



**Kenya Marine Fisheries Socioeconomic  
Development Project (KEMFSED)  
P.O. Box 58187-00200  
NAIROBI**



**MINISTRY OF AGRICULTURE, LIVESTOCK,  
FISHERIES AND COOPERATIVES**

## **Request for Bids Works**

### **Procurement of:**

### **Construction of Fisheries Headquarters –“ UVUVI HOUSE”**

**Employer:** State Department for Fisheries, Aquaculture and the Blue Economy

**Project:** Kenya Marine Fisheries Socio-Economic Development Project (KEMFSED)

**Contract Title:** Construction of Fisheries Headquarters – “UVUVI HOUSE”

**Country:** Republic of Kenya

**Loan No./Credit No./Grant No.:** 6540-KE

**RFBNo.:** KE-MOALF-2021-001-CW-RFB

**Issued on:** 18<sup>TH</sup> October 2022

**VOLUME 1 OF 4:**

# Request for Bids -Works

## (Without Prequalification)

**Employer:** State Department for Fisheries, Aquaculture and the Blue Economy

**Project:** Kenya Marine Fisheries Socio-Economic Development Project

**Contract title:** Construction of Fisheries Headquarters - **“Uvuvi House”**

**Country:** Republic of Kenya

**Credit No.** 6540-KE

**RFB No:** KE-MOALF-2021-001-CW-RFB /MOALF&C/SDFA&BE/05/2022-2023

**Issued on:** 18<sup>th</sup> October 2022

1. The Government of Kenya (hereinafter called “Borrower”) has received financing from the World Bank toward the cost of Kenya Marine Fisheries and Socio-Economic Development Project (KEMFSED) and intends to apply part of the proceeds toward payments under the contract for Construction of Fisheries Headquarters- “Uvuvi House”. For this contract, the Borrower shall process the payments using the Direct Payment disbursement method, as defined in the World Bank’s Disbursement Guidelines for Investment Project Financing.
2. The State Department for Fisheries Aquaculture and the Blue Economy now invites sealed Bids from eligible Bidders for the **Construction of the Fisheries Headquarters – “Uvuvi House” Contract No. KE-MOALF-2021-001-CW-RFB. / MOALF&C/SDFA&BE/05/2022-2023**

The scope of construction works involves;

- a) Builders works entails erection of 10 floors and ancillary works
- b) Civil Works, parking area and drainage works
- c) Mechanical Works
- d) Electrical Works
- e) Landscaping

The Construction period is **24 calendar months**

The Construction location: South C, off Red Cross Road, Nairobi, Kenya on coordinates 1°19'29.4"S 36°50'11.7"E

3. Bidding will be conducted through national competitive procurement using Request for Bids (RFB) as specified in the World Bank’s “Procurement Regulations for IPF Borrowers-Procurement in Investment Projects Financing” dated November 2020 fourth Edition (“Procurement Regulations”), and is open to all eligible Bidders as defined in the Procurement Regulations.

Interested eligible Bidders may obtain further information from **The State Department for Fisheries Aquaculture and the Blue Economy; Kenya Marine Fisheries and Socio-Economic Development (KEMFSED) Project, National Project Coordinator** - E-mail: [info@kemfsed.org](mailto:info@kemfsed.org) and inspect the Bidding document during office hours, i.e. 0800 to 1700 hours East African Time at the address given below.

4. The Bidding document in English and in four volumes i.e. **Volume. I – The Tender Documents; Volume II – Bills of Quantities; Volume III - Specifications and Volume IV – The Drawings**; may be purchased by interested eligible Bidders upon the submission of a written application to the address below and upon payment of a nonrefundable fee of KES 1,000/=. The method of payment will be Cash at the address provided below. The document will be collected at the address provided below or freely downloaded from the website below or state portal for tenders [www.tenders.go.ke](http://www.tenders.go.ke) or Ministry’s website [www.kilimo.go.ke](http://www.kilimo.go.ke)
5. Bids clearly marked **Construction of Fisheries Headquarters - “Uvuvi House” Contract No. KE-MOALF-2021-001-CW-RFB /MOALF&C/SDFA&BE/05/2022-2023**; must be delivered and placed in the tender box located at Maktaba Kuu Building Mezzanine Floor project office Kenya Marine Fisheries and Socio-Economic Development (KEMFSED) Project at Ngong Road on or before **1100 hours East African Time (EAT) on 1<sup>st</sup> December 2022**. Electronic Bidding will NOT be permitted. Late Bids will be rejected. Bids will be publicly opened in the presence of the Bidders’ designated representatives and anyone who chooses to attend at the Maktaba Kuu Building Mezazanine floor KEMFSED Board room at 1100 hours EAT on **1<sup>st</sup> December 2022**
6. All Bids must be accompanied by a Bid Security of **Kenya Shilling Fifteen Million Only (KES.15,000,000.00) from recognized financial institutions in Kenya, Registered with NCA; Category NCA I in Buildings and Civil works, CR12 Certificate issued by the Registrar of Companies (Kenya) within six (6) months, Certified valid Business Permit / License, Certified valid Tax Compliance Certificate.**
7. All Bids must be accompanied by a Sexual Exploitation and Abuse (SEA) and/or Sexual Harassment (SH) Declaration.
8. Attention is drawn to the Procurement Regulations requiring the Borrower to disclose information on the successful bidder’s beneficial ownership, as part of the Contract Award Notice, using the Beneficial Ownership Disclosure Form as included in the bidding document.
9. The address referred to above is;

Physical Address The Principal Secretary State Department for Fisheries, Aquaculture and Blue Economy Ministry of Agriculture, Livestock, Fisheries and Cooperatives	Other addresses The National Project Coordinator Kenya Marine Fisheries and Socio-Economic Development (KEMFSED) Project State Department for Fisheries, Aquaculture and Blue Economy Ministry of Agriculture, Livestock, Fisheries and Cooperatives Maktaba Kuu Building, Mezannine Floor, Ngong Road, P O Box 58187 – 00200, Nairobi Website: <a href="https://www.kilimo.go.ke">https://www.kilimo.go.ke</a> <a href="http://www.kemfsed.org">www.kemfsed.org</a> Email: <a href="mailto:info@kemfsed.org">info@kemfsed.org</a> Telephone: +254-20-2718870
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# Standard Procurement Document

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# **PART 1 – Bidding Procedures**

# Section I - Instructions to Bidders

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# Section I - Instructions to Bidders

## A. General

### 1. Scope of Bid

1.1 In connection with the Specific Procurement Notice – Request for Bids (RFB), specified in the **Bid Data Sheet (BDS)**, the Employer, as **specified in the BDS**, issues this Bidding document for the provision of Works as specified in Section VII, Works' Requirements. The name, identification, and number of lots (contracts) of this RFB are **specified in the BDS**.

1.2 Throughout this bidding document:

the term **“in writing”** means communicated in written form (e.g. by mail, e-mail, fax, including, if **specified in the BDS**, distributed or received through electronic-procurement system used by the Employer) with proof of receipt;

if the context so requires, “singular” means “plural” and vice versa;

**“Day”** means calendar day, unless otherwise specified as a **“Business Day.”** A Business Day is any day that is a working day of the Borrower. It excludes the Borrower's official public holidays;

**“ES”** means environmental and social (including Sexual Exploitation and Abuse (SEA), and Sexual Harassment (SH));

**“Sexual Exploitation and Abuse” “(SEA)”** means the following:

**Sexual Exploitation** is defined as any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.

**Sexual Abuse** is defined as the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions;

**“Sexual Harassment” “(SH)”** is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by the Contractor's Personnel with other Contractor's or Employer's Personnel;



**“Contractor’s Personnel”** is as defined in Sub-Clause 1.1.17 of the General Conditions; and

**“Employer’s Personnel”** is as defined in Sub-Clause 1.1.33 of the General Conditions.

A non-exhaustive list of (i) behaviors which constitute SEA and (ii) behaviors which constitute SH is attached to the Code of Conduct form in Section IV.

## 2. Source of Funds

- 2.1 The Borrower or Recipient (hereinafter called “Borrower”) **specified in the BDS** has received or has applied for financing (hereinafter called “funds”) from the International Bank for Reconstruction and Development or the International Development Association (hereinafter called “the Bank”) in an amount **specified in the BDS**, toward 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 Payment by the Bank will be made only at the request of the Borrower and upon approval by the Bank, and will be subject, in all respects, to the terms and conditions of the Loan (or other financing) Agreement. The Loan (or other financing) Agreement prohibits a withdrawal from the loan account for the purpose of any payment to persons or entities, or for any import of goods, 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. No party other than the Borrower shall derive any rights from the Loan (or other financing) Agreement or have any claim to the proceeds of the Loan (or other financing).

## 3. Fraud and Corruption

- 3.1 The Bank requires compliance with the Bank’s Anti-Corruption Guidelines and its prevailing sanctions policies and procedures as set forth in the WBG’s Sanctions Framework, as set forth in Section VI.
- 3.2 In further pursuance of this policy, Bidders shall permit and shall cause their agents (where declared or not), subcontractors, subconsultants, service providers, suppliers, and personnel, to permit the Bank to inspect all accounts, records and other documents relating to any initial selection process, prequalification process, bid submission, proposal submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Bank.

## 4. Eligible Bidders

- 4.1 A Bidder may be a firm that is a private entity, a state-owned enterprise or institution subject to ITB 4.6 or any combination

of such entities in the form of a joint venture (JV) 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, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Bidding process and, in the event the JV is awarded the Contract, during contract execution. Unless **specified in the BDS**, there is no limit on the number of members in a JV.

- 4.2 A Bidder shall not have a conflict of interest. Any Bidder found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this Bidding process, if the Bidder:
- (a) directly or indirectly controls, is controlled by or is under common control with another Bidder; or
  - (b) receives or has received any direct or indirect subsidy from another Bidder; or
  - (c) has the same legal representative as another Bidder; or
  - (d) has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the Bid of another Bidder, or influence the decisions of the Employer regarding this Bidding process; or
  - (e) or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the Bid; or
  - (f) or any of its affiliates has been hired (or is proposed to be hired) by the Employer or Borrower as Engineer for the Contract implementation; or
  - (g) would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project **specified in the BDS** ITB 2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or
  - (h) has a close business or family relationship with a professional staff of the Borrower (or of the project implementing agency, or of a recipient of a part of the loan) who: (i) are directly or indirectly involved in the

preparation of the Bidding document or specifications of the Contract, and/or the Bid evaluation process of such Contract; or (ii) would be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Bank throughout the Bidding process and execution of the Contract.

- 4.3 A firm that is a Bidder (either individually or as a JV member) shall not participate in more than one Bid, except for permitted alternative Bids. This includes participation as a subcontractor in other Bids. Such participation shall result in the disqualification of all Bids in which the firm is involved. A firm that is not a Bidder or a JV member may participate as a subcontractor in more than one Bid.
- 4.4 A Bidder may have the nationality of any country, subject to the restrictions pursuant to ITB 4.8. A Bidder shall be deemed to have the nationality of a country if the Bidder is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or subconsultants for any part of the Contract including related Services.
- 4.5 A Bidder that has been sanctioned by the Bank, pursuant to the Bank's Anti-Corruption Guidelines, and in accordance with its prevailing sanctions policies and procedures as set forth in the World Bank Group's Sanctions Framework, as described in Section VI paragraph 2.2 d. shall be ineligible to be prequalified for, initially selected for, bid for, propose for, or 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 have determined. The list of debarred firms and individuals is available at the electronic address **specified in the BDS**.
- 4.6 Bidders that are state-owned enterprises or institutions in the Employer's Country may be eligible to compete and be awarded a Contract(s) only if they can establish, in a manner acceptable to the Bank, that they (i) are legally and financially autonomous (ii) operate under commercial law, and (iii) are not under supervision of the Employer.

- 4.7 A Bidder shall not be under suspension from bidding by the Employer as the result of the operation of a Bid-Securing or Proposal-Securing Declaration.
- 4.8 Firms and individuals may be ineligible if so indicated in Section V and (a) as a matter of law or official regulations, 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 the contracting of works or 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 any country, person, or entity in that country. When the Works are implemented across jurisdictional boundaries (and more than one country is a Borrower, and is involved in the procurement), then exclusion of a firm or individual on the basis of ITB 4.8 (a) above by any country may be applied to that procurement across other countries involved, if the Bank and the Borrowers involved in the procurement agree.
- 4.9 A Bidder shall provide such documentary evidence of eligibility satisfactory to the Employer, as the Employer shall reasonably request.
- 4.10 A firm that is under a sanction of debarment by the Borrower from being awarded a contract is eligible to participate in this procurement, unless the Bank, at the Borrower's request, is satisfied that the debarment; (a) relates to fraud or corruption, and (b) followed a judicial or administrative proceeding that afforded the firm adequate due process.
- 5. Eligible Materials, Equipment, and Services**
- 5.1 The materials, equipment and services to be supplied under the Contract and financed by the Bank may have their origin in any country subject to the restrictions specified in Section V, Eligible Countries, and all expenditures under the Contract will not contravene such restrictions. At the Employer's request, Bidders may be required to provide evidence of the origin of materials, equipment and services.

## **B.Contents of Bidding Document**

- 6. Sections of Bidding Document**
- 6.1 The Bidding document consists of Parts 1, 2, and 3, which includes all the sections specified below, and which 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
- Section VI - Fraud and Corruption

**PART 2 Works' Requirements**

- Section VII - Works' Requirements

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

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

- 6.2 The Specific Procurement Notice - Request for Bids (RFB) issued by the Employer is not part of the Bidding document.
- 6.3 Unless obtained directly from the Employer, the Employer is not responsible for the completeness of the Bidding document, responses to requests for clarification, the minutes of the pre-Bid meeting (if any), or Addenda to the Bidding document in accordance with ITB 8. In case of any contradiction, documents obtained directly from the Employer shall prevail.
- 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding document and to furnish with its Bid all information and documentation as is required by the Bidding document.

**7. Clarification of  
Bidding Document,  
Site Visit, Pre-Bid  
Meeting**

- 7.1 A Bidder requiring any clarification of the Bidding document shall contact the Employer in writing at the Employer's address **specified in the BDS** or raise its enquiries during the pre-Bid meeting if provided for in accordance with ITB 7.4. The Employer will respond in writing to any request for clarification, provided that such request is received no later than fourteen (14) days prior to the deadline for submission of Bids. The Employer shall forward copies of its response to all Bidders who have acquired the Bidding document in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. If so **specified in the BDS**, the Employer shall also promptly publish its response at the

web page identified in the BDS. Should the clarification result in changes to the essential elements of the Bidding document, the Employer shall amend the Bidding document following the procedure under ITB 8 and ITB 22.2.

- 7.2 The Bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the Bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.
- 7.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 7.4 If so **specified in the BDS**, the Bidder's designated representative is invited to attend a pre-Bid meeting and/or a Site of Works visit. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 7.5 The Bidder is requested to submit any questions in writing, to reach the Employer not later than one week before the meeting.
- 7.6 Minutes of the pre-Bid meeting, if applicable, including the text of the questions asked by Bidders, 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. If so **specified in the BDS**, the Employer shall also promptly publish the Minutes of the pre-Bid meeting at the web page identified **in the BDS**. 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. 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. The Employer shall also promptly publish the addendum on the Employer's web page in accordance with ITB 7.1.
- 8.3 To give Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Employer should extend the deadline for the submission of Bids, pursuant to ITB 22.2.

**C.Preparation of Bids****9. Cost of Bidding**

- 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall 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 shall comprise the following:
- (a) Letter of Bid prepared in accordance with ITB 12;
  - (b) Schedules including priced Bill of Quantities, completed in accordance with ITB 12 and ITB 14;
  - (c) Bid Security or Bid-Securing Declaration, in accordance with ITB 19.1;
  - (d) Alternative Bid, if permissible, in accordance with ITB 13;
  - (e) Authorization: written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.3;

- (f) Qualifications: documentary evidence in accordance with ITB 17 establishing the Bidder's qualifications to perform the Contract if its Bid is accepted;
- (g) Conformity: a technical proposal in accordance with ITB 16
- (h) Sexual Exploitation and Abuse (SEA), and/or Sexual Harassment (SH) Declaration, using the form included in Section IV, Bidding Forms; and
- (i) any other document required in the BDS.

11.2 In addition to the requirements under ITB 11.1, Bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Bid shall be signed by all members and submitted with the Bid, together with a copy of the proposed Agreement.

11.3 The Bidder shall furnish in the Letter of Bid information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid.

11.4 The Bidder shall furnish in the Letter of Bid the names of three potential DAAB members and attach their curriculum vitae. The list of potential DAAB members proposed by the Employer (Contract Data 21.1) and by the Bidder (Letter of Bid) shall be subject to Bank's No-objection.

## **12. Letter of Bid and Schedules**

12.1 The Letter of Bid and Schedules, including the Bill of Quantities, shall be prepared using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 20.3. All blank spaces shall be filled in with the information requested.

## **13. Alternative Bids**

13.1 Unless otherwise **specified in the BDS**, alternative Bids shall not be considered.

13.2 When alternative times for completion are explicitly invited, a statement to that effect will be included **in the BDS**, and the method of evaluating different alternative times for completion 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 requirements of the Bidding document must first price the Employer's design as described in the Bidding document and shall further provide all



information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the Bidder with the Most Advantageous Bid conforming to the basic technical requirements shall be considered by the Employer.

- 13.4 When **specified in the BDS**, Bidders are permitted to submit alternative technical solutions for specified parts of the Works, and such parts will be identified **in the BDS**, as will the method for their evaluating, and described in Section VII, Works' Requirements.

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

- 14.1 The prices and discounts (including any price reduction) quoted by the Bidder in the Letter of Bid and in the Bill of Quantities shall conform to the requirements specified below.
- 14.2 The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Bidder shall be deemed covered by the rates for other items in the Bill of Quantities and will not be paid for separately by the Employer. An item not listed in the priced Bill of Quantities shall be assumed to be not included in the Bid, and provided that the Bid is determined substantially responsive notwithstanding this omission, the average price of the item quoted by substantially responsive Bidders will be added to the Bid price and the equivalent total cost of the Bid so determined will be used for price comparison.
- 14.3 The price to be quoted in the Letter of Bid, in accordance with ITB 12.1, shall be the total price of the Bid, excluding any discounts offered.
- 14.4 The Bidder shall quote any discounts and the methodology for their application in the Letter of Bid, in accordance with ITB 12.1.
- 14.5 Unless otherwise **specified in the BDS** and the Conditions of Contract, the rates and prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract. In such a case, the Bidder shall furnish the indices and weightings for the price adjustment formulae in the Table of Adjustment Data and the Employer may require the Bidder to justify its proposed indices and weightings.

14.6 If so specified in ITB 1.1, Bids are being invited for individual lots (contracts) or for any combination of lots (packages). Bidders wishing to offer discounts for the award of more than one Contract shall specify in their Bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITB 14.4, provided the Bids for all lots (contracts) are opened at the same time. **If, however, rated criteria is used in accordance with ITB 35.2, discounts on condition of award of more than one contract will not be used for Bid evaluation purpose.**

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

**15. Currencies of Bid and Payment**

15.1 The currency (ies) of the Bid and the currency (ies) of payments shall be the same and shall be as **specified in the BDS.**

15.2 Bidders may be required by the Employer to justify, to the Employer's satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Table of Adjustment Data in the Appendix to Bid are reasonable, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders.

**16. Documents  
Comprising the  
Technical Proposal**

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

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

17.1 To establish Bidder's eligibility in accordance with ITB 4, Bidders shall complete the Letter of Bid, included in Section IV, Bidding Forms.

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

- 17.3 If a margin of preference applies as specified in accordance with ITB 33.1, domestic Bidders, individually or in joint ventures, applying for eligibility for domestic preference shall supply all information required to satisfy the criteria for eligibility specified in accordance with ITB 33.1.

## 18. Period of Validity of Bids

- 18.1 Bids shall remain valid until the date **specified in the BDS** or any extended date if amended by the Employer in accordance with ITB 8. A Bid that is not valid until the date **specified in the BDS**, or any extended date if amended by the Employer in accordance with ITB 8, shall be rejected by the Employer as nonresponsive.
- 18.2 In exceptional circumstances, prior to the date of expiration of the Bid validity, the Employer may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB 19, it shall also be extended for twenty-eight (28) days beyond the extended date for bid validity. 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 18.3
- 18.3 If the award is delayed by a period exceeding fifty-six (56) days beyond the date of expiry of the Bid validity specified in accordance with ITB 18.1, the Contract price shall be determined as follows:
- (a) in the case of **fixed price** contracts, the Contract price shall be the Bid price adjusted by the factor **specified in the BDS**;
  - (b) in the case of **adjustable price** contracts, no adjustment shall be made; or
  - (c) in any case, Bid evaluation shall be based on the Bid price without taking into consideration the applicable correction from those indicated above.

## 19. Bid Security

- 19.1 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 case of a Bid Security, in the amount and currency **specified in the BDS**.
- 19.2 A Bid-Securing Declaration shall use the form included in Section IV, Bidding Forms.

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

- (a) an unconditional guarantee issued by a bank or non-bank financial institution (such as an insurance, bonding or surety company);
- (b) an irrevocable letter of credit;
- (c) a cashier's or certified check; or
- (d) another security **specified in the BDS**,

from a reputable source from an eligible country. If an unconditional guarantee is issued by a non-bank financial institution located outside the Employer's Country, the issuing non-bank financial institution shall have a correspondent financial institution located in the Employer's Country to make it enforceable unless the Employer has agreed in writing, prior to Bid submission, that a correspondent financial institution is not required. 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. The Bid Security shall be valid for twenty-eight (28) days beyond the original date of expiry of the Bid validity, or beyond any extended date if requested under ITB 18.2

19.4 If a Bid Security or Bid-Securing Declaration is specified pursuant to ITB 19.1, any Bid not accompanied by a substantially responsive Bid Security or Bid-Securing Declaration shall be rejected by the Employer as non-responsive.

19.5 If a Bid Security is specified pursuant to ITB 19.1, the Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's signing the Contract and furnishing the Performance Security and if required in the BDS, the Environmental and Social (ES) Performance Security pursuant to ITB 48.

19.6 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, and if required in the BDS, the Environmental and Social (ES) Performance Security.

19.7 The Bid Security may be forfeited:

- (a) if a Bidder withdraws its Bid prior to the expiry date of the Bid validity specified by the Bidder on the Letter of Bid, or any extended date provided by the Bidder; or
- (b) if the successful Bidder fails to:
  - (i) sign the Contract in accordance with ITB 47; or
  - (ii) furnish a Performance Security and if required in the BDS, the Environmental and Social (ES) Performance Security in accordance with ITB 48.

19.8 The Bid Security or the Bid-Securing Declaration of a JV shall be in the name of the JV that submits the Bid. If the JV has not been legally constituted into a legally enforceable JV at the time of Bidding, the Bid Security or the Bid-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITB 4.1 and ITB 11.2.

19.9 If a Bid Security is not required in the BDS, pursuant to ITB 19.1, and:

- (a) if a Bidder withdraws its Bid prior to the expiry date of the Bid validity specified by the Bidder on the Letter of Bid or any extended date provided by the Bidder; or
- (b) if the successful Bidder fails to:
  - (i) sign the Contract in accordance with ITB 47; or
  - (ii) furnish a Performance Security and, if required in the BDS, the Environmental and Social (ES) Performance Security in accordance with ITB 48,

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

## 20. Format and Signing of Bid

20.1 The Bidder shall prepare one original of the documents comprising the Bid as described in ITB 11 and clearly mark it “ORIGINAL.” Alternative Bids, if permitted in accordance with ITB 13, shall be clearly marked “ALTERNATIVE.” In addition, the Bidder shall submit copies of the Bid, in the number **specified in the BDS** and clearly mark them “COPY.” In the event of any discrepancy between the original and the copies, the original shall prevail.

20.2 Bidders shall mark as “CONFIDENTIAL” all information in their Bids which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.

- 20.3 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.
- 20.4 In case the Bidder is a JV, the Bid shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.
- 20.5 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.

