintenance personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities; and shall perform all work and services of whatsoever nature, including those required by the Contractor to properly carry out Precommissioning, Commissioning and Guarantee Tests, all in accordance with the provisions of the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer, at or before the time specified in the program furnished by the Contractor under GC Sub-Clause 18.2 hereof and in the manner thereupon specified or as otherwise agreed

upon by the Employer and the Contractor.

10.6 The Employer shall be responsible for the continued operation of the Facilities after Completion, in accordance with GC Sub-Clause 24.8, and shall be responsible for facilitating the Guarantee Test(s) for the Facilities, in accordance with GC Sub-Clause 25.2.

10.7 All costs and expenses involved in the performance of the obligations under this GC Clause 10 shall be the responsibility of the Employer, save those to be incurred by the Contractor with respect to the performance of Guarantee Tests, in accordance with GC Sub-Clause 25.2.

10.8 In the event that the Employer shall be in breach of any of his obligations under this Clause, the additional cost incurred by the Contractor in consequence thereof shall be determined by the Project Manager and added to the Contract Price.

Payment

11. Contract Price

11.1 The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement.

11.2 Unless an adjustment clause is **provided for in the PC,** the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the Facilities or as otherwise provided in the Contract.

11.3 Subject to GC Sub-Clauses 9.2, 10.1 and 35 hereof, the Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

12. Terms of Payment

12.1 The Contract Price shall be paid as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement and in the Appendix to the Contract Agreement titled Terms and Procedures of Payment, which also outlines the procedures to be followed in making application for and processing payments.

12.2 No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the Facilities or any part(s) thereof.

12.3 In the event that the Employer fails to make any payment by its respective due date or within the period set forth in the

Contract, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate(s) shown in the Appendix to the Contract Agreement titled Terms and Procedures of Payment, for the period of delay until payment has been made in full, whether before or after judgment or arbitrage award.

12.4 The currency or currencies in which payments are made to the Contractor under this Contract shall be specified in the Appendix to the Contract Agreement titled Terms and Procedures of Payment, subject to the general principle that payments will be made in the currency or currencies in which the Contract Price has been stated in the Contractor's bid.

13. Securities

13.1 Issuance of Securities

The Contractor shall provide the securities specified below in favor of the Employer at the times, and in the amount, manner and form specified below.

13.2 Advance Payment Security

13.2.1 The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security in an amount equal to the advance payment calculated in accordance with the Appendix to the Contract Agreement titled Terms and Procedures of Payment, and in the same currency or currencies.

13.2.2 The security shall be in the form provided in the bidding documents or in another form acceptable to the Employer. The amount of the security shall be reduced in proportion to the value of the Facilities executed by and paid to the Contractor from time to time, and shall automatically become null and void when the full amount of the advance payment has been recovered by the Employer. The security shall be returned to the Contractor immediately after its expiration.

13.3 Performance Security

13.3.1 The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security for the due performance of the Contract in the amount **specified in the PC.**

13.3.2 The performance security shall be denominated in the currency or currencies of the Contract, or in a freely convertible currency acceptable to the Employer, and

shall be in the form provided in Section IX, Contract Forms, corresponding to the type of bank guarantee stipulated by the Employer in the PC, or in another form acceptable to the Employer.

13.3.3 Unless otherwise specified in the PC, the security shall be reduced by half on the date of the Operational Acceptance. The Security shall become null and void, or shall be reduced pro rata to the Contract Price of a part of the Facilities for which a separate Time for Completion is provided, five hundred and forty (540) days after Completion of the Facilities or three hundred and sixty five (365) days after Operational Acceptance of the Facilities, whichever occurs first; provided, however, that if the Defects Liability Period has been extended on any part of the Facilities pursuant to GC Sub-Clause 27.8 hereof, the Contractor shall issue an additional security in an amount proportionate to the Contract Price of that part. The security shall be returned to the Contractor immediately after its expiration, provided, however, that if the Contractor, pursuant to GC Sub-Clause 27.10, is liable for an extended defect liability obligation, the performance security shall be extended for the period specified in the PC pursuant to GC Sub-Clause 27.10 and up to the amount specified in the PC.

13.3.4 The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract. The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which the Employer was not entitled to make the claim.

14. Taxes and Duties

14.1 Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all taxes, duties, levies and charges assessed on the Contractor, its Subcontractors or their employees by all municipal, state or national government authorities in connection with the Facilities in and outside of the country where the Site is located.

14.2 Notwithstanding GC Sub-Clause 14.1 above, the Employer shall bear and promptly pay

(a) all customs and import duties for the Plant specified in Price Schedule No. 1; and

(b) other domestic taxes such as, sales tax and value added tax (VAT) on the Plant specified in Price Schedules No. 1 and No. 2 and that is to be incorporated into the Facilities, and on the finished goods, imposed by the law of the country where the Site is located.

14.3 If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in the country where the Site is located, the Employer shall use its best endeavors to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.

14.4 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies and charges prevailing at the date twenty-eight (28) days prior to the date of bid submission in the country where the Site is located (hereinafter called "Tax" in this GC Sub-Clause 14.4). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of Contract, which was or will be assessed on the Contractor, Subcontractors or their employees in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction therefrom, as the case may be, in accordance with GC Clause 36 hereof.

Intellectual Property

15. License/Use of Technical Information

15.1 For the operation and maintenance of the Plant, the Contractor hereby grants a non-exclusive and non-transferable license (without the right to sub-license) to the Employer under the patents, utility models or other industrial property rights owned by the Contractor or by a third Party from whom the Contractor has received the right to grant licenses thereunder, and shall also grant to the Employer a non-exclusive and non-transferable right (without the right to sub-license) to use the know-how and other technical information disclosed to the Employer under the Contract. Nothing contained herein shall be construed as transferring ownership of any patent, utility model, trademark, design, copyright, know-how or other intellectual property right from the Contractor or any third Party to the Employer.

15.2 The copyright in all drawings, documents and other materials

containing data and information furnished to the Employer by the Contractor herein shall remain vested in the Contractor or, if they are furnished to the Employer directly or through the Contractor by any third Party, including suppliers of materials, the copyright in such materials shall remain vested in such third Party.

16. Confidential Information

16.1 The Employer and the Contractor shall keep confidential and shall not, without the written consent of the other Party hereto, divulge to any third Party any documents, data or other information furnished directly or indirectly by the other Party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this GC Clause 16.

16.2 The Employer shall not use such documents, data and other information received from the Contractor for any purpose other than the operation and maintenance of the Facilities. Similarly, the Contractor shall not use such documents, data and other information received from the Employer for any purpose other than the design, procurement of Plant, construction or such other work and services as are required for the performance of the Contract.

16.3 The obligation of a Party under GC Sub-Clauses 16.1 and 16.2 above, however, shall not apply to that information which

(a) now or hereafter enters the public domain through no fault of that Party

(b) can be proven to have been possessed by that Party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other Party hereto

(c) otherwise lawfully becomes available to that Party from a third Party that has no obligation of confidentiality.

16.4 The above provisions of this GC Clause 16 shall not in any way modify any undertaking of confidentiality given by either of the Parties hereto prior to the date of the Contract in respect of the Facilities or any part thereof.

16.5 The provisions of this GC Clause 16 shall survive termination, for whatever reason, of the Contract.

Execution of the Facilities

17. Representatives 17.1 Project Manager

If the Project Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, the Employer shall appoint and notify the Contractor in writing of the name of the Project Manager. The Employer may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give a notice of the name of such other person to the Contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the Facilities. Such appointment shall only take effect upon receipt of such notice by the Contractor. The Project Manager shall represent and act for the Employer at all times during the performance of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided.

All notices, instructions, information and other communications given by the Contractor to the Employer under the Contract shall be given to the Project Manager, except as herein otherwise provided.

17.2 Contractor's Representative & Construction Manager

17.2.1 If the Contractor's Representative is not named in the Contract, then within fourteen (14) days of the Effective Date, the Contractor shall appoint the Contractor's Representative and shall request the Employer in writing to approve the person so appointed. If the Employer makes no objection to the appointment within fourteen (14) days, the Contractor's Representative shall be deemed to have been approved. If the Employer objects to the appointment within fourteen (14) days giving the reason therefor, then the Contractor shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this GC Sub-Clause 17.2.1 shall apply thereto.

17.2.2 The Contractor's Representative shall represent and act for the Contractor at all times during the

performance of the Contract and shall give to the Project Manager all the Contractor's notices, instructions, information and all other communications under the Contract.

All notices, instructions, information and all other communications given by the Employer or the Project Manager to the Contractor under the Contract shall be given to the Contractor's Representative or, in its absence, its deputy, except as herein otherwise provided.

The Contractor shall not revoke the appointment of the Contractor's Representative without the Employer's prior written consent, which shall not be unreasonably withheld. If the Employer consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in GC Sub-Clause 17.2.1.

17.2.3 The Contractor's Representative may, subject to the approval of the Employer which shall not be unreasonably withheld, at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor's Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Employer and the Project Manager.

Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GC Sub-Clause 17.2.3 shall be deemed to be an act or exercise by the Contractor's Representative.

17.2.4 From the commencement of installation of the Facilities at the Site until Completion, the Contractor's Representative shall appoint a suitable person as the Construction Manager. The Construction Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract. Whenever the Construction Manager is absent from the Site, a suitable person shall be appointed to act as the Construction Manager's deputy.

17.2.5 The Employer may by notice to the Contractor object to any representative or person employed by the Contractor in the

execution of the Contract who, in the reasonable opinion of the Employer, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under GC Sub-Clause 22.3. The Employer shall provide evidence of the same, whereupon the Contractor shall remove such person from the Facilities.

17.2.6 If any representative or person employed by the Contractor is removed in accordance with GC Sub-Clause 17.2.5, the Contractor shall, where required, promptly appoint a replacement.

18. Work Program

18.1 Contractor's Organization

The Contractor shall supply to the Employer and the Project Manager a chart showing the proposed organization to be established by the Contractor for carrying out work on the Facilities within twenty-one (21) days of the Effective Date. The chart shall include the identities of the key personnel and the curricula vitae of such key personnel to be employed shall be supplied together with the chart. The Contractor shall promptly inform the Employer and the Project Manager in writing of any revision or alteration of such an organization chart.

18.2 Program of Performance

Within twenty-eight (28) days after the Effective Date, the Contractor shall submit to the Project Manager a detailed program of performance of the Contract, made in a form acceptable to the Project Manager and showing the sequence in which it proposes to design, manufacture, transport, assemble, install and precommission the Facilities, as well as the date by which the Contractor reasonably requires that the Employer shall have fulfilled its obligations under the Contract so as to enable the Contractor to execute the Contract in accordance with the program and to achieve Completion, Commissioning and Acceptance of the Facilities in accordance with the Contract. The program so submitted by the Contractor shall accord with the Time Schedule included in the Appendix to the Contract Agreement titled Time Schedule, and any other dates and periods specified in the Contract. The Contractor shall update and revise the program as and when appropriate or when required by the Project Manager, but without modification in the Times for Completion specified in the PC pursuant to Sub-Clause 8.2 and any extension granted in accordance with GC Clause 40,

and shall submit all such revisions to the Project Manager.

18.3 Progress Report

The Contractor shall monitor progress of all the activities specified in the program referred to in GC Sub-Clause 18.2 above, and supply a progress report to the Project Manager every month.

The progress report shall be in a form acceptable to the Project Manager and shall indicate: (a) percentage completion achieved compared with the planned percentage completion for each activity; and (b) where any activity is behind the program, giving comments and likely consequences and stating the corrective action being taken.

18.4 Progress of Performance

If at any time the Contractor's actual progress falls behind the program referred to in GC Sub-Clause 18.2, or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Employer or the Project Manager, prepare and submit to the Project Manager a revised program, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Facilities within the Time for Completion under GC Sub-Clause 8.2, any extension thereof entitled under GC Sub-Clause 40.1, or any extended period as may otherwise be agreed upon between the Employer and the Contractor.

18.5 Procedures

The Contract shall be executed in accordance with the Contract Documents including the procedures given in the Forms and Procedures of the Employer's Requirements.

The Contractor may execute the Contract in accordance with its own standard project execution plans and procedures to the extent that they do not conflict with the provisions contained in the Contract.

19. Subcontracting

19.1 The Appendix to the Contract Agreement titled List of Major Items of Plant and Installation Services and List of Approved Subcontractors, specifies major items of supply or services and a list of approved Subcontractors against each item, including manufacturers. Insofar as no Subcontractors are listed against any such item, the Contractor shall prepare a list of Subcontractors for such item for inclusion in such list. The

Contractor may from time to time propose any addition to or deletion from any such list. The Contractor shall submit any such list or any modification thereto to the Employer for its approval in sufficient time so as not to impede the progress of work on the Facilities. Such approval by the Employer for any of the Subcontractors shall not relieve the Contractor from any of its obligations, duties or responsibilities under the Contract.

19.2 The Contractor shall select and employ its Subcontractors for such major items from those listed in the lists referred to in GC Sub-Clause 19.1.

19.3 For items or parts of the Facilities not specified in the Appendix to the Contract Agreement titled List of Major Items of Plant and Installation Services and List of Approved Subcontractors, the Contractor may employ such Subcontractors as it may select, at its discretion.

19.4 Each sub-contract shall include provisions which would entitle the Employer to require the sub-contract to be assigned to the Employer under GC 19.5 (if and when applicable), or in event of termination by the Employer under GC 42.2.

19.5 If a sub-contractor's obligations extend beyond the expiry date of the relevant Defects Liability Period and the Project Manager, prior to that date, instructs the Contractor to assign the benefits of such obligations to the Employer, then the Contractor shall do so.

20. Design and Engineering

20.1 Specifications and Drawings

20.1.1 The Contractor shall execute the basic and detailed design and the engineering work in compliance with the provisions of the Contract, or where not so specified, in accordance with good engineering practice.

The Contractor shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Employer.

20.1.2 The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other

document, or any modification thereof provided or designated by or on behalf of the Employer, by giving a notice of such disclaimer to the Project Manager.

20.2 Codes and Standards

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of bid submission shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied subject to approval by the Employer and shall be treated in accordance with GC Clause 39.

20.3 Approval/Review of Technical Documents by Project Manager

20.3.1 The Contractor shall prepare or cause its Subcontractors to prepare, and furnish to the Project Manager the documents listed in the Appendix to the Contract Agreement titled List of Documents for Approval or Review, for its approval or review as specified and in accordance with the requirements of GC Sub-Clause 18.2 (Program of Performance).

Any part of the Facilities covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval thereof.

GC Sub-Clauses 20.3.2 through 20.3.7 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.

20.3.2 Within fourteen (14) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GC Sub-Clause 20.3.1, the Project Manager shall either return one copy thereof to the Contractor with its approval endorsed thereon or shall notify the Contractor in writing of its disapproval thereof and the reasons therefor and the modifications that the Project Manager proposes.

If the Project Manager fails to take such action within the said fourteen (14) days, then the said document shall be deemed to have been approved by the Project

Manager.

20.3.3 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with the Contract or that it is contrary to good engineering practice.

20.3.4 If the Project Manager disapproves the document, the Contractor shall modify the document and resubmit it for the Project Manager's approval in accordance with GC Sub-Clause 20.3.2. If the Project Manager approves the document subject to modification(s), the Contractor shall make the required modification(s), whereupon the document shall be deemed to have been approved.

20.3.5 If any dispute or difference occurs between the Employer and the Contractor in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) thereto that cannot be settled between the Parties within a reasonable period, then such dispute or difference may be referred to a Dispute Board for determination in accordance with GC Sub-Clause 46.1 hereof. If such dispute or difference is referred to a Dispute Board, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the Dispute Board upholds the Contractor's view on the dispute and if the Employer has not given notice under GC Sub-Clause 46.3 hereof, then the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Dispute Board shall decide, and the Time for Completion shall be extended accordingly.

20.3.6 The Project Manager's approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager.

20.3.7 The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Project Manager an amended document and obtained the Project Manager's approval thereof, pursuant to the provisions of this GC Sub-Clause 20.3.

If the Project Manager requests any change in any already approved document and/or in any document based thereon, the provisions of GC Clause 39 shall apply to such request.

21. Procurement

21.1 Plant

Subject to GC Sub-Clause 14.2, the Contractor shall procure and transport all Plant in an expeditious and orderly manner to the Site.

21.2 Employer-Supplied Plant

If the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer, provides that the Employer shall furnish any specific items to the Contractor, the following provisions shall apply:

21.2.1 The Employer shall, at its own risk and expense, transport each item to the place on or near the Site as agreed upon by the Parties and make such item available to the Contractor at the time specified in the program furnished by the Contractor, pursuant to GC Sub-Clause 18.2, unless otherwise mutually agreed.

21.2.2 Upon receipt of such item, the Contractor shall inspect the same visually and notify the Project Manager of any detected shortage, defect or default. The Employer shall immediately remedy any shortage, defect or default, or the Contractor shall, if practicable and possible, at the request of the Employer, remedy such shortage, defect or default at the Employer's cost and expense. After inspection, such item shall fall under the care, custody and control of the Contractor. The provision of this GC Sub-Clause 21.2.2 shall apply to any item supplied to remedy any such shortage or default or to substitute for any defective item, or shall apply to defective items that have been repaired.

21.2.3 The foregoing responsibilities of the Contractor and its obligations of care, custody and control shall not relieve the Employer of liability for any undetected shortage, defect or default, nor place the Contractor under any liability for any

such shortage, defect or default whether under GC Clause 27 or under any other provision of Contract.

21.3 Transportation

21.3.1 The Contractor shall at its own risk and expense transport all the materials and the Contractor's Equipment to the Site by the mode of transport that the Contractor judges most suitable under all the circumstances.

21.3.2 Unless otherwise provided in the Contract, the Contractor shall be entitled to select any safe mode of transport operated by any person to carry the materials and the Contractor's Equipment.

21.3.3 Upon dispatch of each shipment of materials and the Contractor's Equipment, the Contractor shall notify the Employer by telex, cable, facsimile or electronic means, of the description of the materials and of the Contractor's Equipment, the point and means of dispatch, and the estimated time and point of arrival in the country where the Site is located, if applicable, and at the Site. The Contractor shall furnish the Employer with relevant shipping documents to be agreed upon between the Parties.

21.3.4 The Contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the materials and the Contractor's Equipment to the Site. The Employer shall use its best endeavors in a timely and expeditious manner to assist the Contractor in obtaining such approvals, if requested by the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any claim for damage to roads, bridges or any other traffic facilities that may be caused by the transport of the materials and the Contractor's Equipment to the Site.

21.4 Customs Clearance

The Contractor shall, at its own expense, handle all imported materials and Contractor's Equipment at the point(s) of import and shall handle any formalities for customs clearance, subject to the Employer's obligations under GC Sub-Clause 14.2, provided that if applicable laws or regulations require any application or act to be made by or in the name of the

Employer, the Employer shall take all necessary steps to comply with such laws or regulations. In the event of delays in customs clearance that are not the fault of the Contractor, the Contractor shall be entitled to an extension in the Time for Completion, pursuant to GC Clause 40.

22. Installation

22.1 Setting Out/Supervision

22.1.1 Bench Mark: The Contractor shall be responsible for the true and proper setting-out of the Facilities in relation to bench marks, reference marks and lines provided to it in writing by or on behalf of the Employer.

If, at any time during the progress of installation of the Facilities, any error shall appear in the position, level or alignment of the Facilities, the Contractor shall forthwith notify the Project Manager of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect data provided in writing by or on behalf of the Employer, the expense of rectifying the same shall be borne by the Employer.

22.1.2 Contractor's Supervision: The Contractor shall give or provide all necessary superintendence during the installation of the Facilities, and the Construction Manager or its deputy shall be constantly on the Site to provide full-time superintendence of the installation. The Contractor shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.

22.2 Labor:

22.2.1 Engagement of Staff and Labor

Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labor, local or otherwise, and for their payment, housing, feeding and transport.

The Contractor shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled and unskilled labor as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged to use local labor that has the

necessary skills.

The Contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labor and personnel to be employed on the Site into the country where the Site is located. The Employer will, if requested by the Contractor, use his best endeavors in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national or government permission required for bringing in the Contractor's personnel.

The Contractor shall at its own expense provide the means of repatriation to all of its and its Subcontractor's personnel employed on the Contract at the Site to the place where they were recruited or to their domicile. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the Contractor defaults in providing such means of transportation and temporary maintenance, the Employer may provide the same to such personnel and recover the cost of doing so from the Contractor.

22.2.2 Persons in the Service of Employer

The Contractor shall not recruit, or attempt to recruit, staff and labor from amongst the Employer's Personnel.

22.2.3 Labor Laws

The Contractor shall comply with all the relevant labor Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

The Contractor shall at all times during the progress of the Contract use its best endeavors to prevent any unlawful, riotous or disorderly conduct or behavior by or amongst its employees and the labor of its Subcontractors.

The Contractor shall, in all dealings with its labor and the labor of its Subcontractors currently employed on or connected with the Contract, pay due regard to all

recognized festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of labor.

22.2.4 Rates of Wages and Conditions of Labor

The Contractor shall pay rates of wages, and observe conditions of labor, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.

The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages and allowances as are chargeable under the Laws for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

22.2.5 Working Hours

No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours **stated in the PC,** unless:

(a) otherwise stated in the Contract,

(b) the Project Manager gives consent, or

(c) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Project Manager.

If and when the Contractor considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the Project Manager's consent thereto, the Project Manager shall not unreasonably withhold such consent.

This Sub-Clause shall not apply to any work which is customarily carried out by rotary or double-shifts.

22.2.6 Facilities for Staff and Labor

Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Specification.

The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

22.2.7 Health and Safety

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the performance of the Contract, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

The Contractor shall send to the Project Manager, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Engineer may reasonably require.

The Contractor shall throughout the contract (including the Defects Notification Period): (i) conduct Information, Education and Consultation Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labor (including all the Contractor's employees, all Sub-

Contractors and Employer's and Project Manager's' employees, and all truck drivers and crew making deliveries to Site for construction activities) and to the immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance behavior with respect to of Sexually Transmitted Diseases (STD)—or Sexually Transmitted Infections (STI) in general and HIV/AIDS in particular; (ii) provide male or female condoms for all Site staff and labor as appropriate; and (iii) provide for STI and HIV/AIDS screening, diagnosis, counseling and referral to a dedicated national STI and HIV/AIDS program, (unless otherwise agreed) of all Site staff and labor.

The Contractor shall include in the program to be submitted for the execution of the Facilities under Sub-Clause 18.2 an alleviation program for Site staff and labor and their families in respect of Sexually Transmitted Infections (STI) and Sexually Transmitted Diseases (STD) including HIV/AIDS. The STI, STD and HIV/AIDS alleviation program shall indicate when, how and at what cost the Contractor plans to satisfy the requirements of this Sub-Clause and the related specification. For each component, the program shall detail the resources to be provided or utilized and any related sub-contracting proposed. The program shall also include provision of a detailed cost estimate with supporting documentation. Payment to the Contractor for preparation and implementation this program shall not exceed the Provisional Sum dedicated for this purpose.

22.2.8 Funeral Arrangements

In the event of the death of any of the Contractor's personnel or accompanying members of their families, the Contractor shall be responsible for making the appropriate arrangements for their return or burial, unless otherwise **specified in the PC.**

22.2.9 Records of Contractor's Personnel

The Contractor shall keep accurate records of the Contractor's personnel, including the number of each class of Contractor's Personnel on the Site and the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis in a form approved by the Project Manager and shall be available for inspection by the

Project Manager until the Contractor has completed all work.

22.2.10 Supply of Foodstuffs

The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Specification at reasonable prices for the Contractor's Personnel for the purposes of or in connection with the Contract.

22.2.11 Supply of Water

The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor's Personnel.

22.2.12 Measures against Insect and Pest Nuisance

The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce their danger to health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.

22.2.13 Alcoholic Liquor or Drugs

The Contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift barter or disposal by Contractor's Personnel.

22.2.14 Arms and Ammunition

The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.

22.2.15 Prohibition of All Forms of Forced or Compulsory Labor

The contractor shall not employ "forced or compulsory labor" in any form. "Forced or compulsory labor" consists of all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.

22.2.16 Prohibition of Harmful Child Labor

The Contractor shall not employ any child to perform any work that is economically exploitative, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.

22.3 Contractor's Equipment

22.3.1 All Contractor's Equipment brought by the Contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Contractor shall not remove the same from the Site without the Project Manager's consent that such Contractor's Equipment is no longer required for the execution of the Contract.

22.3.2 Unless otherwise specified in the Contract, upon completion of the Facilities, the Contractor shall remove from the Site all Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.

22.3.3 The Employer will, if requested, use its best endeavors to assist the Contractor in obtaining any local, state or national government permission required by the Contractor for the export of the Contractor's Equipment imported by the Contractor for use in the execution of the Contract that is no longer required for the execution of the Contract.

22.4 Site Regulations and Safety

The Employer and the Contractor shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Contractor shall prepare and submit to the Employer, with a copy to the Project Manager, proposed Site regulations for the Employer's approval, which approval shall not be unreasonably withheld.

Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Facilities, gate control, sanitation, medical care, and fire prevention.

22.5 Opportunities for Other Contractors

22.5.1 The Contractor shall, upon written request from the Employer or the Project Manager, give all reasonable opportunities for carrying out the work to any other contractors employed by the Employer on or near the Site.

22.5.2 If the Contractor, upon written request from the Employer or the Project Manager, makes available to other contractors any roads or ways the maintenance for which the Contractor is responsible, permits the use by such other contractors of the Contractor's Equipment, or provides any other service of whatsoever nature for such other contractors, the Employer shall fully compensate the Contractor for any loss or damage caused or occasioned by such other contractors in respect of any such use or service, and shall pay to the Contractor reasonable remuneration for the use of such equipment or the provision of such services.

22.5.3 The Contractor shall also so arrange to perform its work as to minimize, to the extent possible, interference with the work of other contractors. The Project Manager shall determine the resolution of any difference or conflict that may arise between the Contractor and other contractors and the workers of the Employer in regard to their work.

22.5.4 The Contractor shall notify the Project Manager promptly of any defects in the other contractors' work that come to its notice, and that could affect the Contractor's work. The Project Manager shall determine the corrective measures, if any, required to rectify the situation after inspection of the Facilities. Decisions made by the Project Manager shall be binding on the Contractor.

22.6 Emergency Work

If, by reason of an emergency arising in connection with and during the execution of the Contract, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Facilities, the Contractor shall immediately carry out such work.

If the Contractor is unable or unwilling to do such work immediately, the Employer may do or cause such work to be done as the Employer may determine is necessary in order to

prevent damage to the Facilities. In such event the Employer shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work done and the reasons therefor. If the work done or caused to be done by the Employer is work that the Contractor was liable to do at its own expense under the Contract, the reasonable costs incurred by the Employer in connection therewith shall be paid by the Contractor to the Employer. Otherwise, the cost of such remedial work shall be borne by the Employer.

22.7 Site Clearance

22.7.1 Site Clearance in Course of Performance: In the course of carrying out the Contract, the Contractor shall keep the Site reasonably free from all unnecessary obstruction, store or remove any surplus materials, clear away any wreckage, rubbish or temporary works from the Site, and remove any Contractor's Equipment no longer required for execution of the Contract.

22.7.2 Clearance of Site after Completion: After Completion of all parts of the Facilities, the Contractor shall clear away and remove all wreckage, rubbish and debris of any kind from the Site, and shall leave the Site and Facilities in a clean and safe condition.

22.8 Watching and Lighting

The Contractor shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection of the Facilities, or for the safety of the owners and occupiers of adjacent property and for the safety of the public.

23. Test and Inspection

23.1 The Contractor shall at its own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the Plant and any part of the Facilities as are specified in the Contract.

23.2 The Employer and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Employer shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

23.3 Whenever the Contractor is ready to carry out any such test

and/or inspection, the Contractor shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third Party or manufacturer any necessary permission or consent to enable the Employer and the Project Manager or their designated representatives to attend the test and/or inspection.

23.4 The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection.

If the Employer or Project Manager or their designated representatives fails to attend the test and/or inspection, or if it is agreed between the Parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.

23.5 The Project Manager may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impede the progress of work on the Facilities and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.

23.6 If any Plant or any part of the Facilities fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Plant or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under GC Sub-Clause 23.3.

23.7 If any dispute or difference of opinion shall arise between the Parties in connection with or arising out of the test and/or inspection of the Plant or part of the Facilities that cannot be settled between the Parties within a reasonable period of time, it may be referred to an Dispute Board for determination in accordance with GC Sub-Clause 6.1.

23.8 The Contractor shall afford the Employer and the Project Manager, at the Employer's expense, access at any reasonable time to any place where the Plant are being manufactured or the Facilities are being installed, in order to inspect the

progress and the manner of manufacture or installation, provided that the Project Manager shall give the Contractor a reasonable prior notice.

23.9 The Contractor agrees that neither the execution of a test and/or inspection of Plant or any part of the Facilities, nor the attendance by the Employer or the Project Manager, nor the issue of any test certificate pursuant to GC Sub-Clause 23.4, shall release the Contractor from any other responsibilities under the Contract.

23.10 No part of the Facilities or foundations shall be covered up on the Site without the Contractor carrying out any test and/or inspection required under the Contract. The Contractor shall give a reasonable notice to the Project Manager whenever any such parts of the Facilities or foundations are ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract.

23.11 The Contractor shall uncover any part of the Facilities or foundations, or shall make openings in or through the same as the Project Manager may from time to time require at the Site, and shall reinstate and make good such part or parts.

If any parts of the Facilities or foundations have been covered up at the Site after compliance with the requirement of GC Sub-Clause 23.10 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Employer, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Contract.

24. Completion of the Facilities

24.1 As soon as the Facilities or any part thereof has, in the opinion of the Contractor, been completed operationally and structurally and put in a tight and clean condition as specified in the Employer's Requirements, excluding minor items not materially affecting the operation or safety of the Facilities, the Contractor shall so notify the Employer in writing.

24.2 Within seven (7) days after receipt of the notice from the Contractor under GC Sub-Clause 24.1, the Employer shall supply the operating and maintenance personnel specified in the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer for Precommissioning of

the Facilities or any part thereof.

Pursuant to the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer, the Employer shall also provide, within the said seven (7) day period, the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Precommissioning of the Facilities or any part thereof.

24.3 As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the Employer and the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters have been provided by the Employer in accordance with GC Sub-Clause 24.2, the Contractor shall commence Precommissioning of the Facilities or the relevant part thereof in preparation for Commissioning, subject to GC Sub-Clause 25.5.

24.4 As soon as all works in respect of Precommissioning are completed and, in the opinion of the Contractor, the Facilities or any part thereof is ready for Commissioning, the Contractor shall so notify the Project Manager in writing.

24.5 The Project Manager shall, within fourteen (14) days after receipt of the Contractor's notice under GC Sub-Clause 24.4, either issue a Completion Certificate in the form specified in the Employer's Requirements (Forms and Procedures), stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's notice under GC Sub-Clause 24.4, or notify the Contractor in writing of any defects and/or deficiencies.

If the Project Manager notifies the Contractor of any defects and/or deficiencies, the Contractor shall then correct such defects and/or deficiencies, and shall repeat the procedure described in GC Sub-Clause 24.4.

If the Project Manager is satisfied that the Facilities or that part thereof have reached Completion, the Project Manager shall, within seven (7) days after receipt of the Contractor's repeated notice, issue a Completion Certificate stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's repeated notice.

If the Project Manager is not so satisfied, then it shall notify the Contractor in writing of any defects and/or deficiencies within seven (7) days after receipt of the Contractor's

repeated notice, and the above procedure shall be repeated.

24.6 If the Project Manager fails to issue the Completion Certificate and fails to inform the Contractor of any defects and/or deficiencies within fourteen (14) days after receipt of the Contractor's notice under GC Sub-Clause 24.4 or within seven (7) days after receipt of the Contractor's repeated notice under GC Sub-Clause 24.5, or if the Employer makes use of the Facilities or part thereof, then the Facilities or that part thereof shall be deemed to have reached Completion as of the date of the Contractor's notice or repeated notice, or as of the Employer's use of the Facilities, as the case may be.

24.7 As soon as possible after Completion, the Contractor shall complete all outstanding minor items so that the Facilities are fully in accordance with the requirements of the Contract, failing which the Employer will undertake such completion and deduct the costs thereof from any monies owing to the Contractor.

24.8 Upon Completion, the Employer shall be responsible for the care and custody of the Facilities or the relevant part thereof, together with the risk of loss or damage thereto, and shall thereafter take over the Facilities or the relevant part thereof.

25. Commissioning and Operational Acceptance

25.1 Commissioning

25.1.1 Commissioning of the Facilities or any part thereof shall be commenced by the Contractor immediately after issue of the Completion Certificate by the Project Manager, pursuant to GC Sub-Clause 24.5, or immediately after the date of the deemed Completion, under GC Sub-Clause 24.6.

25.1.2 The Employer shall supply the operating and maintenance personnel and all raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Commissioning.

25.1.3 In accordance with the requirements of the Contract, the Contractor's and Project Manager's advisory personnel shall attend the Commissioning, including the Guarantee Test, and shall advise and assist the Employer.

25.2 Guarantee Test

25.2.1 Subject to GC Sub-Clause 25.5, the Guarantee Test

and repeats thereof shall be conducted by the Contractor during Commissioning of the Facilities or the relevant part thereof to ascertain whether the Facilities or the relevant part can attain the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees. The Employer shall promptly provide the Contractor with such information as the Contractor may reasonably require in relation to the conduct and results of the Guarantee Test and any repeats thereof.

25.2.2 If for reasons not attributable to the Contractor, the Guarantee Test of the Facilities or the relevant part thereof cannot be successfully completed within the period from the date of Completion **specified in the PC** or any other period agreed upon by the Employer and the Contractor, the Contractor shall be deemed to have fulfilled its obligations with respect to the Functional Guarantees, and GC Sub-Clauses 28.2 and 28.3 shall not apply.