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

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

- 21.1 The Bidder shall deliver the Bid in a single, sealed envelope (one-envelope Bidding process). Within the single envelope the Bidder shall place the following separate, sealed envelopes:
- (a) in an envelope marked “ORIGINAL”, all documents comprising the Bid, as described in ITB 11; and
  - (b) in an envelope marked “COPIES”, all required copies of the Bid; and
  - (c) if alternative Bids are permitted in accordance with ITB 13, and if relevant:
    - (i) in an envelope marked “ORIGINAL –ALTERNATIVE BID”, the alternative Bid; and
    - (ii) in the envelope marked “COPIES- ALTERNATIVE BID”, all required copies of the alternative Bid.
- 21.2 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 22.1;
  - (c) bear the specific identification of this Bidding process specified in accordance with BDS 1.1; and
  - (d) bear a warning not to open before the time and date for Bid opening.

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

**22. Deadline for Submission of Bids**

22.1 Bids must be received by the Employer at the address and no later than the date and time **specified in the BDS**. When so **specified in the BDS**, Bidders shall have the option of submitting their Bids electronically. Bidders submitting Bids electronically shall follow the electronic Bid submission procedures **specified in the BDS**.

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

**23. Late Bids**

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

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

24.1 A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 20.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices must be:

- (a) prepared and submitted in accordance with ITB 20 and ITB 21 (except that 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 22.

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

24.3 No Bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of Bids and the date of expiry of Bid validity specified by the Bidder on the Letter of Bid or any extended date thereof.

**25. Bid Opening**

- 25.1 Except in the cases specified in ITB 23 and ITB 24.2, the Employer shall publicly open and read out in accordance with this ITB all Bids received by the deadline, at the date, time and place **specified in the BDS**, in the presence of Bidders' designated representatives and anyone who chooses to attend. 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**.
- 25.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding Bid shall not be opened but returned to the Bidder. No Bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Bid opening.
- 25.3 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.
- 25.4 Next, 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.
- 25.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the total Bid Price, per lot (contract) if applicable, including any discounts and alternative Bids; the presence or absence of a Bid Security or Bid-Securing Declaration, if required; and any other details as the Employer may consider appropriate.
- 25.6 Only Bids, alternative Bids and discounts that are opened and read out at Bid opening shall be considered further for evaluation. The Letter of Bid and the Bill of Quantities are to be initialed by representatives of the Employer attending Bid opening in the manner **specified in the BDS**.
- 25.7 The Employer shall neither discuss the merits of any Bid nor reject any Bid (except for late Bids, in accordance with ITB 23.1).



25.8 The Employer shall prepare a record of the Bid opening that shall include, as a minimum:

- (a) the name of the Bidder and whether there is a withdrawal, substitution, or modification;
- (b) the Bid Price, per lot (contract) if applicable, including any discounts;
- (c) any alternative Bids;
- (d) the presence or absence of a Bid Security, if one was required.

25.9 The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

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

#### **26. Confidentiality**

26.1 Information relating to the evaluation of Bids and recommendation of contract award shall not be disclosed to Bidders or any other persons not officially concerned with the Bidding process until information on Intention to Award the Contract is transmitted to all Bidders in accordance with ITB 43.

26.2 Any effort by a Bidder to influence the Employer in the evaluation of the Bids or Contract award decisions may result in the rejection of its Bid.

26.3 Notwithstanding ITB 26.2, from the time of Bid opening to the time of Contract award, if a Bidder wishes to contact the Employer on any matter related to the Bidding process, it shall do so in writing.

#### **27. Clarification of Bids**

27.1 To assist in the examination, evaluation, and comparison of the Bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its Bid, given a reasonable time for a response. 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, including any voluntary increase or decrease, in the prices or substance of the Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered

by the Employer in the evaluation of the Bids, in accordance with ITB 31.

27.2 If a Bidder does not provide clarifications of its Bid by the date and time set in the Employer's request for clarification, its Bid may be rejected.

**28. Deviations, Reservations, and Omissions**

28.1 During the evaluation of Bids, the following definitions apply:

- (a) "Deviation" is a departure from the requirements specified in the Bidding document;
- (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding document; and
- (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding document.

**29. Determination of Responsiveness**

29.1 The Employer's determination of a Bid's responsiveness is to be based on the contents of the Bid itself, as defined in ITB 11.

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

- (a) if accepted, would:
  - (i) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or
  - (ii) limit in any substantial way, inconsistent with the Bidding document, the Employer's rights or the Bidder's obligations under the proposed Contract; or
- (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Bids.

29.3 The Employer shall examine the technical aspects of the Bid submitted in accordance with ITB 16, in particular, to confirm that all requirements of Section VII, Works' Requirements have been met without any material deviation, reservation or omission.

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

**30. Nonmaterial  
Nonconformities**

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

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

30.3 Provided that a Bid is substantially responsive, the Employer shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component, by adding the average price of the item or component quoted by substantially responsive Bidders. If the price of the item or component cannot be derived from the price of other substantially responsive Bids, the Employer shall use its best estimate.

**31. Correction of  
Arithmetical  
Errors**

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

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

- 31.2 Bidders shall be requested to accept correction of arithmetical errors. Failure to accept the correction in accordance with ITB 31.1, shall result in the rejection of the Bid.
- 32. Conversion to Single Currency** 32.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency as **specified in the BDS**.
- 33. Margin of Preference** 33.1 Unless otherwise **specified in the BDS**, a margin of preference for domestic Bidders<sup>1</sup> shall not apply.
- 34. Subcontractors** 34.1 Unless otherwise stated **in the BDS**, the Employer does not intend to execute any specific elements of the Works by subcontractors selected in advance by the Employer.
- 34.2 Bidders may propose subcontracting up to the percentage of total value of contracts or the volume of works as **specified in the BDS**. Subcontractors proposed by the Bidder shall be fully qualified for their parts of the Works.
- 34.3 The subcontractor's qualifications shall not be used by the Bidder to qualify for the Works unless their specialized parts of the Works were previously designated by the Employer **in the BDS** as can be met by subcontractors referred to hereafter as 'Specialized Subcontractors', in which case, the qualifications of the Specialized Subcontractors proposed by the Bidder may be added to the qualifications of the Bidder.
- 35. Evaluation of Bids** **Technical Evaluation**
- 35.1 The Employer shall use the criteria and methodologies listed in Section III, Evaluation and Qualification Criteria.
- 35.2 If **specified in the BDS**, the Employer's evaluation will be carried out by applying rated criteria that take into account technical factors, in addition to cost factors. An Evaluated Bid Score will be calculated for each responsive Bid using the formula, specified in Section III, Evaluation and Qualification Criteria. The scores to be given to technical factors and sub factors are **specified in the BDS**. The weight to be assigned for the Technical factors and cost is **specified in the BDS**.

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<sup>1</sup> An individual firm is considered a domestic Bidder for purposes of the margin of preference if it is registered in the country of the Employer, has more than 50 percent ownership by nationals of the country of the Employer, and if it does not subcontract more than 10 percent of the contract price, excluding provisional sums, to foreign contractors. JVs are considered as domestic Bidders and eligible for domestic preference only if the individual member firms are registered in the country of the Employer or have more than 50 percent ownership by nationals of the country of the Employer, and the JV shall be registered in the country of the Borrower. The JV shall not subcontract more than 10 percent of the contract price, excluding provisional sums, to foreign firms. JVs between foreign and national firms will not be eligible for domestic preference.

### **Financial Evaluation**

35.3 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 Summary Bill of Quantities, but including Daywork items, where priced competitively;
- (b) price adjustment for correction of arithmetic errors in accordance with ITB 31.1;
- (c) price adjustment due to discounts offered in accordance with ITB 14.4;
- (d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 32;
- (e) price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 30.3; and
- (f) the additional evaluation factors **specified in the BDS** and Section III, Evaluation and Qualification Criteria.

35.4 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.

35.5 If this Bidding document allows Bidders to quote separate prices for different lots (contracts), the methodology to determine the lowest evaluated cost of the lot (contract) combinations, including any discounts offered in the Letter of Bid, is specified in Section III, Evaluation and Qualification Criteria. **If, however, rated criteria is used in accordance with ITB 35.2, discounts on condition of award of more than one contract will not be used for Bid evaluation purpose.**

### **36. Comparison of Bids**

36.1 The Employer shall compare the evaluated costs of all substantially responsive Bids established in accordance with ITB 35.2 to determine the Bid that has the lowest evaluated cost.

36.2 If ITB 35.2 is applicable, the Employer will determine the Bid with the highest combined technical and financial score in accordance with BDS 35.2.

### **37. Abnormally Low Bids**

37.1 An Abnormally Low Bid is one where the Bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the Bidder in regard

to the Bidder's ability to perform the Contract for the offered Bid Price.

37.2 In the event of identification of a potentially Abnormally Low Bid, the Employer shall seek written clarifications from the Bidder, including detailed price analyses of its Bid price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Bidding document.

37.3 After evaluation of the price analyses, in the event that the Employer determines that the Bidder has failed to demonstrate its capability to perform the Contract for the offered Bid Price, the Employer shall reject the Bid.

**38. Unbalanced or  
Front Loaded Bids**

38.1 If the Bid that is evaluated as the lowest evaluated cost is, in the Employer's opinion, seriously unbalanced or front loaded, the Employer may require the Bidder to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the Bid prices with the scope of works, proposed methodology, schedule and any other requirements of the Bidding document.

38.2 After the evaluation of the information and detailed price analyses presented by the Bidder, the Employer may as appropriate:

- (a) accept the Bid; or
- (b) require that the total amount of the Performance Security be increased at the expense of the Bidder to a level not exceeding 20% of the Contract Price; or
- (c) reject the Bid.

**39. Qualifications of  
the Bidder**

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

39.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 17. The determination shall not take into consideration the qualifications of other firms such as the Bidder's subsidiaries, parent entities, affiliates, subcontractors (other than Specialized Subcontractors if permitted in the Bidding document), or any other firm(s) different from the Bidder.

39.3 Prior to Contract award, the Employer will verify that the successful Bidder (including each member of a JV) is not disqualified by the Bank due to noncompliance with contractual SEA/SH prevention and response obligations. The Employer will conduct the same verification for each subcontractor proposed by the successful Bidder. If any proposed subcontractor does not meet the requirement, the Employer will require the Bidder to propose a replacement subcontractor..

39.4 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 Bidder who offers a substantially responsive Bid with the next lowest evaluated cost to make a similar determination of that Bidder's qualifications to perform satisfactorily.

**40. Most Advantageous Bid**

40.1 The Employer shall determine the Most Advantageous Bid. The Most Advantageous Bid is the Bid of the Bidder that meets the Qualification Criteria and whose Bid has been determined to be substantially responsive to the Bidding document and:

- (a) when **rated criteria are used** is the Bid with the highest combined technical and financial score; or
- (b) when **rated criteria are not used**, is the Bid with the lowest evaluated cost.

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

41.1 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.

**42. Standstill Period**

42.1 The Contract shall not be awarded earlier than the expiry of the Standstill Period. The Standstill Period shall be ten (10) Business Days unless extended in accordance with ITB 46. The Standstill Period commences the day after the date the Employer has transmitted to each Bidder the Notification of Intention to Award the Contract. Where only one Bid is submitted, or if this contract is in response to an emergency situation recognized by the Bank, the Standstill Period shall not apply.

**43. Notification of Intention to Award**

43.1 The Employer shall send to each Bidder the Notification of Intention to Award the Contract to the successful Bidder. The

Notification of Intention to Award shall contain, at a minimum, the following information:

- (a) the name and address of the Bidder submitting the successful Bid;
- (b) the Contract price of the successful Bid;
- (c) the names of all Bidders who submitted Bids, and their Bid prices as readout, and as evaluated;
- (d) a statement of the reason(s) the Bid (of the unsuccessful Bidder to whom the notification is addressed) was unsuccessful, unless the price information in c) above already reveals the reason;
- (e) the expiry date of the Standstill Period; and
- (f) instructions on how to request a debriefing and/or submit a complaint during the standstill period;

## **F.Award of Contract**

### **44. Award Criteria**

44.1 Subject to ITB 41, the Employer shall award the Contract to the successful Bidder. This is the Bidder whose Bid has been determined to be the Most Advantageous Bid.

### **45. Notification of Award**

45.1 Prior to the date of expiry of the bid validity, and upon expiry of the Standstill Period specified in ITB 42.1 or any extension thereof, and, upon satisfactorily addressing any complaint that has been filed within the Standstill Period, the Employer shall notify the successful Bidder, in writing, that its Bid has been accepted. The notification of award (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 of the Contract (hereinafter and in the Conditions of Contract and Contract Forms called “the Contract Price”).

45.2 Within ten (10) Business Days after the date of transmission of the Letter of Acceptance, the Employer shall publish the Contract Award Notice which shall contain, at a minimum, the following information:

- (a) name and address of the Employer;
- (b) name and reference number of the contract being awarded, and the selection method used;
- (c) names of all Bidders that submitted Bids, and their Bid prices as read out at Bid opening, and as evaluated;



- (d) names of all Bidders whose Bids were rejected either as nonresponsive or as not meeting qualification criteria, or were not evaluated, with the reasons therefor;
- (e) the name of the successful Bidder, the final total contract price, the contract duration and a summary of its scope; and
- (f) successful Bidder's Beneficial Ownership Disclosure Form, if specified in BDS ITB 47.1

45.3 The Contract Award Notice shall be published on the Employer's website with free access if available, or in at least one newspaper of national circulation in the Employer's Country, or in the official gazette. The Employer shall also publish the contract award notice in UNDB online.

45.4 Until a formal Contract is prepared and executed, the Letter of Acceptance shall constitute a binding Contract.

#### **46. Debriefing by the Employer**

46.1 On receipt of the Employer's Notification of Intention to Award referred to in ITB 43.1, an unsuccessful Bidder has three (3) Business Days to make a written request to the Employer for a debriefing. The Employer shall provide a debriefing to all unsuccessful Bidders whose request is received within this deadline.

46.2 Where a request for debriefing is received within the deadline, the Employer shall provide a debriefing within five (5) Business Days, unless the Employer decides, for justifiable reasons, to provide the debriefing outside this timeframe. In that case, the standstill period shall automatically be extended until five (5) Business Days after such debriefing is provided. If more than one debriefing is so delayed, the standstill period shall not end earlier than five (5) Business Days after the last debriefing takes place. The Employer shall promptly inform, by the quickest means available, all Bidders of the extended standstill period.

46.3 Where a request for debriefing is received by the Employer later than the three (3)-Business Day deadline, the Employer should provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of Public Notice of Award of contract. Requests for debriefing received outside the three (3)-day deadline shall not lead to extension of the standstill period.

46.4 Debriefings of unsuccessful Bidders may be done in writing or verbally. The Bidder shall bear its own costs of attending such a debriefing meeting.

- 47. Signing of Contract** 47.1 The Employer shall send to the successful Bidder the Letter of Acceptance including the Contract Agreement, and, if **specified in the BDS**, a request to submit the Beneficial Ownership Disclosure Form providing additional information on its beneficial ownership. The Beneficial Ownership Disclosure Form, if so requested, shall be submitted within eight (8) Business Days of receiving this request.
- 47.2 The successful Bidder shall sign, date and return to the Employer, the Contract Agreement within twenty-eight (28) days of its receipt.
- 48. Performance Security** 48.1 Within twenty-eight (28) days of the receipt of the Letter of Acceptance from the Employer, the successful Bidder shall furnish the Performance Security and, if required in the BDS, the Environmental and Social (ES) Performance Security in accordance with the Conditions of Contract, subject to ITB 38.2 (b), using for that purpose the Performance Security and ES Performance Security Forms included in Section X, 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, unless the Employer has agreed in writing that a correspondent financial institution is not required.
- 48.2 Failure of the successful Bidder to submit the above-mentioned Performance Security and, if required in the BDS, the Environmental and Social (ES) 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 Bidder offering the next Most Advantageous Bid.
- 49. Procurement Related Complaint** 49.1 The procedures for making a Procurement-related Complaint are as **specified in the BDS**.



## Section II - Bid Data Sheet (BDS)

The following specific data for the Works to be procured shall complement, supplement, or amend the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions herein shall prevail over those in ITB.

<b>A. General</b>	
<b>ITB 1.1</b>	<p>The reference number of the Request for Bids (RFB) is: <b>KE-MOALF-2021-001-CW-RFB</b></p> <p>The Employer is: <b>STATE DEPARTMENT FOR FISHERIES, AQUACULTURE AND THE BLUE ECONOMY</b></p> <p>The name of the RFB is: <b>Construction of Fisheries Headquarters – “Uvuvi House”.</b></p> <p>The number and identification of lots (contracts) comprising this RFB is: <b>N/A</b></p>
<b>ITB 2.1</b>	<p>The Borrower is: <b>Government of Kenya and the Employer, State Department of Fisheries, Aquaculture and the Blue Economy, is State Department of the Borrower.</b></p> <p>Loan or Financing Agreement amount; <b>US\$ 100 Million</b></p> <p>The name of the Project is: <b>Kenya Marine Fisheries and Socio-Economic Development (KEMFSED)</b></p>
<b>ITB 4.1</b>	Maximum number of members in the JV shall be: <b>TWO</b>
<b>ITB 4.5</b>	A list of debarred firms and individuals is available on the Bank’s external website: <a href="https://www.worldbank.org/debarr">https://www.worldbank.org/debarr</a>
<b>B. Contents of Bidding Document</b>	
<b>ITB 7.1</b>	<p>For <b><u>Clarification of Bid purposes</u></b> only, the Employer’s address is:</p> <p>To: <b>The Project Co-Ordinator</b></p> <p>Attn: <b>Procurement Consultant</b></p> <p>Address: <b>Maktaba Kuu Building, Ngong Road, Opp NHIF Upper Hill</b></p> <p>Floor/ Room number: <b>Mezzanine Floor</b></p> <p>City: <b>Nairobi</b></p> <p>ZIP Code: <b>00200</b></p> <p>Country: <b>Kenya</b></p> <p>Telephone: <b>+254 020-2716103</b></p> <p>Electronic mail address: <b>info@kemfsed.org</b></p>
<b>ITB 7.4</b>	A Pre-Bid meeting and site visit “ <b>shall</b> ” take place at the following date, time and place:

	<p>Date: <u>25<sup>th</sup> October 2022</u></p> <p>Time: 1100 Hours EAT</p> <p>Place: South C, Off Kenya Red Cross Road, Uvuvi House Site</p> <p>Coordinates: 1°19'29.4"S 36°50'11.7"E</p> <p>A site visit conducted by the Employer <b>shall be</b> organized</p>
<b>ITB 7.6</b>	<p>Web page: <a href="https://kemfsed.org">https://kemfsed.org</a> for publishing Minutes of Pre-Bid Meeting.</p>
<b>C. Preparation of Bids</b>	
<b>ITB 10.1</b>	<p>The language of the Bid is: <b>“English”</b></p> <p>All correspondence exchange shall be in <b>English</b> language.</p> <p>Language for translation of supporting documents and printed literature is <b>English</b></p>
<b>ITB 11.1 (i)</b>	<p>The Bidder shall submit the following additional documents in its Bid:</p> <p><b>(i) Code of Conduct for Contractor’s Personnel (ES)</b></p> <p>The Bidder shall submit its Code of Conduct that will apply to Contractor’s Personnel (as defined in Sub-Clause 1.1.17 of the General Conditions of Contract), to ensure compliance with the Contractor’s Environmental and Social (ES) obligations under the Contract.</p> <p>The Bidder shall use for this purpose the Code of Conduct form provided in Section IV. No substantial modifications shall be made to this form, except that the Bidder may introduce additional requirements, including as necessary to take into account specific Contract issues/risks.</p> <p><b>(ii) Management Strategies and Implementation Plans (MSIP) to manage the (ES) risks</b></p> <p>The Bidder shall submit Management Strategies and Implementation Plans (MSIPs) to manage the following key Environmental, Social, Health and Safety (ES) risks:</p> <ul style="list-style-type: none"> <li>• <i>Traffic Management Plan to ensure safety of local communities from construction traffic</i></li> <li>• <i>Manage and or minimize dust and noise pollution within working area</i></li> <li>• <i>Sexual Exploitation, and Abuse (SEA) prevention and response action plan</i></li> <li>• <i>Spread of HIV/AIDS. Awareness and prevention campaigns amongst the workers and local community for the duration of the Contract</i></li> <li>• <i>Boundary Marking and Protection Strategy for mobilization and construction to prevent offsite adverse impacts</i></li> </ul>

	<ul style="list-style-type: none"> <li>• <i>Strategy for obtaining Consents / Permits prior to the start of relevant works.</i></li> </ul> <p>The Contractor shall be required to submit for approval, and subsequently implement, the Contractor's Environment and Social Management Plan (C-ESMP), in accordance with the Particular Conditions of Contract Sub-Implementation Clause, that includes the agreed Management Strategies and Implementation Plans described here.</p>
<b>ITB 13.1</b>	Alternative Bids <b>shall not be</b> considered.
<b>ITB 13.2</b>	Alternative times for completion <b>shall NOT be</b> permitted.
<b>ITB 13.4</b>	Alternative technical solutions shall be permitted for the following parts of the Works: <b>N/A</b>
<b>ITB 14.5</b>	The prices quoted by the Bidder <b>shall be subject to adjustment.</b>
<b>ITB 15.1</b>	<p>The currency(ies) of the Bid and the payment currency(ies) shall be in accordance with Alternative A as described below:</p> <p><b>Alternative A (Bidders to quote entirely in local currency):</b></p> <p>(a) The unit rates and the prices shall be quoted by the Bidder in the Bill of Quantities, entirely in <b>Kenya Shillings (Kes.)</b>, and further referred to as "the local currency". A Bidder expecting to incur expenditures in other currencies for inputs to the Works supplied from outside the Employer's Country (referred to as "the foreign currency requirements") shall indicate in the Appendix to Bid - Table C, the percentage(s) of the Bid Price (excluding Provisional Sums), needed by the Bidder for the payment of such foreign currency requirements, limited to no more than three foreign currencies.</p> <p>(b) The rates of exchange to be used by the Bidder in arriving at the local currency equivalent and the percentage(s) mentioned in (a) above shall be specified by the Bidder in the Appendix to Bid - Table C and shall apply for all payments under the Contract so that no exchange risk will be borne by the successful Bidder.</p>
<b>ITB 18.1</b>	The Bid shall be valid until: <b>8<sup>th</sup> March 2023</b>
<b>ITB 18.3 (a)</b>	The Bid price shall be adjusted by the following factor(s): <b>Not Applicable</b>

<b>ITB 19.1</b>	<p>A <b>Bid Security shall be</b> required</p> <p>A Bid-Securing Declaration <b>shall not be</b> required.</p> <p>If a Bid Security shall be required, the amount and currency of the Bid Security shall be: <b>Kenya Shillings Fifteen Million (Kes. 15,000,000.00)</b> only</p>
<b>ITB 19.3 (d)</b>	Other types of acceptable securities: <b>None.</b>
<b>ITB 20.1</b>	In addition to the original of the Bid, the number of copies is: Two <b>(2) hard copies and 1 copy of scanned document in in PDF format &amp; BoQ in Excel format in a clearly labelled Flash Disk</b>
<b>ITB 20.3</b>	<p>The written confirmation of authorization to sign on behalf of the Bidder shall consist of:</p> <p>(a) Notarized Power of Attorney to sign documents on the behalf of the firm.</p> <p>(b) In the case of Bids submitted by an existing or intended JV an undertaking signed by all parties (i) stating that all parties shall be jointly and severally liable, if so required in accordance with ITB 4.1 (a), and (ii) nominating a Representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution and a Notarized Power of Attorney to sign documents on behalf of the JV signed by all legally authorized representatives of JV members.</p>
<b>D. Submission and Opening of Bids</b>	
<b>ITB 22.1</b>	<p>For <b><u>Bid submission purposes</u></b> only, the Employer's address is:</p> <p>To: <b>The Project Co-Ordinator</b></p> <p><b>Attention: Procurement Consultant</b></p> <p>Address: <b>Maktaba Kuu, Ngong Road Opp NHIF Upper Hill Floor/</b></p> <p>Room number: <b>Mezzanine Floor</b></p> <p>City: <b>Nairobi</b></p> <p>Country: <b>Kenya</b></p> <p>The deadline for Bid submission is:</p> <p>Date: <b>1st December, 2022</b></p> <p>Time: 1100 Hours EAT</p> <p>Bidders <b>“SHALL NOT”</b> have the option of submitting their Bids electronically.</p>

<b>ITB 25.1</b>	<p>The Bid opening shall take place at:</p> <p>Address: <b>Maktaba Kuu, Ngong Road Opp NHIF Upper Hill</b></p> <p>Floor/ Room number: <b>Mezzanine Floor Boardroom</b> City: <b>Nairobi</b></p> <p>Country: <b>Kenya</b></p> <p>Date: <b>1st December, 2022</b></p> <p>Time: 1100 Hours EAT</p>
<b>ITB 25.6</b>	<p>The Letter of Bid and priced Bill of Quantities shall be initialed by <b>all</b> representatives of the Employer conducting Bid opening.</p> <p>Each Bid shall be initialed by all representatives and shall be numbered, any modification to the unit or total price, bid security shall be initialed by the representatives of the Employer.</p>
<b>E. Evaluation, and Comparison of Bids</b>	
<b>ITB 32.1</b>	<p>The currency that shall be used for Bid evaluation and comparison purposes to convert at the selling exchange rate all Bid prices expressed in various currencies into a single currency is: <b>Kenya Shillings (Kes.)</b></p> <p>The source of exchange rate shall be : Central Bank of Kenya (CBK)</p> <p>The date for the exchange rate shall be <b>of the deadline for bid submission.</b></p> <p>The currency(ies) of the Bid shall be converted into a single currency in accordance with the procedure under Alternative A that follows:</p> <p><b>Alternative A: Bidders quote entirely in local currency</b></p> <p>For comparison of Bids, the Bid Price, corrected pursuant to ITB 31, shall first be broken down into the respective amounts payable in various currencies by using the selling exchange rates specified by the Bidder in accordance with ITB 15.1.</p> <p>In the second step, the Employer will convert the amounts in various currencies in which the Bid Price is payable (excluding Provisional Sums but including Daywork where priced competitively) to the single currency identified above at the selling rates established for similar transactions by the authority specified and on the date stipulated above.</p>
<b>ITB 33.1</b>	A margin of domestic preference <b>shall not</b> apply.
<b>ITB 34.1</b>	At this time the Employer <b>does not intend</b> to execute certain specific parts of the Works by subcontractors selected in advance.