25.3 Operational Acceptance

25.3.1 Subject to GC Sub-Clause 25.4 below, Operational Acceptance shall occur in respect of the Facilities or any part thereof when

(a) the Guarantee Test has been successfully completed and the Functional Guarantees are met; or

(b) the Guarantee Test has not been successfully completed or has not been carried out for reasons not attributable to the Contractor within the period from the date of Completion specified in the PC pursuant to GC Sub-Clause 25.2.2 above or any other period agreed upon by the Employer and the Contractor; or

(c) the Contractor has paid the liquidated damages specified in GC Sub-Clause 28.3 hereof; and

(d) any minor items mentioned in GC Sub-Clause 24.7 hereof relevant to the Facilities or that part thereof have been completed.

25.3.2 At any time after any of the events set out in GC Sub-Clause 25.3.1 have occurred, the Contractor may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate in the form provided in the Employer's Requirements (Forms and

Procedures) in respect of the Facilities or the part thereof specified in such notice as of the date of such notice.

25.3.3 The Project Manager shall, after consultation with the Employer, and within seven (7) days after receipt of the Contractor's notice, issue an Operational Acceptance Certificate.

25.3.4 If within seven (7) days after receipt of the Contractor's notice, the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Contractor in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the Facilities or the relevant part thereof shall be deemed to have been accepted as of the date of the Contractor's said notice.

25.4 Partial Acceptance

25.4.1 If the Contract specifies that Completion and Commissioning shall be carried out in respect of parts of the Facilities, the provisions relating to Completion and Commissioning including the Guarantee Test shall apply to each such part of the Facilities individually, and the Operational Acceptance Certificate shall be issued accordingly for each such part of the Facilities.

25.4.2 If a part of the Facilities comprises facilities such as buildings, for which no Commissioning or Guarantee Test is required, then the Project Manager shall issue the Operational Acceptance Certificate for such facility when it attains Completion, provided that the Contractor shall thereafter complete any outstanding minor items that are listed in the Operational Acceptance Certificate.

25.5 Delayed Precommissioning and/or Guarantee Test

25.5.1 In the event that the Contractor is unable to proceed with the Precommissioning of the Facilities pursuant to Sub-Clause 24.3, or with the Guarantee Test pursuant to Sub-Clause 25.2, for reasons attributable to the Employer either on account of non availability of other facilities under the responsibilities of other contractor(s), or for reasons beyond the Contractor's control, the provisions leading to "deemed" completion of activities such as Completion, pursuant

to GC Sub-Clause 24.6, and Operational Acceptance, pursuant to GC Sub-Clause 25.3.4, and Contractor's obligations regarding Defect Liability Period, pursuant to GC Sub-Clause 27.2, Functional Guarantee, pursuant to GC Clause 28, and Care of Facilities, pursuant to GC Clause 32, and GC Clause 41.1, Suspension, shall not apply. In this case, the following provisions shall apply.

25.5.2 When the Contractor is notified by the Project Manager that he will be unable to proceed with the activities and obligations pursuant to above Sub-Clause 13.1, the Contractor shall be entitled to the following:

(a) the Time of Completion shall be extended for the period of suspension without imposition of liquidated damages pursuant to GC Sub-Clause 26.2;

(b) payments due to the Contractor in accordance with the provision specified in the Appendix to the Contract Agreement titled Terms and Procedures of Payment, which would not have been payable in normal circumstances due to non-completion of the subject activities, shall be released to the Contractor against submission of a security in the form of a bank guarantee of equivalent amount acceptable to the Employer, and which shall become null and void when the Contractor will have complied with its obligations regarding those payments, subject to the provision of Sub-Clause 25.5.3 below;

(c) the expenses towards the above security and extension of other securities under the contract, of which validity needs to be extended, shall be reimbursed to the Contractor by the Employer;

(d) the additional charges towards the care of the Facilities pursuant to GC Sub-Clause 32.1 shall be reimbursed to the Contractor by the Employer for the period between the notification mentioned above and the notification mentioned in Sub-Clause 25.5.4 below. The provision of GC Sub-Clause 33.2 shall apply to the Facilities during the same period.

25.5.3 In the event that the period of suspension under above Sub-Clause 25.5.1 actually exceeds one hundred eighty (180) days, the Employer and Contractor shall mutually agree to any additional compensation payable to the Contractor.

25.5.4 When the Contractor is notified by the Project Manager that the plant is ready for Precommissioning, the Contractor shall proceed without delay in performing Precommissioning in accordance with Clause 24.

Guarantees and Liabilities

26. Completion Time Guarantee

26.1 The Contractor guarantees that it shall attain Completion of the Facilities (or a part for which a separate time for completion is specified) within the Time for Completion specified in the PC pursuant to GC Sub-Clause 8.2, or within such extended time to which the Contractor shall be entitled under GC Clause 40 hereof.

26.2 If the Contractor fails to attain Completion of the Facilities or any part thereof within the Time for Completion or any extension thereof under GC Clause 40, the Contractor shall pay to the Employer liquidated damages in the amount **specified in the PC** as a percentage rate of the Contract Price or the relevant part thereof. The aggregate amount of such liquidated damages shall in no event exceed the amount **specified as "Maximum" in the PC** as a percentage rate of the Contract Price. Once the "Maximum" is reached, the Employer may consider termination of the Contract, pursuant to GC Sub-Clause 42.2.2.

Such payment shall completely satisfy the Contractor's obligation to attain Completion of the Facilities or the relevant part thereof within the Time for Completion or any extension thereof under GC Clause 40. The Contractor shall have no further liability whatsoever to the Employer in respect thereof.

However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the Facilities or from any other obligations and liabilities of the Contractor under the Contract.

Save for liquidated damages payable under this GC Sub-Clause 26.2, the failure by the Contractor to attain any milestone or other act, matter or thing by any date specified in the Appendix to the Contract Agreement titled Time Schedule, and/or other program of work prepared pursuant to GC Sub-Clause 18.2 shall

not render the Contractor liable for any loss or damage thereby suffered by the Employer.

26.3 If the Contractor attains Completion of the Facilities or any part thereof before the Time for Completion or any extension thereof under GC Clause 40, the Employer shall pay to the Contractor a bonus in the amount **specified in the PC.** The aggregate amount of such bonus shall in no event exceed the amount **specified as "Maximum" in the PC.**

27. Defect Liability

27.1 The Contractor warrants that the Facilities or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Plant supplied and of the work executed.

27.2 The Defect Liability Period shall be five hundred and forty (540) days from the date of Completion of the Facilities (or any part thereof) or one year from the date of Operational Acceptance of the Facilities (or any part thereof), whichever first occurs, unless specified otherwise in the PC pursuant to GC Sub-Clause 27.10.

If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Plant supplied or of the work executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Employer regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good as the Contractor shall determine at its discretion, such defect as well as any damage to the Facilities caused by such defect. The Contractor shall not be responsible for the repair, replacement or making good of any defect or of any damage to the Facilities arising out of or resulting from any of the following causes:

(a) improper operation or maintenance of the Facilities by the Employer;

(b) operation of the Facilities outside specifications provided in the Contract; or

(c) normal wear and tear.

27.3 The Contractor's obligations under this GC Clause 27 shall not apply to:

(a) any materials that are supplied by the Employer under GC Sub-Clause 21.2, are normally consumed in operation, or have a normal life shorter than the Defect Liability Period stated herein;

(b) any designs, specifications or other data designed, supplied or specified by or on behalf of the Employer or any matters for which the Contractor has disclaimed responsibility herein; or

(c) any other materials supplied or any other work executed by or on behalf of the Employer, except for the work executed by the Employer under GC Sub-Clause 27.7.

27.4 The Employer shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Employer shall afford all reasonable opportunity for the Contractor to inspect any such defect.

27.5 The Employer shall afford the Contractor all necessary access to the Facilities and the Site to enable the Contractor to perform its obligations under this GC Clause 27.

The Contractor may, with the consent of the Employer, remove from the Site any Plant or any part of the Facilities that are defective if the nature of the defect, and/or any damage to the Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.

27.6 If the repair, replacement or making good is of such a character that it may affect the efficiency of the Facilities or any part thereof, the Employer may give to the Contractor a notice requiring that tests of the defective part of the Facilities shall be made by the Contractor immediately upon completion of such remedial work, whereupon the Contractor shall carry out such tests.

If such part fails the tests, the Contractor shall carry out further repair, replacement or making good, as the case may be, until that part of the Facilities passes such tests. The tests shall be agreed upon by the Employer and the Contractor.

27.7 If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Facilities caused by such defect within a reasonable time (which shall in no event be considered to be less than fifteen (15) days), the Employer may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Employer in connection therewith shall be paid to the Employer by the Contractor or may be deducted by the Employer from any monies due the Contractor or claimed under the Performance Security.

27.8 If the Facilities or any part thereof cannot be used by reason of

such defect and/or making good of such defect, the Defect Liability Period of the Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the Employer because of any of the aforesaid reasons.

27.9 Except as provided in GC Clauses 27 and 33, the Contractor shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Facilities or any part thereof, the Plant, design or engineering or work executed that appear after Completion of the Facilities or any part thereof, except where such defects are the result of the gross negligence, fraud, or criminal or willful action of the Contractor.

27.10 In addition, any such component of the Facilities, and during the period of time as may be **specified in the PC,** shall be subject to an extended defect liability period. Such obligation of the Contractor shall be in addition to the defect liability period specified under GC Sub-Clause 27.2.

28. Functional Guarantees

28.1 The Contractor guarantees that during the Guarantee Test, the Facilities and all parts thereof shall attain the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees, subject to and upon the conditions therein specified.

28.2 If, for reasons attributable to the Contractor, the minimum level of the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees, are not met either in whole or in part, the Contractor shall at its cost and expense make such changes, modifications and/or additions to the Plant or any part thereof as may be necessary to meet at least the minimum level of such Guarantees. The Contractor shall notify the Employer upon completion of the necessary changes, modifications and/or additions, and shall request the Employer to repeat the Guarantee Test until the minimum level of the Guarantees has been met. If the Contractor eventually fails to meet the minimum level of Functional Guarantees, the Employer may consider termination of the Contract, pursuant to GC Sub-Clause 42.2.2.

28.3 If, for reasons attributable to the Contractor, the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees, are not attained either in whole or in part, but the minimum level of the Functional Guarantees specified in the said Appendix to the Contract Agreement is met,

the Contractor shall, at the Contractor's option, either

(a) make such changes, modifications and/or additions to the Facilities or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the Employer to repeat the Guarantee Test or

(b) pay liquidated damages to the Employer in respect of the failure to meet the Functional Guarantees in accordance with the provisions in the Appendix to the Contract Agreement titled Functional Guarantees.

28.4 The payment of liquidated damages under GC Sub-Clause 28.3, up to the limitation of liability specified in the Appendix to the Contract Agreement titled Functional Guarantees, shall completely satisfy the Contractor's guarantees under GC Sub-Clause 28.3, and the Contractor shall have no further liability whatsoever to the Employer in respect thereof. Upon the payment of such liquidated damages by the Contractor, the Project Manager shall issue the Operational Acceptance Certificate for the Facilities or any part thereof in respect of which the liquidated damages have been so paid.

29. Patent Indemnity

29.1 The Contractor shall, subject to the Employer's compliance with GC Sub-Clause 29.2, indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Employer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of: (a) the installation of the Facilities by the Contractor or the use of the Facilities in the country where the Site is located; and (b) the sale of the products produced by the Facilities in any country.

Such indemnity shall not cover any use of the Facilities or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the Facilities or any part thereof, or any products produced thereby in association or combination with any other equipment, plant or materials not supplied by the Contractor, pursuant to the Contract Agreement.

29.2 If any proceedings are brought or any claim is made against the Employer arising out of the matters referred to in GC Sub-Clause 29.1, the Employer shall promptly give the Contractor a

notice thereof, and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

29.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Employer.

30. Limitation of Liability

30.1 Except in cases of criminal negligence or willful misconduct,

(a) neither Party shall be liable to the other Party, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, which may be suffered by the other Party in connection with the Contract, other than specifically provided as any obligation of the Party in the Contract, and

(b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the amount resulting from the application of the multiplier specified in the PC, to the Contract Price or, if a multiplier is not so specified, the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Employer

with respect to patent infringement.

Risk Distribution

31. Transfer of Ownership

31.1 Ownership of the Plant (including spare parts) to be imported into the country where the Site is located shall be transferred to the Employer upon loading on to the mode of transport to be used to convey the Plant from the country of origin to that country.

31.2 Ownership of the Plant (including spare parts) procured in the country where the Site is located shall be transferred to the Employer when the Plant are brought on to the Site.

31.3 Ownership of the Contractor's Equipment used by the Contractor and its Subcontractors in connection with the Contract shall remain with the Contractor or its Subcontractors.

31.4 Ownership of any Plant in excess of the requirements for the Facilities shall revert to the Contractor upon Completion of the Facilities or at such earlier time when the Employer and the Contractor agree that the Plant in question are no longer required for the Facilities.

31.5 Notwithstanding the transfer of ownership of the Plant, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor pursuant to GC Clause 32 (Care of Facilities) hereof until Completion of the Facilities or the part thereof in which such Plant are incorporated.

32. Care of Facilities

32.1 The Contractor shall be responsible for the care and custody of the Facilities or any part thereof until the date of Completion of the Facilities pursuant to GC Clause 24 or, where the Contract provides for Completion of the Facilities in parts, until the date of Completion of the relevant part, and shall make good at its own cost any loss or damage that may occur to the Facilities or the relevant part thereof from any cause whatsoever during such period. The Contractor shall also be responsible for any loss or damage to the Facilities caused by the Contractor or its Subcontractors in the course of any work carried out, pursuant to GC Clause 27. Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the Facilities or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GC Sub-Clauses 32.2 and 38.1.

32.2 If any loss or damage occurs to the Facilities or any part thereof or to the Contractor's temporary facilities by reason of

(a) insofar as they relate to the country where the Site is located, nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under GC Clause 34 hereof; or

(b) any use or occupation by the Employer or any third Party other than a Subcontractor, authorized by the Employer of any part of the Facilities; or

(c) any use of or reliance upon any design, data or specification provided or designated by or on behalf of the Employer, or any such matter for which the Contractor has disclaimed responsibility herein,

the Employer shall pay to the Contractor all sums payable in respect of the Facilities executed, notwithstanding that the same be lost, destroyed or damaged, and will pay to the Contractor the replacement value of all temporary facilities and all parts thereof lost, destroyed or damaged. If the Employer requests the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Contractor shall make good the same at the cost of the Employer in accordance with GC Clause 39. If the Employer does not request the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Employer shall either request a change in accordance with GC Clause 39, excluding the performance of that part of the Facilities thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Facilities, the Employer shall terminate the Contract pursuant to GC Sub-Clause 42.1 hereof.

32.3 The Contractor shall be liable for any loss of or damage to any Contractor's Equipment, or any other property of the Contractor used or intended to be used for purposes of the Facilities, except (i) as mentioned in GC Sub-Clause 32.2 with respect to the Contractor's temporary facilities, and (ii) where such loss or damage arises by reason of any of the matters specified in GC

Sub-Clauses 32.2 (b) and (c) and 38.1.

32.4 With respect to any loss or damage caused to the Facilities or any part thereof or to the Contractor's Equipment by reason of any of the matters specified in GC Sub-Clause 38.1, the provisions of GC Sub-Clause 38.3 shall apply.

33. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification

33.1 Subject to GC Sub-Clause 33.3, the Contractor shall indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property other than the Facilities whether accepted or not, arising in connection with the supply and installation of the Facilities and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Employer, its contractors, employees, officers or agents.

33.2 If any proceedings are brought or any claim is made against the Employer that might subject the Contractor to liability under GC Sub-Clause 33.1, the Employer shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

33.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from any liability for loss of or damage to property of the Employer, other than the Facilities not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under GC Clause 34, provided that such

fire, explosion or other perils were not caused by any act or failure of the Contractor.

33.4 The Party entitled to the benefit of an indemnity under this GC Clause 33 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the Party fails to take such measures, the other Party's liabilities shall be correspondingly reduced.

34. Insurance

34.1 To the extent specified in the Appendix to the Contract Agreement titled Insurance Requirements, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said Appendix. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, who should not unreasonably withhold such approval.

(a) Cargo Insurance During Transport

Covering loss or damage occurring while in transit from the Contractor's or Subcontractor's works or stores until arrival at the Site, to the Plant (including spare parts therefor) and to the Contractor's Equipment.

(b) Installation All Risks Insurance

Covering physical loss or damage to the Facilities at the Site, occurring prior to Completion of the Facilities, with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the Defect Liability Period while the Contractor is on the Site for the purpose of performing its obligations during the Defect Liability Period.

(c) Third Party Liability Insurance

Covering bodily injury or death suffered by third Parties including the Employer's personnel, and loss of or damage to property occurring in connection with the supply and installation of the Facilities.

(d) Automobile Liability Insurance

Covering use of all vehicles used by the Contractor or its Subcontractors, whether or not owned by them, in connection with the execution of the Contract.

(e) Workers' Compensation

In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.

(f) Employer's Liability

In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.

(g) Other Insurances

Such other insurances as may be specifically agreed upon by the Parties hereto as listed in the Appendix to the Contract Agreement titled Insurance Requirements.

34.2 The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GC Sub-Clause 34.1, except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to GC Sub-Clause 34.1 except for the Cargo Insurance During Transport, Workers' Compensation and Employer's Liability Insurances. All insurer's rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.

34.3 The Contractor shall, in accordance with the provisions of the Appendix to the Contract Agreement titled Insurance Requirements, deliver to the Employer certificates of insurance or copies of the insurance policies as evidence that the required policies are in full force and effect. The certificates shall provide that no less than twenty-one (21) days' notice shall be given to the Employer by insurers prior to cancellation or material modification of a policy.

34.4 The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.

34.5 The Employer shall at its expense take out and maintain in effect during the performance of the Contract those insurances specified in the Appendix to the Contract Agreement titled Insurance Requirements, in the sums and with the deductibles

and other conditions specified in the said Appendix. The Contractor and the Contractor's Subcontractors shall be named as co-insureds under all such policies. All insurers' rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies. The Employer shall deliver to the Contractor satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than twenty-one (21) days' notice shall be given to the Contractor by all insurers prior to any cancellation or material modification of the policies. If so requested by the Contractor, the Employer shall provide copies of the policies taken out by the Employer under this GC Sub-Clause 34.5.

34.6 If the Contractor fails to take out and/or maintain in effect the insurances referred to in GC Sub-Clause 34.1, the Employer may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Contractor under the Contract any premium that the Employer shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor. If the Employer fails to take out and/or maintain in effect the insurances referred to in GC 34.5, the Contractor may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Employer under the Contract any premium that the Contractor shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Employer. If the Contractor fails to or is unable to take out and maintain in effect any such insurances, the Contractor shall nevertheless have no liability or responsibility towards the Employer, and the Contractor shall have full recourse against the Employer for any and all liabilities of the Employer herein.

34.7 Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GC Clause 34, and all monies payable by any insurers shall be paid to the Contractor. The Employer shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Employer's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Employer. With respect to insurance claims in which the Contractor's interest is involved, the Employer shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.

35. Unforeseen Conditions

35.1 If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions other than climatic conditions, or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract Agreement by an experienced contractor on the basis of reasonable examination of the data relating to the Facilities including any data as to boring tests, provided by the Employer, and on the basis of information that it could have obtained from a visual inspection of the Site if access thereto was available, or other data readily available to it relating to the Facilities, and if the Contractor determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing additional work or using additional Plant or Contractor's Equipment, notify the Project Manager in writing of

(a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen;

(b) the additional work and/or Plant and/or Contractor's Equipment required, including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions;

(c) the extent of the anticipated delay; and

(d) the additional cost and expense that the Contractor is likely to incur.

On receiving any notice from the Contractor under this GC Sub-Clause 35.1, the Project Manager shall promptly consult with the Employer and Contractor and decide upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Project Manager shall instruct the Contractor, with a copy to the Employer, of the actions to be taken.

35.2 Any reasonable additional cost and expense incurred by the Contractor in following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in GC Sub-Clause 35.1 shall be paid by the Employer to the Contractor as an addition to the Contract Price.

If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GC Sub-Clause 35.1, the Time for Completion shall be extended in accordance with GC Clause 40.

36. Change in Laws and Regulations

36.1 If, after the date twenty-eight (28) days prior to the date of Bid submission, in the country where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed which shall be deemed to include any change in interpretation or application by the competent authorities, that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the PC pursuant to GC Sub-Clause 11.2.

37. Force Majeure

37.1 "Force Majeure" shall mean any event beyond the reasonable control of the Employer or of the Contractor, as the case may be, and which is unavoidable notwithstanding the reasonable care of the Party affected, and shall include, without limitation, the following:

(a) war, hostilities or warlike operations whether a state of war be declared or not, invasion, act of foreign enemy and civil war

(b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts

(c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority

(d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague

(e) earthquake, landslide, volcanic activity, fire, flood or

inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster

(f) shortage of labor, materials or utilities where caused by circumstances that are themselves Force Majeure.

37.2 If either Party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.

37.3 The Party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such Party's performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GC Clause 40.

37.4 The Party or Parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either Party's right to terminate the Contract under GC Sub-Clauses 37.6 and 38.5.

37.5 No delay or nonperformance by either Party hereto caused by the occurrence of any event of Force Majeure shall

(a) constitute a default or breach of the Contract, or

(b) give rise to any claim for damages or additional cost or expense occasioned thereby, subject to GC Sub-Clauses 32.2, 38.3 and 38.4

if and to the extent that such delay or nonperformance is caused by the occurrence of an event of Force Majeure.

37.6 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Contract by giving a notice to the other, but without prejudice to either Party's right to terminate

the Contract under GC Sub-Clause 38.5.

37.7 In the event of termination pursuant to GC Sub-Clause 37.6, the rights and obligations of the Employer and the Contractor shall be as specified in GC Sub-Clauses 42.1.2 and 42.1.3.

37.8 Notwithstanding GC Sub-Clause 37.5, Force Majeure shall not apply to any obligation of the Employer to make payments to the Contractor herein.

38. War Risks

38.1 "War Risks" shall mean any event specified in paragraphs (a) and (b) of GC Sub-Clause 37.1 and any explosion or impact of any mine, bomb, shell, grenade or other projectile, missile, munitions or explosive of war, occurring or existing in or near the country (or countries) where the Site is located.

38.2 Notwithstanding anything contained in the Contract, the Contractor shall have no liability whatsoever for or with respect to

(a) destruction of or damage to Facilities, Plant, or any part thereof;

(b) destruction of or damage to property of the Employer or any third Party; or

(c) injury or loss of life

if such destruction, damage, injury or loss of life is caused by any War Risks, and the Employer shall indemnify and hold the Contractor harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges or expenses arising in consequence of or in connection with the same.

38.3 If the Facilities or any Plant or Contractor's Equipment or any other property of the Contractor used or intended to be used for the purposes of the Facilities shall sustain destruction or damage by reason of any War Risks, the Employer shall pay the Contractor for

(a) any part of the Facilities or the Plant so destroyed or damaged to the extent not already paid for by the Employer

and so far as may be required by the Employer, and as may be necessary for completion of the Facilities

(b) replacing or making good any Contractor's Equipment or other property of the Contractor so destroyed or damaged

(c) replacing or making good any such destruction or damage

to the Facilities or the Plant or any part thereof .

If the Employer does not require the Contractor to replace or make good any such destruction or damage to the Facilities, the Employer shall either request a change in accordance with GC Clause 39, excluding the performance of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Facilities, shall terminate the Contract, pursuant to GC Sub-Clause 42.1.

If the Employer requires the Contractor to replace or make good on any such destruction or damage to the Facilities, the Time for Completion shall be extended in accordance with GC 40.

38.4 Notwithstanding anything contained in the Contract, the Employer shall pay the Contractor for any increased costs or incidentals to the execution of the Contract that are in any way attributable to, consequent on, resulting from, or in any way connected with any War Risks, provided that the Contractor shall as soon as practicable notify the Employer in writing of any such increased cost.

38.5 If during the performance of the Contract any War Risks shall occur that financially or otherwise materially affect the execution of the Contract by the Contractor, the Contractor shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its Subcontractors' personnel engaged in the work on the Facilities, provided, however, that if the execution of the work on the Facilities becomes impossible or is substantially prevented for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of any War Risks, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Contract by giving a notice to the other.

38.6 In the event of termination pursuant to GC Sub-Clauses 38.3 or 38.5, the rights and obligations of the Employer and the Contractor shall be specified in GC Sub-Clauses 42.1.2 and 42.1.3.

Change in Contract Elements

39. Change in the Facilities

39.1 Introducing a Change

39.1.1 Subject to GC Sub-Clauses 39.2.5 and 39.2.7, the Employer shall have the right to propose, and subsequently require, that the Project Manager order the Contractor

from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the Facilities hereinafter called "Change", provided that such Change falls within the general scope of the Facilities and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Facilities and the technical compatibility of the Change envisaged with the nature of the Facilities as specified in the Contract.

39.1.2 The Contractor may from time to time during its performance of the Contract propose to the Employer with a copy to the Project Manager, any Change that the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Facilities. The Employer may at its discretion approve or reject any Change proposed by the Contractor, provided that the Employer shall approve any Change proposed by the Contractor to ensure the safety of the Facilities.

39.1.3 Notwithstanding GC Sub-Clauses 39.1.1 and 39.1.2, no change made necessary because of any default of the Contractor in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.

39.1.4 The procedure on how to proceed with and execute Changes is specified in GC Sub-Clauses 39.2 and 39.3, and further details and forms are provided in the Employer's Requirements (Forms and Procedures).

39.2 Changes Originating from Employer

39.2.1 If the Employer proposes a Change pursuant to GC Sub-Clause 39.1.1, it shall send to the Contractor a "Request for Change Proposal," requiring the Contractor to prepare and furnish to the Project Manager as soon as reasonably practicable a "Change Proposal," which shall include the following:

(a) brief description of the Change

(b) effect on the Time for Completion

(c) estimated cost of the Change

(d) effect on Functional Guarantees (if any)

(e) effect on the Facilities

(f) effect on any other provisions of the Contract.

39.2.2 Prior to preparing and submitting the "Change Proposal," the Contractor shall submit to the Project Manager an "Estimate for Change Proposal," which shall be an estimate of the cost of preparing and submitting the Change Proposal.

Upon receipt of the Contractor's Estimate for Change Proposal, the Employer shall do one of the following:

(a) accept the Contractor's estimate with instructions to the Contractor to proceed with the preparation of the Change Proposal

(b) advise the Contractor of any part of its Estimate for Change Proposal that is unacceptable and request the Contractor to review its estimate

(c) advise the Contractor that the Employer does not intend to proceed with the Change.

39.2.3 Upon receipt of the Employer's instruction to proceed under GC Sub-Clause 39.2.2 (a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GC Sub-Clause 39.2.1.

39.2.4 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inequitable, the Parties thereto shall agree on specific rates for the valuation of the Change.

39.2.5 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Contractor under this GC Clause 39 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract Agreement by more than fifteen percent (15%), the Contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the Employer accepts the Contractor's objection, the Employer shall withdraw the proposed Change and shall notify the Contractor in

writing thereof.

The Contractor's failure to so object shall neither affect its right to object to any subsequent requested Changes or Change Orders herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Contractor represents.

39.2.6 Upon receipt of the Change Proposal, the Employer and the Contractor shall mutually agree upon all matters therein contained. Within fourteen (14) days after such agreement, the Employer shall, if it intends to proceed with the Change, issue the Contractor with a Change Order.

If the Employer is unable to reach a decision within fourteen (14) days, it shall notify the Contractor with details of when the Contractor can expect a decision.

If the Employer decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Contractor accordingly. Under such circumstances, the Contractor shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Contractor in its Estimate for Change Proposal submitted in accordance with GC Sub-Clause 39.2.2.

39.2.7 If the Employer and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the Employer may nevertheless instruct the Contractor to proceed with the Change by issue of a "Pending Agreement Change Order."

Upon receipt of a Pending Agreement Change Order, the Contractor shall immediately proceed with effecting the Changes covered by such Order. The Parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.

If the Parties cannot reach agreement within sixty (60) days from the date of issue of the Pending Agreement Change Order, then the matter may be referred to the Dispute Board in accordance with the provisions of GC

Sub-Clause 46.1.

39.3 Changes Originating from Contractor

39.3.1 If the Contractor proposes a Change pursuant to GC Sub-Clause 39.1.2, the Contractor shall submit to the Project Manager a written "Application for Change Proposal," giving reasons for the proposed Change and including the information specified in GC Sub-Clause 39.2.1.

Upon receipt of the Application for Change Proposal, the Parties shall follow the procedures outlined in GC Sub-Clauses 39.2.6 and 39.2.7. However, should the Employer choose not to proceed, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal.

40. Extension of Time for Completion

40.1 The Time(s) for Completion specified in the PC pursuant to GC Sub-Clause 8.2 shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

(a) any Change in the Facilities as provided in GC Clause 39

(b) any occurrence of Force Majeure as provided in GC Clause 37, unforeseen conditions as provided in GC Clause 35, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GC Sub-Clause 32.2

(c) any suspension order given by the Employer under GC Clause 41 hereof or reduction in the rate of progress pursuant to GC Sub-Clause 41.2 or

(d) any changes in laws and regulations as provided in GC Clause 36 or

(e) any default or breach of the Contract by the Employer, Appendix to the Contract Agreement titled ,or any activity, act or omission of the Employer, or the Project Manager, or any other contractors employed by the Employer, or

(f) any delay on the part of a sub-contractor, provided such delay is due to a cause for which the Contractor himself would have been entitled to an extension of time under this sub-clause, or

(g) delays attributable to the Employer or caused by customs, or

(h) any other matter specifically mentioned in the Contract

by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.

40.2 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Employer and the Contractor shall agree upon the period of such extension. In the event that the Contractor does not accept the Employer's estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter to a Dispute Board, pursuant to GC Sub-Clause 46.1.

The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

In all cases where the Contractor has given a notice of a claim for an extension of time under GC 40.2, the Contractor shall consult with the Project Manager in order to determine the steps (if any) which can be taken to overcome or minimize the actual or anticipated delay. The Contractor shall there after comply with all reasonable instructions which the Project Manager shall give in order to minimize such delay. If compliance with such instructions shall cause the Contractor to incur extra costs and the Contractor is entitled to an extension of time under GC 40.1, the amount of such extra costs shall be added to the Contract Price.

41. Suspension

41.1 The Employer may request the Project Manager, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefor. The Contractor shall thereupon suspend performance of such obligation, except those obligations necessary for the care or preservation of the Facilities, until ordered in writing to resume such performance by the Project Manager.

If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations

is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Employer shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GC Clause 39, excluding the performance of the suspended obligations from the Contract.

If the Employer fails to do so within such period, the Contractor may, by a further notice to the Project Manager, elect to treat the suspension, where it affects a part only of the Facilities, as a deletion of such part in accordance with GC Clause 39 or, where it affects the whole of the Facilities, as termination of the Contract under GC Sub-Clause 42.1.

41.2 If

(a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix to the Contract Agreement titled Terms and Procedures of Payment, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GC Sub-Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice or

(b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas in accordance with GC Sub-Clause 10.2, or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities,

then the Contractor may by fourteen (14) days' notice to the Employer suspend performance of all or any of its obligations under the Contract, or reduce the rate of

progress.

41.3 If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this GC Clause 41, then the Time for Completion shall be extended in accordance with GC Sub-Clause 40.1, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Employer to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract.

41.4 During the period of suspension, the Contractor shall not remove from the Site any Plant, any part of the Facilities or any Contractor's Equipment, without the prior written consent of the Employer.

42. Termination

42.1 Termination for Employer's Convenience

42.1.1 The Employer may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this GC Sub-Clause 42.1.

42.1.2 Upon receipt of the notice of termination under GC Sub-Clause 42.1.1, the Contractor shall either immediately or upon the date specified in the notice of termination

(a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition

(b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii) below

(c) remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Subcontractors' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition, and

(d) subject to the payment specified in GC Sub-Clause 42.1.3,

(i) deliver to the Employer the parts of the

Facilities executed by the Contractor up to the date of termination

(ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and

(iii) deliver to the Employer all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Facilities.

42.1.3 In the event of termination of the Contract under GC Sub-Clause 42.1.1, the Employer shall pay to the Contractor the following amounts:

(a) the Contract Price, properly attributable to the parts of the Facilities executed by the Contractor as of the date of termination

(b) the costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment from the Site and in the repatriation of the Contractor's and its Subcontractors' personnel

(c) any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges

(d) costs incurred by the Contractor in protecting the Facilities and leaving the Site in a clean and safe condition pursuant to paragraph (a) of GC Sub-Clause 42.1.2

(e) the cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with third Parties in connection with the Contract and that are not covered by paragraphs (a) through (d) above.

42.2 Termination for Contractor's Default

42.2.1 The Employer, without prejudice to any other rights or remedies it may possess, may terminate the Contract

forthwith in the following circumstances by giving a notice of termination and its reasons therefor to the Contractor, referring to this GC Sub-Clause 42.2:

(a) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, a resolution is passed or order is made for its winding up, other than a voluntary liquidation for the purposes of amalgamation or reconstruction, a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt

(b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GC Clause 43.

(c) if the Contractor, in the judgment of the Employer has engaged in corrupt, collusive, coercive, or fraudulent practices, as defined in GC Clause 6, in competing for or in executing the Contract.

42.2.2 If the Contractor

(a) has abandoned or repudiated the Contract

(b) has without valid reason failed to commence work on the Facilities promptly or has suspended, other than pursuant to GC Sub-Clause 41.2, the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from the Employer to proceed

(c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause

(d) refuses or is unable to provide sufficient materials, services or labor to execute and complete the Facilities in the manner specified in the program furnished under GC Sub-Clause 18.2 at rates of progress that give reasonable assurance to the Employer that the Contractor can attain Completion of the Facilities by the Time for Completion as extended,

then the Employer may, without prejudice to any other

rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination to the Contractor that refers to this GC Sub-Clause 42.2.

42.2.3 Upon receipt of the notice of termination under GC Sub-Clauses 42.2.1 or 42.2.2, the Contractor shall, either immediately or upon such date as is specified in the notice of termination,

(a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition

(b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) below

(c) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination

(d) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors

(e) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.

42.2.4 The Employer may enter upon the Site, expel the Contractor, and complete the Facilities itself or by employing any third Party. The Employer may, to the exclusion of any right of the Contractor over the same, take over and use with the payment of a fair rental rate to the Contractor, with all the maintenance costs to the account of the Employer and with an indemnification by the Employer for all liability including damage or injury to

persons arising out of the Employer's use of such equipment, any Contractor's Equipment owned by the Contractor and on the Site in connection with the Facilities for such reasonable period as the Employer considers expedient for the supply and installation of the Facilities.

Upon completion of the Facilities or at such earlier date as the Employer thinks appropriate, the Employer shall give notice to the Contractor that such Contractor's Equipment will be returned to the Contractor at or near the Site and shall return such Contractor's Equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.

42.2.5 Subject to GC Sub-Clause 42.2.6, the Contractor shall be entitled to be paid the Contract Price attributable to the Facilities executed as of the date of termination, the value of any unused or partially used Plant on the Site, and the costs, if any, incurred in protecting the Facilities and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of GC Sub-Clause 42.2.3. Any sums due the Employer from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.

42.2.6 If the Employer completes the Facilities, the cost of completing the Facilities by the Employer shall be determined.

If the sum that the Contractor is entitled to be paid, pursuant to GC Sub-Clause 42.2.5, plus the reasonable costs incurred by the Employer in completing the Facilities, exceeds the Contract Price, the Contractor shall be liable for such excess.

If such excess is greater than the sums due the Contractor under GC Sub-Clause 42.2.5, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due the Contractor under GC Sub-Clause 42.2.5, the Employer shall pay the balance to the Contractor.

The Employer and the Contractor shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

42.3 Termination by the Contractor

42.3.1 If

(a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix to the Contract Agreement titled Terms and Procedures of Payment, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GC Sub-Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice, or

(b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities,

then the Contractor may give a notice to the Employer thereof, and if the Employer has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to the Employer within twenty-eight (28) days of the said notice, the Contractor may by a further notice to the Employer referring to this GC Sub-Clause 42.3.1, forthwith terminate the Contract.

42.3.2 The Contractor may terminate the Contract forthwith by giving a notice to the Employer to that effect, referring to this GC Sub-Clause 42.3.2, if the Employer becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if

a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Employer takes or suffers any other analogous action in consequence of debt.

42.3.3 If the Contract is terminated under GC Sub-Clauses 42.3.1 or 42.3.2, then the Contractor shall immediately

(a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition

(b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii)

(c) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractors' personnel from the Site, and

(d) subject to the payment specified in GC Sub-Clause 42.3.4,

(i) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination

(ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors, and

(iii) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.

42.3.4 If the Contract is terminated under GC Sub-Clauses 42.3.1 or 42.3.2, the Employer shall pay to the Contractor all payments specified in GC Sub-Clause 42.1.3, and reasonable compensation for all loss, except for loss of

profit, or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.

42.3.5 Termination by the Contractor pursuant to this GC Sub-Clause 42.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by GC Sub-Clause 42.3.

42.4 In this GC Clause 42, the expression "Facilities executed" shall include all work executed, Installation Services provided, and all Plant acquired, or subject to a legally binding obligation to purchase, by the Contractor and used or intended to be used for the purpose of the Facilities, up to and including the date of termination.

42.5 In this GC Clause 42, in calculating any monies due from the Employer to the Contractor, account shall be taken of any sum previously paid by the Employer to the Contractor under the Contract, including any advance payment paid pursuant to the Appendix to the Contract Agreement titled Terms and Procedures of Payment.

43. Assignment

43.1 Neither the Employer nor the Contractor shall, without the express prior written consent of the other Party, which consent shall not be unreasonably withheld, assign to any third Party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder, except that the Contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

44. Export Restrictions

44.1 Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Employer, to the country of the Employer or to the use of the Plant and Installation Services to be supplied which arise from trade regulations from a country supplying those Plant and Installation Services, and which substantially impede the Contractor from meeting its obligations under the Contract, shall release the Contractor from the obligation to provide deliveries or services, always provided, however, that the Contractor can demonstrate to the satisfaction of the Employer and of the Bank that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the export of the Plant and Installation Services under the terms of the Contract. Termination of the Contract on this basis shall be for the Employer's convenience pursuant to

Sub-Clause 42.1.

Claims, Disputes and Arbitration

45. Contractor's Claims

45.1 If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall submit a notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Employer's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

(a) this fully detailed claim shall be considered as interim;

(b) the Contractor shall send further interim claims at monthly

intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and

(c) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.

Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

Each Payment Certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

The Project Manager shall agree with the Contractor or estimate: (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with GC Clause 40, and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

In the event that the Contractor and the Employer cannot agree on any matter relating to a claim, either Party may refer the matter to the Dispute Board pursuant to GC 46 hereof.

46. Disputes and Arbitration

46.1 Appointment of the Dispute Board

Disputes shall be referred to a DB for decision in accordance with GC Sub-Clause 46.3. The Parties shall appoint a DB by the

date stated in the PC.

The DB shall comprise, as stated in the PC, either one or three suitably qualified persons ("the members"), each of whom shall be fluent in the language for communication defined in the Contract and shall be a professional experienced in the type of activities involved in the performance of the Contract and with the interpretation of contractual documents. If the number is not so stated and the Parties do not agree otherwise, the DB shall comprise three persons, one of whom shall serve as chairman.

If the Parties have not jointly appointed the DB 21 days before the date stated in the PC and the DB is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.

However, if a list of potential members is included in the PC, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the DB.

The agreement between the Parties and either the sole member or each of the three members shall incorporate by reference the General Conditions of Dispute Board Agreement contained in the Appendix to these General Conditions, with such amendments as are agreed between them.

The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DB consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment of the member or such expert (as the case may be). Each Party shall be responsible for paying one-half of this remuneration.

If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DB (including each member) shall expire when the Operational Acceptance Certificate has been issued in accordance with GC Sub-Clause 25.3.

46.2 Failure to Agree on the Composition of the Dispute Board

If any of the following conditions apply, namely:

(a) the Parties fail to agree upon the appointment of the sole member of the DB by the date stated in the first paragraph of GC Sub-Clause 46.1,

either Party fails to nominate a member (for approval by the other Party) of a DB of three persons by such date,

the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DB by such date, or

the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

then the appointing entity or official **named in the PC** shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.

46.3 Obtaining Dispute Board's Decision

If a dispute (of any kind whatsoever) arises between the Parties in connection with the performance of the Contract, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Project Manager, either Party may refer the dispute in writing to the DB for its decision, with copies to the other Party and the Project Manager. Such reference shall state that it is given under this Sub-Clause.

For a DB of three persons, the DB shall be deemed to have received such reference on the date when it is received by the chairman of the DB.

Both Parties shall promptly make available to the DB all such additional information, further access to the Site, and appropriate facilities, as the DB may require for the purposes of making a decision on such dispute. The DB shall be deemed to be not acting as arbitrator(s).

Within 84 days after receiving such reference, or within such other period as may be proposed by the DB and approved by

both Parties, the DB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue with the performance of the Facilities in accordance with the Contract.

If either Party is dissatisfied with the DB's decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction and intention to commence arbitration. If the DB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction and intention to commence arbitration.

In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in GC Sub-Clauses 46.6 and 46.7, neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.

If the DB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the DB's decision, then the decision shall become final and binding upon both Parties.

46.4 Amicable Settlement

Where notice of dissatisfaction has been given under GC Sub-Clause 46.3 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of dissatisfaction and intention to commence arbitration was given, even if no attempt at amicable settlement has been made.

46.5 Arbitration

Unless **indicated otherwise in the PC,** any dispute not settled amicably and in respect of which the DB's decision (if any) has not become final and binding shall be finally settled by arbitration. Unless otherwise agreed by both Parties, arbitration

shall be conducted as follows:

(a) For contracts with foreign contractors:

(i) international arbitration with proceedings administered by the international arbitration institution **appointed in the PC,** in accordance with the rules of arbitration of the appointed institution;,

(ii) the place of arbitration shall be the city where the headquarters of the appointed arbitration institution is located or such other place selected in accordance with the applicable arbitration rules; and

(iii) the arbitration shall be conducted in the language for communications defined in Sub-Clause 5.3; and

(b) For contracts with domestic contractors, arbitration with proceedings conducted in accordance with the laws of the Employer's country.

The arbitrator(s) shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, and any decision of the DB, relevant to the dispute. Nothing shall disqualify the Project Manager from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the DB to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the DB shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Project Manager and the DB shall not be altered by reason of any arbitration being conducted during the progress of the Works.

46.6 Failure to Comply with Dispute Board's Decision

In the event that a Party fails to comply with a DB decision which has become final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under GC Sub-Clause 46.5. GC Sub-Clauses 46.3 and 46.4 shall not apply to this reference.

46.7 Expiry of Dispute Board's Appointment

If a dispute arises between the Parties in connection with the performance of the Contract, and there is no DB in place, whether by reason of the expiry of the DB's appointment or otherwise:

(a) GC Sub-Clauses 46.3 and 46.4 shall not apply, and

(b) the dispute may be referred directly to arbitration under GC Sub-Clause 46.5

APPENDIX

A General Conditions of Dispute Board Agreement

1. Definitions

Each "Dispute Board Agreement" is a tripartite agreement by and between:

the "Employer";

the "Contractor"; and

the "Member" who is defined in the Dispute Board Agreement as being:

(i) the sole member of the "DB" and, where this is the case, all references to the "Other Members" do not apply, or

(ii) one of the three persons who are jointly called the "DB" (or "dispute board") and, where this is the case, the other two persons are called the "Other Members".

The Employer and the Contractor have entered (or intend to enter) into a contract, which is called the "Contract" and is defined in the Dispute Board Agreement, which incorporates this Appendix. In the Dispute Board Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.

2. General Provisions

Unless otherwise stated in the Dispute Board Agreement, it shall take effect on the latest of the following dates:

(a) the Commencement Date defined in the Contract,

(b) when the Employer, the Contractor and the Member have each signed the Dispute Board Agreement, or

(c) when the Employer, the Contractor and each of the Other Members (if any) have respectively each signed a dispute board agreement.

This employment of the Member is a personal appointment. At any time, the Member may give not less than 70 days' notice of resignation to the Employer and to the Contractor, and the Dispute Board Agreement shall terminate upon the expiry of this period.

3. Warranties

The Member warrants and agrees that he/she is and shall be impartial and independent of the Employer, the Contractor and the Project Manager. The Member shall promptly disclose, to each of them and to the Other Members (if any), any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.

When appointing the Member, the Employer and the Contractor relied upon the Member's representations that he/she is:

(a) experienced in the work which the Contractor is to carry out under the Contract,

(b) experienced in the interpretation of contract documentation, and

(c) fluent in the language for communications defined in the Contract.

4. General Obligations of the Member

The Member shall:

(a) have no interest financial or otherwise in the Employer, the Contractor or the Project Manager, nor any financial interest in the Contract except for payment under the Dispute Board Agreement;

(b) not previously have been employed as a consultant or otherwise by the Employer, the Contractor or the Project Manager, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Board Agreement;

(c) have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before entering into the Dispute Board Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer, the Contractor or the Project Manager, and any previous involvement in the overall project of which the Contract forms part;

(d) not, for the duration of the Dispute Board Agreement, be employed as a consultant or otherwise by the Employer, the Contractor or the Project Manager, except as may be agreed in writing by the Employer, the Contractor and the Other Members (if any);

(e) comply with the annexed procedural rules and with GC Sub-Clause 46.3;

(f) not give advice to the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;

(g) not while a Member enter into discussions or make any agreement with the Employer, the Contractor or the Project Manager regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Board Agreement;

(h) ensure his/her availability for all site visits and hearings as are necessary;

(i) become conversant with the Contract and with the progress of the Facilities (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;

(j) treat the details of the Contract and all the DB's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor and the Other Members (if any); and

(k) be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members (if any).

5. General Obligations of the Employer and the Contractor

The Employer, the Contractor, the Employer's Personnel and the Contractor's Personnel shall not request advice from or consultation with the Member regarding the Contract, otherwise than in the normal course of the DB's activities under the Contract and the Dispute Board Agreement. The Employer and the Contractor shall be responsible for compliance with this provision, by the Employer's Personnel and the Contractor's Personnel respectively.

The Employer and the Contractor undertake to each other and to the Member that the Member shall not, except as otherwise agreed in writing by the Employer, the Contractor, the Member and the Other Members (if any):

(a) be appointed as an arbitrator in any arbitration under the Contract;

(b) be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Contract; or

(c) be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member's functions, unless the act or omission is shown to have been in bad faith.

The Employer and the Contractor hereby jointly and severally indemnify and hold the Member harmless against and from claims from which he is relieved from liability under the preceding paragraph.

Whenever the Employer or the Contractor refers a dispute to the DB under GC Sub-Clause 46.3, which will require the Member to make a site visit and attend a hearing, the Employer or the Contractor shall provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

6. Payment

The Member shall be paid as follows, in the currency named in the Dispute Board Agreement:

(a) a retainer fee per calendar month, which shall be considered as payment in full for:

(i) being available on 28 days' notice for all site visits and hearings;

(ii) becoming and remaining conversant with all project developments and maintaining relevant files;

(iii) all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and

(iv) all services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this Clause.

The retainer fee shall be paid with effect from the last day of the calendar month in which the Dispute Board Agreement becomes effective; until the last day of the calendar month in which the Taking-Over Certificate is issued for the whole of the Works.

With effect from the first day of the calendar month following the month in which Taking-Over Certificate is issued for the whole of the Works, the retainer fee shall be reduced by one third This reduced fee shall be paid until the first day of the calendar month in which the Member resigns or the Dispute Board Agreement is otherwise terminated.

(b) a daily fee which shall be considered as payment in full for:

(i) each day or part of a day up to a maximum of two days' travel time in each direction for the journey between the Member's home and the site, or another location of a meeting with the Other Members (if any);

(ii) each working day on site visits, hearings or preparing decisions; and

(iii) each day spent reading submissions in preparation for a hearing.

(c) all reasonable expenses including necessary travel expenses (air fare in less than first class, hotel and subsistence and other direct travel expenses) incurred in connection with the Member's duties, as well as the cost of telephone calls, courier charges, faxes and telexes: a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (b) of this Clause;

(d) any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause 6.

The retainer and daily fees shall be as specified in the Dispute Board Agreement. Unless it specifies otherwise, these fees shall remain fixed for the first 24 calendar months, and shall thereafter be adjusted by agreement between the Employer, the Contractor and the Member, at each anniversary of the date on which the Dispute Board Agreement became effective.

If the Parties fail to agree on the retainer fee or the daily fee the appointing entity or official named in the PC shall determine the amount of the fees to be used.

The Member shall submit invoices for payment of the monthly retainer and air fares quarterly in advance. Invoices for other expenses and for daily fees shall be submitted following the

conclusion of a site visit or hearing. All invoices shall be accompanied by a brief description of activities performed during the relevant period and shall be addressed to the Contractor.

The Contractor shall pay each of the Member's invoices in full within 56 calendar days after receiving each invoice and shall apply to the Employer (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The Employer shall then pay the Contractor in accordance with the Contract.

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Board Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DB; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in accordance with GC Sub-Clause 12.3.

If the Member does not receive payment of the amount due within 70 days after submitting a valid invoice, the Member may (i) suspend his/her services (without notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice under Clause 7.

7. Termination

At any time: (i) the Employer and the Contractor may jointly terminate the Dispute Board Agreement by giving 42 days' notice to the Member; or (ii) the Member may resign as provided for in Clause 2.

If the Member fails to comply with the Dispute Board Agreement, the Employer and the Contractor may, without prejudice to their other rights, terminate it by notice to the Member. The notice shall take effect when received by the Member.

If the Employer or the Contractor fails to comply with the Dispute Board Agreement, the Member may, without prejudice to his other rights, terminate it by notice to the Employer and the Contractor. The notice shall take effect when received by them both.

Any such notice, resignation and termination shall be final and binding on the Employer, the Contractor and the Member. However, a notice by the Employer or the Contractor, but not by both, shall be of no effect.

8. Default of the Member

If the Member fails to comply with any of his obligations under Clause 4 concerning his impartiality or independence in relation to the Employer or the Contractor, he/she shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses received by the Member and the Other Members (if any), for proceedings or decisions (if any) of the DB which are rendered void or ineffective by the said failure to comply.

9. Disputes

Any dispute or claim arising out of or in connection with this Dispute Board Agreement, or the breach, termination or invalidity thereof, shall be finally settled by institutional arbitration. If no other arbitration institute is agreed, the arbitration shall be conducted under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with these Rules of Arbitration.

Annex

DISPUTE BOARD GUIDELINES

1. Unless otherwise agreed by the Employer and the Contractor, the DB shall visit the site at intervals of not more than 140 days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor and the DB, the period between consecutive visits shall not be less than 70 days, except as required to convene a hearing as described below.

2. The timing of and agenda for each site visit shall be as agreed jointly by the DB, the Employer and the Contractor, or in the absence of agreement, shall be decided by the DB. The purpose of site visits is to enable the DB to become and remain acquainted with the progress of the Works and of any actual or potential problems or claims, and, as far as reasonable, to prevent potential problems or claims from becoming disputes.

3. Site visits shall be attended by the Employer, the Contractor and the Project Manager and shall be co-ordinated by the Employer in co-operation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each site visit and before leaving the site, the DB shall prepare a report on its activities during the visit and shall send copies to the Employer and the Contractor.

4. The Employer and the Contractor shall furnish to the DB one copy of all documents which the DB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract. All communications between the DB and the Employer or the Contractor shall be copied to the other Party. If the DB comprises three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.

5. If any dispute is referred to the DB in accordance with GC Sub-Clause 46.3, the DB shall proceed in accordance with GC Sub-Clause 46.3 and these Guidelines. Subject to the time allowed to give notice of a decision and other relevant factors, the DB shall:

(a) act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other's case, and

(b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.

6. The DB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.

7. Except as otherwise agreed in writing by the Employer and the Contractor, the DB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer, the Contractor and the Project Manager, and to proceed in the absence of any Party who the DB is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.

8. The Employer and the Contractor empower the DB, among other things, to:

(a) establish the procedure to be applied in deciding a dispute,

(b) decide upon the DB's own jurisdiction, and as to the scope of any dispute referred to it,

(c) conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Guidelines,

(d) take the initiative in ascertaining the facts and matters required for a decision,

(e) make use of its own specialist knowledge, if any,

(f) decide upon the payment of financing charges in accordance with the Contract,

(g) decide upon any provisional relief such as interim or conservatory measures,

(h) open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute, and

(i) appoint, should the DB so consider necessary and the Parties agree, a suitable expert at the cost of the Parties to give advice on a specific matter relevant to the dispute.

9. The DB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DB shall make and give its decision in accordance with GC Sub-Clause 46.3, or as otherwise agreed by the Employer and the Contractor in writing. If the DB comprises three persons:

(a) it shall convene in private after a hearing, in order to have discussions and prepare its decision;

(b) it shall endeavour to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Employer and the Contractor; and

(c) if a Member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision, unless:

(i) either the Employer or the Contractor does not agree that they do so, or

(ii) the absent Member is the chairman and he/she instructs the other Members to not make a decision.

Section VIII. Particular Conditions

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

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Particular Conditions

The following Particular Conditions (PC) shall supplement the General Conditions (GC). Whenever there is a conflict, the provisions herein shall prevail over those in the GC. The clause number of the PC is the corresponding clause number of the GC.

PC 1. Definitions

The Employer is: _____

The Project Manager is: _____

The Bank is: _____

Country of Origin: all countries and territories as indicated in Section V of the bidding documents, Eligible Countries.

PC 5. Law and Language

PC 5.1 The Contract shall be interpreted in accordance with the laws of: _____.

PC 5.2 The ruling language is: _____

PC 5.3 The language for communications is: _____

PC 7. Scope of Facilities [Spare Parts] (GC Clause 7)

PC 7.3 The Contractor agrees to supply spare parts for a period of years: _____

Sample Addition to PC **7.3**

The Contractor shall carry sufficient inventories to ensure an ex-stock supply of consumable spares for the Plant. Other spare parts and components shall be supplied as promptly as possible, but at the most within six (6) months of placing the order and opening the letter of credit. In addition, in the event of termination of the production of spare parts, advance notification will be made to the Employer of the pending termination, with sufficient time to permit the Employer to procure the needed requirement. Following such termination, the Contractor will furnish to the extent possible and at no cost to the Employer the blueprints, drawings and specifications of the spare parts, if requested.

PC 8. Time for Commencement and Completion

PC 8.1 The Contractor shall commence work on the Facilities within _____ from the Effective Date for determining Time for Completion as specified in the Contract Agreement.

PC 8.2 The Time for Completion of the whole of the Facilities shall be _____ from the Effective Date as described in the Contract Agreement.

PC 11. Contract Price

PC 11.2 The Contract Price shall be adjusted in accordance with the provisions of the Appendix to the Contract Agreement titled Adjustment Clause.

PC 13. Securities

PC 13.3.1 The amount of performance security, as a percentage of the Contract Price for the Facility or for the part of the Facility for which a separate Time for Completion is provided, shall be: _____

PC 13.3.2 The performance security shall be in the form of the _____attached hereto in Section IX, Contract Forms.

PC 13.3.3 The performance security shall not be reduced on the date of the Operational Acceptance.

PC 13.3.3 The performance security shall be reduced to ten percent (10%) of the value of the component covered by the extended defect liability to cover the Contractor's extended defect liability in accordance with the provision in the PC, pursuant to GC Sub-Clause 27.10.

PC 22 Installation

PC 22.2.5 Working Hours

Normal working hours are:_____

PC 22.2.8 Funeral Arrangements: _____

PC 25. Commissioning and Operational Acceptance

PC 25.2.2 The Guarantee Test of the Facilities shall be successfully completed within _____ from the date of Completion.

PC 26. Completion Time Guarantee

PC 26.2

Applicable rate for liquidated damages: _____

The above rate applies to the price of the part of the Facilities, as quoted in the Price Schedule, for that part for which the Contractor fails to achieve Completion within the particular Time for Completion.

Maximum deduction for liquidated damages: _____

PC 26.3

Applicable *(amount or rate)* for the bonus for early Completion:

Maximum bonus:

PC 26.3 No bonus will be given for earlier Completion of the Facilities or part thereof.

PC 27. Defect Liability

PC 27.1 The critical components covered under the extended defect liability are _____, and the period shall be _____ *(to be inserted **only** when an extended defect liability is requested).*

PC 30. Limitation of Liability

Sample Clause

PC 30.1 (b) The multiplier of the Contract Price is: _____

PC 46. Disputes and Arbitration

PC 46.1 The DB shall be appointed within [28 days] after the Effective Date.

PC 46.1 The DB shall be:

_____

or

_____

PC 46.1 List of potential DB members is: _____

PC 46.2 Appointment (if not agreed) to be made by:

PC 46.5 Procedure to settle disputes in respect of DB's decisions: _____

(a) Appointed arbitration institution:

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Notification of Award - Letter of Acceptance

_____

To: _____

This is to notify you that your Bid dated _____ for execution of the _____ for the Contract Price in the aggregate of _____ _____, 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 one of the Performance Security Forms included in Section IX, - Contract Forms, of the Bidding Document

Authorized Signature: _____
Name and Title of Signatory: _____
Name of Agency: _____

Attachment: Contract Agreement

Contract Agreement

THIS AGREEMENT is made the _____ day of _____, _____,

BETWEEN

(1) _____, a corporation incorporated under the laws of _____ and having its principal place of business at _____ (hereinafter called "the Employer"), and (2) _____, a corporation incorporated under the laws of _____ and having its principal place of business at _____ (hereinafter called "the Contractor").

WHEREAS the Employer desires to engage the Contractor to design, manufacture, test, deliver, install, complete and commission certain Facilities, viz. _____ ("the Facilities"), and the Contractor has agreed to such engagement upon and subject to the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:

Article 1. Contract Documents

1.1 Contract Documents (Reference GC Clause 2)

The following documents shall constitute the Contract between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract:

(a) This Contract Agreement and the Appendices hereto

(b) Letter of Bid and Price Schedules submitted by the Contractor

(c) Particular Conditions

(d) General Conditions

(e) Specification

(f) Drawings

(g) Other completed bidding forms submitted with the Bid

(h) Any other documents forming part of the Employer's Requirements

(i) Any other documents shall be added here

1.2 Order of Precedence (Reference GC Clause 2)

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1

(Contract Documents) above.

1.3 Definitions (Reference GC Clause 1)

Capitalized words and phrases used herein shall have the same meanings as are ascribed to them in the General Conditions.

Article 2. Contract Price and Terms of Payment

2.1 Contract Price (Reference GC Clause 11)

The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price shall be the aggregate of: _____, _____ as specified in Price Schedule No. 5 (Grand Summary), and_____, _____, or such other sums as may be determined in accordance with the terms and conditions of the Contract.

2.2 Terms of Payment (Reference GC Clause 12)

The terms and procedures of payment according to which the Employer will reimburse the Contractor are given in the Appendix (Terms and Procedures of Payment) hereto.

The Employer may instruct its bank to issue an irrevocable confirmed documentary credit made available to the Contractor in a bank in the country of the Contractor. The credit shall be for an amount of _____; and shall be subject to the Uniform Customs and Practice for Documentary Credits 1993 Revision, ICC Publication No. 600.

In the event that the amount payable under Schedule No. 1 is adjusted in accordance with GC 11.2 or with any of the other terms of the Contract, the Employer shall arrange for the documentary credit to be amended accordingly.

Article 3. Effective Date

3.1 Effective Date (Reference GC Clause 1)

The Effective Date from which the Time for Completion of the Facilities shall be counted is the date when all of the following conditions have been fulfilled:

(a) This Contract Agreement has been duly executed for and on behalf of the Employer and the Contractor;

(b) The Contractor has submitted to the Employer the performance security and the advance payment guarantee;

(c) The Employer has paid the Contractor the advance payment

(d) The Contractor has been advised that the documentary credit referred to in Article 2.2 above has been issued in its favor.

Each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.

3.2 If the conditions listed under 3.1 are not fulfilled within two (2) months from the date of this Contract notification because of reasons not attributable to the Contractor, the Parties shall discuss and agree on an equitable adjustment to the Contract Price and the Time for Completion and/or other relevant conditions of the Contract.

Article 4. Communications

4.1 The address of the Employer for notice purposes, pursuant to GC 4.1 is: _____.

4.2 The address of the Contractor for notice purposes, pursuant to GC 4.1 is: _____.

Article 5. Appendices

5.1 The Appendices listed in the attached List of Appendices shall be deemed to form an integral part of this Contract Agreement.

5.2 Reference in the Contract to any Appendix shall mean the Appendices attached hereto, and the Contract shall be read and construed accordingly.

IN WITNESS WHEREOF the Employer and the Contractor have caused this Agreement to be duly executed by their duly authorized representatives the day and year first above written.

Signed by, for and on behalf of the Employer

_____

[Signature]

_____

[Title]

in the presence of _____

Signed by, for and on behalf of the Contractor

_____

[Signature]

_____

[Title]

in the presence of _____

APPENDICES

Appendix 1	Terms and Procedures of Payment
Appendix 2	Price Adjustment
Appendix 3	Insurance Requirements
Appendix 4	Time Schedule
Appendix 5	List of Major Items of Plant and Installation Services and List of Approved Subcontractors
Appendix 6	Scope of Works and Supply by the Employer
Appendix 7	List of Documents for Approval or Review
Appendix 8	Functional Guarantees

Appendix 1. Terms and Procedures of Payment

In accordance with the provisions of GC Clause 12 (Terms of Payment), the Employer shall pay the Contractor in the following manner and at the following times, on the basis of the Price Breakdown given in the section on Price Schedules. Payments will be made in the currencies quoted by the Bidder unless otherwise agreed between the Parties. Applications for payment in respect of part deliveries may be made by the Contractor as work proceeds.

TERMS OF PAYMENT

Schedule No. 1. Plant and Equipment Supplied from Abroad

In respect of plant and equipment supplied from abroad, the following payments shall be made:

Ten percent (10%) of the total CIP amount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of the plant and equipment delivered to the site, as evidenced by shipping and delivery documents.

Eighty percent (80%) of the total or pro rata CIP amount upon Incoterm "CIP", upon delivery to the carrier within forty-five (45) days after receipt of documents.

Five percent (5%) of the total or pro rata CIP amount upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata CIP amount upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.

Schedule No. 2. Plant and Equipment Supplied from within the Employer's Country

In respect of plant and equipment supplied from within the Employer's country, the following payments shall be made:

Ten percent (10%) of the total EXW amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of the plant and equipment delivered to the site, as evidenced by shipping and delivery documents.

Eighty percent (80%) of the total or pro rata EXW amount upon Incoterm "Ex-Works," upon delivery to the carrier within forty-five (45) days after receipt of invoice and documents.

Five percent (5%) of the total or pro rata EXW amount upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata EXW amount upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.

Schedule No. 3. Design Services

In respect of design services for both the foreign currency and the local currency portions, the following payments shall be made:

Ten percent (10%) of the total design services amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer.

Ninety percent (90%) of the total or pro rata design services amount upon acceptance of design in accordance with GC Clause 20 by the Project Manager within forty-five (45) days after receipt of invoice.

Schedule No. 4. Installation Services

In respect of installation services for both the foreign and local currency portions, the following payments shall be made:

Ten percent (10%) of the total installation services amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of work performed by the Contractor as evidenced by the invoices for installation services.

Eighty percent (80%) of the measured value of work performed by the Contractor, as identified in the said Program of Performance, during the preceding month, as evidenced by the Employer's authorization of the Contractor's application, will be made monthly within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly

applications, upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.

In the event that the Employer fails to make any payment on its respective due date, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate of _____*]* percent (__%) per month for period of delay until payment has been made in full.

PAYMENT PROCEDURES

The procedures to be followed in applying for certification and making payments shall be as follows:

_____

_____

Appendix 2. Price Adjustment

Where the Contract Period (excluding the Defects Liability Period) exceeds eighteen (18) months, it is normal procedure that prices payable to the Contractor shall be subject to adjustment during the performance of the Contract to reflect changes occurring in the cost of labor and material components. In such cases the bidding documents shall include in this Appendix 2 a formula of the following general type, pursuant to GC Sub-Clause 11.2.

Where Contracts are of a shorter duration than eighteen (18) months or in cases where there is to be no Price Adjustment, the following provision shall not be included. Instead, it shall be indicated under this Appendix 2 that the prices are to remain firm and fixed for the duration of the Contract.

Sample Price Adjustment Formula

Prices payable to the Contractor, in accordance with the Contract, shall be subject to adjustment during performance of the Contract to reflect changes in the cost of labor and material components, in accordance with the following formula:

$$P_1 = P_0 \times (a + b\frac{L_1}{L_0} + c\frac{M_1}{M_0}) - P_0$$

in which:

P_1 = adjustment amount payable to the Contractor

P_0 = Contract price (base price)

a = percentage of fixed element in Contract price (a = _ %)

b = percentage of labor component in Contract price (b = _%)

c = percentage of material and equipment component in Contract price (c = _%)

L_0, L_1 = labor indices applicable to the appropriate industry in the country of origin on the base date and the date for adjustment, respectively

M_0, M_1= material and equipment indices in the country of origin on the base date and the date for adjustment, respectively

N.B. a+b+c= 100%.

Conditions Applicable To Price Adjustment

The Bidder shall indicate the source of labor and materials indices and the base date indices in its bid.

Item	Source of Indices Used	Base Date Indices

The base date shall be the date twenty-eight (28) days prior to the Bid closing date.

The date of adjustment shall be the mid-point of the period of manufacture or installation of component or Plant.

The following conditions shall apply:

(a) No price increase will be allowed beyond the original delivery date unless covered by an extension of time awarded by the Employer under the terms of the Contract. No price increase will be allowed for periods of delay for which the Contractor is responsible. The Employer will, however, be entitled to any price decrease occurring during such periods of delay.

(b) If the currency in which the Contract price, P_0, is expressed is different from the currency of the country of origin of the labor and/or materials indices, a correction factor will be applied to avoid incorrect adjustments of the Contract price. The correction factor shall correspond to the ratio of exchange rates between the two currencies on the base date and the date for adjustment as defined above.

(c) No price adjustment shall be payable on the portion of the Contract price paid to the Contractor as an advance payment.

Appendix 3. Insurance Requirements

Insurances to be Taken Out by the Contractor

In accordance with the provisions of GC Clause 34, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, such approval not to be unreasonably withheld.

(a) Cargo Insurance
Covering loss or damage occurring, while in transit from the supplier's or manufacturer's works or stores until arrival at the Site, to the Facilities (including spare parts therefor) and to the construction equipment to be provided by the Contractor or its Subcontractors.

Amount	Deductible limits	Parties insured	From	To

(b) Installation All Risks Insurance
Covering physical loss or damage to the Facilities at the Site, occurring prior to completion of the Facilities, with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the defect liability period while the Contractor is on the Site for the purpose of performing its obligations during the defect liability period.

Amount	Deductible limits	Parties insured	From	To

(c) Third Party Liability Insurance
Covering bodily injury or death suffered by third parties (including the Employer's personnel) and loss of or damage to property (including the Employer's property and any parts of the Facilities that have been accepted by the Employer) occurring in connection with the supply and installation of the Facilities.

Amount	Deductible limits	Parties insured	From	To

(d) Automobile Liability Insurance
Covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the supply and installation of the Facilities. Comprehensive insurance in accordance with statutory requirements.

(e) Workers' Compensation

In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

(f) Employer's Liability
In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

(g) Other Insurances
The Contractor is also required to take out and maintain at its own cost the following insurances:

Details:

Amount	Deductible limits	Parties insured	From	To

The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GC Sub-Clause 34.1, except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to GC Sub-Clause 34.1, except for the Cargo, Workers' Compensation and Employer's Liability Insurances. All insurer's rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.

Insurances To Be Taken Out By The Employer

The Employer shall at its expense take out and maintain in effect during the performance of the Contract the following insurances.