<b>ITB 34.2</b>	<p>Contractor's proposed subcontracting: Maximum percentage of subcontracting permitted is: 30% of the total contract amount.</p> <p>Bidders planning to subcontract more than 10% of total volume of work shall specify, in the Letter of Bid, the activity (ies) or parts of the Works to be subcontracted along with complete details of the subcontractors and their qualification and experience.</p>
<b>ITB 34.3</b>	<p>The parts of the Works for which the Employer permits Bidders to propose Specialized Subcontractors are designated as follows:</p> <ul style="list-style-type: none"> <li>(a) <b>Electrical Installations</b></li> <li>(b) <b>Plumbing, Drainage and Fire-fighting Installations</b></li> <li>(c) <b>Lifts Installations</b></li> <li>(d) <b>Air-conditioning and Mechanical Ventilation Installations</b></li> </ul> <p>For the above designated parts of the Works that may require Specialized Subcontractors, the relevant qualifications of the proposed Specialized Subcontractors will be added to the qualifications of the Bidder for the purpose of evaluation.</p>
<b>F. Award of Contract</b>	
<b>ITB 47.1</b>	<p>The successful Bidder <b>shall</b> submit the Beneficial Ownership Disclosure Form.</p>
<b>ITB 48.1 and 48.2</b>	<p>The successful Bidder shall be required to submit an Environmental and Social (ES) Performance Security.</p> <p>The (ES) Performance security will be in the amount of one(1) percent of the Accepted Contract Amount and in the same currency(ies) of the Accepted Contract Amount.</p>
<b>ITB 49.1</b>	<p>The procedures for making a Procurement-related Complaint are detailed in the "<a href="#">Procurement Regulations for IPF Borrowers</a> (Annex III)." If a Bidder wishes to make a Procurement-related Complaint, the Bidder shall submit its complaint following these procedures, In Writing (by the quickest means available, such as by email or fax), to:</p> <p><b>For the attention:</b> Patrick Kiara  <b>Title/position:</b> Project Coordinator  <b>Employer:</b> KEMFSED  <b>Email address:</b> <a href="mailto:patrick.kiarahs@gmail.com">patrick.kiarahs@gmail.com</a> / <a href="mailto:info@kemfsed.org">info@kemfsed.org</a></p> <p>In summary, a Procurement-related Complaint may challenge any of the following:</p> <ol style="list-style-type: none"> <li>1. the terms of the Bidding Documents; and</li> <li>2. the Employer's decision to award the contract.</li> </ol>

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

This section contains all the criteria that the Employer shall use to evaluate Bids and qualify Bidders. No other factors, methods or criteria shall be used other than specified in this Bidding document. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.

Wherever a Bidder is required to state a monetary amount, Bidders should indicate the USD equivalent using the rate of exchange determined as follows:

- For construction turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established.
- Value of single contract - Exchange rate prevailing on the date of the contract.

Exchange rates shall be taken from the publicly available source identified in the ITB 32.1. Any error in determining the exchange rates in the Bid may be corrected by the Employer.

## **A. Technical and Financial Evaluation**

### **1. Evaluation of Technical Proposal**

Assessment of adequacy of Technical Proposal with Requirements in accordance with **ITB 35.1**.

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

The Technical proposal including the **Management Strategies and Implementation Plans (MSIP)** submitted by the Bidder shall be evaluated to determine whether it is substantially responsive (i.e. without material deviation, reservation or omission) to the requirements specified in Section VII, Works Requirements – ES Specifications.

A Bid not comprising an MSIP Methodology or a Bid for which the ES Methodology is not substantially responsive (i.e. with material deviation, reservation or omission) shall be rejected.

In addition, the bidder shall clearly outline his approach to adequately address ESHS matters for this specific project. The proposed approaches must be specific to the work outlined in the technical methodology and address the mobilization and works implementation phase.

## **2. Financial Evaluation**

### **2.1 Margin of Preference (N/A)**

If the BDS so specifies, the Employer will grant a margin of preference of 7.5% (seven and one-half percent) to domestic contractors, in accordance with, and subject to, the following provisions:

- (i) Contractors applying for such preference shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Borrower and accepted by the Bank, a particular contractor or group of contractors qualifies for a domestic preference. The Bidding document shall clearly indicate the preference and the method that will be followed in the evaluation and comparison of Bids to give effect to such preference.
- (ii) After Bids have been received and reviewed by the Employer, responsive Bids shall be classified into the following groups:
  - (a) Group A: Bids offered by domestic contractors eligible for the preference.
  - (b) Group B: Bids offered by other contractors.

All evaluated Bids in each group shall, as a first evaluation step, be compared to determine the Most Advantageous Bid, and the Most Advantageous Bid in each group shall be further compared with each other. If a result of this comparison, a Proposal from Group A is the Most Advantageous Bid, it shall be selected for the award, if the Bidder is qualified. If a Bid from Group B is the Most Advantageous Bid, as a second evaluation step, all Bids from Group B shall then be further compared with the Most Advantageous Bid from Group A. For the purpose of this further comparison only, an amount equal to 7.5% (seven and one-half percent) of the respective Bid price corrected for arithmetical errors, including unconditional discounts but excluding provisional sums and the cost of day works, if any, shall be added to the evaluated cost offered in each Bid from Group B. If the Bid from Group A is the Most Advantageous Bid, it shall be selected for award. If not, the most advantageous Bid from Group B based on the first evaluation step shall be selected.

### **2.2 Criteria for Financial Evaluation**

Bidders who will be considered responsive at Stage 2- Technical Evaluation will be subjected to further evaluation of their financial bid. This will involve checking of arithmetic errors, consistency of rates and completeness of the financial bid.

In addition to the criteria listed in ITB 35.3 (a) – (e) the following criteria shall apply:

- (i) **Time Schedule**

Time for completion of the Works from the Commencement Date shall be as specified in the Particular Conditions Part A-Contract Data Sub-clause 1.1.84. No credit will be given for earlier completion.

## **B. Specialized Subcontractors**

If permitted under ITB 34, only the specific experience of Subcontractors for specialized works permitted by the Employer will be considered. The general experience and financial resources of the Specialized Subcontractors shall not be added to those of the Bidder for purposes of qualification of the Bidder.



Eligibility and Qualification Criteria			Compliance Requirements				Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
2.1	History of Non-Performing Contracts	Non-performance of a contract <sup>1</sup> did not occur as a result of contractor default since <b>1<sup>st</sup> January 2017</b>	Must meet requirement	Must meet requirements	Must meet requirement <sup>2</sup>	N/A	Form CON-2
2.2	Suspension Based on Execution of Bid/Proposal Securing Declaration by the Employer	Not under suspension based on-execution of a Bid/Proposal Securing Declaration pursuant to ITB 4.7 and ITB 19.9	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Letter of Bid
2.3	Pending Litigation	Bidder’s financial position and prospective long-term profitability still sound according to criteria established in 3.1 below and assuming that all pending litigation will be resolved against the Bidder	Must meet requirement	N/A	Must meet requirement	N/A	Form CON – 2

<sup>1</sup> Nonperformance, as decided by the Employer, shall include all contracts where (a) nonperformance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the contractor. Nonperformance shall not include contracts where Employers decision was overruled by the dispute resolution mechanism. Nonperformance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation 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.

<sup>2</sup> This requirement also applies to contracts executed by the Bidder as JV member.

Eligibility and Qualification Criteria			Compliance Requirements				Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
2.4	<b>Litigation History</b>	No consistent history of court/arbitral award decisions against the Bidder <sup>3</sup> since <b>1<sup>st</sup> January 2017</b>	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Form CON – 2
2.5	<b>Declaration: Environmental and Social (ES) past performance</b>	Declare any civil work contracts that have been suspended or terminated and/or performance security called by an employer for reasons of breach of environmental, or social (including Sexual Exploitation and Abuse) contractual obligations in the past five years. <sup>4</sup>	Must make the declaration. Where there are Specialized Subcontractor/s, the Specialized Subcontractor/s must also make the declaration.	N/A	Each must make the declaration. Where there are Specialized Subcontractor/s, the Specialized Subcontractor/s must also make the declaration.	N/A	Form CON-3 ES Performance Declaration
2.6	<b>Bank's SEA and/or SH Disqualification</b>	(a) At the time of Contract Award, not subject to disqualification by the Bank for non-compliance with SEA/ SH obligations	Must meet requirement (including each subcontractor proposed by the Bidder)	N/A	Must meet requirement (including each subcontractor proposed by the Bidder)	N/A	Letter of Bid, Form CON-4
		(b) If the Bidder had been subject to disqualification	Must meet requirement	N/A	Must meet requirement	N/A	Letter of Bid, Form CON-4

<sup>3</sup> The Bidder shall provide accurate information on the related Bid Form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the last five years. A consistent history of awards against the Bidder or any member of a joint venture may result in failure of the Bid.

<sup>4</sup> The Employer may use this information to seek further information or clarifications in carrying out its due diligence.



Eligibility and Qualification Criteria				Compliance Requirements			Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
		by the Bank for non-compliance with SEA/SH obligations, the Bidder shall either (i) provide evidence of an arbitral award on the disqualification made in its favour; or (ii) demonstrate that it has adequate capacity and commitment to comply with SEA/SH prevention and response obligations; or (iii) provide evidence that it has already demonstrated such capacity and commitment on another Bank financed works contract.	(including each subcontractor proposed by the Bidder)		(including each subcontractor proposed by the Bidder)		
<b>3. Financial Situation and Performance</b>							
<b>3.1</b>	<b>Financial Capabilities</b>	(i) The Bidder shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the	Must meet requirement	Must meet requirement	N/A	N/A	Form FIN – 3.1, with attachments

Eligibility and Qualification Criteria			Compliance Requirements				Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
		construction cash flow requirements estimated as <b>Kes One Hundred and Fifty Million (<b>Kes 150 Million</b>)</b> for the subject contract(s) net of the Bidder's other commitments  (ii) The Bidders shall also demonstrate, to the satisfaction of the Employer, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.  (iii) The audited balance sheets or, if not required by the laws of the Bidder's country, other financial statements acceptable to the Employer, for the last <b>Five (2021, 2020, 2019, 2018, 2017) years</b> shall be submitted and must demonstrate the current soundness of the Bidder's financial position and indicate its prospective long-term profitability.	Must meet requirement	Must meet requirement	N/A	N/A	
			Must meet requirement	N/A	Must meet requirement	N/A	

Eligibility and Qualification Criteria			Compliance Requirements				Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
3.2	Average Annual Construction Turnover	Minimum average annual construction turnover of <b>Kes. Eight Hundred and Sixty million (Kes 860,000,000)</b> calculated as total certified payments received for contracts in progress and/or completed within the last <b>Five (5) years</b> , divided by <b>Five (5) years</b> .	Must meet requirement	Must meet requirement	Must meet 50%, <i>[Fifty Percent]</i> of the requirement	Must meet 70 %, <i>[Seventy Percent]</i> of the requirement	Form FIN – 3.2
4. Experience							
4.1 (a)	General Construction Experience	Experience under construction contracts in the role of prime contractor, JV member, Subcontractor, or management contractor for at least the last TEN <i>[10]</i> years, starting 1 <sup>st</sup> January <i>[2012]</i> .	Must meet requirement	N/A	Must meet requirement	N/A	Form EXP – 4.1
4.2 (a)	Specific Construction & Contract	(i) A minimum number of similar contracts specified below that have been satisfactorily and	Must meet requirement	Must meet requirement <sup>7</sup>	N/A	N/A	Form EXP 4.2(a)

<sup>7</sup> In the case of JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated.

Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
	Management Experience	<p>substantially<sup>5</sup> completed as a prime contractor, joint venture member<sup>6</sup>, management contractor or Subcontractor between <b>1st January 2017</b> and bid submission deadline:</p> <p>(ii) Two (2) contracts, each of minimum value Kes Seven Hundred Million (Kes 700 Million) of which all should be works that are similar to those to be done.</p> <p>(iii) One contract of minimum value Kes. One Billion Four Hundred Million (Kes 1.4 Billion) of which all should be works that are similar to those to be done.</p> <p>The similarity of the contracts shall be based on the following: physical size, complexity, methods / technology or other characteristics as described in Section VI, Scope of Works.</p>	Must meet requirement	Must meet requirement			

<sup>5</sup> Substantial completion shall be based on 80% or more works completed under the contract.

<sup>6</sup> For contracts under which the Bidder participated as a joint venture member or Subcontractor, only the Bidder's share, by value, shall be considered to meet this requirement

Eligibility and Qualification Criteria				Compliance Requirements			Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
<b>4.2 (b)</b>		For the above and any other contracts [substantially completed and under implementation] as prime contractor, joint venture member, or Subcontractor between 1st January 2017 and Application submission deadline, a minimum construction experience in the following key activities successfully completed <sup>8</sup> :  <i>Earthworks – Average of 100 m3 per month between 1<sup>st</sup> January 2017 and bid submission deadline</i>  <i>Concrete – Average of 100 m3 per month between 1<sup>st</sup> January 2017 and bid submission deadline</i>	Must meet the following requirements for key activities listed below; (a)Electrical Installations (b)Plumbing, Drainage and Fire-fighting Installations (c)Lifts Installations (d)Air-conditioning and Mechanical Ventilation Installations	Must meet the following requirements for key activities listed below (a)Electrical Installations (b)Plumbing, Drainage and Fire-fighting Installations (c)Lifts Installations (d)Air-conditioning and Mechanical Ventilation Installations	N/A	N/A	Form EXP – 4.2 (b)
<b>4.2 (c)</b>	<b>Specific Experience in managing ES aspects</b>	For the contracts in 4.2 (a) above and/or any other contracts [substantially completed and under implementation] as prime contractor, joint venture member, or Subcontractor between <b>1st January 2017</b>	Must meet requirements	Must meet requirement	Must meet the following requirements: <i>[1.C-ESMP</i> <i>2.Code of Conduct</i>	N/A	Form EXP – 4.2 (c)

<sup>8</sup> Volume, number or rate of production of any key activity can be demonstrated in one or more contracts combined if executed during same time period.

Eligibility and Qualification Criteria			Compliance Requirements				Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Members Combined	Each Member	One Member	
		and Application submission deadline, experience in managing ES risks and impacts.			3.Contractor’s ESHS Management Strategy and Implementation Plan: 4.EHS Provisional Sum 5.EHS Key Personnel		

## 5. Contractor's Representative and Key Personnel

The Bidder must demonstrate that it will have a suitably qualified Contractor's Representative and suitably qualified (and in adequate numbers) Key Personnel, as described in the Specification.

The Bidder shall provide details of the Contractor's Representative and Key Personnel and such other Key Personnel that the Bidder considers appropriate to perform the Contract, together with their academic qualifications and work experience. The Bidder shall complete the relevant Forms in Section IV, Bidding Forms.

Item No.	Position/specialization	Relevant minimum academic qualifications <sup>1</sup>	Minimum years of general work experience	Specific experience in similar works (years)
1.	Contract Manager/Site Agent (Registered as professional Engineer/Architect/ Quantity Surveyor)	Bsc. Structural/Civil Engineering/ Architect/ Quantity Surveyor	15	7
2.	Structure Engineer (Registered Professional Civil/Structural Engineer by the Engineers Board of Kenya)	Bsc. Structural/Civil Engineering	15	7
3.	Site Engineer (Engineer Registered by the recognized board)	Bsc. Structural/Civil Engineering	10	7
4.	Electrical Engineer (registered by the recognized board)	Bsc. Electrical Engineering	15	7
5.	Mechanical Engineer (registered by the recognized board)	Bsc. Mechanical Engineering	15	7
6.	ICT/Telecommunication Engineer (Registered by the recognized board)	Bsc. ICT/Telecommunication	10	5
7.	Land Surveyor (registered by the recognized board)	Bsc. In Land Surveying	10	5
8.	Quantity Surveyor (Registered by the recognized board)	Bsc. In Building Economics/Quantity Surveying.	10	5

<sup>1</sup> The Curriculum vitae shall be accompanied by certified copies of academic and professional certification.

9.	Chief Foreman	Full Technician Certificate; Grade A (FTC)	10	5
10.	Environmental Specialist (Registered by a board recognized in Kenya)	Bsc. In Environmental Engineering/ Environmental sciences (A NEMA lead expert; 5 years' experience in ESIA consultancies)	10	5
11.	Health and Safety Officer	Bachelor's degree plus diploma in health and safety ( <i>Occupational Health and Safety Expert; who has undertaken OHS and EHS training</i> )	10	5
12.	Social safeguards specialist	Bachelor's degree in sociology or any related Social Science (5 years' experience in handling Social Safeguards matter in construction, monitoring and managing risks related to gender-based violence, out of which 3 years of relevant experience in addressing issues related to sexual exploitation, sexual abuse and sexual harassment)	10	5

Positions for 1, 2, 3, 4, 5, 6, 7, 8 & 10 should be held by personnel registered under relevant recognized Boards in Kenya.



## 6. Equipment

The Bidder **MUST** demonstrate that it has access (owned/leased/to be hired) to the key equipment listed hereafter: (Must be functional for the project period).

No.	Equipment Type and Characteristics	Minimum Number required
1	Steel scaffolding	1 Set
2	Hoists for 10 storey loading/hoisting	1No
3	Tower Cranes with 20m boom	1No
4	Porker Vibrator 40mm	2 No
5	Tippers 10 tons	3No
6	Pickups 3 tons	3No
7	Generator 60KVA with sound insulation	1No
8	Electric block making machine	2 sets
9	Dumper 1c.m.	5No.
10	Water pump 1000lts/hr	1 No
11	Roller (1.3 tonnes vibratory)	1 No
12	Portable Electrical welding set (3 phase)	1No
13	Safety gears as per regulations for contractors	Lots
14	Water bowzers (10,000 litres capacity)	1 No
15	Concrete Mixer 14/10 with batching plant.	1 No
16	Excavator with 2.0m <sup>3</sup> bucket	1 No
17	Wheel loader with 2.0m <sup>3</sup> bucket	1No
18	Pneumatic hammer (25kg)	1 No
19	Portable Compressor (high pressure 360 pci)	1 No
20	60m <sup>3</sup> /hr Concrete Pump	1No

The Bidder shall provide further details of proposed items of equipment using Form EQU in Section IV, Bidding Forms.

# Section IV - Bidding Forms

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## Letter of Bid

***INSTRUCTIONS TO BIDDERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE DOCUMENT***

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

*Note: All italicized text is to help Bidders in preparing this form.*

**Date of this Bid submission:** *[insert date (as day, month and year) of Bid submission]*

**Request for Bid No.:** *[insert identification]*

**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) **No reservations:** We have examined and have no reservations to the Bidding document, including Addenda issued in accordance with ITB 8;
- (b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITB 4;
- (c) **Bid-Securing Declaration:** We have not been suspended nor declared ineligible by the Employer based on execution of a Bid-Securing or Proposal-Securing Declaration in the Employer's Country in accordance with ITB 4.7;
- (d) **Sexual Exploitation and Abuse (SEA) and/or Sexual Harassment (SH):** *[select the appropriate option from (i) to (v) below and delete the others].*

We *[where JV, insert: "including any of our JV members"]*, and any of our subcontractors:

- (i) *[have not been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations.]*
- (ii) *[are subject to disqualification by the Bank for non-compliance with SEA/ SH obligations.]*
- (iii) *[had been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations. An arbitral award on the disqualification case has been made in our favor.]*
- (iv) *[had been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations for a period of two years. We have subsequently provided and demonstrated that we have adequate capacity and commitment to comply with SEA and SH prevention and response obligations.]*

- (v) [had been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations for a period of two years. We have attached documents demonstrating that we have adequate capacity and commitment to comply with SEA and SH prevention and response obligations.]
- (e) **Conformity:** We offer to execute in conformity with the Bidding document and in accordance with the implementation and completion specified in the construction schedule, the following Works: [insert a brief description of the Works];  
\_\_\_\_\_;
- (f) **Bid Price:** The total price of our Bid, excluding any discounts offered in item (f) below is: [Insert one of the options below as appropriate]
- Option 1, in case of one lot: Total price is: [insert the total price of the Bid in words and figures, indicating the various amounts and the respective currencies];
- Or
- Option 2, in case of multiple lots: (a) Total price of each lot [insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies]; and (b) Total price of all lots (sum of all lots) [insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies];
- (g) **Discounts:** The discounts offered and the methodology for their application are:
- (i) The discounts offered are: [Specify in detail each discount offered.]
- (ii) The exact method of calculations to determine the net price after application of discounts is shown below: [Specify in detail the method that shall be used to apply the discounts];
- (h) **Bid Validity:** Our Bid shall be valid until [insert day, month and year in accordance with ITB 18.1], and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (i) **Performance Security** If our Bid is accepted, we commit to obtain a Performance Security [and an Environmental and Social (ES) Performance Security, **Delete if not applicable**] in accordance with the Bidding document;
- (j) **One Bid Per Bidder:** We are not submitting any other Bid(s) as an individual Bidder, and we are not participating in any other Bid(s) as a Joint Venture member or as a subcontractor, and meet the requirements of ITB 4.3, other than alternative Bids submitted in accordance with ITB 13;
- (k) **Suspension and Debarment:** We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the World Bank Group or a debarment imposed by the World Bank

Group in accordance with the Agreement for Mutual Enforcement of Debarment Decisions between the World Bank and other development banks. Further, we are not ineligible under the Employer's Country laws or official regulations or pursuant to a decision of the United Nations Security Council;

- (l) **State-owned enterprise or institution:** *[select the appropriate option and delete the other]*  
*[We are not a state-owned enterprise or institution] / [We are a state-owned enterprise or institution but meet the requirements of ITB 4.6];*
- (m) **Commissions, gratuities, fees:** 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.")*

- (n) **Binding Contract:** We understand that this Bid, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- (o) **Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Bid, the Most Advantageous Bid or any other Bid that you may receive;
- (p) **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption;
- (q) **Potential DAAB Members:** We hereby propose the following three persons, whose curriculum vitae are attached, as potential DAAB members:

Name	Address
1. ....	
2. ....	
3. ....	