Details:

Amount	Deductible limits	Parties insured	From	To

Appendix 4. Time Schedule

Appendix 5. List of Major Items of Plant and Installation Services and List of Approved Subcontractors

A list of major items of Plant and Installation Services is provided below.

The following Subcontractors and/or manufacturers are approved for carrying out the items of the Facilities indicated below. Where more than one Subcontractor is listed, the Contractor is free to choose between them, but it must notify the Employer of its choice in good time prior to appointing any selected Subcontractor. In accordance with GC Sub-Clause 19.1, the Contractor is free to submit proposals for Subcontractors for additional items from time to time. No Subcontracts shall be placed with any such Subcontractors for additional items until the Subcontractors have been approved in writing by the Employer and their names have been added to this list of Approved Subcontractors.

Major Items of Plant and Installation Services	Approved Subcontractors/Manufacturers	Nationality

Appendix 6. Scope of Works and Supply by the Employer

The following personnel, facilities, works and supplies will be provided/supplied by the Employer, and the provisions of GC Clauses 10, 21 and 24 shall apply as appropriate.

All personnel, facilities, works and supplies will be provided by the Employer in good time so as not to delay the performance of the Contractor, in accordance with the approved Time Schedule and Program of Performance pursuant to GC Sub-Clause 18.2.

Unless otherwise indicated, all personnel, facilities, works and supplies will be provided free of charge to the Contractor.

Personnel	Charge to Contractor (if any)
Facilities	Charge to Contractor (if any)
Works	Charge to Contractor (if any)
Supplies	Charge to Contractor (if any)

Appendix 7. List of Documents for Approval or Review

Pursuant to GC Sub-Clause 20.3.1, the Contractor shall prepare, or cause its Subcontractor to prepare, and present to the Project Manager in accordance with the requirements of GC Sub-Clause 18.2 (Program of Performance), the following documents for

A. Approval

1.

2.

3.

B. Review

1.

2.

3.

Appendix 8. Functional Guarantees

1. General

This Appendix sets out

(a) the functional guarantees referred to in GC Clause 28 (Functional Guarantees)

(b) the preconditions to the validity of the functional guarantees, either in production and/or consumption, set forth below

(c) the minimum level of the functional guarantees

(d) the formula for calculation of liquidated damages for failure to attain the functional guarantees.

2. Preconditions

The Contractor gives the functional guarantees (specified herein) for the facilities, subject to the following preconditions being fully satisfied:

_____

3. Functional Guarantees

Subject to compliance with the foregoing preconditions, the Contractor guarantees as follows:

3.1 Production Capacity

_____

and/or

3.2 Raw Materials and Utilities Consumption

_____

4. Failure in Guarantees and Liquidated Damages

4.1 Failure to Attain Guaranteed Production Capacity

If the production capacity of the facilities attained in the guarantee test, pursuant to GC Sub-Clause 25.2, is less than the guaranteed figure specified in para. 3.1 above, but the actual production capacity attained in the guarantee test is not less than the minimum level specified in para. 4.3 below, and the Contractor elects to pay liquidated damages to the Employer in lieu of making changes, modifications and/or additions to the Facilities, pursuant to GC Sub-Clause 28.3, then the Contractor shall pay liquidated damages at the rate of _____ for every complete one percent (1%) of the deficiency in the production capacity of

the Facilities, or at a proportionately reduced rate for any deficiency, or part thereof, of less than a complete one percent (1%).

4.2 Raw Materials and Utilities Consumption in Excess of Guaranteed Level

_____

If the actual measured figure of specified raw materials and utilities consumed per unit (or their average total cost of consumption) exceeds the guaranteed figure specified in para. 3.2 above (or their specified average total cost of consumption), but the actual consumption attained in the guarantee test, pursuant to GC Sub-Clause 25.2, is not more than the maximum level specified in para. 4.3 below, and the Contractor elects to pay liquidated damages to the Employer in lieu of making changes, modifications and/or additions to the Facilities pursuant to GC Sub-Clause 28.3, then the Contractor shall pay liquidated damages at the rate of *[amount in the contract currency]* for every complete one percent (1%) of the excess consumption of the Facilities, or part thereof, of less than a complete one percent (1%).

4.3 Minimum Levels

Notwithstanding the provisions of this paragraph, if as a result of the guarantee test(s), the following minimum levels of performance guarantees (and consumption guarantees) are not attained by the Contractor, the Contractor shall at its own cost make good any deficiencies until the Facilities reach any of such minimum performance levels, pursuant to GC Sub-Clause 28.2:

(a) production capacity of the Facilities attained in the guarantee test: ninety-five percent (95%) of the guaranteed production capacity (the values offered by the Contractor in its bid for functional guarantees represents 100%).

and/or

(b) average total cost of consumption of all the raw materials and utilities of the Facilities: one hundred and five percent (105%) of the guaranteed figures (the figures offered by the Contractor in its bid for functional guarantees represents 100%).

4.4 Limitation of Liability

Subject to para. 4.3 above, the Contractor's aggregate liability to pay liquidated damages for failure to attain the functional guarantees shall not exceed _____ percent (___ %) of the Contract price

Performance Security Form – *Bank Guarantee*[21]

_____

Beneficiary:

Date: _____

PERFORMANCE GUARANTEE No.: _____

We have been informed that _____ (hereinafter called "the Contractor") has entered into Contract No. _____ dated _____ with you, for the execution of _____ (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 _____ hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ (___)[22], 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 be reduced by half upon our receipt of:

(a) a copy of the Operational Acceptance Certificate; or
(b) a registered letter from the Contractor (i) attaching a copy of its notice requesting issuance of the Operational Acceptance Certificate and (ii) stating that the project manager has failed to issue such Certificate within the time required or provide in writing justifiable reasons why such Certificate has not been issued, so that Operational Acceptance is deemed to have occurred.

This guarantee shall expire no later than the earlier of:[23]

(a) twelve months after our receipt of either (a) or (b) above; or

---

21 *The Employer should insert either the Bank Guarantee (4.1) or the Conditional Guarantee (4.2).*

22 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*.

23 This text shall be revised as and where necessary to take into account (i) partial acceptance of the Facilities in accordance with Sub-Clause 25.4 of the GCC; and (ii) extension of the performance security when the Contractor is liable for an extended warranty obligation pursuant to Sub-Clause 27.10 of the GCC (although in this latter case the *Employer* might want to consider an extended warranty security in lieu of the extension of the performance security).

(b) eighteen months after our receipt of:

(i) a copy of the Completion Certificate; or

(ii) a registered letter from the Contractor, attaching a copy of the notice to the project manager that the Facilities are ready for commissioning, and stating that fourteen days have elapsed from receipt of such notice (or seven days have elapsed if the notice was a repeated notice) and the project manager has failed to issue a Completion Certificate or inform the Contractor in writing of any defects or deficiencies; or

(iii) a registered letter from the Contractor stating that no Completion Certificate has been issued but the Employer is making use of the Facilities; or

(c) the ____ day of _____, 2___.[24]

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

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

_____

[signature(s)]

[24] Insert the date twenty-eight days after the expected expiration date of the Defect Liability Period. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

Performance Security Form- Conditional Bank Guarantee

Date: _____
Loan/Credit N^{o}: _____
IFB N^{o}: _____

_____

To: _____

Dear Ladies and/or Gentlemen,

We refer to the Contract Agreement ("the Contract") signed on [date] between you and _____ ("the Contractor") concerning design, execution and completion of _____.

By this letter we, the undersigned, [name of Bank], a Bank (or company) organized under the laws of _____ and having its registered/principal office at _____, do hereby jointly and severally with the Contractor irrevocably guarantee payment owed to you by the Contractor, pursuant to the Contract, up to the sum of _____, equivalent to _____ percent (__%) of the Contract Price until the date of the Operational Acceptance Certificate and thereafter up to a sum of _____, equivalent to_____ percent (_%) of the Contract Price, until twelve (12) months after the date of Operational Acceptance, or eighteen (18) months after Completion of the Facilities, whichever comes first.

Where it is agreed between you and the Contractor that the Facilities are to be accepted in parts, and thus where there are separate Completion and Operational Acceptance Certificates for each part, this Letter of Guarantee shall be apportioned to the value of each such part and shall reduce or expire as provided above on or following Completion or Operational Acceptance of each part.

We shall only undertake to make payment under this Letter of Guarantee upon our receipt of a written demand signed by your duly authorized officer for a specified sum, where such demand sets out the reasons for your claim under this Letter of Guarantee and is accompanied by

(a) a copy of the written notice sent by you to the Contractor before making the claim under this Guarantee, specifying the Contractor's breach of contract and requesting the Contractor to remedy it

(b) a letter signed by your duly authorized officer certifying that the Contractor has failed to remedy the default within the period allowed for remedial action

(c) a copy of your written notice to the Contractor stating your intent to claim under this Letter of Guarantee because of the Contractor's failure to remedy the default in accordance with the request referred to in para. (a) above.

Our liability under this Letter of Guarantee shall be to pay to you whichever is the lesser of the sum so requested or the amount then guaranteed hereunder in respect of any demand duly made hereunder prior to expiry of this Letter of Guarantee, without being entitled to inquire whether or not this payment is lawfully demanded.

This Letter of Guarantee shall be valid from the date of issue until the earlier of twelve (12) months after the date of Operational Acceptance or eighteen (18) months after the date of Completion of the Facilities or, where the Facilities are to be accepted in parts, twelve (12) months after the date of Operational Acceptance or eighteen (18) months after the date of Completion of the last part or [date], whichever comes first.

Except for the documents herein specified, no other documents or other action shall be required, notwithstanding any applicable law or regulation.

If the Defect Liability Period is extended with respect to any part of the Facilities in accordance with the Contract, you shall notify us, and the validity of this Letter of Guarantee shall be extended with respect to the percentage of the Contract Price stipulated in the notification until expiry of such extended Defect Liability Period.

Our liability under this Letter of Guarantee shall become null and void immediately upon its expiry, whether it is returned or not, and no claim may be made hereunder after such expiry or after the aggregate of the sums paid by us to you shall equal the sums guaranteed hereunder, whichever is the earlier.

All notices to be given hereunder shall be given by registered (airmail) post to the addressee at the address herein set out or as otherwise advised by and between the parties hereto.

We hereby agree that any part of the Contract may be amended, renewed, extended, modified, compromised, released or discharged by mutual agreement between you and the Contractor, and this security may be exchanged or surrendered without in any way impairing or affecting our liabilities hereunder without notice to us and without the necessity for any additional endorsement, consent or guarantee by us, provided, however, that the sum guaranteed shall not be increased or decreased.

No action, event or condition which by any applicable law should operate to discharge us from liability hereunder shall have any effect and we hereby waive any right we may have to apply such law, so that in all respects our liability hereunder shall be irrevocable and, except as stated herein, unconditional in all respects.

Yours truly,

Authorized Signature

Bank Guarantee Form for Advance Payment

_____

Beneficiary: _____

Date: _____

ADVANCE PAYMENT GUARANTEE No.: _____

We have been informed that _____ (hereinafter called "the Contractor") has entered into Contract No. _____ dated _____ with you, for the execution of _____ (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of _____ (_____) is to be made against an advance payment guarantee.

At the request of the Contractor, we _____ hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ (_____)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 toward the execution 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 his account number _____ at _____.

The maximum amount of this guarantee is valid shall be progressively reduced in proportion to the value of each part-shipment or part-delivery of plant and equipment to the site, as indicated in copies of the relevant shipping and delivery documents that shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of documentation indicating full repayment by the Contractor of the amount of the advance payment, or on the ___ day of _____, 2___, whichever is earlier.[25] Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

---

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

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

_____

[signature(s) name of bank or financial institution]

STANDARD BIDDING DOCUMENTS

User's Guide

for
Procurement of Plant
Design, Supply and Install

The World Bank

April 2008

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Introduction

The purpose of this User's Guide is to provide guidance to Employers on how to prepare a bidding document based on the World Bank's Standard Bidding Documents for the Procurement of Plant - Design, Supply and Install (SBD-Plant).

There are two bidding procedures both covered by this User's Guide.

Single-Stage Bidding Procedure

In the single-stage bidding procedure, bidders submit bids in one envelope containing both the price proposal and the technical proposal. The envelopes are opened in public at the date and time advised in the bidding document. The bids are evaluated, and following approval by the Bank, the contract is awarded to the bidder whose bid has been determined to be the lowest evaluated substantially responsive bid.

Two-Stage Bidding Procedure

In the two-stage bidding procedure, bidders first submit their technical proposals, in accordance with the specifications, but without prices. The technical proposals are opened at the date and time advised in the bidding document. The technical proposals are evaluated and may be discussed with the bidders. Any deficiencies, extraneous provisions and unsatisfactory technical features are pointed out to the bidders whose comments are carefully evaluated. The bidders are allowed to revise or adjust their technical proposals to meet the requirements of the Employer. The objective of this process is to ensure that all technical proposals conform to the same acceptable technical standard and meet the technical solution required by the Employer. Bidders who are unable or unwilling to bring their bids to the acceptable technical standard may be rejected as non responsive bidders. After the evaluation of technical proposals has been accepted by the Bank, the second stage is to invite bidders to submit price proposals and revised technical proposals in compliance with the acceptable technical standard. The revised technical proposals and price proposals are opened in public at a date and time advised by the Employer. In setting the date the Employer should allow sufficient time for bidders to incorporate the changes involved in the technical proposals and prepare price proposals. The price proposals and revised technical proposals are evaluated, and following the Bank's acceptance, the contract is awarded to the bidder whose bid has been determined to be the lowest evaluated substantially responsive bid.

For each one of the bidding procedures above, there are two optional procedures for qualifying bidders, also both covered by this User's Guide.

Bidding following Prequalification: This procedure is to be used when bidding is preceded by a prequalification exercise. the Bank's Guidelines for Procurement require prequalification of bidders for large or complex contracts or turnkey contracts to ensure, in advance of bidding, that invitations to bid are confined to capable firms. Prequalification is followed by a competitive bidding procedure in which only those firms meeting specified prequalification criteria are invited to submit a bid. Prequalification should not be used for

limiting competition to a predetermined number of potential bidders. All applicants meeting the specified criteria shall be allowed to bid. The process of prequalification shall follow the procedure indicated in the Bank's Standard Procurement Document for the Prequalification of Bidders. Prequalification shall be applied for all large and complex plant contracts

Bidding without Prequalification: For the procurement of simple contracts the Employer may apply post qualification by requiring bidders to submit the information pertaining to their qualification together with their bids. In this event, it will be necessary to ensure that a bidder's risk of having its bid rejected on grounds of qualification is remote if due diligence is exercised by the bidder during bid preparation. For that purpose, clear-cut, fail-pass qualification criteria need to be specified by the Employer in the Bidding Document in order to enable bidders to make an informed decision whether to pursue a specific contract and, if so, either as a single entity or in joint venture. Post qualification criteria and procedures are covered in Section III (Evaluation and Qualification Criteria) and Section IV (Bidding Forms) of the SBD Plant.

The SBD Plant documents must be used for the procurement of plant financed in whole or in part by the Bank unless the Bank agrees to the use of other bidding documents acceptable to the Bank.

The SBD Plant documents are intended to be used for the procurement of plant through international competitive bidding when:

- the contract involves the design, supply, installation and commissioning of specially engineered plant and equipment, such as turbines, generators, boilers, switchyards, pumping stations, telecommunication systems, process and treatment plants, and similar projects, and

- the value of the plant and equipment represents the major part of the estimated contract value, and the nature and complexity of the plant and equipment is such that the facilities cannot safely be taken over by the Employer without comprehensive testing, pre-commissioning, commissioning and acceptance procedures being followed.

The SBD Plant documents anticipate that the contractor is responsible for each activity required for completion of the facilities, e.g., design, manufacture, delivery, installation, testing, commissioning, training, etc. However, these conditions may be adapted for single responsibility contracts where some activities, such as parts of the preliminary design or site preparation works, are done by others.

The procedures and practices incorporated in the SBD Plant documents have been developed through broad international experience and are based on the Master Bidding Document for Procurement of Procurement of Plant - Design, Supply and Install, prepared by multilateral development banks and other public international financial institutions, and has the structure and the provisions of the Master Procurement Document, except where the Bank specific considerations have required a change.

The conditions of contract are based on the Model Form of International Contract for Process Plant Construction published by the Engineering Advancement Association of Japan (ENAA) as used in the former Standard Bidding Document for Supply and Installation of Plant and Equipment of the World Bank. The multilateral development banks participating in the procurement harmonization process gratefully acknowledge the contribution of ENAA to the advancement of good contracting practices by their Borrowers.

The role of "the Engineer," as found in various forms of contract is not included in this SBD. In its place, and fulfilling similar duties, there are two parties namely the "Project Manager" and the "Dispute Board". The Project Manager is appointed by the Employer to supervise and manage the contract on behalf of the Employer with the intention of achieving the Employer's objectives for the completed contract. When appointing the Project Manager, the Employer may either select a reputable firm of consulting engineers experienced in the particular field, or the Employer may appoint one of its own staff as Project Manager, if the Bank is satisfied that it has suitable in-house expertise. The documents foresee the nomination of a Dispute Board whose role is to review and decide upon any matters of potential dispute between the parties where the parties, with or without the help of the Project Manager, have been unable to settle the matter amicably. The costs of the Dispute Board are shared equally by both parties. Arbitration is resorted to only if the parties fail to settle the dispute through the Dispute Board.

The SBD has been designed to be used as follows. The provisions in the relevant Section I (Instructions to Bidders) either Single-Stage Bidding Procedure or Two-Stage Bidding Procedure, and Section VII (General Conditions of Contract), must be used with their text unchanged. Any data and provisions that these sections required for a specific procurement and contract shall be included respectively in Section II (Bid Data Sheet) and Section VIII (Special Conditions of Contract). An important feature of the SBD Plant is that it can be used with minimum changes, as it does not contain explanations, footnotes or examples that should not form part of the Bidding Document.

This Guide includes two initial sections on the Bidding Process, and the Invitation for Bids (IFB). The Employer should note that **the IFB is neither a part of the Bidding Documents nor a Contract Document**.

The Bank welcomes any feedback or experiences from the use of its SBD Works from borrowers and from bidders as well. For information on procurement under the Bank-financed projects, contact:

Procurement Policy and Services Group
Operations Policy and Country Services Vice Presidency
The World Bank
1818 H Street, NW
Washington, D.C. 20433 U.S.A.
pdocuments@worldbank.org
http://www.worldbank.org/procure

Acronyms

BDS	Bid Data Sheet
BD	Bidding Document
EQC	Evaluation and Qualification Criteria
GCC	General Conditions of Contract
ICB	International Competitive Bidding
IFB	Invitation for Bids
ITB	Instructions to Bidders
JV	Joint Venture
SBD	Standard Bidding Document
SCC	Special Conditions of Contract
TS	Technical Specifications

The Bidding Process

The International Competitive Bidding (ICB) process includes six main stages: *Publicity [Advertising or Notice]*, Preparation and Issuing of Bidding Documents, Bid Preparation and Submission, Bid Opening, Bid Evaluation, and Contract Award.

Publicity [*Advertising or Notice*]

The Employer must announce an upcoming bidding process in the international (dgMarket and UN Development Business on-line) and national media –re Guidelines, Para 2.8 [26]--, and give enough time for potential bidders to respond with well prepared offers –re Guidelines, Para 2.44 [27].

Preparing and Issuing a Bidding Document

The Employer and Bidder should keep in mind that:

(a) The Employer is responsible for the preparation and issuing of the Bidding Document.

(b) The Employer shall use the SBD issued by the Bank, as this is a mandatory requirement for contracts to be financed by the Bank.

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

(i) Section II, Bid Data Sheet

(ii) Section III, Evaluation and Qualification Criteria

(iii) Section IV, Bidding Forms

(iv) Section V, Eligible Countries

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[26] Full text of Para 8 of the Guidelines: "Invitations to prequalify or to bid, as the case may be, shall be advertised as Specific Procurement Notices in at least one newspaper of national circulation in the Borrower's country (or in the official gazette, or in an electronic portal with free access). Such invitations shall also be published in *UNDB online* and in *dgMarket.* Notification shall be given in sufficient time to enable prospective bidders to obtain prequalification or bidding documents and prepare and submit their responses"

[27] Extract of Para 2.44 of the Guidelines: "The time allowed for the preparation and submission of bids shall be determined with due consideration of the particular circumstances of the project and the magnitude and complexity of the contract. Generally, not less than six weeks from the date of the invitation to bid or the date of availability of bidding documents, whichever is later, shall be allowed for ICB. Where large works or complex items of equipment are involved, this period shall generally be not less than twelve weeks to enable prospective bidders to conduct investigations before submitting their bids. In such cases, the Borrower is encouraged to convene pre-bid conferences and arrange site visits."

(v) Section VI, Employer's Requirements

(vi) Section VIII, Special Conditions of Contract

(vii) Section IX, Contract Forms

(d) The Employer shall allow Bidders sufficient time for studying the Bidding Document, preparing complete and responsive bids and submitting the bids.

Bid Preparation and Submission

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

- Promptly respond to requests for clarifications from Bidders and amend, as needed, the Bidding Documents.
- Amend the Bidding Documents only with the Bank's "no objection" in contracts subject to the Bank's prior review.

Bid Opening

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

Best Bid-Opening Practices to Observe

The Employer, in observance of best practices, shall:

- Conduct the Bid Opening strictly following the procedures as specified in the ITB for all bids received not later than the date and time of the bid submission deadline. The term "Bid Opening" can be misleading because a bid for which a Bid Withdrawal or Bid Substitution notice was received on time shall not be opened, but returned unopened to the Bidder. The sequence in which bids are handled and opened is crucial.
- Ensure that all bids that were received on time **are accounted for, before starting** the Bid Opening, as bids that are not opened and read out at Bid Opening shall not be further considered.
- Not reject any bid at Bid Opening, except for late bids received after the date and time of bid submission deadline.
- The Employer shall, however, verify at Bid Opening the validity of the documentation (Power of Attorney or other acceptable equivalent document as specified in ITB), confirming the validity of a bid modification, bid withdrawal, or

bid substitution as the case may be, because a withdrawn or substituted bid shall not be opened and in consequence not read out and, therefore, they shall not be further considered by the Employer. Similarly, a bid modification shall be opened and read out to modify a bid that was received on time.

Bid Evaluation and Contract Award

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

The Employer, in observance of best practices, shall:

- Maintain the bid evaluation process strictly confidential;
- Reject any attempts or pressures to distort the outcome of the evaluation, including fraud and corruption;
- Always comply with the prior-review requirements of the Bank; and
- Strictly apply only and all of the evaluation and qualification criteria specified in the Bidding Documents.

Invitation for Bids

Invitation for Bids - Following Prequalification

The Invitation for Bids for contracts, subject to prequalification, is sent only to firms determined by the Borrower to be qualified in accordance with the Borrower's prequalification procedure. This prequalification procedure must be reviewed and commented on by the Bank if the potential contract is to be eligible for the Bank financing [see Guidelines for Procurement, Appendix 1, para. 2 (a)].

Ideally, the Invitation for Bids is sent to the qualified bidders at the time that the prequalification results are announced.

For major plant, prequalification shall be used. If, exceptionally, prequalification is not used, the appropriate Invitation for Bids form(s) (see below) shall be used.

Standard Format for Invitation for Bids

Date: *[date of issuance of IFB]*
Loan N°:
IFB N°:

1. The *[name of Borrower]* has received[28] a loan[29] from the International Bank for Reconstruction and Development (IBRD) [30] in various currencies towards the cost of *[insert name of Project]*. It is intended that part of the proceeds of this loan will be applied to eligible payments under the contract for *[insert title of contract]*.

2. The *[name of the Employer]* now invites sealed bids from pre-qualified eligible bidders for the construction and completion of *[insert brief description of the plant and services to be procured]* ("the Facilities"). International competitive bidding will conducted in accordance with the Bank's *[insert "Single-Stage" or "Two-Stage"]* [31] Bidding Procedure.

3. Pre-qualified eligible bidders may obtain further information from and inspect the bidding documents at the office of *[insert name of appropriate purchasing unit]*[32] *[insert mailing address of appropriate office for inquiry and issuance of bidding documents and cable, telex, and/or facsimile numbers]*.

4. A complete set of bidding documents may be purchased by interested pre-qualified bidders on the submission of a written application to the above and upon payment of a non-refundable fee of *[insert amount in Borrower's currency or in a convertible currency]*.[33]

5. Bids must be delivered to the above office[34] on or before *[insert time]* on *[insert date]* and must be accompanied by a security of *[insert fixed sum or percentage of bid amount]*.

6. Bids will be opened in the presence of bidders' representatives who choose to attend at *[insert time and date]* at the offices of *[insert address of appropriate office]*.

---

28 Substitute "has applied for," if appropriate.

29 Substitute "grant" or "credit" for "loan," where appropriate.

30 Substitute "IDA" for "IBRD" where appropriate.

31 The choice of the Two Stage bidding procedure shall be subject to the Bank's advance approval on a case-to-case basis, depending on the complexity of the contract and the particular circumstances surrounding its procurement and implementation.

32 The office for inquiry and issuance of bidding documents and that for bid submission may or may not be the same.

33 The fee chargeable should only be nominal to defray reproduction and mailing costs. An amount between US$50 and US$200 or equivalent is deemed appropriate.

34 Substitute the Employer's address for bid submission if different from its address for inquiry and issuance of bidding documents.

Invitation for Bids - Without Prequalification

If bids are invited openly from contractors without using a prequalification procedure, the Invitation for Bids should be issued directly to the public as a Specific Procurement Notice (see Guidelines for Procurement, para. 2.8) as

(a) an advertisement in at least one newspaper of general circulation in the in the Borrower's country (or in the official gazette, or in an electronic portal with free access); and

(b) an advertisement in UN Development Business on line and in dgMarket.

The Invitation for Bids provides information that enables potential bidders to decide whether to participate. Apart from a summary description of the works, the Invitation for Bids should also indicate any important bid evaluation criteria or qualification requirement (for example, a requirement for a minimum level of experience in similar projects for which the Invitation for Bids is issued).

The Invitation for Bids form should be incorporated in the bidding documents and should be consistent with the information contained in Section II - Bid Data Sheet.

Standard Format for Invitation for Bids

Date: *[date of issuance of IFB]*
Loan N^{o}:
IFB N^{o}:

1. The *[name of Borrower]* has received[35] a loan[36] from the International Bank for Reconstruction and Development (IBRD) [37] in various currencies towards the cost of *[insert name of Project]*. It is intended that part of the proceeds of this loan will be applied to eligible payments under the contract for *[title of contract]*.

2. The *[name of the Employer]* now invites sealed bids from eligible bidders for the construction and completion of *[insert brief description of the plant and services to be procured]* ("the Facilities"). International competitive bidding will conducted in accordance with the Bank's [*insert "Single-Stage" or "Two-Stage"*] [38] Bidding Procedure.

3. Interested eligible bidders may obtain further information from and inspect the bidding documents at the office of *[insert name of appropriate purchasing unit]*[39] *[insert mailing address of appropriate office for inquiry and issuance of bidding documents and cable, telex, and/or facsimile numbers]*.

4. A complete set of bidding documents may be purchased by interested bidders on the submission of a written application to the above and upon payment of a non-refundable fee of *[insert amount in Borrower's currency or in a convertible currency]*.[40]

5. The provisions in the Instructions to Bidders and in the General Conditions of Contract are the provisions of the Bank *Standard Bidding Documents: Procurement of Plant*.

6. Bids must be delivered to the above office[41] on or before *[insert time]* on *[insert date]* and must be accompanied by a security of *[insert fixed sum or percentage of bid amount]*

7. Bids will be opened in the presence of bidders' representatives who choose to attend at *[insert time and date]* at the offices of *[insert address of appropriate office]*.

---

35 Substitute "has applied for," if appropriate.

36 Substitute "grant" or "credit" for "loan," where appropriate.

37 Substitute "IDA" for "IBRD" where appropriate.

38 The choice of the Two Stage bidding procedure shall be subject to the Bank's advance approval on a case-to-case basis, depending on the complexity of the contract and the particular circumstances surrounding its procurement and implementation.

39 The office for inquiry and issuance of bidding documents and that for bid submission may or may not be the same.

40 The fee chargeable should only be nominal to defray reproduction and mailing costs and to ensure that only bona fide bidders will request the bidding documents. An amount between US$50 and US$"00 or equivalent is deemed appropriate.

41 Substitute the Employer's address for bid submission if different from its address for inquiry and issuance of bidding documents.

Standard Format for Invitation for Second-Stage Bids

[Letterhead of the Employer]

Date: *[date of issuance of Invitation for Second-Stage Bids]*
Loan No:
IFB No:
Deadline for Bids *[insert closing date and time]*

To: *[insert name and address of the Bidder]*

1. We hereby inform you that you are invited to submit a sealed Second-Stage Bid for the execution and completion of the cited contract for which you submitted a first-stage bid on *[insert date of submission of first stage bid*], which was reviewed during the clarification meeting(s) held on *[insert dates*]and has been found technically responsive.

2. Your Second-Stage Bid should include an updated technical and commercial bid based on attached amendment, if any[42], and on the modifications, if any, listed in the "Changes Required Pursuant to the First Stage Evaluation" Annex to the Memorandum of the clarification meeting(s) held with you on *[insert dates]* [43].

3. Second-Stage Bids shall be submitted *[insert time, date and address for Second-Stage Bid submission]* and will be opened in the presence of the Bidder's representatives who choose to attend at *[insert time, date and address for Second-Stage Bid opening]*[44].

4. Second-Stage Bids shall remain valid for *[insert number of days]* [45] after the deadline for bid submission prescribed above.

5. All Second-Stage Bids must be accompanied by a bid security in an amount of *[insert fixed sum or percentage of bid amount*].

6. *[If bidders were prequalified, include any requirement for updating information provided during prequalification.*] [46]

7. Please confirm receipt of this letter immediately in writing by email, fax or telex. If you do not intend to bid, we would appreciate being so notified again in writing at your earliest opportunity.

---

[42] Amendment shall be common to all bidders invited to submit a Second-Stage Bid.

[43] A copy of the respective Annex should be attached to the letter to the corresponding Bidder.

[44] The dates of bid submission and bid opening should be the same, and the time should also be the same or immediately thereafter.

[45] The period should be sufficient to permit completion of the Second-Stage Bid evaluation, review of the recommended selection by the Bank, obtainment of approvals and notification of award. A realistic period should be specified in order to avoid the need for bid validity extension.

[46] Information to be updated may be specified, such as an updated financial situation, new contractual commitments or current litigation.

Yours truly,
Authorized signature:
Name and title:
Attachments: *[insert title of amendments, if any, and the Memorandum of "Changes Required Pursuant to First Stage Evaluation]*

Part 1 - Bidding Procedures

Option A – Single Stage Bidding

Documents Structure

I. Bidding Document
Issued by Employer

Section 1 - Instructions to Bidders (ITB)
Section 2 - Bid Data Sheet (BDS)
Section 3 - Evaluation and Qualification Criteria (EQC)
Section 4 - Bidding Forms
Section 5 - Eligible Countries
Section 6 - Employer's Requirements
Section 7 - General Conditions of Contract
Section 8 - Special Conditions of Contract
Section 9 - Contract Forms

↓

II. The Bid
Submitted by Bidder

(a) Letter of Bid;
(b) Completed schedules as required, including Price Schedules, in accordance with ITB 12 and 18;
(c) Bid Security, in accordance with ITB 20;
(d) Alternative bids, if permissible, in accordance with ITB 13;
(e) Written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 21.2;
(f) Documentary evidence established in accordance with ITB 14.1 that the plant and services offered by the Bidder in its bid or in any alternative bid, if permitted, are eligible;
(g) Documentary evidence in accordance with ITB 15 establishing the Bidder's eligibility and qualifications to perform the contract if its Bid is accepted;
(h) Technical Proposal in accordance with ITB 17;
(i) Documentary evidence established in accordance with ITB 16 that the plant and services offered by the Bidder conform to the Bidding Document;
(j) JV agreement, or letter of intent to enter into a JV including a draft agreement, indicating at least the parts of the Plant to be executed by the respective partners in the case of a bid submitted by a JV;
(k) List of subcontractors, in accordance with ITB 17.2; and
(l) Any other document required in the BDS

↓

III. Contract Documents
Issued by Employer & Submitted by Bidder

(a) Letter of Acceptance
(b) Contract Agreement and the Appendices hereto
(c) Letter of Bid and Price Schedules submitted by the Contractor
(d) Special Conditions
(e) General Conditions
(f) Specification
(g) Drawings
(h) Other completed Bidding Forms submitted with the Letter of Bid
(i) Any other documents part of the Employer's Requirements
(j) Any other documents as needed and specified

Section I. Instructions to Bidders

Section I, Instructions to Bidders, provides the information necessary for bidders to prepare responsive bids in accordance with the requirements of the Employer. It also gives information on bid submission, opening, and evaluation, and on the award of the Contract.

Section I includes provisions that are to be used unchanged. Section II, Bid Data Sheet, consists of provisions that supplement, amend, or specify information or changes to Section I that are specific to each procurement.

Matter governing the performance of the Contractor under the Contract, payments under the Contract, or matters affecting the risks, rights, or obligations of the parties under the Contract, are not included in this section, but rather in Section VII, General Conditions, Section VIII, Special Conditions, and/or the Contract Forms. If duplication of a subject is inevitable in the different sections of the documents, the Employer should exercise care to avoid contradiction or conflict between clauses dealing with the same topic.

The Instructions to Bidders will not be part of the Contract.

Section II. Bid Data Sheet

Section II, Bid Data Sheet, shall be filled in by the Employer before issuance of the bidding documents. This Guide provides information to the Employer **[in bold]** on how to enter all required information, and includes a BDS format that summarizes all information to be provided.

The Bid Data Sheet (BDS) contains information and provisions that are specific to a particular bidding process. The Employer must specify in the BDS only the information that the ITB request be specified in the BDS. All information shall be provided; **no clause shall be left blank**.

To facilitate the preparation of the BDS, its clauses are numbered with the same numbers as the corresponding ITB clause.

BDS Form

Input of Information to be completed by Employer

ITB Clause Reference	Bid Data
	A. Introduction
ITB 1.1	The number of the Invitation for Bids is : **[Insert number of the Invitation for Bids]**
ITB 1.1	The Employer is: **[Insert name of the Employer]**
ITB 1.1	The name of the ICB is: **[Insert name of the ICB]** The identification number of the ICB is: **[Insert number of the ICB]**
ITB 2.1	The Borrower is: **[Insert name of the Borrower and statement of relationship with the Employer, if different from the Borrower. This insertion should correspond to the information provided in the Invitation for Bids]**
ITB 2.1	The name of the Project is: **[Insert name of the project]**
ITB 4.1 (a)	**[The following provision should be included and the corresponding information inserted only if partners of a JV will not be required to be jointly and severally liable. Otherwise omit.]** The individuals or firms in a joint venture **[insert "shall not be"]** jointly and severally liable.
	B. Bidding Document
ITB 7.1	For **clarification purposes** only, the Employer's address is: **[Insert the corresponding information as required below. This address may be the**

	same as or different from that specified under provision ITB 22.1 for bid submission] Attention: **[insert full name of person, if applicable**] Street Address: [**insert street address and number**] Floor/ Room number: [**insert floor and room number, if applicable**] City: [**insert name of city or town**] ZIP Code: [**insert postal (ZIP) code, if applicable**] Country: [**insert name of country**] Telephone: [**insert telephone number, including country and city codes**] Facsimile number: [**insert telephone number, including country and city code**s] Electronic mail address: [**insert email address, if applicable**]
ITB 7.4	A Pre-Bid meeting **[insert "will" and insert the date, time and place information in the spaces provided below if a pre-bid meeting will take place, taking into consideration that the meeting should take place no later than four weeks before the deadline for bid submission. Otherwise, insert "will not" and insert "Not Applicable" in the spaces provided below for the date, time and place]** take place at the following date, time and place: Date:_____ Time: _____ Place: _____ A site visit conducted by the Employer **[insert "will be" or "will not be", as appropriate]** organized.

C. Preparation of Bids

ITB 10.1	The language of the bid is: [**insert language**].
ITB 11.1 (k)	The Bidder shall submit with its bid the following additional documents: **[insert any additional document not already listed in ITB Sub-Clause 11.1 that must be submitted with the Bid].**
ITB 13.1	**Use one of the following options as appropriate.** Alternative bids are invited in accordance with ITB 13.2 and/or 13.4 **[specify the type(s) of alternative accepted in relation to ITB 13.2 and 13.4"]** or

	Alternative bids are permitted in accordance with ITB 13.3. or Alternative bids are not permitted.
ITB 13.2	Alternatives to the Time Schedule **[insert "shall" or "shall not"]** be permitted. If alternatives to the Time Schedule are permitted, the evaluation method will be as specified in Section III (Evaluation and Qualification Criteria).
ITB 13.4	Alternative technical solutions shall be permitted for the following parts of the plant and services: **[insert parts for which alternative technical solutions are permitted]** further detailed in the Specification. If alternative technical solutions are permitted, the evaluation method will be as specified in Section III (Evaluation and Qualification Criteria).
ITB 17.1	**Use one of the following options as appropriate.** Bidders shall quote for the entire plant and services on a single responsibility basis. **or** Bidders shall quote for the following components or services on a single responsibility basis: [insert list of components or services] **and/or** The following components or services will be provided under the responsibility of the Employer: **[insert list of components or services]**
ITB 17.5 (a)	Named place of destination is:**[insert destination**] *[Note: When the named place of destination is the project site, the transportation costs for Schedule No. 1 items are covered under CIP and therefore will not be stated here. This schedule will cover only for items in Schedule No. 2. If the named place of destination is different from the site of installation (project site), then the transport cost from the named place of destination to project site for Schedule No. 1 shall be also included here.]*
ITB 17.5 (d)	Named place of final destination is:**[insert destination**]
ITB 17.7	The prices quoted by the Bidder shall be **[insert "fixed" or "adjustable"].**
ITB 18.1	Prices shall be quoted in the following currencies: (a) Plant and equipment to be supplied from abroad shall be quoted entirely in the currency of any country. If the Bidder wishes to be

	paid in a combination of amounts in different currencies, it may quote its price accordingly, but use no more than three currencies from any countries. (b) Plant and equipment to be supplied from within the Employer's country shall be quoted in the currency of the Employer's country. (c) Design and installation services shall be quoted in either foreign and/or local currency, depending upon the currency in which the costs are to be incurred.
ITB 19.1	The bid validity period shall be **[insert number of days required for evaluation, approval and award plus contingency]** days. **[This period should be realistic, allowing sufficient time to evaluate the bids, bearing in mind the complexity of the Works and the time required for obtaining references, clarifications, clearances, and approvals (including the Bank's "No Objection") and for notification of the award. Normally the validity period should not exceed 120 days.]**
ITB 20.1	[**insert one of the following options:** Bid shall include a bid security (issued by bank or surety); or Bid shall include a "Bid-Securing Declaration"] If a bid security shall be required, **insert:** The amount of the bid security shall be **[insert amount and currency of the bid security]** or its equivalent in a convertible currency.
ITB 20.3 (d)	Other types of acceptable securities: **[Insert names of other acceptable securities. Insert "None" if no bid security is required under provision ITB 20.1 or if bid security is required but no other forms of bid securities besides those listed in ITB 20.3 (a) through (c) are acceptable.]**
ITB 20.10	**[The following provision should be included and the required corresponding information inserted <u>only</u> if a bid security is not required under provision ITB 20.1 and the Employer wishes to declare the Bidder ineligible for a period of time should the Bidder incur in the actions mentioned in provision ITB 20.7. Otherwise omit.]** The ineligibility period will be **[insert period of time]**.
ITB 21.1	In addition to the original of the bid, the number of copies is **[Insert number of copies].**
ITB 21.2	The written confirmation of authorization to sign on behalf of the Bidder shall consist of **[insert the name and description of the documentation required**

	to demonstrate the authority of the signatory to sign the bid].

D. Submission and Opening of Bids

ITB 22.1	**[The following provision should be included and the required corresponding information inserted <u>only</u> if bidder are allowed to submit their bids electronically; otherwise omit]** Bidders shall have the option of submitting their bids electronically, in which case they shall follow the electronic bid submission procedures specified as follows: **[insert description of procedure]**.
ITB 23.1	For **<u>bid submission purposes</u>** only, the Employer's address is: **[This address may be the same as or different from that specified under provision ITB 7.1 for clarifications]** Attention: [**insert full name of person, if applicable]** Street Address: [**insert street address and number**] Floor/ Room number: [**insert floor and room number, if applicable**] City: [**insert name of city or town**] ZIP Code: [**insert postal (ZIP) code, if applicable**] Country: [**insert name of country**] **The deadline for bid submission is:** Date: [**insert day, month, and year, i.e. 15 June, 2008**] Time: [**insert time, and identify if a.m. or p.m., i.e. 10:30 a.m.**] **[The date and time should be the same as those provided in the Invitation for Bids, unless subsequently amended pursuant to Clause 24.2.]**
ITB 26.1	The bid opening shall take place at: Street Address: **[insert street address and number]** Floor/ Room number: **[insert floor and room number, if applicable]** City: **[insert name of city or town]** Country: **[insert name of country]** Date: **[insert day, month, and year, i.e. 15 June, 2008]** Time: **[insert time, and identify if a.m. or p.m. i.e. 10:30 a.m.] [Date and time should be the same as those given for the deadline for submission of**

	bids (Clause 24).] If electronic bid submission is permitted in accordance with ITB 22.1, the specific bid opening procedures shall be: **[insert electronic bid submission procedures].**

E. Evaluation, and Comparison of Bids

ITB 33.1	The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: **[Insert name of currency]** The source of exchange rate shall be: **[Insert name of the source of exchange rates (e.g., the Central Bank in the Employer's Country).]** The date for the exchange rate shall be: **[insert day, month and year, i.e. 15 June, 2008 not earlier than 28 days prior to the deadline for submission of the Bids, nor later than the original date for the expiry of bid validity].**

Section III. Evaluation and Post Qualification Criteria - Following Prequalification

This Section contains all the criteria that the Employer shall use to evaluate bids and qualify Bidders. In accordance with ITB 35 and ITB 37, no other methods, criteria and factors shall be used. The Bidder shall provide all the information requested in the forms included in Section IV (Bidding Forms).

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1. Evaluation

1.1 Technical Evaluation

In addition to the criteria listed in ITB 35.2 (a) – (b) the following factors shall apply: **[insert appropriate provision]**

1.2 Economic Evaluation

Any adjustments in price that result from the procedures outlined below shall be added, for purposes of comparative evaluation only, to arrive at an "Evaluated Bid Price." Bid prices quoted by bidders shall remain unaltered.

(a) Time Schedule

Time to complete the plant and services from the effective date specified in Article 3 of the Contract Agreement for determining time for completion of pre-commissioning activities is: **[insert number of days**]. No credit will be given for earlier completion.

[The completion time specified shall be for the entire plant and services or for parts or sections of the plant and services.]

or [*where alternative time schedule is accepted, pursuant to ITB 13.2]*

Time to complete the plant and services from the effective date specified in Article 3 of the Contract Agreement for determining time for completion of pre-commissioning activities shall be between **[insert number of days]** minimum and **[insert number of days]** maximum. The adjustment rate in the event of completion beyond the minimum period shall be **[insert percentage in words and figures]** for each week of delay from that minimum period. No credit will be given for completion earlier than the minimum designated period. Bids offering a completion date beyond the maximum designated period shall be rejected.

[One-fifth of a percent (0.2%) per week is a reasonable figure. Alternatively, the rate may be a fixed amount per month, or pro rata per week, of delay related to the loss of benefits to the Employer. The percentage or amount should be less than or equal to the percentage or amount of liquidated damages specified in the SCC in relation to GCC Sub-Clause 26.2]

(b) Operating and Maintenance Costs

Since the operating and maintenance costs of the facilities being procured form a major part of the life cycle cost of the facilities, these costs will be evaluated according to the principles given hereafter, including the cost of spare parts for the initial period of operation stated below and based on prices furnished by each Bidder in Price Schedule Nos. 1 and 2, as well as on past experience of the Employer or other employers similarly placed. Such costs shall be added to the bid

price for evaluation. The price of recommended spare parts quoted in Price Schedule No. 6 shall not be considered for evaluation.

[Use one of the two options given below]

The operating and maintenance costs factors for calculation of the life cycle cost are:

(i) Number of years for life cycle **[insert life cycle period in years. The period should not exceed the period before a major overhaul of the facilities becomes necessary]**

(ii) Operating costs **[insert fuel and/or other input unit cost for operational requirements]**

(iii) Maintenance costs, including the cost of spare parts for the period of operation,

(iv) A rate of **[insert rate in words and figures]** percent to be used to discount to present value all annual future costs calculated under (ii) and (iii) above for the period specified in (i).

or

[insert a reference to the methodology specified in the Specification or elsewhere in the bidding documents]

(c) Functional Guarantees of the facilities

[insert appropriate reference to the functional guarantees, and use text suggested below]

For the purposes of evaluation for each percentage point in performance or efficiency below the norm specified in the Specification but above the minimum acceptable levels also specified there, an adjustment of **[insert amount in the currency of bid evaluation]** will be added to the bid price.

Functional Guarantee	Minimum (or Maximum as appropriate Required
1.	
2.	
3.	
…	

(d) Work, services, facilities, etc., to be provided by the Employer

Where bids include the undertaking of work or the provision of services or facilities by the Employer in excess of the provisions allowed for in the bidding document, the Employer shall assess the costs of such additional work, services and/or facilities during the duration of the contract. Such costs shall be added to the bid price for evaluation.

(e) Specific additional criteria

The following additional criteria will be used in the evaluation:

[if applicable, insert a list of additional criteria and evaluation method, or a reference to criteria and methods specified elsewhere in the bidding document]

1.3 Technical Alternatives

Technical alternatives, if permitted under ITB 13.4, will be evaluated as follows: **[insert a reference to the methodology specified in the Specification or elsewhere in the bidding documents]**.

2. Qualification

2.1 Update of Information

The Bidder shall continue to meet the criteria used at the time of prequalification. Updating and reassessment of the following information which was previously considered during prequalification will be required:

(a) Eligibility
(b) Pending Litigation
(c) Financial Situation

2.2 Financial Resources

Using the relevant Forms in Section IV (Bidding Forms) the Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet:

(1) the following cash-flow requirement: . . . . . and

(2) the overall cash flow requirements for this contract and his current works commitment.

Indicate under (1) above the construction cash flow requirement for a number of months, determined as the total time needed by the Employer to pay a contractor's invoice, allowing for (a) the actual time consumed for construction, from the beginning of the month invoiced, (b) the time needed by the Engineer to issue the monthly payment certificate, and (c) the time needed by the Employer to pay the amount certified. The total period should not exceed six months. The assessment of the monthly

amount should be based on a straight-line projection of the estimated cash flow requirement over the particular contract period, neglecting the effect of any advance payment and retention monies, but including contingency allowances in the estimated contract cost.

2.3 Personnel

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

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

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

The managerial and technical competence of a contractor is largely related to the key personnel on site. The extent to which the Bidder should demonstrate having staff with extensive experience should be limited to those requiring critical operational or technical skills. The prequalification criteria should therefore refer to a limited number of such key personnel, for instance, the project or contract manager and those superintendents working under the project manager who will be responsible for major components (e.g., superintendents specialized in dredging, piling, or earthworks, as required for each particular project). Criteria of acceptability should be based on; (a) a minimum number of years of experience in a similar position; and (b) a minimum number of years of experience and/or number of comparable projects carried out in a specified number of preceding years.

2.4 Equipment

The Bidder must demonstrate that it has the key equipment listed hereafter:

No.	Equipment Type and Characteristics	No. Min. Number Required
1		
2		
3		
…		

The Bidder shall provide further details of proposed items of equipment using the relevant Form in Section IV (Bidding Forms)

In most cases Bidders can readily purchase, lease, or hire equipment; thus, it is usually unnecessary for the assessment of a contractor's qualification to depend on the contractor's owning readily available items of equipment. The pass–fail criteria adopted should therefore be limited only to those bulky or specialized items that are

critical for the type of project to be implemented, and that may be difficult for the contractor to obtain quickly. Examples may include items such as heavy lift cranes and piling barges, etc. Even in such cases, contractors may not own the specialized items of equipment, and may rely on specialist subcontractors or equipment–hire firms. The availability of such subcontractors and of the specified equipment should be subject to verification prior to contract award.

The Bidder shall provide updated details for the above by using the relevant forms included in Section IV (Bidding Forms).

2.5 Subcontractors/manufacturers

Subcontractors/manufacturers for major items of supply or services identified in the prequalification document must meet or continue to meet the minimum criteria specified therein for each item.

Subcontractors for the following additional major items of supply or services must meet the following minimum criteria, herein listed for that item:

Item No.	Description of Item	Minimum Criteria to be met
1		
2		
3		
…		

Section III. Evaluation and Qualification Criteria - Without Prequalification

This Section contains all the criteria that the Employer shall use to evaluate bids and qualify Bidders. In accordance with ITB 35 and ITB 37, no other methods, criteria and factors shall be used. The Bidder shall provide all the information requested in the forms included in Section IV (Bidding Forms).

the Bank requires bidders to be qualified by meeting predefined, precise minimum requirements. The method entails setting pass-fail criteria, which, if not met by the bidder, results in disqualification. It will therefore be necessary to ensure that a bidder's risk of having its bid rejected on grounds of qualification is remote if due diligence is exercised by the bidder during bid preparation. For that purpose, clear-cut, fail-pass qualification criteria need to be specified in order to enable bidders to make an informed decision whether to pursue a specific contract and, if so, either as a single entity or in joint venture. The criteria adopted must relate to characteristics that are essential to ensure satisfactory execution of the contract, and must be stated in unambiguous terms.

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2.7 Subcontractors 35

1. Evaluation

1.1 Technical Evaluation

In addition to the criteria listed in ITB 35.2 (a) – (b) the following factors shall apply:

1.2 Economic Evaluation

Any adjustments in price that result from the procedures outlined below shall be added, for purposes of comparative evaluation only, to arrive at an "Evaluated Bid Price." Bid prices quoted by bidders shall remain unaltered.

(a) Time Schedule

Time to complete the plant and services from the effective date specified in Article 3 of the Contract Agreement for determining time for completion of pre-commissioning activities is: **[insert number of days]**. No credit will be given for earlier completion.

[The completion time specified shall be for the entire plant and services or for parts or sections of the plant and services.]

or *[where alternative time schedule is accepted, pursuant to ITB 13.2]*

Time to complete the plant and services from the effective date specified in Article 3 of the Contract Agreement for determining time for completion of pre-commissioning activities shall be between **[insert number of days]** minimum and **[insert number of days]** maximum. The adjustment rate in the event of completion beyond the minimum period shall be **[insert percentage in words and figures]** for each week of delay from that minimum period. No credit will be given for completion earlier than the minimum designated period. Bids offering a completion date beyond the maximum designated period shall be rejected.

[One-fifth of a percent (0.2%) per week is a reasonable figure. Alternatively, the rate may be a fixed amount per month, or pro rata per week, of delay related to the loss of benefits to the Employer. The accepted period between the minimum and maximum time for completion should be such that the percentage or amount corresponding to the maximum period for completion should be less than or equal to the percentage or amount of liquidated damages specified in the SCC in relation to GCC Sub-Clause 26.2]

(b) Operating and Maintenance Costs

Since the operating and maintenance costs of the facilities being procured form a major part of the life cycle cost of the facilities, these costs will be evaluated according to the principles given hereafter, including the cost of spare parts for the initial period of operation stated below and based on prices furnished by each Bidder in Price Schedule Nos. 1 and 2, as well as on past experience of the Employer or other employers similarly placed. Such costs shall be added to the bid

price for evaluation. The price of recommended spare parts quoted in Price Schedule No. 6 shall not be considered for evaluation.

[Use one of the two options given below]

The operating and maintenance costs factors for calculation of the life cycle cost are:

(i) Number of years for life cycle **[insert life cycle period in years. The period should not exceed the period before a major overhaul of the facilities becomes necessary]**

(ii) Operating costs **[insert fuel and/or other input, unit cost for annual and total operational requirements]**

(iii) Maintenance costs, including the cost of spare parts for the initial period of operation,

(iv) A rate of insert rate in words and figures] in percent to be used to discount to present value all annual future costs calculated under (ii) and (iii) above for the period specified in (i).

or

[insert a reference to the methodology specified in the Specification or elsewhere in the bidding documents]

(c) Functional Guarantees of the facilities

[insert appropriate reference to the functional guarantees, and use text suggested below]

For the purposes of evaluation of **[insert FG to be evaluated]**, for each percentage point in performance or efficiency below the norm specified in the Specification but above the minimum acceptable levels also specified there, an adjustment of **[insert amount in the currency of bid evaluation]** will be added to the bid price.

Functional Guarantee	Minimum (or Maximum, as appropriate) Requirement
1.	
2.	
3.	
…	

(d) Work, services, facilities, etc., to be provided by the Employer

Where bids include the undertaking of work or the provision of services or facilities by the Employer in excess of the provisions allowed for in the bidding document, the Employer shall assess the costs of such additional work, services and/or facilities during the duration of the contract. Such costs shall be added to the bid price for evaluation.

(e) Specific additional criteria

The following additional criteria will be used in the evaluation:

[if applicable, insert a list of additional criteria or a reference to criteria specified elsewhere in the bidding document]

1.3 Technical Alternatives

Technical alternatives, if permitted under ITB 13.4, will be evaluated as follows: **[insert a reference to the methodology specified in the Specification or elsewhere in the bidding documents]**.

2. Qualification

2.1. Eligibility

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

2.1.1 Nationality

Nationality in accordance with ITB Sub-Clause 4.2.	must meet requirement	existing or intended JV must meet requirement	must meet requirement	not applicable	Forms ELI–1.1; ELI–1..2 with attachments

2.1.2 Conflict of Interest

No conflicts of interest in accordance with ITB Sub-Clause 4.3.	must meet requirement	existing or intended JV must meet requirement	must meet requirement	not applicable	Letter of Bid

2.1.3 Bank Eligibility

Not having been declared ineligible by the Bank, as described in ITB Sub-Clause 4.4.	must meet requirement	existing or intended JV must meet requirement	must meet requirement	not applicable	Letter of Bid

2.1.4 Government-owned Entity

Bidder required to meet conditions of ITB Sub-Clause 4.5.	must meet requirement	must meet requirement	must meet requirement	not applicable	Forms ELI-1.1, ELI-1,2 with attachments

2.1.5 Exclusions

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Bidder required to meet conditions of ITB Sub-Clause 4.7.	must meet requirement	must meet requirement	must meet requirement	not applicable	Letter of Bid

2.2 Pending Litigation

2.2.1 History of non-performing contracts

2.2.2 Pending Litigation

All pending litigation shall be treated as resolved against the Bidder and so shall in total not represent more than . . . . . percent of the Bidder's net worth.	must meet requirement by itself or as partner to past or existing JV	not applicable	must meet requirement by itself or as partner to past or existing JV	not applicable	CON-2

[The above percentage should normally be within the range of 50% to 100% of a Bidder's net worth]

2.3. Financial Situation

2.3.1 Historical Financial Performance

Submission of audited balance sheets and income statements or, if not required by the law of the bidder's country, other financial statements acceptable to the Employer, for the last **[Insert no. of years in words and figures. The time period should not be less than 3 years]** years to demonstrate the current soundness of the bidders financial position and its prospective long-term profitability. As a minimum, a Bidder's net worth calculated as the difference between total assets and total liabilities should be positive.	must meet requirement	not applicable	must meet requirement	not applicable	Form FIN-3.1 with attachments

[The financial information provided by a Bidder should be reviewed in its entirety to allow a truly informed judgment, and the pass–fail decision on the financial position of the Bidder should be given on

this basis. Any abnormal features which may lead to financial problems should alert the Employer to seek expert professional advice for further review and interpretation]

2.3.2 Average Annual Turnover

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Minimum average annual turnover of US$ . . . . . calculated as total certified payments received for contracts in progress or completed, within the last **[Insert number of years in words and figures; the time period is normally 3 years or more]** years.	must meet requirement	must meet requirement	must meet . . . . . of the requirement	must meet . . . . . of the requirement	Form FIN–3.2

[The amount stated should normally not be less than 2 x V/T, the estimated annual turnover or cash flow in the subject contract based on a straight-line projection of the Employer's estimated cost (V), including contingencies, over the contract duration (T). The multiplier of two may be reduced for very large contracts but should not be less than 1.5][2]

2.3.3 Financial Resources

Using Forms FIN – 3 and FIN - 4 in Section IV (Bidding Forms) the Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet: (1) the following cash-flow requirement: . . . . . , and (2) the overall cash flow requirements for this contract and its current works commitment.	must meet requirement	must meet requirement	must meet . . . . . of the requirement	must meet . . . . . of the requirement	Form FIN–3.3

[Indicate under (1) above the construction cash flow requirement for a number of months determined as the total time needed by the Employer to pay a contractor's invoice, allowing for (a) the actual time consumed for construction, from the beginning of the month invoiced, (b) the time needed by the Engineer to issue the monthly payment certificate, and (c) the time needed by the Employer to pay the amount certified. The total period should not exceed six months. The assessment of the monthly amount should be based on a straight-line projection of the estimated cash flow requirement over the particular contract period, neglecting the effect of any advance payment and retention monies, but including contingency allowances in the estimated contract cost]

2.4 Experience

2.4.1 General Experience

Experience under contracts in the role of contractor, subcontractor, or management contractor for at least the last . . . . . years prior to the	must meet requirement	not applicable	must meet requirement	not applicable	Form EXP-2.4.1

submission deadline.					

[Insert number of years in words and figures. The time period is normally 5 years or more]

2.4.2 Specific Experience

(a) Contracts of Similar Size and Nature

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Participation as contractor, management contractor, or subcontractor, in at least **[1]** contracts within the last **[2]** years, each with a value of at least US$ **[3]** that have been successfully or are substantially completed and that are similar to the proposed works. The similarity shall be based on the physical size, complexity, methods, technology or other characteristics as described in Section VI, Employer's Requirements.	must meet requirement	must meet requirement	not applicable	not applicable	Form EXP-2.4.2(a)

[(1) Insert number of contracts, the range should be one to three, depending on the size and complexity of the subject contract, the exposure of the Employer to risk of contractor default, and country conditions.
(2) Insert number of years in words and figures. The range is normally five to ten years, and should be related to the number of similar contracts stated above and to the duration of the subject contract, e.g., ten years for two contracts of about five years' duration, or six years for two contracts of about three years' duration
(3) Insert US$ amount, usually 80% of the estimated value of the subject contract]

(b) Experience in Key Activities

For the above or other contracts executed during the period stipulated in 2.4.2(a) above, a minimum construction experience in the following key activities:	must meet all requirements	must meet all requirements	not applicable	not applicable	Form EXP-2.4.2(b)
[Insert key activities as appropriate]					
*					
*					
*					

2.5 Personnel

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

No.	Position	Total Work Experience [years]	Experience In Similar Work [years]
1			

2			
3			
…			

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

The managerial and technical competence of a contractor is largely related to the key personnel on site. The extent to which the Bidder should demonstrate having staff with extensive experience should be limited to those requiring critical operational or technical skills. The qualification criteria should therefore refer to a limited number of such key personnel, for instance, the project or contract manager and those superintendents working under the project manager who will be responsible for major components (e.g., superintendents specialized in dredging, piling, or earthworks, as required for each particular project). Criteria of acceptability should be based on: (a) a minimum number of years of experience in a similar position; and (b) a minimum number of years of experience and/or number of comparable projects carried out in a specified number of preceding years.

2.6 Equipment

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

No.	Equipment Type and Characteristics	No. Min. Number Required
1		
2		
3		
…		

The Bidder shall provide further details of proposed items of equipment using the relevant Form in Section IV (Bidding Forms)

In most cases Bidders can readily purchase, lease, or hire equipment; thus, it is usually unnecessary for the assessment of a contractor's qualification to depend on the contractor's owning readily available items of equipment. The pass–fail criteria adopted should therefore be limited only to those bulky or specialized items that are critical for the type of project to be implemented, and that may be difficult for the contractor to obtain quickly. Examples may include items such as heavy lift cranes and piling barges, etc. Even in such cases, contractors may not own the specialized items of equipment, and may rely on specialist subcontractors or equipment–hire firms. The availability of such subcontractors and of the specified equipment should be subject to verification prior to contract award.

2.7 Subcontractors

Subcontractors/manufacturers for the following major items of supply or services must meet the following minimum criteria, herein listed for that item. Failure to comply with this requirement will result in rejection of the subcontractor.

Item No.	Description of Item	Minimum Criteria to be Met
1		
2		
3		
…		

In the case of a Bidder who offers to supply and install major items of supply under the contract that the Bidder did not manufacture or otherwise produce, the Bidder shall provide the manufacturer's authorization, using the form provided in Section IV (Bidding Forms), showing that the Bidder has been duly authorized by the manufacturer or producer of the related plant and equipment or component to supply and install that item in the Employer's country. The Bidder is responsible for ensuring that the manufacturer or producer complies with the requirements of ITB 4 and 5 and meets the minimum criteria listed above for that item.

Option B: Two Stage Bidding

SBD Plant - Two-Stage Bidding Procedure

Documents Structure

I. Bidding Documents
Issued by Employer

Section 1 - Instructions to Bidders (ITB)
Section 2 - Bid Data Sheet (BDS)
Section 3 - Evaluation and Qualification Criteria (EQC)
Section 4 - Bidding Forms
Section 5 - Eligible Countries
Section 6 - Employer's Requirements
Section 7 - General Conditions of Contract
Section 8 - Special Conditions of Contract
Section 9 - Contract Forms

→

II. The First Stage Bid
Submitted by Bidder

(a) Letter of First Stage Bid;
(b) Alternative Bids in accordance with ITB 13;
(c) Written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 17.2;
(d) Documentary evidence establishing in accordance with ITB 14 that the plant and services offered by the Bidder in its bid or in any alternative bid are eligible;
(e) Documentary evidence in accordance with ITB 15 establishing the Bidder's eligibility and qualifications to perform the contract if its Bid is accepted;
(f) Technical Proposal in accordance with ITB 16.
(g) Documentary evidence established in accordance with ITB 16 that the plant and services offered by the Bidder conform to the Bidding Document and/or details of deviations in accordance with ITB 16.2;
(h) in the case of a bid submitted by a JV, JV agreement, or letter of intent to enter into a JV including a draft agreement, indicating at least the parts of the Plant to be executed by the respective partners;
(i) List of subcontractors, in accordance with ITB 16.2;
(j) any other document required in the BDS.

↙

III. Clarification of First Stage Bid
Issued by Employer

(a) Memorandum entitled "Changes Required Pursuant to First Stage Evaluation";
(b) Invitation for Second Stage Bids;
(c) Any Addendum to the Bidding Document in accordance with ITB 8, if so required.

↓

IV. The Second Stage Bid
Submitted by Bidder

(a) The Letter of Second Stage Bid;
(b) Completed schedules as required, including Price Schedules, in accordance with ITB 29 and 30;
(c) Bid Security, in accordance with ITB 32;
(d) Written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 33.2;
(e) Updated First Stage Bid, comprising any modifications required to the First Stage Bid as recorded in the Memorandum entitled "Changes Required Pursuant to First Stage Evaluation";
(f) Documentary evidence establishing in accordance with ITB 14 that any additional or varied plant and services offered by the Bidder, and not included in the First Stage Bid, are eligible;
(g) Documentary evidence regarding any changes that may have occurred between the time of submitting the First and Second Stage Bids that have any material effect on the Bidder's eligibility and qualifications to perform the Contract;
(h) Documentary evidence establishing that any additional or varied facilities to be supplied and installed by the Bidder, in accordance with the requirements of the Memorandum entitled "Changes Required Pursuant to First Stage Evaluation", are technically acceptable;
(i) List of Subcontractors additional to or different from those named in its First Stage bid for major items of supply or services;
(j) Other documentation and information which may be specified in the BDS.

→

V. The Contract
Issued by Employer and submitted by Bidder

(a) Letter of Acceptance;
(b) Contract Agreement and the Appendices hereto;
(c) Letter of Second Stage Bid and Price Schedules;
(d) Special Conditions of Contract ;
(e) General Conditions of Contract;
(f) Specification;
(g) Drawings;
(h) Other completed Bidding Forms submitted with the Letter of Second Stage Bid;
(i) Any other documents part of the Employer's Requirements;
(i) Any other documents as needed and specified.

Section I. Instructions to Bidders

Section I, Instructions to Bidders, provides the information necessary for bidders to prepare responsive bids in accordance with the requirements of the Employer. It also gives information on bid submission, opening, and evaluation, and on the award of the Contract.

Section I includes provisions that are to be used unchanged. Section II, Bid Data Sheet, consists of provisions that supplement, amend, or specify information or changes to Section I that are specific to each procurement.

Matter governing the performance of the Contractor under the Contract, payments under the Contract, or matters affecting the risks, rights, or obligations of the parties under the Contract, are not included in this section, but rather in Section VII, General Conditions, Section VIII, Special Conditions, and/or the Contract Forms. If duplication of a subject is inevitable in the different sections of the documents, the Employer should exercise care to avoid contradiction or conflict between clauses dealing with the same topic.

The Instructions to Bidders will not be part of the Contract.

Section II. Bid Data Sheet

Section II, Bid Data Sheet, shall be filled in by the Employer before issuance of the bidding documents. This Guide provides information to the Employer **[in bold]** on how to enter all required information, and includes a BDS format that summarizes all information to be provided.

The Bid Data Sheet (BDS) contains information and provisions that are specific to a particular bidding process. The Employer must specify in the BDS only the information that the ITB request be specified in the BDS. All information shall be provided; **no clause shall be left blank**.

To facilitate the preparation of the BDS, its clauses are numbered with the same numbers as the corresponding ITB clause.

BDS Form

Input of Information to be completed by Employer

ITB Clause Reference	Bid Data
	A. Introduction
ITB 1.1	The number of the Invitation for Bids is : **[Insert number of the Invitation for Bids]**
ITB 1.1	The Employer is: **[Insert name of the Employer]**
ITB 1.1	The name of the ICB is: **[Insert name of the ICB]** The identification number of the ICB is: **[Insert number of the ICB]**
ITB 2.1	The Borrower is: **[Insert name of the Borrower and statement of relationship with the Employer, if different from the Borrower. This insertion should correspond to the information provided in the Invitation for Bids]**
ITB 2.1	The name of the Project is: **[Insert name of the project]**
ITB 4.1 (a)	**[The following provision should be included and the corresponding information inserted only if partners of a JV will not be required to be jointly and severally liable. Otherwise omit.]** The individuals or firms in a joint venture **[insert "shall not be"]** jointly and severally liable.

B. Bidding Document

ITB 7.1	For **clarification purposes** only, the Employer's address is: **[Insert the corresponding information as required below. This address may be the same as or different from that specified under provision ITB 22.1 for bid submission]** Attention: **[insert full name of person, if applicable**] Street Address: [**insert street address and number**] Floor/ Room number: [**insert floor and room number, if applicable**] City: [**insert name of city or town**] ZIP Code: [**insert postal (ZIP) code, if applicable**] Country: [**insert name of country**] Telephone: [**insert telephone number, including country and city codes**] Facsimile number: [**insert telephone number, including country and city code***s*] Electronic mail address: [**insert email address, if applicable**]
ITB 7.4	A Pre-Bid meeting **[insert "will" and insert the date, time and place information in the spaces provided below if a pre-bid meeting will take place, taking into consideration that the meeting should take place no later than four weeks before the deadline for bid submission. Otherwise, insert "will not" and insert "Not Applicable" in the spaces provided below for the date, time and place]** take place at the following date, time and place: Date:_____ Time: _____ Place: _____ A site visit conducted by the Employer **[insert "will be" or "will not be", as appropriate]** organized.