**Name of the Bidder:** *\*[insert name of the Bidder]*

**Name of the person duly authorized to sign the Bid on behalf of the Bidder:** *\*\*[insert complete name of person duly authorized to sign the Bid]*

**Title of the person signing the Bid:** *[insert complete title of the person signing the Bid]*

**Signature of the person named above:** *[insert signature of person whose name and capacity are shown above]*

**Date signed** *[insert date of signing]* **day of** *[insert month]*, *[insert year]*

Date signed \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\*: In the case of the Bid submitted by joint venture specify the name of the Joint Venture as Bidder

\*\*: Person signing the Bid shall have the power of attorney given by the Bidder to be attached with the Bid

## Appendix to Bid

### Schedule of Cost Indexation

*The formulae for price adjustment shall be of the following general type:*

$$P_n = a + b \frac{L_n}{L_o} + c \frac{E_n}{E_o} + d \frac{M_n}{M_o} + \dots$$

*where:*

“ $P_n$ ” is the adjustment multiplier to be applied to the estimated contract value in the relevant currency of the work carried out in period “ $n$ ”, this period being a month unless otherwise stated in the Contract Data;

“ $a$ ” is a fixed coefficient, stated in the relevant table of adjustment data, representing the non-adjustable portion in contractual payments;

“ $b$ ”, “ $c$ ”, “ $d$ ”, ... are coefficients representing the estimated proportion of each cost element related to the execution of the Works as stated in the relevant table of adjustment data; such tabulated cost elements may be indicative of resources such as labour, equipment and materials;

“ $L_n$ ”, “ $E_n$ ”, “ $M_n$ ”, ... are the current cost indices or reference prices for period “ $n$ ”, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the date 49 days prior to the last day of the period (to which the particular Payment Certificate relates); and

“ $L_o$ ”, “ $E_o$ ”, “ $M_o$ ”, ... are the base cost indices or reference prices, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the Base Date.

The cost indices or reference prices stated in the Table of Adjustment Data shall be used. If their source is in doubt, it shall be determined by the Engineer. For this purpose, reference shall be made to the values of the indices at stated dates (quoted in the fourth and fifth columns respectively of the table).

If the currency in which the Contract price is expressed is different from the currency of the country of origin of the indices, a correction factor will be applied to avoid incorrect adjustments of the Contract price. The correction factor shall be:  $Z_0 / Z_1$ , where,

$Z_0$  = the number of units of currency of the origin of the indices which equal to one unit of the currency of the Contract Price on the Base date, and

$Z_1$  = the number of units of currency of the origin of the indices which equal to one unit of the currency of the Contract Price on the Date of Adjustment.



## Table of Adjustment Data

[In Tables A, B, and C, below, the Bidder shall (a) indicate its amount of local currency payment, (b) indicate its proposed source and base values of indices for the different foreign currency elements of cost, (c) derive its proposed weightings for local and foreign currency payment, and (d) list the exchange rates used in the currency conversion. In the case of very large and/or complex works contracts, it may be necessary to specify several families of price adjustment formulae corresponding to the different works involved.]

**Table A. Local Currency**

<b>Index code*</b>	<b>Index description*</b>	<b>Source of index*</b>	<b>Base value and date*</b>	<b>Bidder's related currency amount</b>	<b>Bidder's proposed weighting</b>
Fixed	Nonadjustable				A=0.2
LL	Local Labour				B=0.15-0.23
FU	Fuel and Lubricants				C=0.20-0.34
CE	Cement				D=0.06-0.17
RS	Reinforcement Steel				E=0.01-0.06
<b>Total</b>					<b>1.00</b>

[Whereas “A” should a fixed percentage, B, C, D and E should specify a range of values and the Bidder will be required to specify a value within the range such that the total weighting = 1.00]

- (1) Base date is the date defined in the General Conditions of Contract, and the Base value is that value at the Base Date.
- (2) Sources of indices are to be attached as a table giving:

Index code  
Index description  
Currency of index  
Details and source of index  
Base value and base date of index

**Table B. Foreign Currency (FC)**

**State type:** ..... [If the Bidder is allowed to receive payment in foreign currencies this table shall be used. If Bidder wishes to quote in more than one foreign currency (up to three currencies permitted) then this table should be repeated for each foreign currency.]

<b>Index code</b>	<b>Index description</b>	<b>Source of index</b>	<b>Base value and date</b>	<b>Bidder's related source currency in type/amount</b>	<b>Equivalent in FC1</b>	<b>Bidder's proposed weighting</b>
Fixed	Nonadjustable					A=0.2
LL	Local Labour					B=0.5
FU	Fuel and Lubricants					C=0.15
CE	Cement					D=0.06–0.07
RS	Reinforcement Steel					E=0.01-0.08
<b>Total</b>						<b>1.00</b>

[\* To be entered by the Employer. Whereas “A” should a fixed percentage, B, C, D and E should specify a range of values and the Bidder will be required to specify a value within the range such that the total weighting = 1.00]

**Table C. Summary of Payment Currencies**

Table: Alternative A

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

Name of payment currency	A Amount of currency	B Rate of exchange (local currency per unit of foreign)	C Local currency equivalent $C = A \times B$	D Percentage of Total Bid Price (TBP) $\frac{100 \times C}{TBP}$
Local currency _____		1.00		
Foreign currency #1 _____				
Foreign currency #2 _____				
Foreign currency # _____				
Total Bid Price				100.00
Provisional sums expressed in local currency	<i>[To be entered by the Employer]</i>		<i>[To be entered by the Employer]</i>	
<b>TOTAL BID PRICE</b> (including provisional sum)				

## **Bill of Quantities**

Please refer to Volume 2

## **B. Work Items**

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

Bill No. 1: PARTICULAR PRELIMINARIES  
BILL NO. 2 : GENERAL PRELIMINARIES  
BILL NO. 3: SUBSTRUCTURES- BASEMENT  
BILL NO. 4 : BASEMENT STAIRS AND RAMPS  
BILL NO. 5 : BASEMENT WORKS  
BILL NO. 6: GROUND FLOOR  
BILL NO. 7: FIRST FLOOR  
BILL NO. 8: SECOND FLOOR  
BILL NO. 9: THIRD FLOOR  
BILL NO. 10: FOURTH FLOOR  
BILL NO. 11: FIFTH FLOOR  
BILL NO. 12: SIXTH FLOOR  
BILL NO. 13: SEVENTH FLOOR  
BILL NO. 14: EIGHTH FLOOR  
BILL NO. 15: NINTH FLOOR  
BILL NO. 16: TENTH FLOOR  
BILL NO. 17 BUILDER'S WORK SUMMARY PAGE  
BILL NO. 18 : SERVICE BUILDING  
BILL NO. 19 : LANDSCAPING  
BILL NO. 20: SIGNAGE  
BILL NO. 21 : CIVIL WORKS & PARKING  
BILL NO. 22: DAYWORKS  
BILL NO. 23: ESMP  
SECTION 24: ELECTRICAL INSTALLATIONS  
SECTION 25: FIRE ALARM DETECTION & PUBLIC  
SECTION 26 : LIFTS INSTALLATIONS  
SECTION 27 : GENERATOR INSTALLATIONS  
SECTION 28: PLUMBING & DRAINAGE  
SECTION 29 : HVAC  
SECTION 30: BOREHOLE DRILLING AND EQUIPPING  
SECTION 31: ELECTRICAL WORKS

2. Bidders shall price the Bill of Quantities in local currency only and shall indicate in the Appendix to Bid the percentage expected for payment in foreign currency or currencies.

## **Technical Proposal**

- **Site Organization**
- **Method Statement**
- **Mobilization Schedule**
- **Construction Schedule**
- **ES Management Strategies and Implementation Plans**
- **Code of Conduct for Contractor's Personnel (ES)**
- **Equipment**
- **Key Personnel Schedule**

## **Site Organization**

*[insert Site Organization information]*

## **Method Statement**

*[insert Method Statement]*



## **Mobilization Schedule**

*[insert Mobilization Schedule]*

In accordance with the Particular Conditions, Sub-Clause 4.1, the Contractor shall not carry out mobilization to Site unless the Engineer gives consent that appropriate measures are in place to address environmental and social risks and impacts, which as a minimum shall include applying the Management Strategies and Implementation Plans (MSIPs) and Code of Conduct for Contractor's Personnel, submitted as part of the Bid and agreed as part of the Contract.

## Construction Schedule

*[insert Construction Schedule]*

*The construction schedule shall include the following key milestones:*

- *No-objection to the Contractor's MSIPs, which collectively form the C-ESMP, in accordance with the Particular Conditions - Special provisions Sub-Clause 4.1.*
- *Constitution of the DAAB*
- *SEA and SH orientation conference*

## **ES Management Strategies and Implementation Plans**

The Bidder shall submit comprehensive and concise Environmental and Social Management Strategies and Implementation Plans (ES-MSIP) as required by ITB 11.1 (i) of the Bid Data Sheet. These strategies and plans shall describe in detail the actions, materials, equipment, management processes etc. that will be implemented by the Contractor, and its subcontractors.

### **(ES-MSIP)**

In developing these strategies and plans, the Bidder shall have regard to the ES provisions of the contract including those as may be more fully described in the Works' Requirements in Section VII.

## Code of Conduct for Contractor's Personnel (ES) Form

### Note to the Bidder:

**The minimum content of the Code of Conduct form as set out by the Employer shall not be substantially modified.** However, the Bidder may add requirements as appropriate, including to take into account Contract-specific issues/risks.

The Bidder shall initial and submit the Code of Conduct form as part of its bid.

## CODE OF CONDUCT FOR CONTRACTOR'S PERSONNEL

We are the Contractor, [*enter name of Contractor*]. We have signed a contract with [*enter name of Employer*] for [*enter description of the Works*]. These Works will be carried out at [*enter the Site and other locations where the Works will be carried out*]. Our contract requires us to implement measures to address environmental and social risks related to the Works, including the risks of sexual exploitation, sexual abuse and sexual harassment.

This Code of Conduct is part of our measures to deal with environmental and social risks related to the Works. It applies to all our staff, labourers and other employees at the Works Site or other places where the Works are being carried out. It also applies to the personnel of each subcontractor and any other personnel assisting us in the execution of the Works. All such persons are referred to as “**Contractor's Personnel**” and are subject to this Code of Conduct.

This Code of Conduct identifies the behavior that we require from all Contractor's Personnel.

Our workplace is an environment where unsafe, offensive, abusive or violent behavior will not be tolerated and where all persons should feel comfortable raising issues or concerns without fear of retaliation.

**REQUIRED CONDUCT**

Contractor's Personnel shall:

1. carry out his/her duties competently and diligently;
2. comply with this Code of Conduct and all applicable laws, regulations and other requirements, including requirements to protect the health, safety and well-being of other Contractor's Personnel and any other person;
3. maintain a safe working environment including by:
  - a. ensuring that workplaces, machinery, equipment and processes under each person's control are safe and without risk to health;
  - b. wearing required personal protective equipment;
  - c. using appropriate measures relating to chemical, physical and biological substances and agents; and
  - d. following applicable emergency operating procedures.
4. report work situations that he/she believes are not safe or healthy and remove himself/herself from a work situation which he/she reasonably believes presents an imminent and serious danger to his/her life or health;
5. treat other people with respect, and not discriminate against specific groups such as women, people with disabilities, migrant workers or children;
6. not engage in Sexual Harassment, which means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature with other Contractor's or Employer's Personnel;
7. not engage in Sexual Exploitation, which means any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another;
8. not engage in Sexual Abuse, which means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions;
9. not engage in any form of sexual activity with individuals under the age of 18, except in case of pre-existing marriage;
10. complete relevant training courses that will be provided related to the environmental and social aspects of the Contract, including on health and safety matters, Sexual Exploitation and Abuse (SEA), and Sexual Harassment (SH);
11. report violations of this Code of Conduct; and
12. not retaliate against any person who reports violations of this Code of Conduct, whether to us or the Employer, or who makes use of the grievance mechanism for Contractor's Personnel or the project's Grievance Redress Mechanism. .

**RAISING CONCERNS**

If any person observes behavior that he/she believes may represent a violation of this Code of Conduct, or that otherwise concerns him/her, he/she should raise the issue promptly. This can be done in either of the following ways:

1. Contact [enter name of the Contractor's Social Expert with relevant experience in handling sexual exploitation, sexual abuse and sexual harassment cases, or if such person is not required under the Contract, another individual designated by the Contractor to handle these matters] in writing at this address [ ] or by telephone at [ ] or in person at [ ]; or
2. Call [ ] to reach the Contractor's hotline (if any) and leave a message.

The person's identity will be kept confidential, unless reporting of allegations is mandated by the country law. Anonymous complaints or allegations may also be submitted and will be given all due and appropriate consideration. We take seriously all reports of possible misconduct and will investigate and take appropriate action. We will provide warm referrals to service providers that may help support the person who experienced the alleged incident, as appropriate.

There will be no retaliation against any person who raises a concern in good faith about any behavior prohibited by this Code of Conduct. Such retaliation would be a violation of this Code of Conduct.

**CONSEQUENCES OF VIOLATING THE CODE OF CONDUCT**

Any violation of this Code of Conduct by Contractor's Personnel may result in serious consequences, up to and including termination and possible referral to legal authorities.

**FOR CONTRACTOR'S PERSONNEL:**

I have received a copy of this Code of Conduct written in a language that I comprehend. I understand that if I have any questions about this Code of Conduct, I can contact [enter name of Contractor's contact person(s) with relevant experience)] requesting an explanation.

Name of Contractor's Personnel: [insert name]

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

Countersignature of authorized representative of the Contractor:

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

**ATTACHMENT 1:** Behaviors constituting Sexual Exploitation and Abuse (SEA) and behaviors constituting Sexual Harassment (SH)

## **ATTACHMENT 1 TO THE CODE OF CONDUCT FORM**

### **BEHAVIORS CONSTITUTING SEXUAL EXPLOITATION AND ABUSE (SEA) AND BEHAVIORS CONSTITUTING SEXUAL HARASSMENT (SH)**

The following non-exhaustive list is intended to illustrate types of prohibited behaviors

**(1) Examples of sexual exploitation and abuse** include, but are not limited to:

- A Contractor's Personnel tells a member of the community that he/she can get them jobs related to the work site (e.g. cooking and cleaning) in exchange for sex.
- A Contractor's Personnel that is connecting electricity input to households says that he can connect women headed households to the grid in exchange for sex.
- A Contractor's Personnel rapes, or otherwise sexually assaults a member of the community.
- A Contractor's Personnel denies a person access to the Site unless he/she performs a sexual favor.
- A Contractor's Personnel tells a person applying for employment under the Contract that he/she will only hire him/her if he/she has sex with him/her.

**(2) Examples of sexual harassment in a work context**

- Contractor's Personnel comment on the appearance of another Contractor's Personnel (either positive or negative) and sexual desirability.
- When a Contractor's Personnel complains about comments made by another Contractor's Personnel on his/her appearance, the other Contractor's Personnel comment that he/she is "asking for it" because of how he/she dresses.
- Unwelcome touching of a Contractor's or Employer's Personnel by another Contractor's Personnel.
- A Contractor's Personnel tells another Contractor's Personnel that he/she will get him/her a salary raise, or promotion if he/she sends him/her naked photographs of himself/herself.

### 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 <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured	

Omit the following information for equipment owned by the Bidder.

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 PER -1

# Contractor's Representative and Key Personnel Schedule

Bidders should provide the names and details of the suitably qualified Contractor's Representative and Key Personnel to perform the Contract. The data on their experience should be supplied using the Form PER-2 below for each candidate.

### Contractor' Representative and Key Personnel

<b>1.</b>	<b>Title of position:</b> Contractor's Representative	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	<b>Time commitment for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
<b>2.</b>	<b>Title of position:</b> <i>[Environmental Specialist]</i>	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	<b>Time commitment for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
<b>3.</b>	<b>Title of position:</b> <i>[Health and Safety Specialist]</i>	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	<b>Time commitment for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
<b>4.</b>	<b>Title of position:</b> <i>[Social Specialist]</i>	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	<b>Time commitment for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>

	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
<b>5.</b>	<b>Title of position: Sexual Exploitation, Abuse and Harassment Expert</b> <i>[Where a Project SEA risks are assessed to be substantial or high, Key Personnel shall include an expert with relevant experience in addressing sexual exploitation, sexual abuse and sexual harassment cases]</i>	
	<b>Name of candidate</b>	
	<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	<b>Time commitment for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
<b>6..</b>	<b>Title of position:</b> <i>[insert title]</i>	
	<b>Name of candidate</b>	
	<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	<b>Time commitment for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>

**Form PER-2:  
Resume and Declaration  
Contractor's Representative and Key Personnel**

<b>Name of Bidder</b>
-----------------------

<b>Position [#1]:</b> <i>[title of position from Form PER-1]</i>		
<b>Personnel information</b>	<b>Name:</b>	<b>Date of birth:</b>
	<b>Address:</b>	<b>E-mail:</b>
	<b>Professional qualifications:</b>	
	<b>Academic qualifications:</b>	
	<b>Language proficiency:</b> <i>[language and levels of speaking, reading and writing skills]</i>	
<b>Details</b>		
	<b>Address of employer:</b>	
	<b>Telephone:</b>	<b>Contact (manager / personnel officer):</b>
	<b>Fax:</b>	
	<b>Job title:</b>	<b>Years with present employer:</b>

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

Project	Role	Duration of involvement	Relevant experience
<i>[main project details]</i>	<i>[role and responsibilities on the project]</i>	<i>[time in role]</i>	<i>[describe the experience relevant to this position]</i>

## Declaration

I, the undersigned *[insert either "Contractor's Representative" or "Key Personnel" as applicable]*, certify that to the best of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Bid:

Commitment	Details
<b>Commitment to duration of contract:</b>	<i>[insert period (start and end dates) for which this Contractor's Representative or Key Personnel is available to work on this contract]</i>
<b>Time commitment:</b>	<i>[insert period (start and end dates) for which this Contractor's Representative or Key Personnel is available to work on this contract]</i>

I understand that any misrepresentation or omission in this Form may:

1. be taken into consideration during Bid evaluation;
2. result in my disqualification from participating in the Bid
3. result in my dismissal from the contract.

**Name of Contractor's Representative or Key Personnel:** *[insert name]*

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

**Countersignature of authorized representative of the Bidder:**

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

## **Bidders Qualification without prequalification**

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

## Form ELI -1.1

# Bidder Information Form

Date: \_\_\_\_\_  
RFB No. and title: \_\_\_\_\_  
Page \_\_\_\_\_ of \_\_\_\_\_ pages

Bidder's name
In case of Joint Venture (JV), name of each member:
Bidder's actual or intended country of registration: <i>[indicate country of Constitution]</i>
Bidder's actual or intended year of incorporation:
Bidder's legal address [in country of registration]:
Bidder's authorized representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ E-mail address: _____
1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITB 4.4 <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1 <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITB 4.6, documents establishing: <ul style="list-style-type: none"> <li>• Legal and financial autonomy</li> <li>• Operation under commercial law</li> <li>• Establishing that the Bidder is not under the supervision of the Employer</li> </ul>
2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. <i>[If required under BDS ITB 47.1, the successful Bidder shall provide additional information on beneficial ownership, using the Beneficial Ownership Disclosure Form.]</i>

**Form ELI -1.2**

## **Bidder's JV Information Form**

**(to be completed for each member of Bidder's JV)**

Date: \_\_\_\_\_  
RFB No. and title: \_\_\_\_\_  
Page \_\_\_\_\_ of \_\_\_\_\_ pages

Bidder's JV name:
JV member's name:
JV member's country of registration:
JV member's year of constitution:
JV member's legal address in country of constitution:
JV member's authorized representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ E-mail address: _____
1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITB 4.4. <input type="checkbox"/> In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Employer, in accordance with ITB 4.6. 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. <i>[If required under BDS ITB 47.1, the successful Bidder shall provide additional information on beneficial ownership for each JV member using the Beneficial Ownership Disclosure Form.]</i>

**Form CON – 2****Historical Contract Non-Performance, Pending Litigation  
and Litigation History**

Bidder's Name: \_\_\_\_\_

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

JV Member's Name \_\_\_\_\_

RFB No. and title: \_\_\_\_\_

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

**Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria**

☐ Contract non-performance did not occur since 1<sup>st</sup> January [2017] ☐ Contract(s) not performed since 1<sup>st</sup> January [2019, 2020, 2021]

<b>Year</b>	<b>Non-performed portion of contract</b>	<b>Contract Identification</b>	<b>Total Contract Amount (current value, currency, exchange rate and US\$ equivalent)</b>
[insert year]	[insert amount and percentage]	Contract Identification: [indicate complete contract name/ number, and any other identification] Name of Employer: [insert full name] Address of Employer: [insert street/city/country] Reason(s) for nonperformance: [indicate main reason(s)]	[insert amount]

**Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria. Subfactor 2.3**☐ No pending litigation☐ Pending litigation



<b>Year of dispute</b>	<b>Amount in dispute (currency)</b>	<b>Contract Identification</b>	<b>Total Contract Amount (currency), USD Equivalent (exchange rate)</b>
		Contract Identification: _____ Name of Employer: _____ Address of Employer: _____ Matter in dispute: _____ Party who initiated the dispute: _____  Status of dispute: _____	
		Contract Identification: Name of Employer: Address of Employer: Matter in dispute: Party who initiated the dispute: Status of dispute:	
Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Subfactor 2.4			
<input type="checkbox"/> No Litigation History <input type="checkbox"/> Litigation History			
<b>Year of award</b>	<b>Outcome as percentage of Net Worth</b>	<b>Contract Identification</b>	<b>Total Contract Amount (currency), USD Equivalent (exchange rate)</b>
<i>[insert year]</i>	<i>[insert percentage]</i>	Contract Identification: <i>[indicate complete contract name, number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Matter in dispute: <i>[indicate main issues in dispute]</i> Party who initiated the dispute: <i>[indicate "Employer" or "Contractor"]</i> Reason(s) for Litigation and award decision <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>

## Form CON – 3

### Environmental and Social Performance Declaration

*[The following table shall be filled in for the Bidder, each member of a Joint Venture and each Specialized Subcontractor]*

Bidder's Name: *[insert full name]*

Date: *[insert day, month, year]*

Joint Venture Member's or Specialized Subcontractor's Name: *[insert full name]*

RFB No. and title: *[insert RFB number and title]*

Page *[insert page number]* of *[insert total number]* pages

<b>Environmental and Social Performance Declaration</b> in accordance with Section III, Qualification Criteria, and Requirements			
<input type="checkbox"/> <b>No suspension or termination of contract:</b> An employer has not suspended or terminated a contract and/or called the performance security for a contract for reasons related to Environmental or Social (ES) performance since the date specified in Section III, Qualification Criteria, and Requirements, Sub-Factor 2.5.			
<input type="checkbox"/> <b>Declaration of suspension or termination of contract:</b> The following contract(s) has/have been suspended or terminated and/or Performance Security called by an employer(s) for reasons related to Environmental or Social (ES) performance since the date specified in Section III, Qualification Criteria, and Requirements, Sub-Factor 2.5. Details are described below:			
Year	Suspended or terminated portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and US\$ equivalent)
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Reason(s) for suspension or termination: <i>[indicate main reason(s) e.g. gender-based violence; sexual exploitation or sexual abuse breaches]</i>	<i>[insert amount]</i>
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i>	<i>[insert amount]</i>

		Reason(s) for suspension or termination: <i>[indicate main reason(s)]</i>	
...	...	<i>[list all applicable contracts]</i>	...
<b>Performance Security called by an employer(s) for reasons related to ES performance</b>			
Year	Contract Identification		Total Contract Amount (current value, currency, exchange rate and US\$ equivalent)
<i>[insert year]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Reason(s) for calling of performance security: <i>[indicate main reason(s) e.g. for gender-based violence; sexual exploitation or sexual abuse breaches]</i>		<i>[insert amount]</i>

## Form CON – 4

# Sexual Exploitation and Abuse (SEA) and/or Sexual Harassment Performance Declaration

*[The following table shall be filled in by the Bidder, each member of a Joint Venture and each subcontractor proposed by the Bidder]*

Bidder's Name: *[insert full name]*

Date: *[insert day, month, year]*

Joint Venture Member's or Subcontractor's Name: *[insert full name]*

RFB No. and title: *[insert RFB number and title]*

Page *[insert page number]* of *[insert total number]* pages

<b>SEA and/or SH Declaration</b> <b>in accordance with Section III, Qualification Criteria, and Requirements</b>
<p>We:</p> <p><input type="checkbox"/> (a) have not been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations</p> <p><input type="checkbox"/> (b) are subject to disqualification by the Bank for non-compliance with SEA/ SH obligations</p> <p><input type="checkbox"/> (c) had been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations. An arbitral award on the disqualification case has been made in our favor.</p> <p><input type="checkbox"/> (d) had been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations for a period of two years. We have subsequently demonstrated that we have adequate capacity and commitment to comply with SEA/ SH obligations.</p> <p><input type="checkbox"/> (e) had been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations for a period of two years. We have attached evidence demonstrating that we have adequate capacity and commitment to comply with SEA/ SH obligations.</p>
<p><b><i>[If (c) above is applicable, attach evidence of an arbitral award reversing the findings on the issues underlying the disqualification.]</i></b></p>
<p><b><i>[If (d) or ( e) above are applicable, provide the following information:]</i></b></p>
<p>Period of disqualification: From: _____ To: _____</p>
<p>If previously provided on another Bank financed works contract, details of evidence that demonstrated adequate capacity and commitment to comply with SEA/ SH obligations (as per (d) above)</p> <p style="margin-left: 40px;">Name of Employer: _____</p> <p style="margin-left: 40px;">Name of Project: _____</p> <p style="margin-left: 40px;">Contract description: _____</p> <p style="margin-left: 40px;">Brief summary of evidence provided: _____</p>

\_\_\_\_\_

Contact Information: (Tel, email, name of contact person): \_\_\_\_\_

\_\_\_\_\_

As an alternative to the evidence under (d), other evidence demonstrating adequate capacity and commitment to comply with SEA/ SH obligations (**as per (e) above**) [*attach details as appropriate*].