C.-1. First Stage Bids - Preparation

ITB 10.1	The language of the bid is: [**insert language**].
ITB 11.1 (i)	The Bidder shall submit with its bid the following additional documents: **[insert any additional document not already listed in ITB Sub-Clause 11.1 that must be submitted with the Bid].**

ITB 16.2 (b)	The period following completion of plant and services in accordance with provisions of contract shall be **[insert number of years as appropriate]**
ITB 17.1	In addition to the original of the bid, the number of copies is **[Insert number of copies].**
ITB 17.2	The written confirmation of authorization to sign on behalf of the Bidder shall consist of **[insert the name and description of the documentation required to demonstrate the authority of the signatory to sign the bid**].
C.-2. First Stage Bids - Submission and Opening	
ITB 18.1	Bidders **[insert shall or shall not]** have the option of submitting their bids electronically.
ITB 18.1 (b)	If bidders shall have the option of submitting their bids electronically, the electronic bidding submission procedures shall be: **[insert electronic bid submission procedure]**
ITB 19.1	For **First Stage Bid submission purposes** only, the Employer's address is: **[This address may be the same as or different from that specified under provision ITB 7.1 for clarifications]** Attention: [**insert full name of person, if applicable]** Street Address: [**insert street address and number**] Floor/ Room number: [**insert floor and room number, if applicable**] City: [**insert name of city or town**] ZIP Code: [**insert postal (ZIP) code, if applicable**] Country: [**insert name of country**] **The deadline for First Stage bid submission is:** Date: [**insert day, month, and year, i.e. 15 June, 2006**] Time: [**insert time, and identify if a.m. or p.m., i.e. 10:30 a.m.**] **[The date and time should be the same as those provided in the Invitation for Bids, unless subsequently amended pursuant to Clause 20.2.]**
ITB 21.1	The First Stage bid opening shall take place at: Street Address: [**insert street address and numbe***r*] Floor/ Room number: [**insert floor and room number, if applicable**]

	City: [**insert name of city or town**] Country: [**insert name of country**] Date: **[insert day, month, and year, i.e. 15 June, 2008**] Time: [**insert time, and identify if a.m. or p.m. i.e. 10:30 a.m.**] **[Date and time should be the same as those given for the deadline for submission of bids (Clause 19).]**
ITB 21.1	If electronic bid submission is permitted in accordance with ITB 19.1, the specific bid opening procedures shall be: **[insert description of the procedures]**
E-1. Second Stage - Bid Preparation	
ITB 27.1(j)	The Bidder shall submit with its Second-Stage bid the following additional documents: **[insert any additional document not already listed in ITB Sub-Clause 27.1 that must be submitted with the Bid]**.
ITB 29.1	**Use one of the following options as appropriate.** Bidders shall quote for the entire plant and services on a single responsibility basis. **or** Bidders shall quote for the following components or services on a single responsibility basis: [insert list of components or services] **and/or** The following components or services will be provided under the responsibility of the Employer: **[insert list of components or services]**
ITB 29.4(a)	Named place of destination is: **[insert place]** *[Note: When the named place of destination is the project site, the transportation costs for Schedule No. 1 items are covered under CIP and therefore will not be stated here. This schedule will cover only for items in Schedule No. 2. If the named place of destination is different from the site of installation (project site), then the transport cost from the named place of destination to project site for Schedule No. 1 shall be also included here.]*
ITB 29.4(a)	Named place of final destination is:**[insert destination**]
IT 29.6	The prices quoted by the Bidder shall be **[insert "fixed" or "adjustable"].**
IT 30.1	Prices shall be quoted in the following currencies: (a) Plant and equipment to be supplied from abroad shall be quoted entirely in the currency of any country. If the Bidder wishes to be paid in a combination of amounts in different currencies, it may

	quote its price accordingly, but use no more than three currencies from any countries. (b) Plant and equipment to be supplied from within the Employer's country shall be quoted in the currency of the Employer's country. (c) Design and installation services shall be quoted in either foreign and/or local currency, depending upon the currency in which the costs are to be incurred.
IT 31.1	The bid validity period shall be **[insert number of days required for evaluation, approval and award plus contingency]** days. **[This period should be realistic, allowing sufficient time to evaluate the bids, bearing in mind the complexity of the Works and the time required for obtaining references, clarifications, clearances, and approvals (including the Bank's "No Objection") and for notification of the award. Normally the validity period should not exceed 120 days.]**
IT 32.1	**Insert either** "A Bid-Securing Declaration shall be required" **Or** "A bid security **shall be** required; the Bid Security shall be issued by a bank using the form included in Section IV (Bidding Forms). The amount and currency of the bid security shall be [**insert amount and currency of the bid security]**
IT 32.3 (d)	Other types of acceptable securities: **[Insert names of other acceptable securities. Insert "None" if no bid security is required under provision ITB 32.1 or if bid security is required but no other forms of bid securities besides those listed in ITB 32.2 (a) through (c) are acceptable.]**
ITB 32.10	If the Bidder incurs any of the actions prescribed in subparagraphs (a) or (b) of this provision, the Borrower will declare the Bidder ineligible to be awarded contracts by the Employer for a period of **[insert number of years in words and figures]** years.
IT 33.1	In addition to the original of the bid, the number of copies is **[Insert number of copies].**
IT 33.2	The written confirmation of authorization to sign on behalf of the Bidder shall consist of **[insert the name and description of the documentation required to demonstrate the authority of the signatory to sign the bid**].

E-2. Second Stage Bids - Submission and Opening

ITB 34.1	Bidders **[insert shall or shall not]** have the option of submitting their bids electronically.
ITB 34.1 (b)	If bidders shall have the option of submitting their bids electronically, the electronic bidding submission procedures shall be: **[insert electronic bid submission procedure]**
ITB 38.1	If electronic bid submission is permitted in accordance with ITB 34.1, the specific bid opening procedures shall be same as stated above in 34.1(b)

E-3. Second Stage Bids - Evaluation, and Comparison

ITB 45.1	The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: **[Insert name of currency]** The source of exchange rate shall be: **[Insert name of the source of exchange rates (e.g., the Central Bank in the Employer's Country).]** The date for the exchange rate shall be: [**insert day, month and year, i.e. 15 June , 2008 not earlier than 28 days prior to the deadline for submission of the Bids, nor later than the original date for the expiry of bid validity].**

Section III. Evaluation and Post Qualification Criteria - Following Prequalification

This Section contains all the criteria that the Employer shall use to evaluate bids and qualify Bidders. In accordance with ITB 24, ITB 47 and ITB 49, no other methods, criteria and factors shall be used. The Bidder shall provide all the information requested in the forms included in Section IV (Bidding Forms).

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A. First Stage Evaluation

1. Technical Evaluation

In addition to the criteria listed in ITB 23.1 (a) – (c) the following factors shall apply:

2. Qualification

2.1 Update of Information

The Bidder shall continue to meet the criteria used at the time of prequalification. Updating and reassessment of the following information which was previously considered during prequalification will be required:

(a) Eligibility
(b) Pending Litigation
(c) Financial Situation

2.2 Financial Resources

Using the relevant Forms in Section IV (Bidding Forms) the Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet:

(1) the following cash-flow requirement: . . . . . and

(2) the overall cash flow requirements for this contract and his current works commitment.

Indicate under (1) above the construction cash flow requirement for a number of months, determined as the total time needed by the Employer to pay a contractor's invoice, allowing for (a) the actual time consumed for construction, from the beginning of the month invoiced, (b) the time needed by the Engineer to issue the monthly payment certificate, and (c) the time needed by the Employer to pay the amount certified. The total period should not exceed six months. The assessment of the monthly amount should be based on a straight-line projection of the estimated cash flow requirement over the particular contract period, neglecting the effect of any advance payment and retention monies, but including contingency allowances in the estimated contract cost.

2.3 Personnel

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

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

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

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

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

2.4 Equipment

The Bidder must demonstrate that it has the key equipment listed hereafter:

No.	Equipment Type and Characteristics	No. Min. Number Required
1		
2		
3		
…		

The Bidder shall provide further details of proposed items of equipment using the relevant Form in Section IV (Bidding Forms)

In most cases Bidders can readily purchase, lease, or hire equipment; thus, it is usually unnecessary for the assessment of a contractor's qualification to depend on the contractor's owning readily available items of equipment. The pass–fail criteria adopted should therefore be limited only to those bulky or specialized items that are critical for the type of project to be implemented, and that may be difficult for the contractor to obtain quickly. Examples may include items such as heavy lift cranes and piling barges, etc. Even in such cases, contractors may not own the specialized items of

equipment, and may rely on specialist subcontractors or equipment–hire firms. The availability of such subcontractors and of the specified equipment should be subject to verification prior to contract award.

The Bidder shall provide updated details for the above by using the relevant forms included in Section IV (Bidding Forms).

2.5 Subcontractors/Manufacturers

Subcontractors/manufacturers for major items of supply or services identified in the prequalification document must meet or continue to meet the minimum criteria specified therein for each item.

Subcontractors for the following additional major items of supply or services must meet the following minimum criteria, herein listed for that item:

Item No.	Description of Item	Minimum Criteria to be met
1		
2		
3		
…		

B. Second Stage Evaluation

1. Evaluation

1.1 Economic Evaluation

Any adjustments in price that result from the procedures outlined below shall be added, for purposes of comparative evaluation only, to arrive at an "Evaluated Bid Price." Bid prices quoted by bidders shall remain unaltered.

(a) Time Schedule

Time to complete the plant and services from the effective date specified in Article 3 of the Contract Agreement for determining time for completion of pre-commissioning activities is: **[insert number of days**]. No credit will be given for earlier completion.

[The completion time specified shall be for the entire plant and services or for parts or sections of the plant and services.]
or

Time to complete the plant and services from the effective date specified in Article 3 of the Contract Agreement for determining time for completion of pre-commissioning

activities shall be between **[insert number of days**] minimum and **[insert number of days]** maximum. The adjustment rate in the event of completion beyond the minimum period shall be [**insert percentage in words and figures**] for each week of delay from that minimum period. No credit will be given for completion earlier than the minimum designated period. Bids offering a completion date beyond the maximum designated period shall be rejected.

[One-fifth of a percent (0.2%) per week is a reasonable figure. Alternatively, the rate may be a fixed amount per month, or pro rata per week, of delay related to the loss of benefits to the Employer. The accepted period between the minimum and maximum time for completion should be such that the percentage or amount corresponding to the maximum period for completion should be less than or equal to the percentage or amount of liquidated damages specified in the SCC in relation to GCC Sub-Clause 26.2]

(b) Operating and Maintenance Costs

Since the operating and maintenance costs of the facilities being procured form a major part of the life cycle cost of the facilities, these costs will be evaluated according to the principles given hereafter, including the cost of spare parts for the initial period of operation stated below and based on prices furnished by each Bidder in Price Schedule Nos. 1 and 2, as well as on past experience of the Employer or other employers similarly placed. Such costs shall be added to the bid price for evaluation. The price of recommended spare parts quoted in Price Schedule No. 6 shall not be considered for evaluation.

[Use one of the two options given below – delete the inapplicable option]

Option 1: The operating and maintenance costs factors for calculation of the life cycle cost are:

(i) Number of years for life cycle **[insert life cycle period in years. The period should not exceed the period before a major overhaul of the facilities becomes necessary]**

(ii) operating costs **[insert fuel and/or other input, unit cost for annual and total operational requirements]**

(iii) maintenance costs, including the cost of spare parts for the initial period of operation,

(iv) A rate of insert rate in words and figures] in percent to be used to discount to present value all annual future costs calculated under (ii) and (iii) above for the period specified in (i).

Or Option 2

[insert a reference to the methodology specified in the Specification or elsewhere in the bidding documents]

Functional Guarantees of the facilities

[insert appropriate reference to the functional guarantees, and use text suggested below]

For the purposes of evaluation for each percentage point in performance or efficiency below the norm specified in the Specification but above the minimum acceptable levels also specified there, an adjustment of **[insert amount in the currency of bid evaluation]** will be added to the bid price.

(c) Work, services, facilities, etc., to be provided by the Employer

Where bids include the undertaking of work or the provision of services or facilities by the Employer in excess of the provisions allowed for in the bidding document, the Employer shall assess the costs of such additional work, services and/or facilities during the duration of the contract. Such costs shall be added to the bid price for evaluation.

(d) Specific additional criteria

The following additional criteria will be used in the evaluation:

[if applicable, insert a list of additional criteria which may also be included as amendments in the invitation for the second stage bid]

The relevant evaluation method shall be detailed below and/or in the Specification:

[insert the evaluation method]

Section III. Evaluation and Qualification Criteria - Without Prequalification

This Section contains all the criteria that the Employer shall use to evaluate bids and qualify Bidders. In accordance with ITB 23, ITB 47 and ITB 49, no other methods, criteria and factors shall be used. The Bidder shall provide all the information requested in the forms included in Section IV (Bidding Forms).

the Bank requires bidders to be qualified by meeting predefined, precise minimum requirements. The method entails setting pass-fail criteria, which, if not met by the bidder, results in disqualification. It will therefore be necessary to ensure that a bidder's risk of having its bid rejected on grounds of qualification is remote if due diligence is exercised by the bidder during bid preparation. For that purpose, clear-cut, fail-pass qualification criteria need to be specified in order to enable bidders to make an informed decision whether to pursue a specific contract and, if so, either as a single entity or in joint venture. The criteria adopted must relate to characteristics that are essential to ensure satisfactory execution of the contract, and must be stated in unambiguous terms.

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A. First Stage Technical Proposal

1. Evaluation

In addition to the criteria listed in ITB 25.1 (a) – (c) the following factors shall apply:

2. Qualification

2.1. Eligibility

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
2.1.1 Nationality					
Nationality in accordance with ITB Sub-Clause 4.2.	must meet requirement	existing or intended JV must meet requirement	must meet requirement	not applicable	Forms ELI –1.1; ELI –.1.2 with attachments
2.1.2 Conflict of Interest					
No conflicts of interest in accordance with ITB Sub-Clause 4.3.	must meet requirement	existing or intended JV must meet requirement	must meet requirement	not applicable	Letter of Bid
2.1.3 Bank Eligibility					
Not having been declared ineligible by the Bank, as described in ITB Sub-Clause 4.4.	must meet requirement	existing or intended JV must meet requirement	must meet requirement	not applicable	Letter of Bid
2.1.4 Government-owned Entity					
Bidder required to meet conditions of ITB Sub-Clause 4.5.	must meet requirement	must meet requirement	must meet requirement	not applicable	Forms ELI -1, ELI -2 with attachments
2.1.5 Ineligibility based on a United Nations resolution or Borrower's country law					
Not having been excluded as a result of the Borrower's country laws or official regulations, or by an act of compliance with UN Security Council resolution, in accordance with ITB 4.8	Must meet requirement	Existing JVA must meet requirement	Must meet requirement	N / A	Letter of Bid

2.2 Pending Litigation

2.2.1 History of non-performing contracts

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Non-performance of a contract did not occur within the last **[Insert no. of years in words and figures]** years prior to the deadline for application submission, based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the Dispute Resolution Mechanism under the respective contract, and where all appeal instances available to the bidder have been exhausted.	Must meet requirement by itself or as partner to past or existing JVA	N / A	Must meet requirement by itself or as partner to past or existing JVA	N / A	Form CON - 2

2.2.2 Pending Litigation

All pending litigation shall be treated as resolved against the Bidder and so shall in total not represent more than **[Insert percentage in words and figures]** percent of the Bidder's net worth.	must meet requirement by itself or as partner to past or existing JV	not applicable	must meet requirement by itself or as partner to past or existing JV	not applicable	Form CON-2

[The above percentage should normally be within the range of 50% to 100% of a Bidder's net worth]

2.3. Financial Situation

2.3.1 Historical Financial Performance

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Submission of audited balance sheets and income statements or, if not required by the law of the	must meet requirement	not applicable	must meet requirement	not applicable	Form FIN – 3.1 with attachments

bidder's country, other financial statements acceptable to the Employer, for the last **[Insert no. of years in words and figures. The time period should not be less than 3 years]** years to demonstrate the current soundness of the bidders financial position and its prospective long-term profitability. As a minimum, a Bidder's net worth calculated as the difference between total assets and total liabilities should be positive.					

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

2.3.2 Average Annual Turnover

Criteria	Compliance Requirements				Documents
Requirement	**Single Entity**	**Joint Venture**			**Submission Requirements**
		All Partners Combined	**Each Partner**	**One Partner**	
Minimum average annual turnover of US$ **[insert amount in words and figures]** calculated as total certified payments received for contracts in progress or completed, within the last **[Insert number of years in words and figures; the time period is normally 3 years or more]** years.	must meet requirement	must meet requirement	must meet **[insert percentage in words and figures]** of the requirement	must meet **[insert percentage in words and figures]** of the requirement	Form FIN – 3-2

[The amount stated should normally not be less than 2 x V/T, the estimated annual turnover or cash flow in the subject contract based on a straight-line projection of the Employer's estimated cost (V), including contingencies, over the contract duration (T). The multiplier of two may be reduced for very large contracts but should not be less than 1.5][2]

2.3.3 Financial Resources

Using Forms FIN – 3 and FIN - 4 in Section IV (Bidding Forms) the Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets,	must meet requirement	must meet requirement	must meet **[insert percentage in words and figures]** of the	must meet **[insert percentage in words and figures]** of the	Form FIN - 3

lines of credit, and other financial means, other than any contractual advance payments to meet: (1) the following cash-flow requirement: **[insert cash-flow requirements]**, and (2) the overall cash flow requirements for this contract and its current works commitment.			requirement	requirement	

[Indicate under (1) above the construction cash flow requirement for a number of months determined as the total time needed by the Employer to pay a contractor's invoice, allowing for (a) the actual time consumed for construction, from the beginning of the month invoiced, (b) the time needed by the Engineer to issue the monthly payment certificate, and (c) the time needed by the Employer to pay the amount certified. The total period should not exceed six months. The assessment of the monthly amount should be based on a straight-line projection of the estimated cash flow requirement over the particular contract period, neglecting the effect of any advance payment and retention monies, but including contingency allowances in the estimated contract cost]

2.4 Experience

2.4.1 General Experience

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Experience under contracts in the role of contractor, subcontractor, or management contractor for at least the last **[Insert number of years in words and figures]** years prior to the submission deadline.	must meet requirement	not applicable	must meet requirement	not applicable	Form EXP-2.4.1

[The time period is normally 5 years or more]

2.4.2 Specific Experience

(a) Contracts of Similar Size and Nature

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Participation as contractor, management contractor, or subcontractor, in at least **[1]** contracts within the last **[2]** years, each with a value of at least US$ **[3]** that have been	must meet requirement	must meet requirement	not applicable	not applicable	Form EXP 2.4.2(a)

successfully or are substantially completed and that are similar to the proposed works. The similarity shall be based on the physical size, complexity, methods, technology or other characteristics as described in Section VI, Employer's Requirements.					

[(1) Insert number of contracts, the range should be one to three, depending on the size and complexity of the subject contract, the exposure of the Employer to risk of contractor default, and country conditions.
(2) Insert number of years in words and figures. The range is normally five to ten years, and should be related to the number of similar contracts stated above and to the duration of the subject contract, e.g., ten years for two contracts of about five years' duration, or six years for two contracts of about three years' duration
(3) Insert US$ amount, usually 80% of the estimated value of the subject contract]

(b) Experience in Key Activities

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
For the above or other contracts executed during the period stipulated in 2.4.2(a) above, a minimum construction experience in the following key activities:	must meet all requirements	must meet all requirements	not applicable	not applicable	Form EXP-2.4.2(b)
[Insert key activities as appropriate]					
*					
*					
*					

2.5 Personnel

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

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

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

The managerial and technical competence of a contractor is largely related to the key personnel on site. The extent to which the Bidder should demonstrate having staff with extensive experience should be limited to those requiring critical operational or technical skills. The qualification criteria should therefore refer to a limited number of such key personnel, for instance, the project or contract manager and those superintendents working under the project manager who will be responsible for major components (e.g., superintendents specialized in dredging, piling, or earthworks, as required for each particular project). Criteria of acceptability should be based on:
(a) a minimum number of years of experience in a similar position; and
(b) a minimum number of years of experience and/or number of comparable projects carried out in a specified number of preceding years.

2.6 Equipment

The Bidder must demonstrate that it has the key equipment listed hereafter:

No.	Equipment Type and Characteristics	No. Min. Number Required
1		
2		
3		
…		

The Bidder shall provide further details of proposed items of equipment using the relevant Form in Section IV (Bidding Forms)

In most cases Bidders can readily purchase, lease, or hire equipment; thus, it is usually unnecessary for the assessment of a contractor's qualification to depend on the contractor's owning readily available items of equipment. The pass–fail criteria adopted should therefore be limited only to those bulky or specialized items that are critical for the type of project to be implemented, and that may be difficult for the contractor to obtain quickly. Examples may include items such as heavy lift cranes and piling barges, etc. Even in such cases, contractors may not own the specialized items of

equipment, and may rely on specialist subcontractors or equipment–hire firms. The availability of such subcontractors and of the specified equipment should be subject to verification prior to contract award.

2.7 Subcontractors

Subcontractors/manufacturers for the following major items of supply or services must meet the following minimum criteria, herein listed for that item. Failure to comply with this requirement will result in rejection of the subcontractor.

Item No.	Description of Item	Minimum Criteria to be Met
1		
2		
3		
…		

In the case of a Bidder who offers to supply and install major items of supply under the contract that the Bidder did not manufacture or otherwise produce, the Bidder shall provide the manufacturer's authorization, using the form provided in Section IV (Bidding Forms), showing that the Bidder has been duly authorized by the manufacturer or producer of the related plant and equipment or component to supply and install that item in the Employer's country. The Bidder is responsible for ensuring that the manufacturer or producer complies with the requirements of ITB 4 and 5 and meets the minimum criteria listed above for that item.

B. Second Stage Bids

1. Evaluation

1.1 Economic Evaluation

Any adjustments in price that result from the procedures outlined below shall be added, for purposes of comparative evaluation only, to arrive at an "Evaluated Bid Price." Bid prices quoted by bidders shall remain unaltered.

(a) Time Schedule

Time to complete the plant and services from the effective date specified in Article 3 of the Contract Agreement for determining time for completion of pre-commissioning activities is: **[insert number of days**]. No credit will be given for earlier completion.

[The completion time specified shall be for the entire plant and services or for parts or sections of the plant and services.]

or

Time to complete the plant and services from the effective date specified in Article 3 of the Contract Agreement for determining time for completion of pre-commissioning activities shall be between **[insert number of days**] minimum and **[insert number of days**] maximum. The adjustment rate in the event of completion beyond the minimum period shall be [**insert percentage in words and figures**] for each week of delay from that minimum period. No credit will be given for completion earlier than the minimum designated period. Bids offering a completion date beyond the maximum designated period shall be rejected.

[One-fifth of a percent (0.2%) per week is a reasonable figure. Alternatively, the rate may be a fixed amount per month, or pro rata per week, of delay related to the loss of benefits to the Employer. The accepted period between the minimum and maximum time for completion should be such that the percentage or amount corresponding to the maximum period for completion should be less than or equal to the percentage or amount of liquidated damages specified in the SCC in relation to GCC Sub-Clause 26.2]

(b) Operating and Maintenance Costs

Since the operating and maintenance costs of the facilities being procured form a major part of the life cycle cost of the facilities, these costs will be evaluated according to the principles given hereafter, including the cost of spare parts for the initial period of operation stated below and based on prices furnished by each Bidder in Price Schedule Nos. 1 and 2, as well as on past experience of the Employer or other employers similarly placed. Such costs shall be added to the bid price for evaluation. The price of recommended spare parts quoted in Price Schedule No. 6 shall not be considered for evaluation.

Option 1: [Use one of the two options given below – delete inapplicable option]

The operating and maintenance costs factors for calculation of the life cycle cost are:

(i) Number of years for life cycle **[insert life cycle period in years. The period should not exceed the period before a major overhaul of the facilities becomes necessary]**

(ii) operating costs **[insert fuel and/or other input, unit cost for annual and total operational requirements]**

(iii) maintenance costs, including the cost of spare parts for the initial period of operation,

(iv) A rate of insert rate in words and figures] in percent to be used to discount to present value all annual future costs calculated under (ii) and (iii) above for the period specified in (i).

Or Option 2:

[insert a reference to the methodology specified in the Specification or elsewhere in the bidding documents]

(c) Functional Guarantees of the facilities

[insert appropriate reference to the functional guarantees, and use text suggested below]

For the purposes of evaluation of **[insert FG to be evaluated]**, for each percentage point in performance or efficiency below the norm specified in the Specification but above the minimum acceptable levels also specified there, an adjustment of **[insert amount in the currency of bid evaluation]** will be added to the bid price.

(d) Work, services, facilities, etc., to be provided by the Employer

Where bids include the undertaking of work or the provision of services or facilities by the Employer in excess of the provisions allowed for in the bidding document, the Employer shall assess the costs of such additional work, services and/or facilities during the duration of the contract. Such costs shall be added to the bid price for evaluation.

(e) Specific additional criteria

The following additional criteria will be used in the evaluation:

[if applicable, insert a list of additional criteria or a reference to criteria specified elsewhere in the bidding document]

Section IV. Bidding Forms

The Employer shall include in the BD all bidding forms that the Bidder shall fill out and include in its bid. As specified in Section IV of the BD, these forms are the Letter of First Stage Bid, the Letter of Second Stage Bid, and relevant Schedules, the Bid Security, the Price Schedules, the Technical Proposal Form, and the Bidder's Qualification Information Form for which two options are attached (Option "Following Prequalification" and Option "Without Prequalification"). This Guide helps the Employer fill in all the required information in each Bidding Form.

Letter of Bid

Letter of Bid – Single Stage Bidding

Date: _____
ICB No.: _____
Invitation for Bid No.: _____

To: _____

We, the undersigned, declare that:

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

(b) We offer to *[insert the services that apply, i.e., design, manufacture, test, deliver, install, precommission and commission]*, in conformity with the Bidding Document, the following Plant and Installation Services: *[Insert a brief description of the Plant and Services.]*

(c) The price of our Bid, excluding any discounts offered in item (d) below is the sum of: , (*amount in figures*), **and** *[insert amount of local currency in words]* (*amount in figures*)]

(d) The discounts offered and the methodology for their application are: *[insert any discounts offered and the methodology for their application]*;

(e) Our bid shall be valid for a period of *_[insert number of days in words and figures]* days from the date fixed for the bid submission deadline in accordance with the Bidding Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

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

(g) We, including any subcontractors or manufacturers for any part of the contract , have or will have nationalities from eligible countries, in accordance with ITB-4.2;

(h) We, including any subcontractors or manufacturers for any part of the contract, do not have any conflict of interest in accordance with ITB-4.3;

(i) We are not participating, as a Bidder or as a subcontractor, in more than one bid in this bidding process in accordance with ITB-4.3, other than alternative bids submitted in accordance with ITB-13;

(j) We, including any of our subcontractors or manufacturers for any part of the contract, have not been declared ineligible by the Bank, under the Employer's country laws or official regulations or by an act of compliance with a decision of the United Nations Security Council;

(k) We are not a government owned entity/ We are a government owned entity but meet the requirements of ITB-4.5;[47]

(l) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:

Name of Recipient	Address	Reason	Amount

(If none has been paid or is to be paid, indicate "none.")

(m) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed; and

(n) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

Name _____ In the capacity of _____

Signed _____

Duly authorized to sign the bid for and on behalf of _____

Dated on _____ day of _____, _____

[47] *Bidder to use as appropriate*

Letter of Bid - Two Stage Bidding, First Stage Bid

Input of Information to be completed by Bidder (bold) or Employer (*italic*)

Letter of Bid - Two Stage Bidding, First Stage Bid

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

To: [*insert complete name of Employer*]

We, the undersigned, declare that:

(a) We have examined and have no reservations to the Bidding Documents, including Addenda No.: [**insert the number and issuing date of each Addenda**];

(b) We offer to **[insert; the services that apply, i.e., design, manufacture, test, deliver, install, recommission and commission],** in conformity with the Bidding Document the following Plant and Services **[insert a brief description of the Plant and Services]**;

(c) Our firm, including any subcontractors or suppliers for any part of the Contract, has nationals from eligible countries in accordance with ITB-4.2;

(d) We, including any subcontractors or suppliers for any part of the contract, do not have any conflict of interest in accordance with ITB-4.3;

(e) We are not participating, as z Bidder or as a subcontractor, in more than one bid in this bidding process, in accordance with ITB 4.3, other than alternative bids in accordance with ITB 13;

(f) We, including any of our subcontractors or manufacturers for any part of the contract, have not been declared ineligible by the Bank, under the Employer's country laws or official regulations or by an act of compliance with a decision of the United Nations Security Council*;*

(g) We are not a government owned entity/ We are a government owned entity but meet the requirements of ITB-4.5;[48]

(h) We further undertake, if invited to do so by you, and at our own cost, to attend a clarification meeting at a place of your choice, for the purpose of reviewing our First

[48] *Bidder to use as appropriate*

Stage Bid and duly noting all amendments and additions thereto, and noting omissions therefrom that you may require.

(i) We further undertake, upon receiving your written invitation, to proceed with the preparation of our Second Stage Bid, updating our First Stage Bid in accordance with the requirements from the Memorandum of the clarification meeting, and completing our Second Stage bid for supplying the Plant and Installation Services.

(j) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(If none has been paid or is to be paid, indicate "none.")

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

In the capacity of **[insert legal capacity of person signing the bid**]

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

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

Dated on _____ day of _____, _____ [**insert date of signing**]

Letter of Bid – Two Stage Bidding, Second Stage Bid

Input of Information to be completed by Bidder (bold) or Employer (*italic*)

Letter of Bid – Two Stage Bidding, Second Stage Bid

Date: [**insert date (as day, month and year) of Bid Submission**]
ICB No.: [*insert number of bidding process*]
Invitation for Bid No.: [*insert No of IFB*]

To: [*insert complete name of Employer*]

We, the undersigned, declare that:

(a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders ITB0 8, an dyour requirements incorporated in the Memorandum of the clarification meeting held between us on **[insert date of meeting]**;

(b) We offer to **[insert; the services that apply, i.e., design, manufacture, test, deliver, install, recommission and commission]** in conformity with the Bidding Document the following Plant and Services **[insert a brief description of the Plant and Services];**

(c) The total price of our Bid, excluding any discounts offered in item (d) below, is: **[insert amount(s) of foreign currency(ies) in words], [amount(s) in figures], and [amount of local currency in words], [amount in figures]**;

The discounts offered and the methodology for their application are:

Discounts: If our bid is accepted, the following discounts shall apply. [Specify in detail each discount offered.]

Methodology of Application of the Discounts: The discounts shall be applied using the following method: [**Specify in detail the method that shall be used to apply the discounts**];

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

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

(f) We, including any subcontractors or suppliers for any part of the Contract, has or will have nationalities from eligible countries in accordance with ITB-4.2;

(g) We, including any subcontractors or suppliers for any part of the contract, do not have any conflict of interest in accordance with ITB-4.3;

(h) We are not participating, as a Bidder or as a subcontractor , in more than one bid in this bidding process in accordance with ITB 4.3;

(i) We, including any of our subcontractors or manufacturers for any part of the contract, have not been declared ineligible by the Bank, under the Employer's country laws or official regulations or by an act of compliance with a decision of the United Nations Security Council*;*

(j) We are not a government owned entity/ We are a government owned entity but meet the requirements of ITB-4.5;[49]

(k) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the contract: [**insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]**

Name of Recipient	Address	Reason	Amount

(If none has been paid or is to be paid, indicate "none.")

(l) We understand that this Bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed.

(m) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

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

In the capacity of **[insert legal capacity of person signing the bid**]

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

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

Dated on _____ day of _____, _____ [**insert date of signing**]

[49] *Bidder to use as appropriate*

Price Schedules

PREAMBLE

General

1. The Price Schedules are divided into separate Schedules as follows:

   Schedule No. 1: Plant (including Mandatory Spare Parts) Supplied from Abroad

   Schedule No. 2: Plant (including Mandatory Spare Parts) Supplied from within the Employer's Country

   Schedule No. 3: Design Services

   Schedule No. 4: Installation and Other Services

   Schedule No. 5: Grand Summary

   Schedule No. 6: Recommended Spare Parts

2. The Schedules do not generally give a full description of the plant to be supplied and the services to be performed under each item. Bidders shall be deemed to have read the Employer's Requirements and other sections of the Bidding Document and reviewed the Drawings to ascertain the full scope of the requirements included in each item prior to filling in the rates and prices. The entered rates and prices shall be deemed to cover the full scope as aforesaid, including overheads and profit.

3. If bidders are unclear or uncertain as to the scope of any item, they shall seek clarification in accordance with ITB 7 prior to submitting their bid.

Pricing

4. Prices shall be filled in indelible ink, and any alterations necessary due to errors, etc., shall be initialled by the Bidder.

   As specified in the Bid Data Sheet and Special Conditions of Contract, prices shall be fixed and firm for the duration of the Contract, or prices shall be subject to adjustment in accordance with the corresponding Appendix (Price Adjustment) to the Contract Agreement.

5. Bid prices shall be quoted in the manner indicated and in the currencies specified in the Instructions to Bidders in the Bidding Document.

   For each item, bidders shall complete each appropriate column in the respective Schedules, giving the price breakdown as indicated in the Schedules.

   Prices given in the Schedules against each item shall be for the scope covered by that item as detailed in Section 6 (Employer's Requirements) or elsewhere in the Bidding Document.

6. Payments will be made to the Contractor in the currency or currencies indicated under each respective item.

7. When requested by the Employer for the purposes of making payments or partial payments, valuing variations or evaluating claims, or for such other purposes as the Employer may reasonably require, the Contractor shall provide the Employer with a breakdown of any composite or lump sum items included in the Schedules.

Schedules of Rates and Prices

Schedule No. 1 - Plant and Mandatory Spare Parts Supplied from Abroad

Item	Description	Code[1]	Qty.	Unit Price[2]		Total Price[2]
					CIP	
			(1)	*(2)*	*(3)*	*(1) x (3)*
TOTAL (to Schedule No. 5. Grand Summary)						

Name of Bidder _____

Signature of Bidder _____

[1] Bidders shall enter a code representing the country of origin of all imported plant and equipment.
[2] Specify currency. Create and use as many columns for Unit Price and Total Price as there are currencies.