**Form FIN – 3.1:****Financial Situation and Performance**

Bidder's Name: \_\_\_\_\_

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

JV Member's Name \_\_\_\_\_

RFB No. and title: \_\_\_\_\_

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

**1. Financial data**

Type of Financial information in (currency)	Historic information for previous <i>five (5) years</i> , _____ (amount in currency, currency, exchange rate*, USD equivalent)				
	Year 1	Year 2	Year 3	Year 4	Year 5
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from Operating Activities					

\*Refer to ITB 15 for the exchange rate

## 2. Sources of Finance

Specify sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.

No.	Source of finance	Amount (US\$ equivalent)
1		
2		
3		

## 2. Financial documents

The Bidder and its parties shall provide copies of financial statements for \_\_\_\_\_ years pursuant Section III, Evaluation and Qualifications Criteria, Sub-factor 3.1. The financial statements shall:

- (a) reflect the financial situation of the Bidder or in case of JV member, and not an affiliated entity (such as parent company or group member).
- (b) be independently audited or certified in accordance with local legislation.
- (c) be complete, including all notes to the financial statements.
- (d) correspond to accounting periods already completed and audited.

☐ Attached are copies of financial statements<sup>1</sup> for the \_\_\_\_\_ years required above; and complying with the requirements

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<sup>1</sup> If the most recent set of financial statements is for a period earlier than 12 months from the date of Bid, the reason for this should be justified.

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

Bidder's Name: \_\_\_\_\_

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

JV Member's Name \_\_\_\_\_

RFB No. and title: \_\_\_\_\_

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

		<b>Annual turnover data (construction only)</b>	
<b>Year</b>	<b>Amount Currency</b>	<b>Exchange rate</b>	<b>USD equivalent</b>
<i>[indicate year]</i>	<i>[insert amount and indicate currency]</i>		
Average Annual Construction Turnover *			

\* See Section III, Evaluation and Qualification Criteria, Sub-Factor 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 specified in Section III, Evaluation and Qualification Criteria

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

**Form FIN – 3.4:****Current Contract Commitments / Works in Progress**

Bidders and each member 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.

Current Contract Commitments					
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 EXP - 4.1****General Construction Experience**

Bidder's Name: \_\_\_\_\_

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

JV Member's Name \_\_\_\_\_

RFB No. and title: \_\_\_\_\_

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

Starting Year	Ending Year	Contract Identification	Role of Bidder
		Contract name: _____ Brief Description of the Works performed by the Bidder: _____ Amount of contract: _____ Name of Employer: _____ Address: _____	
		Contract name: _____ Brief Description of the Works performed by the Bidder: _____ Amount of contract: _____ Name of Employer: _____ Address: _____	
		Contract name: _____ Brief Description of the Works performed by the Bidder: _____ Amount of contract: _____ Name of Employer: _____ Address: _____	

**Form EXP - 4.2(a)****Specific Construction and Contract Management  
Experience**

Bidder's Name: \_\_\_\_\_

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

JV Member's Name \_\_\_\_\_

RFB No. and title: \_\_\_\_\_

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

Similar Contract No.	Information			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Subcontractor <input type="checkbox"/>
Total Contract Amount			US\$	
If member in a JV or Subcontractor, specify participation in total Contract amount				
Employer's Name:				
Address:				
Telephone/fax number				
E-mail:				

**Form EXP - 4.2(a) (cont.)****Specific Construction and Contract Management  
Experience (cont.)**

<b>Similar Contract No.</b>	<b>Information</b>
Description of the similarity in accordance with Sub-Factor 4.2(a) of Section III:	
1. Amount	
2. Physical size of required works items	
3. Complexity	
4. Methods/Technology	
5. Construction rate for key activities	
6. Other Characteristics	

**Form EXP - 4.2(b)****Construction Experience in Key Activities**

Bidder's Name: \_\_\_\_\_

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

Bidder's JV Member Name: \_\_\_\_\_

Subcontractor's Name<sup>2</sup> (as per ITB 34): \_\_\_\_\_

RFB No. and title: \_\_\_\_\_

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

All Subcontractors for key activities must complete the information in this form as per ITB 34 and Section III, Evaluation and Qualification Criteria, Sub-Factor 4.2.

1. Key Activity No One: \_\_\_\_\_

Information				
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Subcontractor <input type="checkbox"/>
Total Contract Amount			US\$	
Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year	Total quantity in the contract (i)	Percentage participation (ii)		Actual Quantity Performed (i) x (ii)
Year 1				
Year 2				
Year 3				
Year 4				
Year 5				

---

<sup>2</sup> If applicable

	<b>Information</b>
Employer's Name:	
Address: Telephone/fax number E-mail:	

	<b>Information</b>
Description of the key activities in accordance with Sub-Factor 4.2(b) of Section III:	

2. Activity No. Two

3. ....

**Form EXP - 4.2(c)****Specific Experience in Managing ES aspects**

*[The following table shall be filled in for contracts performed by the Bidder, and each member of a Joint Venture]*

Bidder's Name: \_\_\_\_\_

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

Bidder's JV Member Name: \_\_\_\_\_

RFB No. and title: \_\_\_\_\_

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

1. Key Requirement no 1 in accordance with 4.2 (c): \_\_\_\_\_

Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Subcontractor <input type="checkbox"/>
Total Contract Amount			US\$	
Details of relevant experience				

2. Key Requirement no 2 in accordance with 4.2 (c): \_\_\_\_\_

3. Key Requirement no 3 in accordance with 4.2 (c): \_\_\_\_\_

...



## Form of Bid Security - Demand Guarantee

**Beneficiary:** \_\_\_\_\_

**Request for Bids No:** \_\_\_\_\_

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

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

**Guarantor:** \_\_\_\_\_

We have been informed that \_\_\_\_\_ (hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its Bid (hereinafter called "the Bid") for the execution of \_\_\_\_\_ under Request for Bids No. \_\_\_\_\_ ("the RFB").

Furthermore, we understand that, according to the Beneficiary's conditions, Bids must be supported by a Bid guarantee.

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (\_\_\_\_\_) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:

- (a) has withdrawn its Bid prior to the Bid validity expiry date set forth in the Applicant's Letter of Bid, or any extended date provided by the Applicant; or
- (b) having been notified of the acceptance of its Bid by the Beneficiary prior to the expiry date of the Bid Validity or any extension thereto provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance Security and, if required, the Environmental and Social (ES) Performance Security, in accordance with the Instructions to Bidders ("ITB") of the Beneficiary's Bidding document.

This guarantee will expire: (a) if the Applicant is the successful Bidder, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, if required, the Environmental and Social (ES) Performance Security, issued to the Beneficiary in relation to such contract agreement; or (b) if the Applicant is not the successful Bidder, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Bidding process; or (ii) twenty-eight days after the expiry date of the Bid Validity.

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

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.

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*[signature(s)]*

## **Form of Sexual Exploitation and Abuse (SEA), and/or Sexual Harassment (SH) Declaration**

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

RFB No.: \_\_\_\_\_

Alternative No.: \_\_\_\_\_

Contract Title: \_\_\_\_\_

To:

We, the undersigned, declare that:

We understand that Bids must be supported by a SEA and/or SH Declaration.

We accept that, if awarded the Contract, we, including our Subcontractors, are required to comply with the SEA/SH Prevention and Response Obligations under the Contract, and we further accept that the Bank may disqualify us from being awarded a Bank-financed contract for a period of two years, if it is determined by Dispute Avoidance/Adjudication Board (DAAB) decision that we:

- (a) have failed to correct non-compliance with identified SAE/SH Prevention and Response Obligation; and/or
- (b) were non-compliant with such obligations at the time of an alleged incident,

And, in the event of recourse to the Emergency Arbitration provisions under the International Chamber of Commerce Arbitration Rules, an order to reverse the DAAB Decision is not issued by the Emergency Arbitrator under the Rules.

Name of the Bidder\* \_\_\_\_\_

Name of the person duly authorized to sign the Bid on behalf of the Bidder\*\* \_\_\_\_\_

Title of the person signing the Bid \_\_\_\_\_

Signature of the person named above \_\_\_\_\_

Date signed \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\*: In the case of the Bid submitted by joint venture specify the name of the Joint Venture as Bidder

\*\*: Person signing the Bid shall have the power of attorney given by the Bidder attached to the Bid

*[Note: In case of a Joint Venture, the SEA and/or SH Declaration must be in the name of all members to the Joint Venture that submits the Bid.]*

## Section V - Eligible Countries

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

In reference to ITB 4.8 and 5.1, for the information of the Bidders, at the present time firms, goods and services from the following countries are excluded from this Bidding process:

Under ITB 4.8 (a) and 5.1: *None*

Under ITB 4.8 (b) and 5.1: *None*



## Section VI - Fraud and Corruption

### 1. Purpose

1.1 The Bank's Anti-Corruption Guidelines and this annex apply with respect to procurement under Bank Investment Project Financing operations.

### 2. Requirements

2.1 The Bank requires that Borrowers (including beneficiaries of Bank financing); bidders (applicants/proposers), consultants, contractors and suppliers; any sub-contractors, sub-consultants, service providers or suppliers; any agents (whether declared or not); and any of their personnel, observe the highest standard of ethics during the procurement process, selection and contract execution of Bank-financed contracts, and refrain from Fraud and Corruption.

2.2 To this end, 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;
  - ii. "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
  - iii. "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
  - iv. "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - v. "obstructive practice" is:
    - (a) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a 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
    - (b) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under paragraph 2.2 e. below.
- b. Rejects a proposal for award if the Bank determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly,

engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;

- c. In addition to the legal remedies set out in the relevant Legal Agreement, may take other appropriate actions, including declaring misprocurement, if the Bank determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement process, selection and/or execution of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;
- d. Pursuant to the Banks Anti-Corruption Guidelines and in accordance with the Bank's prevailing sanctions policies and procedures, may sanction a firm or individual, either indefinitely or for a stated period of time, including by publicly declaring such firm or individual ineligible (i) to be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;<sup>1</sup> (ii) to be a nominated<sup>2</sup> sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-financed project;
- e. Requires that a clause be included in bidding/request for proposals documents and in contracts financed by a Bank loan, requiring (i) bidders (applicants/proposers), consultants, contractors, and suppliers: and their sub-contractors, sub-consultants, service providers, suppliers, agents, personnel, permit the Bank to inspect<sup>3</sup> all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the Bank.

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<sup>1</sup> For the avoidance of doubt, a sanctioned party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.

<sup>2</sup> A nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider (different names are used depending on the particular bidding document) is one which 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 allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower.

<sup>3</sup> Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Bank or persons appointed by the Bank to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.

## **PART 2 –Works' Requirements**



# Section VII - Works' Requirements

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## **Scope of Works**

Construction of the Proposed Fisheries Headquarters – “Uvuvi House”.

The construction involves;

1. Civil works which involves excavation and earth works, foundation erection, drainage works and storm water works, landscaping and parking.
2. Builders works entails concrete works and installation of fittings which involves erection of basement to roof slab level, fittings and finishes plus other auxiliary works.
3. Mechanical works involves Plumbing and Drainage, HVAC (Heating, ventilation, and air conditioning) and Borehole Drilling and Equipping
4. Electrical Works involves electrical installation, fire alarm, public address and lifts erection
5. All works done as per the ESMP

## **Specification**

Please refer to Volume 3

## **Environmental and Social (ES) requirements**

### **MINIMUM CONTENT OF ESHS REQUIREMENTS**

#### **Preliminary Clauses:**

1. **C-ESMP:** Prior to the commencement of works, the Contractor will prepare and submit a Contractor Environmental and Social Management Plan (CESMP) to the KEMFSED NPCU supervision for acceptance. The CESMP will provide a detailed explanation of how the contractor will comply with the project the EHS clauses for contractors and demonstrate that sufficient funds are budgeted for that purpose and sufficient capacity is in place to oversee, monitor and report on CESMP performance. The CESMP must include specific mitigation measures based on the subproject environmental and social management plan.
2. **CODE OF CONDUCT:** Bidders/Proposers will submit ESHS Code of Conduct that will apply to their employees and sub-contractors, and details of how it will be enforced. The suitability of the Code of Conduct will be assessed and discussed as part of the Bid/Proposal evaluation and negotiations. The successful Bidder/Proposer is required to implement the agreed Code of Conduct upon contract award.
3. **CONTRACTOR’S ESHS MANAGEMENT STRATEGY AND IMPLEMENTATION PLAN:**  
Bidders/Proposers will be required to submit, as part of their Bid/Proposal, ESHS Management Strategies and Implementation Plans required to manage the key ESHS risks of the Uvuvi House project. The suitability of these strategies and plans will be assessed as part of the Bid/Proposal evaluation, and discussed during pre-contract discussions, as appropriate. These strategies and plans will become part of the Contractor’s Environmental and Social Management Plan (C-ESMP).
4. **EHS PROVISIONAL SUM:**  
An additional provisional sum, specifically for ESHS outcomes, will be included in the Request for Bids/Proposals documents, and eventual contract. Normally, the payment for the delivery of ESHS requirements shall be a subsidiary obligation of the Contractor covered under the prices quoted for other Bill of Quantity/price items.
5. **EHS KEY PERSONNEL:**  
Bidders/Proposers will be expected to demonstrate that they have suitably qualified ESHS specialists among their Key Personnel – Environmental Specialist, EHS Specialist, Community Liaison Officer.
  - ☐ Key Personnel and CV must be named in the Bid/Proposal, and in the contract.
  - ☐ The quality of the proposed Key Personnel (including ESHS specialists) will be assessed during the evaluation of Bids/Proposals.
  - ☐ The Contractor shall require the Employer’s consent to substitute or replace any Key Personnel.

- The Engineer may require the removal of Personnel if they undertake behavior which breaches the ESHS Code of Conduct, e.g. spreading communicable diseases, sexual harassment, gender-based violence, illicit activity, or crime.

### **ENVIRONMENTAL, HEALTH AND SAFETY INSTRUCTIONS**

Environmental and Social Clauses (disclosed as part of the Uvuvi House ESIA report) to be applied to fully avoid or mitigate environmental or social impacts such as safety. Bidders should integrate environmental protection, occupational and community health and safety, gender, equality, child protection, vulnerable people (including those with disabilities), sexual harassment, gender-based violence (GBV), sexual exploitation and abuse (SEA), HIV/AIDS awareness and prevention and wide stakeholder engagement in the planning processes, programming, and activities of the parties involved in the execution of the Works. The Environmental, Social, Health and Safety activities will be implemented throughout the construction phase and the Client will closely monitor compliance on ESHS requirements with the aim of continuously improving processes and activities implementation.

### **PROPOSED MEASURES FOR CONTRACTOR THAT WILL HAVE COST IMPLICATION**

Provide and maintain a healthy and safe work environment and safe systems of work and protect the health and safety of local communities and users.

The contractor shall exercise care to conserve the natural landscape and shall conduct his construction operations so as to prevent any unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the works. Except where clearing is required for permanent works, diversions or excavation operations, all trees, native shrubbery and vegetation shall be preserved and shall be protected from damage by the contractor's construction operation and equipment. performed in a manner to prevent damage to grazing land, crops or property

On completion of the project all temporary buildings including concrete footings and slabs, and all construction materials and debris shall be removed from the site. The area shall be regarded, as required, so that all surfaces drain naturally, blend with natural terrain, and are left in a condition that will facilitate natural re-vegetation, provide for proper drainage and prevent erosion

The contractor shall NOT use any explosives at the site.

The Contractor's construction activities shall be performed by methods that will prevent entrance or accidental spillage, of solid matter, contaminants, debris, and other pollutants and wastes at the construction site.

The Contractor shall comply with applicable laws and regulations and water quality standards concerning the control and abatement of water pollution.

The Contractor will be required to pay all conservancy charges and shall ensure clean daily maintenance and disinfecting of the latrines/toilet, and not less than once per week, the whole area shall be sprayed with disinfectant and insecticides and any temporary drains shall be removed and all works and surfaces disturbed made good and then the whole area disinfected and left clean and free from pollution to the satisfaction of the Architect and local authorities.

### **SAFETY, HEALTH AND WELFARE OF WORKERS**

To avoid work related accidents and injuries, the contractor will:

- Provide occupational health and safety training to all employees involved in works.
- Ensure availability of first aid box.
- Provide employees with access to toilets and potable drinking water.
- Train workers regarding the handling of any hazardous materials at the site.
- Inspect existing connections to reduce the risk of injury to workers, and all works are subject to written approval by the GOK Engineer to be provided before implementation of work;

The Contractor shall allow for providing for the safety, health and welfare of staff and for complying with any relevant Ordinances (DOSH, WIBA), Regulations or Union Agreement

In addition to complying with the requirements of the Occupational Safety & Health Act 2007 and the Factories Act, the Contractor and Sub-Contractors shall be required to comply in all respects with the Factories (Building Operations and Work of Engineering Construction) rules together with the Construction Safety Plan in compliance with International Labour Organizations (ILO) Regulations.

The Contractor will further be required to identify a Site Health Safety Officer in accordance with the above Rules who will be responsible for the health and safety of workers on the site.

The Contractor will also be required to provide approved good quality protective masks, helmet, safety belts and safety shoes, safety goggles, as appropriate, , and other necessary protective gear for all workers on site including Sub-Contractors' workers and also for the exclusive use by the Clerk of Works and representatives of the Employer and Consultants.

The contractor attention is further drawn to the fact that he is required to submit with his tender a detailed write-up on how he intends to implement the above Construction Safety Plan. It should be noted that this write-up will form a heavily weighted criteria in the evaluation of the tenders.

Adequate temporary Notices and Signs shall be posted to indicate e.g. that “Uvuvu House Construction is Ongoing” and “entry is at Ones own risk” or “trespassers are liable to be prosecuted” or such other Notices and Signs as the Architect may consider necessary from time to time. The design and location of such signs will be to the approval of the Architect.

Further to enforcing the compliance of environmental management, contractors are responsible on providing insurance for construction labors – compliance with Workers Injury Benefits Act (WIBA) for staff attending to the construction site.

### **PREVENTION OF DISTURBANCE AND NUISANCE**

The Contractor shall take all practicable measures to minimize nuisance from noise, vibration and dust caused by heavy vehicles and construction machinery. This includes: respecting normal working hours in South C residential areas; maintaining equipment in a good working order to minimize extraneous noise from mechanical vibration, creaking and squeaking, as well as emissions or fumes from the machinery shutting down equipment when it is not directly in use using operational noise mufflers Provide a water tanker, and spray water when required to minimize the impact of dust Limiting the speed of vehicles used for construction.

The Contractor shall comply with all instructions issued by the Employer or Supervision Consultant with regard to minimizing such disturbances.

The Contractor shall not directly or indirectly or otherwise by himself or through his agents cause nuisance to the neighboring community.

The works and such sections of the site necessary shall be under the entire care and control of the contractor during the whole period of the contract and shall take all possible precautions to prevent any nuisance, inconvenience or injury to the holder or occupiers of the existing or surrounding properties and to the public generally, and shall at all times keep all paths and roads affected by the works in a safe and clear state, and shall use proper precautions to ensure the safety of all wheeled traffic and pedestrians.

### **WASTE DISPOSAL**

The Contractor must agree with the Nairobi City County about arrangements for construction waste disposal. The Nairobi City County shall designate a dumping site or landfill for the disposal of solid waste. The contractor will take measures to avoid soil and groundwater contamination by liquid waste.

### **PROTECTION OF EXISTING INSTALLATION**

The Contractor shall take all necessary measures required for the support and protect structures, pipes, cables, sewers and other apparatus during the construction period, and to repair any damage occurs in coordination with local resident association, County Government of Nairobi and concerned authorities.

### **PHYSICAL CULTURAL RESOURCES**

The contractor will train construction crews and supervisors to spot potential archaeological finds. In the event of a potential find, the contractor will inform the implementing partner who will in turn liaise with the archaeological department at the Ministry of Culture, and Social Services or a local universities for quick assessment and action.

### **PIT AND QUARRY REINSTATEMENT SPECIFICATION**

1. At the completion of operations the Contractor shall rehabilitate used, exhausted and obsolete pits and quarries, wherever they will be.
2. The sides and floors of pits shall be formed to a flowing finish with side slopes not steeper than 1 vertical to 6 horizontal.
3. During pit reshaping any material carried to the pit shall be spread uniformly over the entire shaped surface. The Contractor shall ensure that non – biodegradable and inert waste is removed and disposed of in licenced sites. The same will apply to toxic waste.
4. Topsoil shall be spread over the shaped batters, filled areas and bare areas of the pits to a reasonable depth.
5. Following the spreading of topsoil, the entire pit shall be ripped along the contours to a depth of 500mm and at not more than 500mm spacing.

### **DECOMMISSIONING**

The Contractor shall upon completion of the works remove and clear away all temporary buildings, scaffolding, plant, rubbish and unused materials, surplus excavated materials and shall leave the whole of the site of the works in a clean and tidy state to the satisfaction of the Architect, including clearing away and making good all traces of dirt.

Particular care shall be taken in leaving windows, floors and fittings clean and the removal of all paint and cement stains there from.

He shall also remove all rubbish and dirt from the site as it accumulates or as directed by the Supervision Consultant. The Contractor is to find his own dump and shall pay all charges in connection therewith.

### **AMBIENT AIR QUALITY AND NOISE MONITORING**

The Contractor shall comply with applicable laws and regulations concerning the prevention and control of air pollution. Notwithstanding the above in conduct of construction activities and operation of equipment, the Contractor shall utilize such practicable methods and devices as are reasonably available to control prevent and otherwise minimize atmospheric emissions or discharges of air contaminants.

The emission of dust into the atmosphere shall be strictly controlled

Equipments and vehicles that show excessive emissions of exhaust gases due to poor engine adjustments or other inefficient operating conditions shall not be operated until corrective repairs or adjustments are made



Burning of materials resulting from combustible construction materials, and rubbish will be permitted only when atmospheric conditions for burning are considered favourable and when authorized by the Project Engineer. In lieu of burning, such combustible materials may be disposed of by other methods. Where open burning is permitted, the burn piles shall be properly constructed to minimize smoke, and in no case shall unapproved materials such as tires, plastic rubber products, asphalt products, or other materials, that create heavy black smoke or nuisance odours, be burned.

Blasting, the use of jackhammers, pile driving, rock crushing or other operations producing high-intensity impact noise may be not be performed during the night.

The Contractor shall exercise special care to direct all stationary flood-light to shine downwards at an angle less than horizontal. These floodlights shall also be shielded so as not to be a nuisance to surrounding areas. No lighting shall include a residence in its direct beam. The Contractor shall be responsible for correcting light problems when they occur as directed by the Project Engineer.

The Contractor to carry out continuous monitoring of the ambient air quality and Noise measurements as well as vibration monitoring on quarterly basis during the construction phase and this should be done at different weather and seasons to ensure that all the weather patterns are taken into consideration during the monitoring process.

### **GENDER BASED VIOLENCE**

Contractors must address the risk of gender-based violence, through: i. Mandatory and repeated training and awareness raising for the workforce about refraining from unacceptable conduct toward local community members, specifically women and children; ii. Informing workers about national laws that make sexual harassment and gender-based violence a punishable offence which is prosecuted; iii. Introducing a Worker Code of Conduct as part of the employment contract, and including sanctions for non-compliance (e.g., termination). Adopting a policy to cooperate with law enforcement agencies in investigating complaints about gender-based violence.

### **CHILD LABOR**

Contractors must not employ workers below the age of 18.

### **LABOUR INFLUX AND LABOUR ISSUES**

Where contractors and labor come from outside the local area, contractors will need to maintain labor relation relations with local communities through labor codes of conduct and formation of Local labor committees must be initiated.

### **HIV/AIDS MITIGATION AT THE SITE**

To assist in the general health and well-being of both all the site staff and the local residents at Uvuvi House construction site location, the contractor will organize and coordinate appropriate HIV/AIDS awareness campaign and training as well as health screening.

The Contractor shall ensure that the Project Engineer is informed when any new staff commences work on the site such that health and HIV awareness and counselling can be provided either in group sessions or on an individual basis. The Contractor shall ensure that staff are available for briefing and counselling and shall make available suitable rooms, administrative support and provide any facilities or supplies for HIV/AIDS mitigation at the site. The Contractor shall ensure that condoms provided as part of the HIV/STD control program are readily available to all staff and workers

The Client will also arrange for the health screening of site workers in local medical facilities and the Contractor shall cooperate fully in these programmes by making staff available. The Contractor shall ensure that the Project Engineer and local medical officials are informed promptly of any workers suffering from the symptoms of infectious disease so appropriate help and treatment can be arranged promptly.

### **TRAFFIC AT CONSTRUCTION SITE**

In order to carry out the construction works, it will be necessary to provide safety road signage on busy roads around the construction site, temporarily during the construction period. The contractor should arrange diversions for providing alternative route for transport. After breaking up, closing or otherwise interfering with any street or footpath to which the public has access, the Contractor shall make such arrangements as may be reasonably necessary so as to cause as little interference with the traffic in that entrance road or footpath during construction of the Uvuvi House as shall be reasonably practicable. Wherever the construction works interfere with existing public or private roads or other ways over which there is a public or private right of way for any traffic, the Contractor shall construct diversion ways wherever possible.

The Contractor shall provide, erect and maintain such traffic signs, road markings, barriers and traffic control signals, lights and such other measures as may be necessary for ensuring traffic safety around the rehabilitation site.

The Contractor shall not commence any work that affects the public road until all traffic safety measures necessitated by the work are fully operational.

### **MOVEMENT OF TRUCKS OR MACHINERY**

The Contractor moving solid or liquid construction materials and waste shall take strict measures to minimize littering of roads by ensuring that vehicles are licensed and loaded in such a manner as to prevent falling off or spilling of construction materials and by sheeting the sides and tops of all vehicles carrying mud, sand, other materials and debris. Construction materials should be brought from registered/approved sources in the city or from the city and debris should be transferred to assigned places in the landfill with documented confirmation.

**ENVIRONMENTAL AND SOCIAL MONITORING BY THE CONTRACTOR**

KEMFSED will require that contractors monitor, keep records and report on the following environmental and social issues for their subproject. The application of this requirement will be proportionate to the activities and to the size of the contract, in manner acceptable to the World Bank and Government of Kenya:

**ENVIRONMENTAL AND SOCIAL MONITORING**

**SAFETY:** hours worked, recordable incidents and corresponding Root Cause Analysis (lost time incidents, medical treatment cases), first aid cases, high potential near misses, and remedial and preventive activities required (for example, revised job safety analysis, new or different equipment, skills training, and so forth).

**ENVIRONMENTAL INCIDENTS AND NEAR MISSES:** environmental incidents and high potential near misses and how they have been addressed, what is outstanding, and lessons learned.

**TRAINING ON E&S ISSUES:** including dates, number of trainees, and topics.

**FOOTPRINT MANAGEMENT:** details of any work outside boundaries or major off-site impacts caused by ongoing construction—to include date, location, impacts, and actions taken.

**EXTERNAL STAKEHOLDER ENGAGEMENT:** highlights, including formal and informal meetings, and information disclosure and dissemination—to include a breakdown of women and men consulted and themes coming from various stakeholder groups, including vulnerable groups (e.g., disabled, elderly, children, etc.).

**DETAILS OF ANY SECURITY RISKS:** details of risks the contractor may be exposed to while performing its work—the threats may come from third parties external to the project.

**WORKER GRIEVANCES:** details including occurrence date, grievance, and date submitted; actions taken and dates; resolution (if any) and date; and follow-up yet to be taken—grievances listed should include those received since the preceding report and those that were unresolved at the time of that report.

**EXTERNAL STAKEHOLDER GRIEVANCES:** grievance and date submitted, action(s) taken and date(s), resolution (if any) and date, and follow-up yet to be taken—grievances listed should include those received since the preceding report and those that were unresolved at the time of that report. Grievance data should be gender-disaggregated.

**DEFICIENCY AND PERFORMANCE MANAGEMENT:** actions taken in response to previous notices of deficiency or observations regarding E&S performance and/or plans for actions to be taken—these should continue to be reported until UNOPS determines the issue is resolved satisfactorily.

**MAJOR WORKS:** those undertaken and completed, progress against project schedule, and key work fronts (work areas). ♣

**E&S REQUIREMENTS:** noncompliance incidents with permits and national law (legal noncompliance), project commitments, or other E&S requirements.

**E&S INSPECTIONS AND AUDITS:** by contractor, engineer, or others, including authorities—to include date, inspector or auditor name, sites visited, and records reviewed, major findings, and actions taken.

**WORKERS:** number of workers, indication of origin (expatriate, local, nonlocal nationals), gender, age with evidence that no child labor is involved, and skill level (unskilled, skilled, supervisory, professional, management).

### **ENVIRONMENTAL AND SOCIAL LIABILITIES BY THE CONTRACTOR**

Contractors will be legally and financially accountable for any environmental or social damage or prejudice caused by their staff, and thus are expected to put in place controls and procedures to manage their environmental and social performance. A breakdown for the cost of noncompliance for each mitigation measure will be enclosed in bidding documents. These will include:

Deductions for environmental noncompliance will be added as a clause in the Bill of Quantities (BOQ) section. Environmental penalties shall be calculated and deducted in each submitted invoice. Any impact that is not properly mitigated will be the object of an environmental/social notice by SDF&BE/KEMFSED.

For minor infringements and social complaints, an incident which causes temporary but reversible damage, the contractor will be given a notice to remedy the problem and restore the environment. No further actions will be taken if the Project engineer confirms that restoration is done satisfactorily.

For social notices, the Project engineer will alert the contractor to remedy the social impact and to follow the issue until solved. If the contractor does not comply with the remediation request, work will be stopped and considered under no excused delay. If the contractor hasn't remedied the environmental impact during the allotted time, the Project engineer will stop the work and give the contractor a notification indicating a financial penalty according to the non-complied mitigation measure that was specified in the bidding document. No further actions will be required if the Project engineer sees that restoration is done satisfactorily.

Otherwise, if Contractor hasn't remedied the situation within one day any additional days of stopping work will be considered no excused delay. Environmental notifications issued by the Project engineer might include one or more environmental penalty. In the event of repeated noncompliance totaling 5% of the contract value, the Project Engineer will bring the environmental and social notices and the deduction history to the client's procurement in order to take legal action.

### **GRIEVANCE REDRESS MECHANISM FOR WORKERS**

Contractors will put in place a Grievance Mechanism for their workers that is proportionate to their workforce, according to the following principles:

**PROVISION OF INFORMATION.** All workers should be informed about the grievance mechanism at the time they are hired, and details about how it operates should be easily available, for example, included in worker documentation or on notice boards.

**TRANSPARENCY OF THE PROCESS.** Workers must know to whom they can turn in the event of a grievance and the support and sources of advice that are available to them. All line and senior managers must be familiar with their organization's grievance procedure.

**KEEPING IT UP TO DATE.** The process should be regularly reviewed and kept up to date, for example, by referencing any new statutory guidelines, changes in contracts or representation.

**CONFIDENTIALITY.** The process should ensure that a complaint is dealt with confidentially. While procedures may specify that complaints should first be made to the workers' line manager, there should also be the option of raising a grievance first with an alternative manager, for example, a human resource (personnel) manager.

**NON-RETRIBUTION.** Procedures should guarantee that any worker raising a complaint will not be subject to any reprisal. employment code.

**REASONABLE TIMESCALES.** Procedures should allow for time to investigate grievances fully but should aim for swift resolutions. The longer a grievance is allowed to continue, the harder it can be for both sides to get back to normal afterwards. Time limits should be set for each stage of the process, for example, a maximum time between a grievance being raised and the setting up of a meeting to investigate it.

**RIGHT OF APPEAL.** A worker should have the right to appeal to the client or national courts if he or she is not happy with the initial finding.

**RIGHT TO BE ACCOMPANIED.** In any meetings or hearings, the worker should have the right to be accompanied by a colleague, friend or union representative.

**KEEPING RECORDS.** Written records should be kept at all stages. The initial complaint should be in writing if possible, along with the response, notes of any meetings and the findings and the reasons for the findings.

**RELATIONSHIP WITH COLLECTIVE AGREEMENTS.** Grievance procedures should be consistent with any collective agreements and should be compliant with the national

### **General Conditions of Contract**

Sub-clause 3	Language and Law
Sub-clause 7.1	Subcontracting
Sub-clause 8.1	Other Contractors

Sub-clause 9	Personnel and Equipment
Sub-clause 12	Contractor's Risks
Sub-clause 15.1	Contractor to Construct the Works
Sub-clause 18.1	Safety
Sub-clause 19.1	Discoveries
Sub-clause 31	Early Warnings
Sub-clause 41.4	Payments

## **MINIMUM REQUIREMENTS FOR THE CODE OF CONDUCT**

*The minimum Code of Conduct requirement may be based on the following:*

### **CODE OF CONDUCT REQUIREMENTS**

A satisfactory code of conduct will contain obligations on all project staff (including sub-contractors and day workers) that are suitable to address the following issues, as a minimum. Additional obligations may be added to respond to particular concerns of the region, the location and the project sector or to specific project requirements. The issues to be addressed include:

1. Compliance with applicable laws, rules, and regulations of the jurisdiction
2. Compliance with applicable health and safety requirements (including wearing prescribed personal protective equipment, preventing avoidable accidents and a duty to report conditions or practices that pose a safety hazard or threaten the environment)
3. The use of illegal substances
4. Non-Discrimination (for example on the basis of family status, ethnicity, race, gender, religion, language, marital status, birth, age, disability, or political conviction)
5. Interactions with community members (for example to convey an attitude of respect and non-discrimination)
6. Sexual harassment (for example to prohibit use of language or behavior, in particular towards women or children, that is inappropriate, harassing, abusive, sexually provocative, demeaning or culturally inappropriate)
7. Violence or exploitation (for example the prohibition of the exchange of money, employment, goods, or services for sex, including sexual favors or other forms of humiliating, degrading or exploitative behavior)
8. Protection of children (including prohibitions against abuse, defilement, or otherwise unacceptable behavior with children, limiting interactions with children, and ensuring their safety in project areas)
9. Sanitation requirements (for example, to ensure workers use specified sanitary facilities provided by their employer and not open areas)
10. Avoidance of conflicts of interest (such that benefits, contracts, or employment, or any sort of preferential treatment or favors, are not provided to any person with whom there is a financial, family, or personal connection)
11. Respecting reasonable work instructions (including regarding environmental and social norms)

12. Protection and proper use of property (for example, to prohibit theft, carelessness or waste)
13. Duty to report violations of this Code
14. Non retaliation against workers who report violations of the Code, if that report is made in good faith.

The Code of Conduct should be written in plain English language and signed by each worker to indicate that they have:

- received a copy of the code;
- had the code explained to them;
- acknowledged that adherence to this Code of Conduct is a condition of employment; and
- understood that violations of the Code can result in serious consequences, up to and including dismissal, or referral to legal authorities.

**Payment for ES Requirements**

The payment for the delivery of ESHS requirements shall be a subsidiary obligation of the Contractor covered under the prices quoted for other Bill of Quantity items.



## Contractor's Representative and Key Personnel

### Contractor's Representative and Key Personnel

Item No.	Position/specialization	Relevant academic qualifications	Minimum years of relevant work experience
1.	Contract Manager/Site Agent (Registered as professional Engineer/Architect/ Quantity Surveyor)	Bsc. Structural/Civil Engineering/ Architect/ Quantity Surveyor	15
2.	Structure Engineer (Registered Professional Civil/Structural Engineer by the Engineers Board of Kenya)	Bsc. Structural/Civil Engineering	7
3.	Site Engineer (Engineer Registered by the recognized board)	Bsc. Structural/Civil Engineering	7
4.	Electrical Engineer (registered by the recognized board)	Bsc. Electrical Engineering	7
5.	Mechanical Engineer (registered by the recognized board)	Bsc. Mechanical Engineering	7
6.	ICT/Telecommunication Engineer (Registered by the recognized board)	Bsc. ICT/Telecommunication	5
7.	Land Surveyor (registered by the recognized board)	Bsc. In Land Surveying	5
8.	Quantity Surveyor (Registered by the recognized board)	Bsc. In Building Economics/Quantity Surveying.	5
9.	Chief Foreman	Full Technician Certificate; Grade A (FTC)	5
10.	Environmental Specialist (Registered by a board recognized in Kenya)	Bsc. In Environmental Engineering/ Environmental sciences <i>(A NEMA lead expert; 5 years' experience in ESIA consultancies)</i>	5

11.	Health and Safety Officer	Bachelor's degree plus diploma in health and safety ( <i>Occupational Health and Safety Expert; who has undertaken OHS and EHS training</i> )	5
12.	Social safeguards specialist	Bachelor's degree in sociology or any related Social Science (5 years' experience in handling Social Safeguards matter in construction, monitoring and managing risks related to gender-based violence, out of which 3 years of relevant experience in addressing issues related to sexual exploitation, sexual abuse and sexual harassment)	5

## **Drawings**

Please refer to Volume 4

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

## Section VIII - General Conditions (GC)

**Red Book:**

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The Conditions of Contract are the “General Conditions” which form part of the “Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer (“Red book”) Second edition 2017” published by the Federation Internationale Des Ingenieurs – Conseils (FIDIC) and the following “Particular Conditions” which comprise of the Bank’s COPA and the amendments and additions to such General Conditions.

An original copy of the above FIDIC publication i.e. “*Conditions of Contract for Building and Engineering Works Designed by the Employer*” must be obtained from FIDIC.

**International Federation of Consulting Engineers (FIDIC)**

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

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## **Section IX - Particular Conditions**

The following Particular Conditions shall supplement the General Conditions. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions.

## Particular Conditions

### Part A – Contract Data

Conditions	Sub-Clause	Data
Where the Contract allows for Cost Plus Profit, percentage profit to be added to the Cost	1.1.20	1.5%
Employer's name and address	1.1.31	State Department for Fisheries Aquaculture and the Blue Economy Kenya Marine Fisheries and Socio Economic Development (KEMFSED) Project Maktaba Kuu Mezzanine Floor, Ngong Road, Upper Hill Opposite NHIF Nairobi P.O. Box 58187-00200 NAIROBI E-mail: info@kemfsed.org / Website: www.kemfsed.org
Engineer's name and address	1.1.35	Aprium Consultants P.O. Box 12969 - 00400 Nairobi, Kenya Email: info@apriumconsultants.com
Bank's name	1.1.89	International Development Association (IDA)
Borrower's name	1.1.90	Government of Kenya
Time for Completion	1.1.84	730 days
Defects Notification Period	1.1.27	365 days (one year)
Electronic transmission system	1.3 (a) (ii)	Electronic mail (E-mail)
Address of Employer for communications:	1.3(d)	State Department for Fisheries Aquaculture and the Blue Economy Kenya Marine Fisheries and Socio Economic Development (KEMFSED) Project Maktaba Kuu Mezzanine Floor, Ngong Road, Upper Hill Opposite NHIF Nairobi P.O. Box 58187-00200 NAIROBI E-mail: info@kemfsed.org / Website: www.kemfsed.org
Address of Engineer for communications:	1.3(d)	Aprium Consultants P.O. Box 12969 - 00400 Nairobi, Kenya Email: info@apriumconsultants.com
Address of Contractor for communications:	1.3(d)	To be filled
Governing Law	1.4	Kenya
Ruling language	1.4	English
Language for communications	1.4	English
Time for the Parties to sign Contract Agreement	1.6	28 days after receipt of Letter of Acceptance

Conditions	Sub-Clause	Data
Number of additional paper copies of Contractor's Documents	1.8	Three copies
Total liability of the Contractor to the Employer under or in connection with the Contract	1.15	Accepted Contract Amount
Site	1.1.74	South C, off Red Cross Road, Nairobi, Kenya. Coordinates 1°19'29.4"S 36°50'11.7"E
Time for access to the Site	2.1	No later than Commencement Date
Engineer's Duties and Authority	3.2	Variations resulting in an increase of the Accepted Contract Amount in excess of <u>0.2%</u> shall require written consent of the Employer.
Performance Security	4.2	The Performance Security will be in the form of a " <i>demand guarantee</i> " in the amount(s) of ten (10) percent of the Accepted Contract Amount and in the same currency (ies) of the Accepted Contract Amount.
Period for notification of errors in the items of reference	4.7.2 (a)	28 Days
Period of payment for temporary utilities	4.19	28 Days
Number of additional paper copies of progress reports	4.20	4
Maximum allowable accumulated value of work subcontracted (as a percentage of the Accepted Contract Amount)	5.1(a)	30_%
Parts of the Works for which subcontracting is not permitted	5.1(b)	Civil and Builders Works –
Normal working hours	6.5	8am to 5pm Monday to Friday and 8a.m to 1p.m. on Saturday (45 hours per week) as per labour laws act of government of Kenya.
Number of additional paper copies of programmes	8.3	<u>5</u>
Delay damages payable for each day of delay	8.8	<u>0.04</u> “% of the Accepted Contract Amount, less provisional sum, for DAAB.
Maximum amount of Delay Damages	8.8	10%of the Accepted Contract Amount less provisional sum for DAAB
Method of measurement	12.2	Standard Method of Measurement of the U.K. Institution of Civil Engineers.
Percentage profit	12.3	<i>As stated under 1.1.20 above</i>



Conditions	Sub-Clause	Data
Percentage rate to be applied to Provisional Sums for overhead charges and profit	13.4 (b)(ii)	_1.5_ %
Total advance payment	14.2	<u>20</u> % Percentage of the Accepted Contract Amount payable in the currencies and proportions in which the Accepted Contract Amount is payable.
Repayment of the Advance Payment	14.2.3	_(a)_ exceeds 30% of the portion of the Accepted Contract Amount payable in that currency less Provisional Sums (b) deductions shall be made at the amortization rate of 20%_ <i>[provided that the advance payment shall be completely repaid prior to the time when 90 percent (90%) of the Accepted Contract Amount less Provisional Sums has been certified for payment]</i>
Period of payment	14.3	Within 56 days after receipt of certified Interim Payment Certificate
Number of additional paper copies of Statements	14.3(b)	Five copies (5)
Percentage of retention	14.3(iii)	10%
Limit of Retention Money (as a percentage of Accepted Contract Amount)	14.3(iii)	10%
Plant and Materials for payment when shipped .	14.5(b)(i)	N/A
Plant and Materials for payment when delivered to the Site	14.5(c)(i)	N/A
Minimum Amount of Interim Payment Certificates	14.6.2	5 % of the Accepted Contract Amount.
Period of payment of Advance Payment to the Contractor	14.7(a)	Within 56 days after receipt of certified advance payment application
Period for the Employer to make interim payments to the Contractor under Sub-Clause 14.6 (interim Payment)	14.7b(i)	Within 56 days after receipt of certified interim payments application
Period for the Employer to make interim payments to the Contractor under Sub-Clause 14.13 (Final Payment)	14.7b(ii)	Within 56 days after receipt of certified interim payments application
Period for the Employer to make final payment to the Contractor	14.7(c)	Within 56 days after receipt of certified final payment application

Conditions	Sub-Clause	Data
financing charges for delayed payment (percentage points above the average bank short-term lending rate as referred to under sub-paragraph (a))	14.8	1 %
Number of additional paper copies of draft Final Statement	14.11.1(b)	<i>Five copies (5)</i>
Forces of nature, the risks of which are allocated to the Contractor	17.2(d)	Weather, seismic activities and Covid 19
Permitted deductible limits:	19.1	<p>insurance required for the Works: <u>Contractors All Risks Insurance for construction</u> – 5%</p> <p>insurance required for Goods: N/A</p> <p>insurance required for liability for breach of professional duty: <u>Errors and omissions insurance</u> – 5%</p> <p>insurance required against liability for fitness for purpose (if any is required): <u>Contractor General Liability Insurance</u> – 5%</p> <p>insurance required for injury to persons and damage to property: <u>General liability insurance</u> – 5%</p> <p>insurance required for injury to employees: <u>Workers' Compensation Insurance</u> – 5%</p> <p>other insurances required by Laws and by <u>local practice</u>:</p> <ul style="list-style-type: none"> <li>• Work Injury Benefit Act (WIBA) Insurance</li> <li>• Motor Vehicle Insurance</li> <li>• Employers Liability (Common Law) Insurance</li> </ul>
Additional amount to be insured (as a percentage of the replacement value, if less or more than 15%)	19.2.1(b)	15_%
List of Exceptional Risks which shall not be excluded from the insurance cover for the Works	19.2.1(iv)	None
Extent of insurance required for Goods	19.2.2	Full replacement value