Country of Origin Declaration Form

Item	Description	Country

Schedule No. 2 - Plant and Mandatory Spare Parts Supplied from Within the Employer's Country

Item	Description	Qty. *(1)*	EXW Unit Price[1] *(2)*	EXW Total Price[1] *(1) x (2)*
TOTAL (to Schedule No. 5. Grand Summary)				

Name of Bidder _____

Signature of Bidder _____

[1] Specify currency in accordance with specifications in Bid Data Sheet under ITB 18.1 in Single Stage Bid, or ITB 30.1 in Two Stage Bid.

Schedule No. 3 - Design Services

Item	Description	Qty.	Unit Price[1]		Total Price[1]
			Local Currency Portion	Foreign Currency Portion	
		(1)	*(2)*	*(optional)*	*(1) x (2)*
TOTAL (to Schedule No. 5. Grand Summary)					

Name of Bidder _____

Signature of Bidder _____

[1] Specify currency in accordance with specifications in Bid Data Sheet under ITB 18.1 in Single Stage Bid, or ITB 30.1 in Two Stage Bid.

Schedule No. 4 - Installation and Other Services

Item	Description	Qty.	Unit Price[1]		Total Price[1]	
			Foreign Currency Portion	Local Currency Portion	Foreign	Local
		(1)	*(2)*	*(3)*	*(1) x (2)*	*(1) x (3)*
TOTAL (to Schedule No. 5. Grand Summary)						

Name of Bidder _____

Signature of Bidder _____

[1] Specify currency in accordance with specifications in Bid Data Sheet under ITB 18.1 in Single Stage Bid, or ITB 30.1 in Two Stage Bid.

Schedule No. 5 - Grand Summary

Item	Description	Total Price[1]	
		Foreign	Local
	Total Schedule No. 1. Plant, and Mandatory Spare Parts Supplied from Abroad		
	Total Schedule No. 2. Plant, and Mandatory Spare Parts Supplied from Within the Employer's Country		
	Total Schedule No. 3. Design Services		
	Total Schedule No. 4. Installation and Other Services		
	TOTAL (to Bid Form)		

Name of Bidder _____

Signature of Bidder _____

[1] Specify currency in accordance with specifications in Bid Data Sheet under ITB 18.1 in Single Stage Bid, or ITB 30.1 in Two Stage Bid. Create and use as many columns for Foreign Currency requirement as there are foreign currencies

Schedule No. 6 - Recommended Spare Parts

Item	Description	Qty.	Unit Price		Total Price
			CIF or CIP (foreign parts)	EXW (local parts)	
		(1)	*(2)*	*(3)*	*(1) x (2) or(3)*

Price Adjustment

Where the Contract Period (excluding the Defects Liability Period) exceeds eighteen (18) months, it is normal procedure that prices payable to the Contractor shall be subject to adjustment during the performance of the Contract to reflect changes occurring in the cost of labor and material components. In such cases the bidding documents shall include in this form a formula of the following general type, pursuant to PC Sub-Clause 11.2.

Where Contracts are of a shorter duration than eighteen (18) months or in cases where there is to be no Price Adjustment, the following provision shall not be included. Instead, it shall be indicated under this form that the prices are to remain firm and fixed for the duration of the Contract.

Sample Price Adjustment Formula

Prices payable to the Contractor, in accordance with the Contract, shall be subject to adjustment during performance of the Contract to reflect changes in the cost of labor and material components, in accordance with the following formula:

$$P_1 = P_0 \times (a + b\frac{L_1}{L_0} + c\frac{M_1}{M_0}) - P_0$$

in which:

P_1 = adjustment amount payable to the Contractor

P_0 = Contract price (base price)

a = percentage of fixed element in Contract price (a = _ %)

b = percentage of labor component in Contract price (b = _%)

c = percentage of material and equipment component in Contract price (c = _%)

L_0, L_1 = labor indices applicable to the appropriate industry in the country of origin on the base date and the date for adjustment, respectively

M_0, M_1= material and equipment indices in the country of origin on the base date and the date for adjustment, respectively

N.B. a+b+c= 100%.

Conditions Applicable To Price Adjustment

The Bidder shall indicate the source of labor and materials indices and the base date indices in its bid.

Item	Source of Indices Used	Base Date Indices

The base date shall be the date thirty (30) days prior to the Bid closing date.

The date of adjustment shall be the mid-point of the period of manufacture or installation of component or Plant.

The following conditions shall apply:

(a) No price increase will be allowed beyond the original delivery date unless covered by an extension of time awarded by the Employer under the terms of the Contract. No price increase will be allowed for periods of delay for which the Contractor is responsible. The Employer will, however, be entitled to any price decrease occurring during such periods of delay.

(b) If the currency in which the Contract price, P_0, is expressed is different from the currency of the country of origin of the labor and/or materials indices, a correction factor will be applied to avoid incorrect adjustments of the Contract price. The correction factor shall correspond to the ratio of exchange rates between the two currencies on the base date and the date for adjustment as defined above.

(c) No price adjustment shall be payable on the portion of the Contract price paid to the Contractor as an advance payment.

Technical Proposal

Site Organization

Method Statement

Mobilization Schedule

Construction Schedule

Plant

Contractor's equipment

Personnel

Proposed Subcontractors for Major Items of Plant and Services

Others

Site Organization

[insert technical proposal for Site Organization]

Method Statement

[insert technical proposal for Method Statement]

Mobilization Schedule

[insert technical proposal for Mobilization Schedule]

Construction Schedule

[insert technical proposal for Construction Schedule]

Plant

[insert technical proposal for Plant]

Form EQU - Equipment

The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III (Evaluation and Qualification Criteria). A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder.

Item of Equipment		
Equipment Information	**Name of manufacturer**	**Model and power rating**
	Capacity	**Year of manufacture**
Current Status	**Current location**	
	Details of current commitments	
Source	**Indicate source of the equipment** ☐ **Owned** ☐ **Rented** ☐ **Leased** ☐ **Specially manufactured**	

Omit the following information for equipment owned by the Bidder.

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

Form FUNC

The Bidder shall copy in the left column of the table below, the identification of each functional guarantee required in the Specification and stated by the Employer in para. 1.2 (c) of Section III. Evaluation and Qualification Criteria, and in the right column, provide the corresponding value for each functional guarantee of the proposed plant and equipment.

Required Functional Guarantee	Value of Functional Guarantee of the Proposed Plant and Equipment
1.	
2.	
3.	
…	

Personnel

Form PER – 1: Proposed Personnel

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

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

*As listed in Section III (Evaluation and Qualification Criteria).

Form PER – 2: Resume of Proposed Personnel

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

Summarize professional experience over the last 20 years in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

• From	• To	• Company / Project / Position / Relevant technical and management experience

Proposed Subcontractors/Manufacturers for Major Items of Plant and Services

The following Subcontractors and/or manufacturers are proposed for carrying out the item of the facilities indicated. Bidders are free to propose more than one for each item.

Major Items of Plant and Services	Proposed Subcontractors/Manufacturers	Nationality

Others - Time Schedule

To be used by Bidder when alternative Time for Completion is invited in ITB 13.2.

Others – Commercial or contractual aspects of the bidding documents that the Bidder would like to discuss with the Employer during clarifications (to be used by Bidder – Two Stage Bidding only)

Form ELI 1.1

Bidder Information Sheet

Date: _____
ICB No.: _____
Invitation for Bid No.: _____
Page _____ of _____ pages

1. Bidder's Legal Name
2. In case of JVA, legal name of each party:
3. Bidder's actual or intended Country of Registration:
4. Bidder's Year of Registration:
5. Bidder's Legal Address in Country of Registration:
6. Bidder's Authorized Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: ☐ Articles of Incorporation or Registration of firm named in 1, above, in accordance with ITB Sub-Clauses 4.1 and 4.2. ☐ In case of JVA, letter of intent to form JVA including a draft agreement, or JVA agreement, in accordance with ITB Sub-Clauses 4.1 and 11.1(i) Single Stage Bidding or 11.1(g) Two Stage Bidding. ☐ In case of government owned entity from the Employer's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law, in accordance with ITB Sub-Clause 4.5.

Please note that a written authorization needs to be attached to this sheet as required by ITB 21.2 Single Stage Bidding) or ITB 17.2 Two Stage Bidding

Form ELI 1.2

Party to JVA Information Sheet

Date: _____
ICB No.: _____
Invitation for Bid No.:_____
Page _____ of_ _____ pages

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

Form CON – 2

Historical Contract Non-Performance

In case a prequalification process was conducted this form should be used only if the information submitted at the time of prequalification requires updating

Bidder's Legal Name: _____ Date: _____

JVA Partner Legal Name: _____ _____

ICB No.: _____

Page _____ of _____ pages

Non-Performing Contracts in accordance with Section III, Evaluation Criteria			
☐ Contract non-performance did not occur during the stipulated period, in accordance with Sub- Factor 2.2.1 of Section III, Evaluation Criteria			

Pending Litigation, in accordance with Section III, Evaluation Criteria			
☐ No pending litigation in accordance with Sub-Factor 2.2.2 of Section III, Evaluation Criteria ☐ Pending litigation in accordance with Sub-Factor 2.2.2 of Section III, Evaluation Criteria, as indicated below			
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, US$ equivalent)
_____	_____	Contract Identification: Name of Employer: Address of Employer: Matter in dispute:	_____
_____	_____	Contract Identification: Name of Employer: Address of Employer: Matter in dispute:	_____

Bidders Qualification following Prequalification

Form CCC - Current Contract Commitments / Works in Progress

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

No.	**Name of Contract**	**Employer's Contact Address, Tel, Fax**	**Value of Outstanding Work [Current US$ Equivalent]**	**Estimated Completion Date**	**Average Monthly Invoicing Over Last Six Months [US$/month)]**
1					
2					
3					
4					
5					

Form FIN 3.1

Financial Situation

Historical Financial Performance

Bidder's Legal Name: _____ Date: _____
JVA Partner Legal Name: _____ ICB No.: _____
Page _____ of _____ pages

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

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

☐ Attached are copies of financial statements (balance sheets, including all related notes, and income statements) for the years required above complying with the following conditions:

(a) Must reflect the financial situation of the Bidder or partner to a JVA, and not sister or parent companies

(b) Historic financial statements must be audited by a certified accountant

(c) Historic financial statements must be complete, including all notes to the financial statements

(d) Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted)

Form FIN – 3.2

Average Annual Turnover

Bidder's Legal Name: _____ Date: _____
JVA Partner Legal Name: _____ ICB No.: _____
Page _____ of _____ pages

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

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

Form FIN - Financial Resources

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

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

Form EXP 2.4.1

Experience - General Experience

Bidder's Legal Name: _____ Date: _____
JVA Partner Legal Name: _____ICB No.: _____
Page _____ of _____ pages

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

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

Form EXP – 2.4.2(a)

Specific Experience

Bidder's Legal Name: _____ Date: _____
JVA Partner Legal Name: _____ ICB No.: _____

Page _____ of _____ pages

Similar Contract Number: ___ of ___ required.	**Information**		
Contract Identification	_____		
Award date Completion date	_____ _____		
Role in Contract	☐ Contractor	☐ Management Contractor	☐ Subcontractor
Total contract amount	_____		US$_____
If partner in a JVA or subcontractor, specify participation of total contract amount	_____%	_____	US$_____
Employer's Name:	_____		
Address: Telephone/fax number: E-mail:	_____ _____ _____ _____		

Form EXP – 2.4.2(a) (cont.)

Specific Experience (cont.)

Bidder's Legal Name: _____ Page _____ of _____ pages
JVA Partner Legal Name: _____

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

Form EXP – 2.4.2(b)

Specific Experience in Key Activities

Bidder's Legal Name: _____ Date: _____
JVA Partner Legal Name: _____ ICB No.: _____
Subcontractor's Legal Name: _____ Page _____ of _____ pages

	Information		
Contract Identification	_____		
Award date Completion date	_____ _____		
Role in Contract	☐ Contractor	☐ Management Contractor	☐ Subcontractor
Total contract amount	_____		US$_____
If partner in a JVA or subcontractor, specify participation of total contract amount	_____%	_____	US$_____
Employer's Name:	_____		
Address: Telephone/fax number: E-mail:	_____ _____ _____ _____		

Form EXP – 2.4.2 (b)(cont.)

Specific Experience in Key Activities (cont.)

Bidder's Legal Name: _____ Page _____ of _____ pages
JVA Partner Legal Name: _____
Subcontractor's Legal Name: _____

	Information
Description of the key activities in accordance with Sub-Factor 2.4.2b) of Section III:	

Form of Bid Security (Bank Guarantee)

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

Beneficiary: _____ *[Name and Address of* Employer*]*

Date: _____

BID GUARANTEE No.: _____

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

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

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

(a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Form of Bid; or

(b) having been notified of the acceptance of its Bid by the Employer during the period of bid validity, (i) fails or refuses to execute the Contract Agreement or (ii) fails or refuses to furnish the performance security, in accordance with the ITB.

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

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

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

_____

[signature(s)]

Form of Bid Security (Bid Bond)

BOND NO. _____

BY THIS BOND *[inset name of Bidder]* as Principal (hereinafter called "the Principal"), and *Insert name, legal title, and address of surety]*, **authorized to transact business in** *[insert name of country of Employer]*, as Surety (hereinafter called "the Surety"), are held and firmly bound unto *[insert name of Employer]* as Obligee (hereinafter called "the Employer") in the sum of *[insert amount of Bond in words]*[50] (*[insert amount in figures])*, for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has submitted a written Bid to the Employer dated the _____ day of _____, 20__, for the construction of *[insert name of contract]* (hereinafter called the "Bid").

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

(a) withdraws its Bid during the period of bid validity specified in the Form of Bid; or

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

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

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

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

Principal: _____	Surety: _____ Corporate Seal (where appropriate)
_____ *(Signature)*	_____ *(Signature)*
(Printed name and title)	*(Printed name and title)*

[50] The amount of the Bond shall be denominated in the currency of the *Employer*'s country or the equivalent amount in a freely convertible currency.

Form of Bid-Securing Declaration

Date: _____
Bid No.: _____
Alternative No.: _____

To: *[insert complete name of employer]*

We, the undersigned, declare that:

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

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

(a) have withdrawn our Bid during the period of bid validity specified in the Letter of Bid; or

(b) having been notified of the acceptance of our Bid by the Employer during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITB.

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

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

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

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

Dated on _____ day of _____, _____
_____

Corporate Seal (where appropriate)

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

Manufacturer's Authorization

[The Bidder shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This letter of authorization should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. The Bidder shall include it in its bid, if so indicated in the BDS.]

Date: [**insert date (as day, month and year) of Bid Submission**]
ICB No.: [**insert number of bidding process**]

To: [**insert complete name of Purchaser**]

WHEREAS

We [**insert complete name of Manufacturer or Manufacturer's authorized agent**], who are official manufacturers of [**insert type of goods manufactured**], having factories at [**insert full address of Manufacturer's factories**], do hereby authorize [**insert complete name of Bidder**] to submit a bid the purpose of which is to provide the following goods, manufactured by us [**insert name and or brief description of the goods**], and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 27 of the General Conditions of Contract, with respect to the goods offered by the above firm.

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

In the capacity of **[insert legal capacity of person signing the bid**]

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

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

Dated on _____ day of _____, _____ [**insert date of signing**]

Note: This letter of authorization should be on the letterhead of the Manufacturer and should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. It should be included by the Bidder in its bid, if so indicated in the BDS.

Section V. Eligible Countries

Input of Information to be completed by Employer

[Insert the policies of the Bank as appropriate and if applicable, regarding eligibility of firms to participate in bidding process financed by the Bank.]

Part 2 – Employer's Requirements

Section VI. Employer's Requirements

This Section contains the Scope, the Specifications, the Drawings, Supplementary Information that describe the Facilities and Forms to be used during the implementation of the contract.

In a design, supply and install approach the design is to be done by the Contractor. No detailed technical specification as is normal practice is developed at the pre-bid stage. However, the Employer does and must know what it wants and must communicate its needs to the bidders. Hence, this section on Employer's Requirements replaces the usual Technical Specifications of a more traditional approach.

To enable bidders to submit responsive bids and subsequently for the bids received to be evaluated in an equitable manner, the Employer must take its requirements as clearly and as precisely as possible. The Employer's requirements must therefore, specify exactly the particular requirements of the completed Facilities. Where the performance of the completed Facilities could be measured in quantitative terms such as production output of a manufacturing plant or maximum generating capacity of a power station, the Employer's Requirements should not only clearly specify the desired output/capacity but also the upper and lower acceptable limits of deviation from the desired capacity and how such deviations (if any) will be evaluated. It will also be necessary to specify the tests that will be carried out on completion of the Facilities to verify compliance with the requirements specified. The Employer's Requirements should also clearly specify what associated or incidental services and goods must be supplied by the Contractor. For example, the Contractor may be required to train the Employer's personnel and to supply consumable or spare parts as listed in a schedule.

While this section of the bidding document should endeavor to define the Employer's Requirements as precisely as possible care must be taken to avoid over specifying details to the extent that the flexibility and potential benefits associated with a design, supply and install contract are seriously eroded or threatened. This section on Employer's Requirements should, therefore, be carefully prepared on behalf of the Employer by suitably-qualified engineers who are familiar with the requirements and with the technical aspect of the required Facilities.

For an the Bank financed design, supply and install contract to be procured through international competitive bidding procedures, the Employer's Requirements must be drawn up to permit the widest, possible competition and, at the same time, present a clear statement of the required standards of workmanship, materials and performance of the Facilities. Only

if this is done will the objectives of economy and efficiency, fairness and transparency in procurement be realized, responsiveness of bids be ensured and the subsequent task of bid evaluation facilitated. The Employer's Requirements should stipulate that all goods and materials to be incorporated in the Works are new, unused, of the most recent or current models and incorporate all recent improvements in design and materials.

As for the drafting of the Specification, care must be taken when drafting the Employer's Requirements to ensure that the requirements are not restrictive. Recognized international standards should be used as much as possible for the description of goods, materials and workmanship. Where other particular standards are specified, whether national standards of the Borrower's country or other standards, it should be stated that goods, materials and workmanship meeting other authoritative standards and which promise to ensure equal or higher quality than the standards specified, will also be acceptable. Where a brand name of a product is specified it should always be qualified with the terms "or equivalent".

For a design, supply and install contract no detail drawings would generally be available at the pre-tender stage. It would, however, be useful to include such conceptual drawings as are appropriate to supplement or help explain the general concept of the Employer's needs.

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Scope of Supply of Plant and Installation Services by the Contractor

[insert scope]

Specification

[insert the specifications]

Forms and Procedures

Form of Completion Certificate

Date: _____
Loan/Credit N^{o}: _____
IFB N^{o}: _____

[Name of Contract]

To: *[Name and address of Contractor]*

Dear Ladies and/or Gentlemen,

Pursuant to GC Clause 24 (Completion of the Facilities) of the General Conditions of the Contract entered into between yourselves and the *Employer* dated *[date]*, relating to the *[brief description of the Facilities]*, we hereby notify you that the following part(s) of the Facilities was (were) complete on the date specified below, and that, in accordance with the terms of the Contract, the *Employer* hereby takes over the said part(s) of the Facilities, together with the responsibility for care and custody and the risk of loss thereof on the date mentioned below.

1. Description of the Facilities or part thereof: *[description]*

2. Date of Completion: *[date]*

However, you are required to complete the outstanding items listed in the attachment hereto as soon as practicable.

This letter does not relieve you of your obligation to complete the execution of the Facilities in accordance with the Contract nor of your obligations during the Defect Liability Period.

Very truly yours,

_____
Title
(Project Manager)

Form of Operational Acceptance Certificate

Date: _____
Loan/Credit N°: _____
IFB N°: _____

[Name of Contract]

To: *[Name and address of Contractor]*

Dear Ladies and/or Gentlemen,

Pursuant to GC Sub-Clause 25.3 (Operational Acceptance) of the General Conditions of the Contract entered into between yourselves and the *Employer* dated *[date]*, relating to the *[brief description of the Facilities]*, we hereby notify you that the Functional Guarantees of the following part(s) of the Facilities were satisfactorily attained on the date specified below.

1. Description of the Facilities or part thereof: *[description]*

2. Date of Operational Acceptance: *[date]*

This letter does not relieve you of your obligation to complete the execution of the Facilities in accordance with the Contract nor of your obligations during the Defect Liability Period.

Very truly yours,

_____
Title
(Project Manager)

Change Order Procedure and Forms

Date: _____
Loan/Credit N^{o}: _____
IFB N^{o}: _____

CONTENTS

1. General
2. Change Order Log
3. References for Changes

ANNEXES

Annex 1 Request for Change Proposal
Annex 2 Estimate for Change Proposal
Annex 3 Acceptance of Estimate
Annex 4 Change Proposal
Annex 5 Change Order
Annex 6 Pending Agreement Change Order
Annex 7 Application for Change Proposal

Change Order Procedure

1. General

This section provides samples of procedures and forms for implementing changes in the Facilities during the performance of the Contract in accordance with GC Clause 39 (Change in the Facilities) of the General Conditions.

2. Change Order Log

The Contractor shall keep an up-to-date Change Order Log to show the current status of Requests for Change and Changes authorized or pending, as Annex 8. Entries of the Changes in the Change Order Log shall be made to ensure that the log is up-to-date. The Contractor shall attach a copy of the current Change Order Log in the monthly progress report to be submitted to the *Employer*.

3. References for Changes

(1) Request for Change as referred to in GC Clause 39 shall be serially numbered CR-X-nnn.

(2) Estimate for Change Proposal as referred to in GC Clause 39 shall be serially numbered CN-X-nnn.

(3) Acceptance of Estimate as referred to in GC Clause 39 shall be serially numbered CA-X-nnn.

(4) Change Proposal as referred to in GC Clause 39 shall be serially numbered CP-X-nnn.

(5) Change Order as referred to in GC Clause 39 shall be serially numbered CO-X-nnn.

Note: (a) Requests for Change issued from the *Employer*'s Home Office and the Site representatives of the *Employer* shall have the following respective references:

Home Office	CR-H-nnn
Site	CR-S-nnn

(b) The above number "nnn" is the same for Request for Change, Estimate for Change Proposal, Acceptance of Estimate, Change Proposal and Change Order.

Annex 1. Request for Change Proposal

(*Employer*'s Letterhead)

To: *[Contractor's name and address]* Date: _____

Attention: *[Name and title]*

Contract Name: *[Contract name]*
Contract Number: *[Contract number]*

Dear Ladies and/or Gentlemen:

With reference to the captioned Contract, you are requested to prepare and submit a Change Proposal for the Change noted below in accordance with the following instructions within *[number]* days of the date of this letter*[or on or before (date)]*.

1. Title of Change: *[Title]*

2. Change Request No./Rev.: *[Number]*

3. Originator of Change: *Employer*: *[Name]*
   Contractor (by Application for Change Proposal No. *[Number]*[51]:

4. Brief Description of Change: *[Description]*

5. Facilities and/or Item No. of equipment related to the requested Change: *[Description]*

6. Reference drawings and/or technical documents for the request of Change:

   Drawing No./Document No. Description

7. Detailed conditions or special requirements on the requested Change: *[Description]*

8. General Terms and Conditions:

   (a) Please submit your estimate to us showing what effect the requested Change will have on the Contract Price.

(b) Your estimate shall include your claim for the additional time, if any, for completion of the requested Change.

(c) If you have any opinion negative to the adoption of the requested Change in connection with the conformability to the other provisions of the Contract or the safety of the Plant or Facilities, please inform us of your opinion in your proposal of revised provisions.

(d) Any increase or decrease in the work of the Contractor relating to the services of its personnel shall be calculated.

(e) You shall not proceed with the execution of the work for the requested Change until we have accepted and confirmed the amount and nature in writing.

_____

(*Employer*'s Name)

_____

(Signature)

_____

(Name of signatory)

_____

(Title of signatory)

Annex 2. Estimate for Change Proposal

(Contractor's Letterhead)

To: *[Employer's name and address]* Date: _____

Attention: *[Name and title]*

Contract Name: *[Contract name]*
Contract Number: *[Contract number]*

Dear Ladies and/or Gentlemen:

With reference to your Request for Change Proposal, we are pleased to notify you of the approximate cost of preparing the below-referenced Change Proposal in accordance with GC Sub-Clause 39.2.1 of the General Conditions. We acknowledge that your agreement to the cost of preparing the Change Proposal, in accordance with GC Sub-Clause 39.2.2, is required before estimating the cost for change work.

1. Title of Change: *[Title]*

2. Change Request No./Rev.: *[Number]*

3. Brief Description of Change: *[Description]*

4. Scheduled Impact of Change: *[Description]*

5. Cost for Preparation of Change Proposal: *[Cost]*[52]

(a)	Engineering			(Amount)
	(i)	Engineer	_____ hrs x _____ rate/hr =	_____
	(ii)	Draftsperson	_____ hrs x _____ rate/hr =	_____
		Sub-total	_____ hrs	_____
		Total Engineering Cost		_____
(b)	Other Cost			_____
Total Cost (a) + (b)				_____

[52] Costs shall be in the currencies of the Contract.

_____

(Contractor's Name)

_____

(Signature)

_____

(Name of signatory)

_____

(Title of signatory)

Annex 3. Acceptance of Estimate

(*Employer*'s Letterhead)

To: *[Contractor's name and address]* Date: _____

Attention: *[Name and title]*

Contract Name: *[Contract name]*
Contract Number: *[Contract number]*

Dear Ladies and/or Gentlemen:

We hereby accept your Estimate for Change Proposal and agree that you should proceed with the preparation of the Change Proposal.

1. Title of Change: *[Title]*

2. Change Request No./Rev.: *[Request number/revision]*

3. Estimate for Change Proposal No./Rev.: *[Proposal number/revision]*

4. Acceptance of Estimate No./Rev.: *[Estimate number/revision]*

5. Brief Description of Change: *[Description]*

6. Other Terms and Conditions: In the event that we decide not to order the Change accepted, you shall be entitled to compensation for the cost of preparation of Change Proposal described in your Estimate for Change Proposal mentioned in para. 3 above in accordance with GC Clause 39 of the General Conditions.

_____
(*Employer*'s Name)

_____
(Signature)

_____
(Name and Title of signatory)

Annex 4. Change Proposal

(Contractor's Letterhead)

To: *[Employer's name and address]* Date: _____

Attention: *[Name and title]*

Contract Name: *[Contract name]*
Contract Number: *[Contract number]*

Dear Ladies and/or Gentlemen:

In response to your Request for Change Proposal No. *[Number]*, we hereby submit our proposal as follows:

1. Title of Change: *[Name]*

2. Change Proposal No./Rev.: *[Proposal number/revision]*

3. Originator of Change: *Employer*: *[Name]*
   Contractor: *[Name]*

4. Brief Description of Change: *[Description]*

5. Reasons for Change: *[Reason]*

6. Facilities and/or Item No. of Equipment related to the requested Change: *[Facilities]*

7. Reference drawings and/or technical documents for the requested Change:

   Drawing/Document No. Description

8. Estimate of increase/decrease to the Contract Price resulting from Change Proposal:[53]

   (Amount)

   (a) Direct material _____

   (b) Major construction equipment _____

[53] Costs shall be in the currencies of the Contract.

(c) Direct field labor (Total ____ hrs) _____

(d) Subcontracts _____

(e) Indirect material and labor _____

(f) Site supervision _____

(g) Head office technical staff salaries

Process engineer	_____ hrs @	_____ rate/hr	_____
Project engineer	_____ hrs @	_____ rate/hr	_____
Equipment engineer	_____ hrs @	_____ rate/hr	_____
Procurement	_____ hrs @	_____ rate/hr	_____
Draftsperson	_____ hrs @	_____ rate/hr	_____
Total	_____ hrs		_____

(h) Extraordinary costs (computer, travel, etc.) _____

(i) Fee for general administration, _____ % of Items _____

(j) Taxes and customs duties _____

Total lump sum cost of Change Proposal _____
[Sum of items (a) to (j)]

Cost to prepare Estimate for Change Proposal _____
[Amount payable if Change is not accepted]

9. Additional time for Completion required due to Change Proposal

10. Effect on the Functional Guarantees

11. Effect on the other terms and conditions of the Contract

12. Validity of this Proposal: within *[Number]* days after receipt of this Proposal by the *Employer*

13. Other terms and conditions of this Change Proposal:

(a) You are requested to notify us of your acceptance, comments or rejection of this detailed Change Proposal within *[Number]* days from your receipt of this Proposal.

(b) The amount of any increase and/or decrease shall be taken into account in the adjustment of the Contract Price.

(c) Contractor's cost for preparation of this Change Proposal:[2]
(Note) *This cost shall be reimbursed by the Employer in case of Employer's withdrawal or rejection of this Change Proposal without default of the Contractor in accordance with GC Clause 39 of the General Conditions.*

(Contractor's Name)

(Signature)

(Name of signatory)

(Title of signatory)

[2] Specify where necessary.

Annex 5. Change Order

(*Employer*'s Letterhead)

To: *[Contractor's name and address]* Date: _____

Attention: *[Name and title]*

Contract Name: *[Contract name]*
Contract Number: *[Contract number]*

Dear Ladies and/or Gentlemen:

We approve the Change Order for the work specified in the Change Proposal (No. *[Number]*), and agree to adjust the Contract Price, Time for Completion and/or other conditions of the Contract in accordance with GC Clause 39 of the General Conditions.

1. Title of Change: *[Name]*

2. Change Request No./Rev.: *[Request number/revision]*

3. Change Order No./Rev.: *[Order number/revision]*

4. Originator of Change: *Employer*: *[Name]*
   Contractor: *[Name]*

5. Authorized Price:

   Ref. No.: *[Number]* Date: *[Date]*
   Foreign currency portion *[Amount]* plus Local currency portion *[Amount]*

6. Adjustment of Time for Completion

   None Increase *[Number]* days Decrease *[Number]* days

7. Other effects, if any

Authorized by: _____ Date: _____
(*Employer*)

Accepted by: _____ Date: _____
(Contractor)

Annex 6. Pending Agreement Change Order

(*Employer*'s Letterhead)

To: *[Contractor's name and address]* Date: _____

Attention: *[Name and title]*

Contract Name: *[Contract name]*
Contract Number: *[Contract number]*

Dear Ladies and/or Gentlemen:

We instruct you to carry out the work in the Change Order detailed below in accordance with GC Clause 39 of the General Conditions.

1. Title of Change: *[Name]*

2. *Employer*'s Request for Change Proposal No./Rev.: *[Number/revision]* dated: *[Date]*

3. Contractor's Change Proposal No./Rev.: *[Number/revision]* dated: *[Date]*

4. Brief Description of Change: *[Description]*

5. Facilities and/or Item No. of equipment related to the requested Change: *[Facilities]*

6. Reference Drawings and/or technical documents for the requested Change:

   Drawing/Document No. Description

7. Adjustment of Time for Completion:

8. Other change in the Contract terms:

9. Other terms and conditions:

_____

(*Employer*'s Name)

_____

(Signature)

_____

(Name of signatory)

_____

(Title of signatory)

Annex 7. Application for Change Proposal

(Contractor's Letterhead)

To: *[Employer's name and address]* Date: _____

Attention: *[Name and title]*

Contract Name: *[Contract name]*
Contract Number: *[Contract number]*

Dear Ladies and/or Gentlemen:

We hereby propose that the below-mentioned work be treated as a Change in the Facilities.

1. Title of Change: *[Name]*
2. Application for Change Proposal No./Rev.: *[Number/revision]* dated: *[Date]*
3. Brief Description of Change: *[Description]*
4. Reasons for Change:
5. Order of Magnitude Estimation (in the currencies of the Contract):
6. Scheduled Impact of Change:
7. Effect on Functional Guarantees, if any:
8. Appendix:

_____
(Contractor's Name)

_____
(Signature)

_____
(Name of signatory)

_____
(Title of signatory)

Drawings

It is customary to bind the drawings in a separate volume, which is often larger than other volumes of the Contract documents. The size will be dictated by the scale of the drawings, which must not be reduced to the extent that details are rendered illegible.

A simplified map showing the location of the Site in relation to the local geography, including major roads, posts, airports, and railroads, is helpful.

The construction drawings, even if not fully developed, must show sufficient details to enable bidders to understand the type and complexity of the work involved.

Supplementary Information

[insert any supplementary information]

Part 3 – Conditions Contract and Contract Forms

The Conditions of Contract comprise two parts:

(a) **General Conditions** – GC (Section VII of the Bidding Document), and

(b) **Particular Conditions** – PC (Section VIII of the Bidding Document).

The General Conditions (GC) in the SBD-Plant are based on the Model Form of International Contract for Process Plant Construction published by the Engineering Advancement Association of Japan (ENAA). The Multilateral Development Banks (MDBs) participating in the procurement harmonization process gratefully acknowledge the contribution of ENAA to the advancement of good contracting practices in their member countries. The GC contain general clauses to be applied on all contracts. The GC in this Section, read in conjunction with the Special Conditions in Section VIII and other documents listed therein, should be a complete document expressing all the rights and obligations of the contracting parties. The General Conditions herein shall not be altered.

The Particular Conditions take precedence over the General Conditions.

The PC is intended to be used to introduce country or project specific provisions if so required.

Whoever drafts the PC should be thoroughly familiar with the provisions of the GC and with any specific requirements of the Contract. Legal advice is recommended when amending provisions or drafting new ones.

Clause numbers in the PC correspond to those in the GC.

Section VIII. Particular Conditions

The PC complement the GC to specify data and contractual requirements linked to the special circumstances of the country, the Employer, or the overall project. Whenever there is a conflict, the provisions herein shall prevail over those in the GC.

Clause numbers in the PC correspond to those in the GC.