Conditions	Sub-Clause	Data
Amount of insurance required for Goods		Full replacement value
amount of insurance required for liability for breach of professional duty	19.2.3(a)	5%
Insurance required against liability for fitness for purpose	19.2.3(b)	Yes
Period of insurance required for liability for breach of professional duty	19.2.3	Contract period for parts designed by Contractor
Amount of insurance required for injury to persons and damage to property	19.2.4	As per WIBA (Work Injury Benefits Act) and Contractor's All Risk insurance. [WIBA calculated on the basis of ninety six months earnings subject to the minimum and maximum amounts]
Other insurances required by Laws and by local practice (give details)	19.2.6	The Contractor shall ensure that all the insurance requirements below are covered in his insurance cover <ul style="list-style-type: none"> <li>• Work Injury Benefit Act (WIBA) Insurance</li> <li>• Motor Vehicle Insurance</li> <li>• Employers Liability (Common Law) Insurance</li> <li>• Contractors All Risk</li> </ul>
Time for appointment of DAAB member (s)	21.1	42 days after signature by both parties of the Contract Agreement
The DAAB shall be comprised	21.1	One sole Member
List of proposed members of DAAB	21.1	Proposed by Employer <i>[Attach CVs to the bidding document and the Contract]</i> 1. Eng. Latoya Ouna (member of Chartered Arbitrators member ID: 6076713)  Proposed by Contractor <i>[Attach CVs to the Contract]</i> 1. _____
Appointment (if not agreed) to be made by	21.2	<u>FIDIC</u>

Rules of arbitration	21.6(a)	Sub-Clause 21.6(a) of PART B – Special Provisions <i>shall</i> apply.
	21.6 (b)	Sub-Clause 21.6(b) of PART B – Special Provisions “ <b><i>shall</i></b> ”apply.
Place of arbitration	21.6(a)	Neutral place to be finalized after contract award

## Part B - Special Provisions

<b>Sub-Clause 1.1.10</b> <b>Contract</b>	“the Contractor’s Proposal” is deleted.
<b>Sub-Clause 1.1.49</b> <b>Laws</b>	The Sub-Clause is replaced with:  “ <b>Laws</b> ” means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.”
<b>Sub-Clause 1.1.74</b> <b>Site</b>	The Sub-Clause is replaced with:  “ <b>Site</b> ” means the places where the Permanent Works are to be executed, including storage and working area, and to which Plant and Materials are to be delivered, and any other places specified in the Contract as forming part of the Site.”
<b>Sub-Clause 1.1.77</b> <b>Statement</b>	On the second line after “Payment Certificate under...”, add “Sub-Clause 14.2.1 [Advance Payment Guarantee] (if applicable),”.
<b>Sub-Clause 1.1.81</b> <b>Tender</b>	“the Contractor’s Proposal” is deleted.
<b>Sub-Clause 1.1.89 to 1.1.92 are added after Sub-Clause 1.1.88</b>	
<b>Sub-Clause 1.1.89 Bank</b>	“ <b>Bank</b> ” means the financing institution (if any) named in the Contract Data.
<b>Sub-Clause 1.1.90</b> <b>Borrower</b>	“ <b>Borrower</b> ” means the person (if any) named as the borrower in the Contract Data.
<b>Sub-Clause 1.1.91</b> <b>ES</b>	“ <b>ES</b> ” means Environmental and Social (including Sexual Exploitation and Abuse (SEA), and Sexual Harassment (SH)).
<b>Sub-Clause 1.1.92</b> <b>Sexual Exploitation and Abuse (SEA), and Sexual Harassment (SH)</b>	<p>“<b>Sexual Exploitation and Abuse</b>” “(SEA)” means the following:</p> <p><b>Sexual Exploitation</b> is defined as any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another;</p>

**Sexual Abuse** is defined as the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions; and

**“Sexual Harassment” “(SH)”** is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by the Contractor’s Personnel with other Contractor’s or Employer’s Personnel

**“SEA/SH Prevention and Response Obligations”** means the Contractor’s obligations in regards to the prevention of and response to SEA/SH as set forth in Sub-Clauses 4.1, 4.20, 4.24, 5.1, 6.9, 6.27, and 6.28

**Sub-Clause 1.2**  
**Interpretation**

Sub-paragraph (a) is replaced with the following:

(a) “Words indicating one gender include all genders;

“he/she” is replaced with: “it”;

“him/her” is replaced with “it”;

“his” and “his/her” are replaced with: “its”;

“himself/herself” are replaced with: “itself”.

Further, “and” is deleted from the end of sub-paragraph (i) and added at the end of sub-paragraph (j).

sub-paragraph (k) is added:

(k) “The word “tender” is synonymous with “bid” or “proposal”, the word tenderer with “bidder” or “proposer” and the words “tender documents” with “request for bids documents” or “request for proposal documents”, as applicable.”

**Sub-Clause 1.5**  
**Priority of Documents**

The following documents are added in the list of Priority Documents after (e):

“(f) the Particular Conditions Part C- Fraud and Corruption;

(g) the Particular Conditions Part D- Environmental and Social (ES) Metrics for Progress Reports;”

(h) Particular Conditions- Part E- Sexual Exploitation and Abuse (SEA) and/or Sexual Harassment Performance Declaration for Subcontractors;”

and the list renumbered accordingly.

**Sub-Clause 1.6**  
**Contract Agreement**

The last paragraph is replaced with:

“If the Contractor comprises a JV, *the authorised representative of the JV shall sign* the Contract Agreement in accordance with sub –clauses 1.14 (Joint and Several Liability).”

**Sub-Clause 1.12**  
**Confidentiality**

The following is added at the end of the second paragraph:  
“The Contractor shall be permitted to disclose information required to establish its qualifications to compete for other projects.”

“or” at the end of (b) is deleted.

“or” at the end of (c) is added.

The following is then added as (d): “is being provided to the Bank.”

**Sub-Clause 1.17**  
**Inspections & Audit by the Bank**

The following Sub-Clause is added after Sub-Clause 1.16:

“Pursuant to paragraph 2.2 e. of Particular Conditions - Part C- Fraud and Corruption, the Contractor shall permit and shall cause its agents (where declared or not), subcontractors, subconsultants, service providers, suppliers, and personnel, to permit, the Bank and/or persons appointed by the Bank to inspect the site and/or the accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have such accounts, records and other documents audited by auditors appointed by the Bank. The Contractor’s and its Subcontractors’ and subconsultants’ attention is drawn to Sub-Clause 15.8 (Fraud and Corruption) which provides, inter alia, that acts intended to materially impede the exercise of the Bank’s inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Bank’s prevailing sanctions procedures).”

**Sub-Clause 2.4**  
**Employer’s Financial Arrangements**

The first paragraph is replaced with:

“The Employer shall submit, before the Commencement Date, reasonable evidence that financial arrangements have been made for financing the Employer’s obligations under the Contract.”

The following sub-paragraph is added at the end of Sub-Clause 2.4:

“In addition, if the Bank has notified to the Borrower that the Bank has suspended disbursements under its loan, which finances in whole or in part the execution of the Works, the Employer shall give notice of such suspension to the Contractor with detailed particulars,, including the date of such

notification, with a copy to the Engineer, within 7 days of the Borrower having received the suspension notification from the Bank. If alternative funds will be available in appropriate currencies to the Employer to continue making payments to the Contractor beyond a date 60 days after the date of Bank notification of the suspension, the Employer shall provide reasonable evidence in its notice of the extent to which such funds will be available.”

#### **Sub-Clause 2.6**

#### **Employer-Supplied Materials and Employer’s Equipment**

*[If Employer- Supplied Materials are listed in the Works’ Requirements for the Contractor’s use in the execution of Works, the following provisions may be added]:*

The following is added after the last paragraph of Sub-Clause 2.6:

“The Employer shall supply to the Contractor the Employer-Supplied Materials listed in the Specification, at the time(s) stated in the Specification (if not stated, within the times that shall be required to enable the Contractor to proceed with execution of the Works in accordance with the Programme).

When made available by the Employer, the Contractor shall visually inspect the Employer-Supplied Materials and shall promptly give a Notice to the Engineer of any shortage, defect or default in them. Thereafter, the Contractor shall rectify such shortage, defect or default to the extent instructed by the Engineer. Such instruction shall be deemed to have been given under Sub-Clause 13.3.1 *[Variation by Instruction]*.

After this visual inspection, the Employer-Supplied Materials shall come under the care, custody and control of the Contractor. The Contractor’s obligations of inspection, care, custody, and control shall not relieve the Employer of liability of any shortage, defect or default not apparent from a visual inspection.”

*[If Employer’s Equipment are listed in the Specification for the Contractor’s use in the execution of Works, the following provisions may be added]:*

The following is added after the last paragraph of Sub-Clause 2.6:

“The Employer shall make the Employer’s Equipment listed in the Specification available to the Contractor at the time(s) stated in the Specification (if not stated, within the times that shall be required to enable the Contractor to proceed with execution of the Works in accordance with the Programme).



Unless expressly stated otherwise in the Specification, the Employer's Equipment shall be provided for the exclusive use of the Contractor.

When made available by the Employer, the Contractor shall visually inspect the Employer's Equipment and shall promptly give a Notice to the Engineer of any shortage, defect or default in them. Thereafter, the Contractor shall rectify such shortage, defect or default to the extent instructed by the Engineer. Such instruction shall be deemed to have been given under Sub-Clause 13.3.1 [*Variation by Instruction*].

The Contractor shall be responsible for the Employer's Equipment while it is under the Contractor's control and/or any of the Contractor's Personnel is operating it, driving it, directing it, using it, or in control of it.

The Contractor shall not remove from the Site any items of the Employer's Equipment without the consent of the Employer. However, consent shall not be required for vehicles transporting Goods or Contractor's personnel to or from the Site."

#### **Sub-Clause 2.7**

##### **SEA/SH Conference**

The following new Sub-Clause is added

"The Employer shall organize and run a SEA/SH orientation conference as soon as possible after the constitution of the DAAB and prior to the commencement of any physical work. The SEA/SH orientation conference shall be attended by the Contractor, its Subcontractors, the Engineer, the DAAB members and all other relevant persons. The objective of the SEA/SH orientation conference shall be to ensure a common understanding of all SEA contractual requirements and remedies, including those available under Sub-Clause 21.9 [*SEA/SH Referrals*], Sub-Clause 21.10 [*Dissatisfaction with DAAB's decision of SEA/SH Referrals*] and Sub-Clause 21.11 [*Bank's disqualification of the Contractor and its Subcontractor/s*].

#### **Sub-Clause 3.1**

##### **The Engineer**

The following is added at the end of the first sub-paragraph:

"The Engineer's staff shall include suitably qualified engineers and other professionals who are competent to carry out these duties. "

#### **Sub-Clause 3.2**

##### **Engineer's Duties and Authority**

The Engineer shall obtain the consent in writing of the Employer before taking action under the following Sub-Clauses of these Conditions:

- (a) Sub-Clause 13.1: Right to vary - instructing a variation, except;
  - (i) in an emergency situation as determined by the Engineer; or
  - (ii) (if such a Variation would increase the Accepted Contract Amount by less than the percentage specified in the Contract Data.
- (b) Sub-Clause 13.2 (Value Engineering): stating consent or otherwise to a value engineering proposal submitted by the Contractor in accordance with Sub-Clause 13.2.

Notwithstanding the obligation, as set out above, to obtain consent in writing, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, it may, without relieving the Contractor of any of his duties and responsibility under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of consent of the Employer, with any such instruction of the Engineer. The Engineer shall determine an addition to the Contract Price, in respect of such instruction, and EOT if any, in accordance with Clause 13 and shall notify the Contractor accordingly, with a copy to the Employer.

**Sub-Clause 3.3**

The following is added at the end of Sub-Clause 3.3:

**Engineer's Representative**

"The Engineer shall obtain the consent of the Employer before appointing or replacing an Engineer's Representative."

**Sub-Clause 3.4**

The following is added at the end of the second paragraph:

**Delegation by the Engineer**

"If any assistants are not fluent in this language, the Engineer shall make competent interpreters available during all working hours, in a number sufficient for those assistants to properly perform their assigned duties and/or exercise their delegated authority."

**Sub-Clause 3.6**

In the first paragraph, "42 days" is replaced with: "21 days";

**Replacement of the Engineer**

In the third para, "shall" is replaced with: "should".

**Sub-Clause 4.1**

The following is inserted after the paragraph "The Contractor shall provide the Plant (and spare parts, if any) ...":

**Contractor's General Obligations**

“All equipment, material, and services to be incorporated in or required for the Works shall have their origin in any eligible source country as defined by the Bank.”

The following is inserted after the paragraph “The Contractor shall, whenever required by the Engineer...”:

“The Contractor shall not carry out mobilization to Site (e.g. limited clearance for haul roads, site accesses and work site establishment, geotechnical investigations or investigations to select ancillary features such as quarries and borrow pits) unless the Engineer gives a Notice of No-objection to the Contractor, a Notice that shall not be unreasonably delayed, to the measures the Contractor proposes to manage the environmental and social risks and impacts, which at a minimum shall include applying the Management Strategies and Implementation Plans (MSIPs) and Code of Conduct for Contractor’s Personnel submitted as part of the Bid and agreed as part of the Contract.

The Contractor shall submit, to the Engineer for Review any additional MSIPs as are necessary to manage the ES risks and impacts of ongoing Works (e.g. excavation, earth works, bridge and structure works, stream and road diversions, quarrying or extraction of materials, concrete batching and asphalt manufacture). These MSIPs collectively comprise the Contractor’s Environmental and Social Management Plan (C-ESMP). The Contractor shall review the C-ESMP, periodically (but not less than every six (6) months), and update it as required to ensure that it contains measures appropriate to the Works. The updated C-ESMP shall be submitted to the Engineer for Review.

The C-ESMP shall be part of the Contractor’s Documents. The procedures for Review of the C-ESMP and its updates shall be as described in Sub-Clause 4.4.1 [*Preparation and Review*].”

#### **Sub-Clause 4.2**

#### **Performance Security and ES Performance Security**

The first paragraph is replaced with:

“The Contractor shall obtain (at its cost) a Performance Security for proper performance and, if applicable, an Environmental and Social (ES) Performance Security for compliance with the Contractor’s ES obligations, in the amounts stated in the Contract Data and denominated in the currency(ies) of the Contract or in a freely convertible currency acceptable to the Employer. If amounts are not stated in the Contract Data, this Sub-Clause shall not apply.”

In the following Sub-Clauses of the General Conditions, the term “Performance Security” is replaced with: “Performance Security and, if applicable, an Environmental and Social (ES) Performance Security”:

2.1- Right of Access to the Site;

14.2- Advance Payment;

14.6- Issue of IPC;

14.12- Discharge;

14.13- Issue of FPC;

14.14 Cessation of Employer’s Liability;

15.2- Termination for Contractor’s Default;

15.5- Termination for Employer’s Convenience.

**Sub-Clause 4.2.1**

**Contractor’s  
obligations**

The first paragraph is replaced with:

“The Contractor shall deliver the Performance Security and, if applicable, an ES Performance Security to the Employer within 28 days after receiving the Letter of Acceptance and shall send a copy to the Engineer. The Performance Security shall be issued by a reputable bank or financial institution selected by the Contractor and shall be in the form annexed to the Particular Conditions, as stipulated by the Employer in the Contract Data, or in another form approved by the Employer. The ES Performance Security shall be issued by a reputable bank selected by the Contractor and shall be in the form annexed to the Particular Conditions, as stipulated by the Employer in the Contract Data, or in another form approved by the Employer.”

Thereafter, throughout Sub-Clause 4.2 “Performance Security” is replaced with: “Performance Security and, if applicable, ES Performance Security.”

**Sub-Clause 4.2.2**

**Claims under the  
Performance Security**

The first paragraph is replaced in its entirety with: “The Employer shall not make a claim under the Performance Security, except for amounts for which the Employer is entitled under the Contract.”

**Sub-Clause 4.2.3**

**Return of Performance  
Security**

In sub-paragraph (a) “21 days” is replaced with: “28 days”.

**Sub-Clause 4.3**

The following is added at the end of the last paragraph: “If any of these persons is not fluent in this language, the Contractor

**Contractor's  
Representative**

shall make competent interpreters available during all working hours in a number deemed sufficient by the Engineer.”

Reinstate Sub clause 4.6 on Cooperation

**Sub-Clause 4.7  
Setting out**

In the second bullet-point of sub-paragraph (b) of Sub-Clause 4.7.3:

Before “if the items of reference”, the following is added: “when examining the items of reference within the period stated in sub-paragraph (a) of Sub-Clause 4.7.2,”

On the second and third lines, the following is deleted: “and the contractor’s Notice is given after the period stated in sub-paragraph (a) of Sub-Clause 4.7.2”.

**Sub-Clause 4.8  
Health and Safety  
Obligations**

The following are included after deleting “and” at the end of (f) and replacing “.” with “;” at the end of (g):

“

- (h) provide health and safety training of Contractor’s Personnel as appropriate and maintain training records;
- (i) actively engage the Contractor’s Personnel in promoting understanding, and methods for, implementation of health and safety requirements, as well as in providing information to Contractor’s Personnel, and provision of personal protective equipment without expense to the Contractor’s Personnel;
- (j) put in place workplace processes for Contractor’s Personnel to report work situations that they believe are not safe or healthy, and to remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to their life or health;
- (k) Contractor’s Personnel who remove themselves from such work situations shall not be required to return to work until necessary remedial action to correct the situation has been taken. Contractor’s Personnel shall not be retaliated against or otherwise subject to reprisal or negative action for such reporting or removal;
- (l) subject to Sub-Clause 4.6, collaborate with the entities and Personnel under paragraph (a) , (b) and (c) of Sub-

Clause 4.6, in applying the health and safety requirements. This is without prejudice to the responsibility of the relevant entities for the health and safety of their own personnel; and

- (m) establish and implement a system for regular (not less than six-monthly) review of health and safety performance and the working environment.”

The second paragraph is replaced with the following:

“Subject to Sub-Clause 4.1, the Contractor shall submit to the Engineer for Review a health and safety manual which has been specifically prepared for the Works, the Site and other places (if any) where the Contractor intends to execute the Works. The procedures for Review of the health and safety manual and its updates shall be as described in Sub-Clause 4.4.1 [*Preparation and Review*].

The health and safety manual shall be in addition to any other similar document required under applicable health and safety regulations and Laws.

The health and safety manual shall set out all the health and safety requirements under the Contract,

- (1) which shall include at a minimum:
  - (i) the procedures to establish and maintain a safe working environment without risk to health at all workplaces, machinery, equipment and processes under the control of the Contractor, including control measures for chemical, physical and biological substances and agents;
  - (ii) details of the training to be provided, records to be kept;
  - (iii) the procedures for prevention, preparedness and response activities to be implemented in the case of an emergency event (i.e. an unanticipated incident, arising from both natural and man-made hazards, typically in the form of fire, explosions, leaks or spills, which may occur for a variety of different reasons including failure to implement operating procedures that are designed to prevent their occurrence, extreme weather or lack of early warning);
  - (iv) the measures to be taken to avoid or minimize the potential for community exposure to

water-borne, water-based, water-related, and vector-borne diseases,

- (v) the measures to be implemented to avoid or minimize the spread of communicable diseases (including transfer of Sexually Transmitted Diseases or Infections (STDs), such as HIV virus) and non-communicable diseases associated with the execution of the Works, taking into consideration differentiated exposure to and higher sensitivity of vulnerable groups. This includes taking measures to avoid or minimize the transmission of communicable diseases that may be associated with the influx of temporary or permanent Contract-related labour;
- (vi) the policies and procedures on the management and quality of accommodation and welfare facilities if such accommodation and welfare facilities are provided by the Contractor in accordance with Sub-Clause 6.6; and

- (2) any other requirements stated in the Specification.

The paragraph starting with: “In addition to the reporting requirement of...” is deleted and replaced with the addition to GC Sub-Clause 4.20 in Sub-Clause 4.20 of the Special Provisions.

**Sub-Clause 4.18**  
**Protection of the**  
**Environment**

Sub-Clause 4.18 Protection of the Environment is replaced with:

“The Contractor shall take all necessary measures to:

- (a) protect the environment (both on and off the Site); and
- (b) limit damage and nuisance to people and property resulting from pollution, noise and other results of the Contractor’s operations and/ or activities.

The Contractor shall ensure that emissions, surface discharges, effluent and any other pollutants from the Contractor’s activities shall exceed neither the values indicated in the Specification, nor those prescribed by applicable Laws.

In the event of damage to the environment, property and/or nuisance to people, on or off Site as a result of the Contractor’s operations, the Contractor shall agree with the Engineer the appropriate actions and time scale to remedy, as practicable,

the damaged environment to its former condition. The Contractor shall implement such remedies at its cost to the satisfaction of the Engineer.”

**Sub-Clause 4.20**  
**Progress Reports**

Replace “4.20 (g) with: “the Environmental and Social (ES) metrics set out in Particular Conditions - Part D”

The following is added at the end of the Sub-Clause:

“In addition to the reporting requirement of this sub-paragraph (g) of Sub-Clause 4.20 [*Progress Reports*] and subject to the specific requirement on handling allegations of SEA and/or SH in accordance with Sub-Clause 6.27, the Contractor shall inform the Engineer immediately of any allegation, incident or accident, which has or is likely to have a significant adverse effect on the environment, the affected communities, the public, Employer’s Personnel or Contractor’s Personnel. This includes, but is not limited to, any incident or accident causing fatality or serious injury; significant adverse effects or damage to private property; or any allegation of SEA and/or SH. In case of SEA and/or SH, while maintaining confidentiality as appropriate, the type of allegation (sexual exploitation, sexual abuse or sexual harassment), gender and age of the person who experienced the alleged incident should be included in the information.

The Contractor, upon becoming aware of the allegation, incident or accident, shall also immediately inform the Engineer of any such incident or accident on the Subcontractors’ or suppliers’ premises relating to the Works which has or is likely to have a significant adverse effect on the environment, the affected communities, the public, Employer’s Personnel or Contractor’s, its Subcontractors’ and suppliers’ personnel. The notification shall provide sufficient detail regarding such incidents or accidents. The Contractor shall provide full details of such incidents or accidents to the Engineer within the timeframe agreed with the Engineer.

The Contractor shall require its Subcontractors and suppliers (other than Subcontractors) to immediately notify the Contractor of any incidents or accidents referred to in this Subclause.”

**Sub-Clause 4.21**  
**Security of the Site**

Sub-Clause 4.21 Security of the Site is replaced with:

**“Sub-Clause 4.21 Security of the Site**

The Contractor shall be responsible for the security of the Site, and:



- (a) for keeping unauthorised persons off the Site;
- (b) authorised persons shall be limited to the Contractor's Personnel, the Employer's Personnel, and to any other personnel identified as authorised personnel (including the Employer's other contractors on the Site), by a Notice from the Employer or the Engineer to the Contractor.

Subject to Sub-Clause 4.1, the Contractor shall submit for the Engineer's No-objection a security management plan that sets out the security arrangements for the Site.

The Contractor shall (i) conduct appropriate background checks on any personnel retained to provide security; (ii) train the security personnel adequately (or determine that they are properly trained) in the use of force (and where applicable, firearms), and appropriate conduct towards Contractor's Personnel, Employer's Personnel and affected communities; and (iii) require the security personnel to act within the applicable Laws and any requirements set out in the Specification.

The Contractor shall not permit any use of force by security personnel in providing security except when used for preventive and defensive purposes in proportion to the nature and extent of the threat.

In making security arrangements, the Contractor shall also comply with any additional requirements stated in the Specification."

**Sub-Clause 4.22**  
**Contractor's Operations**  
**on Site**

On the third line of the second paragraph before "4.17", "Sub-Clause" is added.

**Sub-Clause 4.24**  
**Code of Conduct**

The Contractor shall have a Code of Conduct for the Contractor's Personnel.

The Contractor shall take all necessary measures to ensure that each Contractor's Personnel is made aware of the Code of Conduct including specific behaviors that are prohibited, and understands the consequences of engaging in such prohibited behaviors.

These measures include providing instructions and documentation that can be understood by the Contractor's Personnel and seeking to obtain that person's signature acknowledging receipt of such instructions and/or documentation, as appropriate.

The Contractor shall also ensure that the Code of Conduct is visibly displayed in multiple locations on the Site and any other place where the Works will be carried out, as well as in areas outside the Site accessible to the local community and project affected people. The posted Code of Conduct shall be provided in languages comprehensible to Contractor's Personnel, Employer's Personnel and the local community.