Input of Information to be completed by Bidder (bold) or Employer (*italic*)

1. Definitions

The Employer is: *[insert Employer's name]*

The Project Manager is: *[insert Project Manager's name]*

The Bank is the International Bank for Reconstruction and Development Bank (the Bank)

Country of Origin: all countries and territories as indicated in Section V of the bidding documents, Eligible Countries

Country of Origin: *[insert if there are any restrictions on country of origin]*

5. Law and Language

5.1 The Contract shall be interpreted in accordance with the laws of: *[insert name of Employer's country]*

5.2 The ruling language is: *[insert* "the English language"]

5.3 The language for communications is: [*insert* "the English language"]

7. Scope of Facilities

7.3 The Contractor agrees to supply spare parts for a period of years: *[insert a reasonable number of years in words and figures]*

[Where appropriate use the following additional provision to SCC 7.3]

The Contractor shall carry sufficient inventories to ensure an ex-stock supply of consumable spares for the Plant. Other spare parts and components shall be supplied as promptly as possible, but at the most within six (6) months of placing the order and opening the letter of credit. In addition, in the event of termination of the production of spare parts, advance notification will be made to the Employer of the pending termination, with sufficient time to permit the Employer to procure the needed

requirement. Following such termination, the Contractor will furnish to the extent possible and at no cost to the Employer the blueprints, drawings and specifications of the spare parts, if requested.

8. Time for Commencement and Completion

8.1 The Contractor shall commence work on the Facilities within *[insert number of days as appropriate]* days from the Effective Date for determining Time for Completion as specified in the Contract Agreement.

8.2 The Time for Completion of the whole of the Facilities shall be *[insert number of days in numbers and words]* days from the Effective Date as described in the Contract Agreement.

Where appropriate use the following additional provision to SCC 8.2

Time for Completion for parts of the Facilities shall be [*insert days in words and figures]* from the Effective Date as described in the Contract Agreement.

[and where applicable]

Sample Provision

Time for completion for parts of the Facilities:

Description ***Time for completion***

[Each part of the Facilities subject to a specific Time for Completion shall be listed and briefly described with its respective Time for Completion specified in days, in words and figures]

11. Contract Price

This provision to be inserted only if Contract Price is subject to escalation

11.2 The Contract Price shall be adjusted in accordance with the provisions of the Appendix 2 (Price Escalation) to the Contract Agreement.

13. Securities

13.3.1 The amount of performance security, as a percentage of the Contract Price for the Facility or for the part of the Facility for which a separate Time for Completion is provided, shall be: *[insert amount which should not exceed 10% of the Contract price]*.

13.3.2 The performance security shall be in the form of the *[insert "in the form of a Bank Guarantee]* as per form included in Section IX (Contract Forms).

The following provision shall be used if appropriate for the type of Facilities

13.3.3 The performance security shall not be reduced on the date of the Operational Acceptance.

The following provision should be used when the Facilities have warranty obligations beyond the Defect Liability Period, pursuant to the provisions in the PC under GC Clause 12.

13.3.3 The performance security shall be reduced to ten percent (10%) of the value of the component covered by the extended defect liability to cover the Contractor's extended defect liability in accordance with the provision in the PC, pursuant to GC Sub-Clause 27.10 *[To be inserted **only** when an extended warranty is requested.]*

22. Installation

22.2 Labour

22.2.5 Working Hours

Normal working hours are: *[insert normal working hours]*

22.2.8 Funeral Arrangements

[insert any other specific arrangements]

25. Commissioning and Operational Acceptance

25.2.2 The Guarantee Test of the Facilities shall be successfully completed within [*days, written in words and figures*] from the date of Completion.

Parts and separate times for the respective Guarantee Test shall be specified where applicable

26. Completion Time Guarantee

26.2 Applicable rate for liquidated damages: *[insert percentage figure. The percentage shall be at least equivalent to the percentage specified in Section III – Evaluation of Time Schedule. The applicable rate shall not exceed one-half percent (0.5%) per week*]

Maximum deduction for liquidated damages: [*insert a percentage. The maximum shall not exceed ten percent (10%) of the Contract Price]*.

Applicable (amount or rate) for the bonus for early Completion: [. . . *insert appropriate amount or rate as a percentage of the Contract Price, or part thereof, in words and figures, per week of early Completion of the Facilities or part thereof, in accordance with the Time for Completion specified in the PC, with a corresponding reference in GC 8.2*]

Maximum bonus: *[insert the maximum amount which should be related to the benefit the Employer will gain in operating the Facilities, or part thereof, earlier than anticipated*

For a contract without a bonus, the following provision should be used

No bonus will be given for earlier Completion of the Facilities or part thereof

27. Defect Liability

The Employer should not extend the Defect Liability Period beyond the period prescribed in GC Sub-Clause 27.2, except where it is commercial practice for critical components in that type of Facilities, and in which case the relevant period shall be specified in the PC under GC Sub-Clause 27.10.

The provision below should be used only when an extended defect liability is requested

27.10 The critical components covered under the extended defect liability are *[the components should either be mentioned herein or a reference should be made to the related paragraph in Section VI (Employer's Requirements)]*, and the period shall be *[number of years, which shall not exceed five (5) years*]

30. Limitation of Liability

Sample Clause:

Use the following provision only if it is intended to have a limitation of liability higher than the Contract Price

30.1 (b) The multiplier of the Contract Price is: *[insert multiplier]*

46. Disputes and Arbitration

46.1 The DB shall be appointed within [*insert* 28 days] after the Effective Date.

The DB shall be [*insert either* "one sole member" *or* "a DB of three members"]

List of potential DB members is: *[insert list names of potential sole members only when the DB is to be comprised of one sole member. Insert:* "none" i*f no potential sole members are to be included*]

46.2 Appointment (if not agreed) to be made by: *[insert appointing entity or official*].

For contracts entered into with foreign contractors, international commercial arbitration may have practical advantages over other dispute settlement methods. The Bank should not be named as arbitrator, nor should it be asked to name an arbitrator. Among the rules to govern the arbitration proceedings, the Employer may wish to consider the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules of 1976, the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC), the Rules of the London Court of International Arbitration or the Rules of Arbitration Institute of the Stockholm Chamber of Commerce. For contracts entered into with a contractor who is a national of the Employer's country, the Contract may provide for adjudication/arbitration in accordance with the law of the Employer's country. Clause 45.5 (a) shall be retained in the case of a Contract with a foreign Contractor and clause 45.5 (b) shall be retained in

the case of a Contract with a national of the Employer's country.

46.5 Rules of procedure for arbitration proceedings:

(a) Contracts with foreign contractors: *[Insert one of the following arbitration rules*:

Any dispute, controversy or claim arising out of or relating to this Contract, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.

or

All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.

or

Any dispute, controversy or claim arising out of or in connection with this Contract, or the breach termination or invalidity thereof, shall be settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.

or

Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference to this clause.]

(b) Any dispute between the Employer and a Contractor who is a national of the Employer's country arising in connection with the present Contract shall be referred to adjudication or arbitration in accordance with the laws of the Employer's country.

Section IX. Contract Forms

This Section contains the Letter of Acceptance, the Contract Agreement and Appendices to the Contract Agreement which, once completed, will form part of the Contract.

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The Notification of Award will be the basis for formation of the Contract as described in ITB-41 Single Stage Bidding or ITB-52 Two Stage Bidding. This Standard Form should be filled in and sent to the successful Bidder only after evaluation of bids has been completed, subject to any review by the Bank required under the Loan Agreement.

Notification of Award – Letter of Acceptance

[on letterhead paper of the Employer]

. . . . . ***date***. . . . . .

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

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

This is to notify you that your Bid dated . . . . ***date*** . . . . for execution of the . . . . . .***name of the contract and identification number, as given in the Contract Data*** . . . . . for the Accepted Contract Amount of the equivalent of . . . . . .***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 *of* the Performance Security Form included in Section VI of the Bidding Document.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Agency: .....

Attachment: Contract Agreement

Contract Agreement

THIS AGREEMENT made the _____ day of _____, _____,

BETWEEN

(1) [***name of Employer***], a corporation incorporated under the laws of *[**country of Employer***] and having its principal place of business at [***address of Employer***] (hereinafter called "the Employer"), and (2) [***name of Contractor***], a corporation incorporated under the laws of [***country of Contractor***] and having its principal place of business at [***address of Contractor***] (hereinafter called "the Contractor").

WHEREAS the Employer desires to engage the Contractor to design, manufacture, test, deliver, install, complete and commission certain Facilities, viz. [***list of facilities***] ("the Facilities") and the Contractor have agreed to such engagement upon and subject to the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:

Article 1 Contract Documents

1.1 **Contract Documents** (Reference GC Clause 2)

The following documents shall constitute the Contract between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract:

(a) This Contract Agreement and the Appendices hereto

(b) Letter of Bid and Price Schedules submitted by the Contractor

(c) Particular Conditions

(d) General Conditions

(e) Specification

(f) Drawings

(g) Other completed Bidding Forms submitted with the Letter of Bid

(h) Any other documents part of the Employer's Requirements

(i) Any other documents shall be added here

1.2 **Order of Precedence** (Reference GC Clause 2)

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the

order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above.

1.3 **Definitions** (Reference GC Clause 1)

Capitalized words and phrases used herein shall have the same meanings as are ascribed to them in the General Conditions.

Article 2 Contract Price and Terms of Payment

2.1 **Contract Price** (Reference GC Clause 11)

The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price shall be the aggregate of: [. . . ***amounts of foreign currency in words*** . . .], [. . . ***amounts in figures***. . .] as specified in Price Schedule No. 5 (Grand Summary), [. . . ***amounts of local currency in words*** . . .], [. . . ***amounts in figures***. . .], or such other sums as may be determined in accordance with the terms and conditions of the Contract.

2.2 **Terms of Payment** (Reference GC Clause 12)

The terms and procedures of payment according to which the Employer will reimburse the Contractor are given in the Appendix (Terms and Procedures of Payment) hereto.

The Employer shall instruct its bank to issue an irrevocable confirmed documentary credit made available to the Contractor in a bank in the country of the Contractor. The credit shall be for an amount of [. . . ***amount equal to the total named in Schedule 1 less the advance payment to be made for Plant and Equipment supplied from abroad.*** . .]; and shall be subject to the Uniform Customs and Practice for Documentary Credits 1993 Revision, ICC Publication No. 600.

In the event that the amount payable under Schedule No. 1 is adjusted in accordance with GC 11.2 or with any of the other terms of the Contract, the Employer shall arrange for the documentary credit to be amended accordingly

Article 3 Effective Date

3.1 **Effective Date** (Reference GC Clause 1)

The Effective Date upon which the period until the Time for Completion of the Facilities shall be counted from is the date when all of the following conditions have been fulfilled:

(a) This Contract Agreement has been duly executed for and on behalf of the Employer and the Contractor;

(b) The Contractor has submitted to the Employer the

performance security and the advance payment guarantee;

(c) The Employer has paid the Contractor the advance payment

(d) The Contractor has been advised that the documentary credit referred to in Article 2.2 above has been issued in its favor.

Each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.

3.2 If the conditions listed under 3.1 are not fulfilled within two (2) months from the date of this Contract notification because of reasons not attributable to the Contractor, the parties shall discuss and agree on an equitable adjustment to the Contract Price and the Time for Completion and/or other relevant conditions of the Contract.

Article 4 Communications

4.1 The address of the Employer for notice purposes, pursuant to GC 4.1 is: [***Employer's address***].

4.2 The address of the Contractor for notice purposes, pursuant to GC 4.1 is: [***Contractor's address***].

Article 5. Appendices

5.1 The Appendices listed in the attached List of Appendices shall be deemed to form an integral part of this Contract Agreement.

5.2 Reference in the Contract to any Appendix shall mean the Appendices attached hereto, and the Contract shall be read and construed accordingly.

IN WITNESS WHEREOF the Employer and the Contractor have caused this Agreement to be duly executed by their duly authorized representatives the day and year first above written.

Signed by, for and on behalf of the Employer

[***Signature***]

[***Title***]

in the presence of

[***Signature***]

[***Title***]

Signed by, for and on behalf of the Contractor

[***Signature***]
[***Title***]

in the presence of

[***Signature***]
[***Title***]

APPENDICES

Appendix 1 -	Terms and Procedures of Payment
Appendix 2 -	Price Escalation
Appendix 3 -	Insurance Requirements
Appendix 4 -	Time Schedule
Appendix 5 -	List of Major Items of Plant and services and List of Approved Subcontractors
Appendix 6 -	Scope of Works and Supply by the Employer
Appendix 7 -	List of Documents for Approval or Review
Appendix 8 -	Functional Guarantees

Appendix 1. Terms and Procedures of Payment

The following Terms and Procedures of Payment are given as a guideline suitable for Supply and Installation Contracts. In the event that the Employer wishes to introduce different terms of payment to the following, it shall first obtain the written approval of the Bank for the terms it intends to use. If additional Price Schedules are introduced, suitable terms of payment in respect of such additional schedules must be added.

In accordance with the provisions of GCC Clause 12 (Terms of Payment), the Employer shall pay the Contractor in the following manner and at the following times, on the basis of the Price Breakdown given in the section on Price Schedules. Payments will be made in the currencies quoted by the Bidder unless otherwise agreed between the parties. Applications for payment in respect of part deliveries may be made by the Contractor as work proceeds.

Terms of Payment

Schedule No. 1 - Plant and Equipment Supplied from Abroad

In respect of plant and equipment supplied from abroad, the following payments shall be made:

Ten percent (10%) of the total CIF or CIP amount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favour of the Employer. The advance payment security may be reduced in proportion to the value of the plant and equipment shipped FOB or delivered to the site, as evidenced by shipping and delivery documents.

Eighty percent (80%) of the total or pro rata CIP amount upon Incoterm "CIP," upon delivery to carrier within forty-five (45) days after receipt of documents *[Employer to state the required documents, such as a negotiatable bill of lading, a non-negotiable sea way bill, an airway will, a railway consignment note, a road consignment note, insurance certificate, etc.]*.

Five percent (5%) of the total or pro rata CIP amount upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata CIP amount upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.

Schedule No. 2 - Plant and Equipment Supplied from within the Employer's Country

In respect of plant and equipment supplied from within the Employer's country, the following payments shall be made:

Ten percent (10%) of the total EXW amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made

out in favor of the Employer. The advance payment security may be reduced in proportion to the value of the plant and equipment delivered to the site, as evidenced by shipping and delivery documents.

Eighty percent (80%) of the total or pro rata EXW amount upon Incoterm "Ex-Works," upon delivery to the carrier within forty-five (45) days after receipt of invoice. *[Employer to state the required documents, such as a railway consignment note, a road consignment note, insurance certificate, etc.]*

Five percent (5%) of the total or pro rata EXW amount upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata EXW amount upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.

Schedule No. 3 - Design Services

In respect of design services for both the foreign currency and the local currency portions, the following payments shall be made:

Ten percent (10%) of the total design services amount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer.

Ninety percent (90%) of the total or pro rata design services amount upon acceptance of design in accordance with GC Clause 20 by the Project Manager within forty-five (45) days after receipt of invoice.

Schedule No. 4 - Installation and other Services

In respect of installation services for both the foreign and local currency portions, the following payments shall be made:

Ten percent (10%) of the total installation and other services amount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of work performed by the Contractor as evidenced by the invoices for installation services.

Eighty percent (80%) of the measured value of work performed by the Contractor, as identified in the said Program of Performance, during the preceding month, as evidenced by the Employer's authorization of the Contractor's application, will be made monthly within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.

In the event that the Employer fails to make any payment on its respective due date, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate of *[insert a figure that may be different for the foreign and local currency portions and a figure that reflects the cost of money in the respective currencies]* percent (. . . %) per month for period of delay until payment has been made in full.

Payment Procedures

The procedures to be followed in applying for certification and making payments shall be as follows:

[Insert appropriate procedures, usually Letters of Credit, including forms and certificates annexed as appropriate by the Employer in the bidding document]

Appendix 2. Price Escalation

Where the Contract Period (excluding the Defect Liability Period) exceeds eighteen (18) months, it is normal procedure that prices payable to the Contractor shall be subject to adjustment during the performance of the Contract to reflect changes occurring in the cost of labour and material components. In such cases the bidding documents shall include in this Appendix 2 a formula of the following general type, pursuant to GC Sub-Clause 11.2. Where Contracts are of a shorter duration than eighteen (18) months or in cases where there is to be no Price Adjustment, the following provision shall not be included. Instead, it shall be indicated under this Appendix 2 that the prices are to remain firm and fixed for the duration of the Contract.

Sample Price Escalation Formula

Prices payable to the Contractor, in accordance with the Contract, shall be subject to adjustment during performance of the Contract to reflect changes in the cost of labor and material components, in accordance with the following formula:

$$P_1 = P_0 \times (a + b\frac{L_1}{L_0} + c\frac{M_1}{M_0}) - P_0$$

in which:

P_1 = adjustment amount payable to the Contractor

P_0 = Contract price (base price)

a = percentage of fixed element in Contract price (a = _ %)

b = percentage of labor component in Contract price (b = _%)

c = percentage of material and equipment component in Contract price (c = _%)

L_0, L_1 = labor indices applicable to the appropriate industry in the country of origin on the base date and the date for adjustment, respectively

M_0, M_1 = material and equipment indices in the country of origin on the base date and the date for adjustment, respectively

Note that the sum of percentages a, b, c, etc… in formula must always be equal to 100%!

Conditions Applicable To Price Adjustment

The Bidder shall indicate the source of labour and materials indices and the base date indices in its bid.

Item	Source of Indices Used	Base Date Indices

The base date shall be the date thirty (30) days prior to the Bid closing date.

The date of adjustment shall be the mid-point of the period of manufacture or installation of component or Plant.

The following conditions shall apply:

(a) No price increase will be allowed beyond the original delivery date unless covered by an extension of time awarded by the Employer under the terms of the Contract. No price increase will be allowed for periods of delay for which the Contractor is responsible. The Employer will, however, be entitled to any price decrease occurring during such periods of delay.

(b) If the currency in which the Contract price, P_0, is expressed is different from the currency of the country of origin of the labour and/or materials indices, a correction factor will be applied to avoid incorrect adjustments of the Contract price. The correction factor shall correspond to the ratio of exchange rates between the two currencies on the base date and the date for adjustment as defined above.

(c) No price adjustment shall be payable on the portion of the Contract price paid to the Contractor as an advance payment.

For complex plant supply and installation involving several sources of supply and/or a substantial amount of installation works, a family of formulas may be necessary, with provision for the usage of Contractor's equipment in the works formula.

Appendix 3. Insurance Requirements

Details to be completed by the Employer prior to issuing the bidding documents. In the event that the Employer provides any insurances under the Contract, appropriate details must also be given.

Insurances To Be Taken Out By The Contractor

In accordance with the provisions of GC Clause 34, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, such approval not to be unreasonably withheld.

(a) Cargo Insurance

Covering loss or damage occurring, while in transit from the supplier's or manufacturer's works or stores until arrival at the Site, to the Facilities (including spare parts therefore) and to the construction equipment to be provided by the Contractor or its Subcontractors.

Amount **[in currency(ies)]**	**Deductible limits** **[in currency(ies)]**	**Parties insured** **[names]**	**From** **[place]**	**To** **[place]**

(b) Installation All Risks Insurance

Covering physical loss or damage to the Facilities at the Site, occurring prior to completion of the Facilities, with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the defect liability period while the Contractor is on the Site for the purpose of performing its obligations during the defect liability period.

Amount **[in currency(ies)]**	**Deductible limits** **[in currency(ies)]**	**Parties insured** **[names]**	**From** **[place]**	**To** **[place]**

(c) Third Party Liability Insurance

Covering bodily injury or death suffered by third parties (including the Employer's personnel) and loss of or damage to property (including the Employer's property and any

parts of the Facilities that have been accepted by the Employer) occurring in connection with the supply and installation of the Facilities.

Amount [in currency(ies)]	**Deductible limits** [in currency(ies)]	**Parties insured** [names]	**From** [place]	**To** [place]

(d) Automobile Liability Insurance
Covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the supply and installation of the Facilities. Comprehensive insurance in accordance with statutory requirements.

(e) Workers' Compensation
In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

(f) Employer's Liability
In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

(g) Other Insurances
The Contractor is also required to take out and maintain at its own cost the following insurances:

Details:

Amount [in currency(ies)]	**Deductible limits** [in currency(ies)]	**Parties insured** [names]	**From** [place]	**To** [place]

The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GC Sub-Clause 34.1, except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to GC Sub-Clause 34.1, except for the Cargo, Workers' Compensation and Employer's Liability Insurances. All insurer's rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.

Insurances To Be Taken Out By The Employer

If the Employer is proposing to take out any or all of the above insurances itself, or any other insurances in respect of the Facilities, either in its own name or in the joint names of itself and the Contractor, it shall give details below prior to issuing the bidding documents. Under the terms of the Contract, the Contractor and the Contractor's Subcontractors shall be named as co-insured under all such policies.

The Employer shall at its expense take out and maintain in effect during the performance of the Contract the following insurances.

Details:

Amount **[in currency(ies)]**	**Deductible limits** **[in currency(ies)]**	**Parties insured** **[names]**	**From** **[place]**	**To** **[place]**

Appendix 4. Time Schedule

The Employer should normally provide a Time Schedule to be followed by the Contractor during the performance of the Contract. This schedule should be provided with the bidding documents under this Appendix. All completion times indicated must be in accordance with the information regarding Time(s) for Completion given in the Bid Data Sheet.

Except under exceptional circumstances, the Time Schedule should indicate periods of time (e.g., weeks or months) and not specify calendar dates. All periods should be shown from the Effective Date of the Contract.

Should it become necessary to amend the Time Schedule to reflect any agreements made with the selected Bidder prior to award of Contract, the amended Time Schedule shall replace the original Time Schedule prior to signature of the Contract Agreement.

If the bidding documents contain no Time Schedule, the Bidder shall be required to submit with its bid a detailed program, normally in the form of a bar chart, showing how and the order in which it intends to perform the Contract and showing the key events requiring action or decision by the Employer. In preparing this Program, the Bidder shall adhere to the Time(s) for Completion given in the Bid Data Sheet or give its reasons for not adhering thereto. The Time Schedule submitted by the selected Bidder and amended as necessary prior to award of Contract shall be included as Appendix to the Contract Agreement before the Contract is signed

Appendix 5. List of Major Items of Plant and Services and List of Approved Subcontractors

Prior to issuing the Bidding Document, the Employer has established a list of major item of plant and services for which approval of the Employer is required. Prior to award of Contract, the details of approved subcontractor, including manufacturers shall be completed, indicating those subcontractors proposed by the Bidder in the corresponding Attachment to its bid that are approved by the Employer for engagement by the Contractor during the performance of the Contract.

A list of major items of plant and services is provided below.

The following Subcontractors and/or manufacturers are approved for carrying out the item of the facilities indicated. Where more than one Subcontractor is listed, the Contractor is free to choose between them, but it must notify the Employer of its choice in good time prior to appointing any selected Subcontractor. In accordance with GC Sub-Clause 19.1, the Contractor is free to submit proposals for Subcontractors for additional items from time to time. No Subcontracts shall be placed with any such Subcontractors for additional items until the Subcontractors have been approved in writing by the Employer and their names have been added to this list of Approved Subcontractors.

Major Items of Plant and Services	Approved Subcontractors/Manufacturers	Nationality

Appendix 6. Scope of Works and Supply by the Employer

Prior to issuing the bidding documents, the Employer shall indicate in this Appendix details of all personnel and Facilities it will provide for use by the Contractor and indicate, where applicable, the charges that it will make in respect of their use.

The Employer shall also identify any part(s) of the facilities it intends to carry out itself (or by other contractors), and any plant, equipment, or materials that it proposes to purchase itself and supply to the Contractor for incorporation in the facilities, indicating, where applicable, the charges that it will make in respect thereof.

The following personnel, facilities, works and supplies will be provided/supplied by the Employer, and the provisions of GCC Clauses 10, 21 and 24 shall apply as appropriate.

All personnel, facilities, works and supplies will be provided by the Employer in good time so as not to delay the performance of the Contractor, in accordance with the approved Time Schedule and Program of Performance pursuant to GCC Sub-Clause 18.2.

Unless otherwise indicated, all personnel, facilities, works and supplies will be provided free of charge to the Contractor.

Personnel	Charge to Contractor (if any)

Facilities	Charge to Contractor (if any)

Works	Charge to Contractor (if any)

Supplies	Charge to Contractor (if any)

Appendix 7. List of Documents for Approval or Review

Pursuant to GCC Sub-Clause 20.3.1, the Contractor shall prepare, or cause its Subcontractor to prepare, and present to the Project Manager in accordance with the requirements of GCC Sub-Clause 18.2 (Program of Performance), the following documents for

(A) Approval

1.....

2.....

3.....

(B) Review

1.....

2.....

3.....

Appendix 8. Functional Guarantees

1. General

This Appendix sets out

(a) the functional guarantees referred to in GC Clause 28 (Functional Guarantees)

(b) the preconditions to the validity of the functional guarantees, either in production and/or consumption, set forth below

(c) the minimum level of the functional guarantees

(d) the formula for calculation of liquidated damages for failure to attain the functional guarantees.

2. Preconditions

The Contractor gives the functional guarantees (specified herein) for the facilities, subject to the following preconditions being fully satisfied: *[List any conditions for the carrying out of the Guarantee Test referred to in GCC Sub-Clause 25.2.*]

3. Functional Guarantees

Subject to compliance with the foregoing preconditions, the Contractor guarantees as follows:

3.1 Production Capacity *[List here the production capacity that the Contractor is to guarantee, making sure to use, as functional guarantees, the figures offered by the Contractor in its bid]*

3.2 Raw Materials and Utilities Consumption *[List here the guaranteed items of consumption per unit of production (e.g., kg, tons, kcal, kWh, etc.) that the Contractor is to guarantee, making sure to use, as functional guarantees, the figures offered by the Contractor in its bid]*

4. Failure in Guarantees and Liquidated Damages

4.1 Failure to Attain Guaranteed Production Capacity

If the production capacity of the facilities attained in the guarantee test, pursuant to GC Sub-Clause 25.2, is less than the guaranteed figure specified in para. 3.1 above, but the actual production capacity attained in the guarantee test is not less than the minimum level specified in para. 4.3 below, and the Contractor elects to pay liquidated damages to the Employer in lieu of making changes, modifications and/or additions to the Facilities, pursuant to GC Sub-Clause 28.3, then the Contractor shall pay liquidated damages at the rate of *[amount in the contract currency]*.for every complete one percent (1%) of the deficiency in the production capacity of the Facilities, or at a proportionately

reduced rate for any deficiency, or part thereof, of less than a complete one percent (1%).

4.2 Raw Materials and Utilities Consumption in Excess of Guaranteed Level

[To be specified in the appropriate wording for the type of facilities if there are consumption guarantee]

If the actual measured figure of specified raw materials and utilities consumed per unit (or their average total cost of consumption) exceeds the guaranteed figure specified in para. 3.2 above (or their specified average total cost of consumption), but the actual consumption attained in the guarantee test, pursuant to GC Sub-Clause 25.2, is not more than the maximum level specified in para. 4.3 below, and the Contractor elects to pay liquidated damages to the Employer in lieu of making changes, modifications and/or additions to the Facilities pursuant to GC Sub-Clause 28.3, then the Contractor shall pay liquidated damages at the rate of *[amount in the contract currency]* for every complete one percent (1%) of the excess consumption of the Facilities, or part thereof, of less than a complete one percent (1%).

[The rate of liquidated damages specified in paras. 4.1 and 4.2 above shall be at least equivalent to the rate specified in Section III (Evaluation and Qualification Criteria) for the comparison of functional guarantees provided by the bidders]

4.3 Minimum Levels

Notwithstanding the provisions of this paragraph, if as a result of the guarantee test(s), the following minimum levels of performance guarantees (and consumption guarantees) are not attained by the Contractor, the Contractor shall at its own cost make good any deficiencies until the Facilities reach any of such minimum performance levels, pursuant to GCC Sub-Clause 28.2:

(a) production capacity of the Facilities attained in the guarantee test: ninety-five percent (95%) of the guaranteed production capacity

and/or

(b) average total cost of consumption of all the raw materials and utilities of the Facilities: one hundred and five percent (105%) of the guaranteed figures.

4.4 Limitation of Liability

Subject to para. 4.3 above, the Contractor's aggregate liability to pay liquidated damages for failure to attain the functional guarantees shall not exceed *[the percentage specified shall not exceed ten percent (10%)]*. percent (. . . %) of the Contract price

Performance Security Form – Bank Guarantee

_____ *[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 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 Facilities]* (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 Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[amount in figures]* (___) *[amount in words]*[54], 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 be reduced by half upon our receipt of:

(a) a copy of the Operational Acceptance Certificate; or
(b) a registered letter from the Contractor (i) attaching a copy of its notice requesting issuance of the Operational Acceptance Certificate and (ii) stating that the project manager has failed to issue such Certificate within the time required or provide in writing justifiable reasons why such Certificate has not been issued, so that Operational Acceptance is deemed to have occurred.

This guarantee shall expire no later than the earlier of:[55]

(a) twelve months after our receipt of either (a) or (b) above; or
(b) eighteen months after our receipt of:

---

[54] 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*.

[55] This text shall be revised as and where necessary to take into account (i) partial acceptance of the Facilities in accordance with Sub-Clause 25.4 of the GCC; and (ii) extension of the performance security when the Contractor is liable for an extended warranty obligation pursuant to Sub-Clause 27.10 of the GCC (although in this latter case the *Employer* might want to consider an extended warranty security in lieu of the extension of the performance security).

(i) a copy of the Completion Certificate; or

(ii) a registered letter from the Contractor, attaching a copy of the notice to the project manager that the Facilities are ready for commissioning, and stating that fourteen days have elapsed from receipt of such notice (or seven days have elapsed if the notice was a repeated notice) and the project manager has failed to issue a Completion Certificate or inform the Contractor in writing of any defects or deficiencies; or

(iii) a registered letter from the Contractor stating that no Completion Certificate has been issued but the Employer is making use of the Facilities; or

(c) the ____ day of _____, 2___.[56]

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

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

_____

[signature(s)]

[56] Insert the date twenty-eight days after the expected expiration date of the Defect Liability Period. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

Performance Security Form- Conditional Bank Guarantee

Date: _____
Loan/Credit N°: _____
IFB N°: _____

[Name of Contract]

To: [Name and address of Employer]

Dear Ladies and/or Gentlemen,

We refer to the Contract Agreement ("the Contract") signed on *[date]* between you and *[name of Contractor]* ("the Contractor") concerning design, execution and completion of *[Brief description of the Facilities]*.

By this letter we, the undersigned, *[name of Bank]*, a Bank (or company) organized under the laws of *[country of Bank]* and having its registered/principal office at *[address of Bank]*, do hereby jointly and severally with the Contractor irrevocably guarantee payment owed to you by the Contractor, pursuant to the Contract, up to the sum of *[amount]*, equivalent to [number] percent (__%) *[amount shall not exceed ten percent (10%) in any case]* of the Contract Price until the date of the Operational Acceptance Certificate and thereafter up to a sum of *[amount]*, equivalent to *[number]* percent (_%) *[amount shall not exceed five percent (5%) in any case]* of the Contract Price, until twelve (12) months after the date of Operational Acceptance, or eighteen (18) months after Completion of the Facilities, whichever comes first.

Where it is agreed between you and the Contractor that the Facilities are to be accepted in parts, and thus where there are separate Completion and Operational Acceptance Certificates for each part, this Letter of Guarantee shall be apportioned to the value of each such part and shall reduce or expire as provided above on or following Completion or Operational Acceptance of each part.

We shall only undertake to make payment under this Letter of Guarantee upon our receipt of a written demand signed by your duly authorized officer for a specified sum, where such demand sets out the reasons for your claim under this Letter of Guarantee and is accompanied by

(a) a copy of the written notice sent by you to the Contractor before making the claim under this Guarantee, specifying the Contractor's breach of contract and requesting the Contractor to remedy it

(b) a letter signed by your duly authorized officer certifying that the Contractor has failed to remedy the default within the period allowed for remedial action

(c) a copy of your written notice to the Contractor stating your intent to claim under this Letter of Guarantee because of the Contractor's failure to remedy the default in accordance with the request referred to in para. (a) above.

Our liability under this Letter of Guarantee shall be to pay to you whichever is the lesser of the sum so requested or the amount then guaranteed hereunder in respect of any demand duly made hereunder prior to expiry of this Letter of Guarantee, without being entitled to inquire whether or not this payment is lawfully demanded.

This Letter of Guarantee shall be valid from the date of issue until the earlier of twelve (12) months after the date of Operational Acceptance or eighteen (18) months after the date of Completion of the Facilities or, where the Facilities are to be accepted in parts, twelve (12) months after the date of Operational Acceptance or eighteen (18) months after the date of Completion of the last part or *[date]*, whichever comes first.

Except for the documents herein specified, no other documents or other action shall be required, notwithstanding any applicable law or regulation.

If the Defect Liability Period is extended with respect to any part of the Facilities in accordance with the Contract, you shall notify us, and the validity of this Letter of Guarantee shall be extended with respect to the percentage of the Contract Price stipulated in the notification until expiry of such extended Defect Liability Period.

Our liability under this Letter of Guarantee shall become null and void immediately upon its expiry, whether it is returned or not, and no claim may be made hereunder after such expiry or after the aggregate of the sums paid by us to you shall equal the sums guaranteed hereunder, whichever is the earlier.

All notices to be given hereunder shall be given by registered (airmail) post to the addressee at the address herein set out or as otherwise advised by and between the parties hereto.

We hereby agree that any part of the Contract may be amended, renewed, extended, modified, compromised, released or discharged by mutual agreement between you and the Contractor, and this security may be exchanged or surrendered without in any way impairing or affecting our liabilities hereunder without notice to us and without the necessity for any additional endorsement, consent or guarantee by us, provided, however, that the sum guaranteed shall not be increased or decreased.

No action, event or condition which by any applicable law should operate to discharge us from liability hereunder shall have any effect and we hereby waive any right we may have to apply such law, so that in all respects our liability hereunder shall be irrevocable and, except as stated herein, unconditional in all respects.

Yours truly,
[Name of the Bank]

Authorized Signature

Bank Guarantee Form for Advance Payment

..... *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 the Facilities*. . . . . (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*. . . . . (. . . . . *amount in words*. . . . .) is to be made against an advance payment guarantee.

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

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

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

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

. . . . . .

Seal of Bank and Signature(s)

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

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