The Contractor's Management Strategy and Implementation Plans shall include appropriate processes for the Contractor to verify compliance with these obligations.

**Sub-Clause 5.1**  
**Subcontractors**

The following is added at the beginning of the second paragraph.

“The Contractor shall require that its Subcontractors execute the Works in accordance with the Contract, including complying with the SEA/SH Prevention and Response Obligations.

All subcontracts relating to the Works shall include a provision stipulating that the Subcontractor accepts that the Bank may disqualify the Subcontractor from being awarded a Bank financed contract for a period of two years if the Subcontractor is determined to have failed to comply with its SEA/SH Prevention and Response Obligations.”

The following is added after the first sentence of the fourth paragraph: “The Contractor's submission to the Engineer shall also include such a Subcontractor's declaration in accordance with the Particular Conditions- Part E- Sexual Exploitation and Abuse (SEA) and/or Sexual Harassment Performance Declaration for Subcontractors.”

The following is added at the end of the last paragraph of Sub-Clause 5.1:

“All subcontracts relating to the Works shall include provisions which entitle the Employer to require the subcontract to be assigned to the Employer under sub-paragraph (a) of Sub-Clause 15.2.3 [*After Termination*].

Where practicable, the Contractor shall give fair and reasonable opportunity for contractors from the Country to be appointed as Subcontractors.”

**Sub-Clause 5.2.2**  
**Objection to Nomination**

In sub-paragraph (a), on the first line before “Subcontractor”, “nominated” is added.

In sub-paragraph (c):

“and” is deleted from the end of (i);

“.” at the end of (ii) is replaced with: “, and”.

The following is then added as (iii):

“(iii) be paid only if and when the Contractor has received from the Employer payments for sums due under the Subcontract referred to under Sub-Clause 5.2.3 [ *Payment to nominated Subcontractors*].”

**Sub-Clause 6.1**

**Engagement of Staff and Labour**

The following paragraph is added at the end of the Sub-Clause:

“The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labour with appropriate qualifications and experience from sources within the Country.”

**Sub-Clause 6.2**

**Rates of Wages and Conditions of Labour**

The following paragraph is added at the end of the Sub-Clause:

“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, allowances and any benefits as are subject to tax under the Laws of the Country 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.”

**Sub-Clause 6.5 Working Hours**

The following is inserted at the end of the Sub-Clause:

The Contractor shall provide the Contractor’s Personnel annual holiday and sick, maternity and family leave, as required by applicable Laws or as stated in the Specification.”

**Sub-Clause 6.7**

**Health and Safety of Personnel**

In the second paragraph, “The Contractor” is replaced with:

“Except as otherwise stated in the Specification, the Contractor”

**Sub-Clause 6.9**

**Contractor’s Personnel**

The Sub-Clause is replaced with:

“The Contractor’s Personnel (including Key Personnel, if any) shall be appropriately qualified, skilled, experienced and competent in their respective trades or occupations.

The Engineer may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor’s Representative and Key Personnel (if any), who:

- (a) persists in any misconduct or lack of care;
- (b) carries out duties incompetently or negligently;

- (c) fails to comply with any provision of the Contract;
- (d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment;
- (e) based on reasonable evidence, is determined to have engaged in Fraud and Corruption during the execution of the Works;
- (f) has been recruited from the Employer's Personnel in breach of Sub-Clause 6.3 [Recruitment of Persons];
- (g) undertakes behaviour which breaches the Code of Conduct for Contractor's Personnel (ES).

If appropriate, the Contractor shall then promptly appoint (or cause to be appointed) a suitable replacement with equivalent skills and experience. In the case of replacement of the Contractor's Representative, Sub-Clause 4.3 [*Contractor's Representative*] shall apply. In the case of replacement of Key Personnel (if any), Sub-Clause 6.12 [*Key Personnel*] shall apply.

Subject to the requirements in Sub-Clause 4.3 [*Contractor's Representative*] and 6.12 [*Key Personnel*], and notwithstanding any requirement from the Engineer to remove or cause to remove any person, the Contractor shall take immediate action as appropriate in response to any violation of (a) through (g) above. Such immediate action shall include removing (or causing to be removed) from the Site or other places where the Works are being carried out, any Contractor's Personnel who engages in (a), (b), (c), (d), (e) or (g) above or has been recruited as stated in (f) above."

**Sub-Clause 6.12**

**Key Personnel**

The following is inserted at the end of the last paragraph:

"If any of the Key Personnel are not fluent in this language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Engineer."

**The following Sub-Clauses 6.13 to 6.28 are added after sub-clause 6.12**

**Sub-Clause 6.13**

**Foreign Personnel**

The Contractor may bring into the Country any foreign personnel who are necessary for the execution of the Works to the extent allowed by the applicable Laws. The Contractor shall ensure that these personnel are provided with the required residence visas and work permits. The Employer will, if requested by the Contractor, use its best endeavours 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 be responsible for the return of these personnel to the place where they were recruited or to their domicile. In the event of the death in the Country of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial.

**Sub-Clause 6.14**

**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.

**Sub-Clause 6.15**

**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.

**Sub-Clause 6.16**

**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 the danger to their health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.

**Sub-Clause 6.17**

**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 thereto by Contractor's Personnel.

**Sub-Clause 6.18**

**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.

**Sub-Clause 6.19**

**Festivals and Religious  
Customs**

The Contractor shall respect the Country's recognized festivals, days of rest and religious or other customs.

**Sub-Clause 6.20**

**Funeral Arrangements**

The Contractor shall be responsible, to the extent required by local regulations, for making any funeral arrangements for any of its local employees who may die while engaged upon the Works.

**Sub-Clause 6.21**  
**Forced Labour**

The Contractor, including its Subcontractors, shall not employ or engage forced labour. Forced labour consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsory labour, such as indentured labour, bonded labour or similar labour-contracting arrangements.

No persons shall be employed or engaged who have been subject to trafficking. Trafficking in persons is defined as the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation.

**Sub-Clause 6.22**  
**Child Labour**

The Contractor, including its Subcontractors, shall not employ or engage a child under the age of 14 unless the national law specifies a higher age (the minimum age).

The Contractor, including its Subcontractors, shall not employ or engage a child between the minimum age and the age of 18 in a manner that is likely to be hazardous, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. The Contractor including its Subcontractors, shall only employ or engage children between the minimum age and the age of 18 after an appropriate risk assessment has been conducted by the Contractor with the Engineer's consent. The Contractor shall be subject to regular monitoring by the Engineer that includes monitoring of health, working conditions and hours of work.

Work considered hazardous for children is work that, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety, or morals of children. Such work activities prohibited for children include work:

- (a) with exposure to physical, psychological or sexual abuse;
- (b) underground, underwater, working at heights or in confined spaces;
- (c) with dangerous machinery, equipment or tools, or involving handling or transport of heavy loads;
- (d) in unhealthy environments exposing children to hazardous substances, agents, or processes, or to temperatures, noise or vibration damaging to health; or

- (e) under difficult conditions such as work for long hours, during the night or in confinement on the premises of the employer.

**Sub-Clause 6.23****Employment Records of Workers**

The Contractor shall keep complete and accurate records of the employment of labour at the Site. The records shall include the names, ages, genders, hours worked, and wages paid to all workers. These records shall be summarised on a monthly basis and submitted to the Engineer. These records shall be included in the details to be submitted by the Contractor under Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment].

**Sub-Clause 6.24****Workers' Organisations**

In countries where the relevant labour laws recognise workers' rights to form and to join workers' organisations of their choosing and to bargain collectively without interference, the Contractor shall comply with such laws. In such circumstances, the role of legally established workers' organizations and legitimate workers' representatives will be respected, and they will be provided with information needed for meaningful negotiation in a timely manner. Where the relevant labour laws substantially restrict workers' organisations, the Contractor shall enable alternative means for the Contractor's Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. The Contractor shall not seek to influence or control these alternative means. The Contractor shall not discriminate or retaliate against the Contractor's Personnel who participate, or seek to participate, in such organisations and collective bargaining or alternative mechanisms. Workers' organisations are expected to fairly represent the workers in the workforce.

**Sub-Clause 6.25****Non-Discrimination and Equal Opportunity**

The Contractor shall not make decisions relating to the employment or treatment of Contractor's Personnel on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment of Contractor's Personnel on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to any aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access

to training, job assignment, promotion, termination of employment or retirement, and disciplinary practices.

Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination. The Contractor shall provide protection and assistance as necessary to ensure nondiscrimination and equal opportunity, including for specific groups such as women, people with disabilities, migrant workers and children (of working age in accordance with Sub-Clause 6.22).

#### **Sub-Clause 6.26**

##### **Contractor's Personnel Grievance Mechanism**

The Contractor shall have a grievance mechanism for Contractor's Personnel, and where relevant the workers' organizations stated in Sub-Clause 6.24, to raise workplace concerns (other than those relating to SEA and/or SH, which shall be addressed under Sub-Clause 6.27 below) The grievance mechanism shall be proportionate to the nature, scale, risks and impacts of the Contract. The mechanism shall address concerns promptly, using an understandable and transparent process that provides timely feedback to those concerned in a language they understand, without any retribution, and shall operate in an independent and objective manner.

The Contractor's Personnel shall be informed of the grievance mechanism at the time of engagement for the Contract, and the measures put in place to protect them against any reprisal for its use. Measures will be put in place to make the grievance mechanism easily accessible to all Contractor's Personnel.

The grievance mechanism shall not impede access to other judicial or administrative remedies that might be available, or substitute for grievance mechanisms provided through collective agreements.

The grievance mechanism may utilize existing grievance mechanisms, providing that they are properly designed and implemented, address concerns promptly, and are readily accessible to Contractor's Personnel. Existing grievance mechanisms may be supplemented as needed with Contract-specific arrangements.

#### **Sub-Clause 6.27**

##### **Contractor's-SEA/SH Response Mechanism; Receipt of SEA/SH allegations; and**

###### **6.27.1 The Contractor's SEA/SH Response Mechanism**

The Contractor shall put in place an effective mechanism for receiving and promptly addressing allegations of SEA and/or SH from the Contractor's or Employer's Personnel or any other person including third parties ("SEA/SH Response Mechanism").



**Contractor's and non-compliance**

The Contractor's Personnel shall be informed of the SEA/SH Response Mechanism at the time of engagement for the Contract and informed of the measures put in place to protect them against any reprisal for its use. For all other persons (including the Employer's Personnel and affected communities), information about this SEA/SH Response Mechanism, including how to submit an allegation or concern and also measures protecting against reprisal, shall be displayed, in languages comprehensible to the Contractor's Personnel, Employer's Personnel, and the affected communities, in locations easily accessible to them.

The SEA/SH Response Mechanism shall permit allegations or concerns to be submitted in writing, in person or by phone, with appropriate provision for confidential treatment, and shall permit the submission of anonymous allegations. The Contractor shall have in place a dedicated person with appropriate skills, experience and training to receive and review such allegations or concerns.

As part of the SEA/SH Response Mechanism, the Contractor shall maintain and implement ethical and safe processes for investigating and addressing allegations of SEA and/or SH. These measures should identify appropriate responses to SEA and/or SH allegations, including the actions set forth in Sub-Clause 6.9, and other appropriate disciplinary measures in the case of the Contractor's Personnel.

**6.27.2 Receipt of SEA/SH allegations**

Any allegation of SEA and/or SH received by the Contractor (including through its Subcontractor/s), the Employer or the Engineer shall be documented and promptly submitted to the other two parties. While maintaining confidentiality of the person who experienced the alleged incident, as appropriate, the documentation and submission should include the type of alleged incident (sexual exploitation, sexual abuse or sexual harassment), gender and age of the person who experienced the alleged incident.

Upon receipt of any SEA and/or SH allegation as described above, the Contractor shall immediately apply its the SEA/SH Response Mechanism, as described in Sub-Clause 6.27.1, to review and address the allegation or concern.

The Employer shall promptly refer the allegation to the DAAB pursuant to Sub-Clause 21.9 [*“SEA/SH Referral”*].

**6.27.3 Contractor’s non-compliance with SEA/SH contractual obligations**

If the Engineer identifies that the Contractor, including its Subcontractor/s, has not complied with the SEA/SH Prevention and Response Obligations under the Contract, the Engineer shall give a Notice to Correct to the Contractor in accordance with Sub-Clause 15.1, copied to the Employer and the DAAB. If the Contractor fails to comply with the Notice to Correct, the Engineer shall immediately notify the Employer and the Contractor. Upon receipt of such a notification, the Employer shall refer the non-compliance to the DAAB for its review and decision pursuant to Sub-Clause 21.9 [*“SEA/SH Referral”*].

If a DAAB report, prepared in accordance with Rule 3.10 of the DAAB Procedural Rules, identifies potential non-compliance of the Contractor, including its Subcontractor/s, with the SEA/SH Prevention and Response Obligations, the Engineer shall review the potential non-compliance and determine whether a Notice to Correct shall be issued to the Contractor. If the Engineer determines that a Notice to Correct shall not be given to the Contractor, the Engineer shall inform the Employer copying the DAAB, providing the basis for its determination. If the Engineer, however, determines that a Notice to Correct shall be given to the Contractor, the Engineer shall give a Notice to Correct to the Contractor in accordance with Sub-Clause 15.1, copied to the Employer and the DAAB. If the Contractor fails to comply with the Notice to Correct, the Engineer shall immediately notify the Employer and the Contractor. Upon receipt of such a notification, the Employer shall refer the non-compliance to the DAAB for its review and decision pursuant to Sub-Clause 21.9 [*“SEA/SH Referral”*].

**Sub-Clause 6.28**

**Training of Contractor’s Personnel**

The Contractor shall provide appropriate training to relevant Contractor’s Personnel on ES aspects of the Contract, including appropriate sensitization on prohibition of SEA and SH, and health and safety training.

As stated in the Specification or as instructed by the Engineer, the Contractor shall also allow appropriate opportunities for the relevant Contractor’s Personnel to be trained on ES aspects of the Contract by the Employer’s Personnel.

The Contractor shall provide training on SEA and SH, including its prevention, to any of its personnel who has a role to supervise other Contractor's Personnel.

**Sub-Clause 7.7**

The following is added before the first paragraph:

**Ownership of Plant and Materials**

“Except as otherwise provided in the Contract,”

**Sub-Clause 8.1**

The Sub- Clause is replaced in its entirety with the following:

**Commencement of Work**

“The Engineer shall give a Notice to the Contractor stating the Commencement Date, not less than 14 days before the Commencement Date.

The Notice shall be issued promptly after the Engineer determines the fulfilment of the following conditions:

- (a) signature of the Contract Agreement by both Parties, and if required, approval of the Contract by relevant authorities of the Country;
- (b) delivery to the Contractor of reasonable evidence of the Employer's financial arrangements (under Sub-Clause 2.4 [Employer's Financial Arrangements]);
- (c) except if otherwise specified in the Contract Data, effective access to and possession of the Site given to the Contractor together with such permission(s) under (a) of Sub-Clause 1.13 [Compliance with Laws] as required for the commencement of the Works;
- (d) receipt by the Contractor of the Advance Payment under Sub-Clause 14.2 [Advance Payment] provided that the corresponding bank guarantee has been delivered by the Contractor;
- (e) constitution of the DAAB in accordance with Sub-Clause 21.1 and Sub-Clause 21.2 as applicable.

Subject to Sub-Clause 4.1 on the Management Strategies and Implementation Plans and the C-ESMP and Sub-Clause 4.8 on the health and safety manual, the Contractor shall commence the execution of the Works as soon as is reasonably practicable after the Commencement Date, and shall then proceed with the Works with due expedition and without delay.”

<b>Sub-Clause 11.7</b> <b>Right of Access after Taking Over</b>	<p>In the second paragraph, “Whenever the Contractor intends to access any part of the Works during the relevant DNP:” is replaced with:</p> <p>“Whenever, until the date 28 days after issue of the Performance Certificate, the Contractor intends to access any part of the Works:”</p>
<b>Sub-Clause 13.3.1</b> <b>Variation by Instruction</b>	<p>Subparagraph 13.3.1 (a) is replaced with: “a description of the varied work performed or to be performed, including details of the resources and methods adopted or to be adopted by the Contractor, and sufficient ES information to enable an evaluation of ES risks and impacts;”</p>
<b>Sub-Clause 13.4</b> <b>Provisional Sums</b>	<p>The following is inserted as the penultimate paragraph:</p> <p>“The Provisional Sum shall be used to cover the Employer's share of the DAAB members’ fees and expenses, in accordance with Clause 21. No prior instruction of the Engineer shall be required with respect to the work of the DAAB. The Contractor shall submit the DAAB members’ invoices and satisfactory evidence of having paid 100% of such invoices as part of the substantiation of those Statements submitted under Sub-Clause 14.3.”</p>
<b>Sub-Clause 13.6</b> <b>Adjustments for Changes in Laws</b>	<p>The following paragraph is added at the end of the Sub-Clause:</p> <p>“Notwithstanding the foregoing, the Contractor shall not be entitled to an extension of time if the relevant delay has already been taken into account in the determination of a previous extension of time and such Cost shall not be separately paid if the same shall already have been taken into account in the indexing of any inputs to the Table of Adjustment Data in accordance with the provisions of Sub-Clause 13.7 [Adjustments for Changes in Cost].”</p>
<b>Sub-Clause 14.1</b> <b>The Contract Price</b>	<p>The following is added at the end of the Sub-Clause:</p> <p>“Notwithstanding the provisions of subparagraph (b), Contractor's Equipment, including essential spare parts therefor, imported by the Contractor for the sole purpose of executing the Contract shall be exempt from the payment of import duties and taxes upon importation.”</p>
<b>Sub-Clause 14.2.1</b> <b>Advance Payment Guarantee</b>	<p>The first paragraph is replaced with:</p> <p>“The Contractor shall obtain (at the Contractor’s cost) an Advance Payment Guarantee in amounts and currencies equal</p>

to the advance payment, and shall submit it to the Employer with a copy to the Engineer. This guarantee shall be issued by reputable bank or financial institution selected by the Contractor and shall be based on the sample form annexed to the Particular Conditions or in another form agreed by the Employer (but such agreement shall not relieve the Contractor from any obligation under this Sub-Clause).”

**Sub-Clause 14.3**

**Application for Interim Payment**

The following is inserted at the end of (vi) after: *[Agreement or Determination]*: “any reimbursement due to the Contractor under the Dispute Avoidance/ Adjudication Agreement. (Appendix General Conditions of Dispute Avoidance/ Adjudication Agreement).”

**Sub-Clause 14.6.2**

**Withholding (amounts in) an IPC**

“and/or” from subparagraph (b) is deleted.

The following is then added as subparagraph (c) and subparagraph (c) of the Sub-Clause is renumbered as (d):

“(c) if the Contractor was, or is, failing to perform any ES obligations or work under the Contract, the value of this work or obligation, as determined by the Engineer, may be withheld until the work or obligation has been performed, and/or the cost of rectification or replacement, as determined by the Engineer, may be withheld until rectification or replacement has been completed. Failure to perform includes, but is not limited to the following:

- (i) failure to comply with any ES obligations or work described in the Works’ Requirements which may include: working outside site boundaries, excessive dust, damage to offsite vegetation, pollution of water courses from oils or sedimentation, contamination of land e.g. from oils, human waste, damage to archaeology or cultural heritage features, air pollution as a result of unauthorized and/or inefficient combustion;
- (ii) failure to regularly review C-ESMP and/or update it in a timely manner to address emerging ES issues, or anticipated risks or impacts;
- (iii) failure to implement the C-ESMP e.g. failure to provide required training or sensitization;
- (iv) failing to have appropriate consents/permits prior to undertaking Works or related activities;

- (v) failure to submit ES report/s (as described in Particular Conditions - Part D), or failure to submit such reports in a timely manner;
- (vi) failure to implement remediation as instructed by the Engineer within the specified timeframe (e.g. remediation addressing non-compliance/s)."

**Sub-Clause 14.7****Payment**

At the end of sub-paragraph (b): "and" is replaced with "or" and the following inserted as (iii):

"(iii) at a time when the Bank's loan or credit (from which part of the payments to the Contractor is being made) is suspended, the amount shown on any statement submitted by the Contractor within 14 days after such statement is submitted, any discrepancy being rectified in the next payment to the Contractor; and"

At the end of sub-paragraph (c): "." is replaced with ";" and the following inserted:

"or, at a time when the Bank's loan or credit (from which part of the payments to the Contractor is being made) is suspended the undisputed amount shown in the Final Statement within 56 days after the date of notification of the suspension in accordance with Sub-Clause 16.2 [Termination by Contractor]."

**Sub-Clause 14.9****Release of Retention Money**

The following is added at the end of Sub-Clause 14.9:

"Unless otherwise stated in the Contract, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment by the Engineer, the Contractor shall be entitled to substitute a guarantee, in the form annexed to the Particular Conditions or in another form approved by the Employer and issued by a reputable bank or financial institution selected by the Contractor, for the second half of the Retention Money. The Contractor shall ensure that the guarantee is in the amounts and currencies of the second half of the Retention Money and is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects, as specified for the Performance Security and, if applicable, an ES Performance Security in Sub-Clause 4.2. On receipt by the Employer of the required guarantee, the Engineer shall certify and the Employer shall pay the second half of the Retention Money. The release of the second half of the Retention Money against a guarantee shall then be in lieu of the release after the latest of the expiry dates of the Defects Notification Periods. The Employer shall return the guarantee to the Contractor

within 21 days after receiving a copy of the Performance Certificate.

If the Performance Security and, if applicable, an ES Performance Security required under Sub-Clause 4.2 is in the form of a demand guarantee, and the amount guaranteed under them when the Taking-Over Certificate is issued is more than half of the Retention Money, then the Retention Money guarantee will not be required. If the amount guaranteed under the Performance Security and, if applicable, an ES Performance Security, when the Taking-Over Certificate is issued is less than half of the Retention Money, the Retention Money guarantee will only be required for the difference between half of the Retention Money and the amount guaranteed under the Performance Security and, if applicable, an ES Performance Security.”

**Sub-Clause 14.12**

**Discharge**

On the seventh line of the first paragraph, “Sub-Clause 21.6 [*Arbitration*]” is replaced with: “Clause 21 [*Disputes and Arbitration*]’.

**Sub-Clause 14.15**

**Currencies of Payment**

Throughout Sub-Clause 14.15, “Contract Data” is replaced with: “Schedule of Payment Currencies”.

**Sub-Clause 15.1**

**Notice to Correct**

“and” is deleted from (b) and

“.” is replaced by: “; and” in (c).

The following is then added as (d)

“(d) specify the time within which the Contractor shall respond to the Notice to Correct.”

In the third para., “shall immediately respond” is replaced with: “shall respond within the time specified in (d)”. Further, in the third para., “to comply with the time specified in the Notice to Correct.” is replaced with: “to comply with the time specified in (c).”

**Sub-Clause 15.2.1**

**Notice**

Sub-paragraph (h) is replaced with: “based on reasonable evidence, has engaged in Fraud and Corruption as defined in paragraph 2.2 of the Particular Conditions - Part C- Fraud and Corruption, in competing for or in executing the Contract.”

**Sub-Clause 15.8**

**Fraud and Corruption**

The following new Sub-Clause is added:

“15.8.1 The Bank requires compliance with the Bank’s Anti-Corruption Guidelines and its prevailing sanctions policies and procedures as set forth in the Bank’s Sanctions

Framework, as set forth in Particular Conditions - Part C-Fraud and Corruption.

15.8.2 The Employer requires the Contractor to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the bidding process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.”

**Sub-Clause 16.1**

**Suspension by Contractor**

The following paragraph is inserted after the first paragraph:

“Notwithstanding the above, if the Bank has suspended disbursements under the loan or credit from which payments to the Contractor are being made, in whole or in part, for the execution of the Works, and no alternative funds are available as provided for in Sub-Clause 2.4 [Employer’s Financial Arrangements], the Contractor may by notice suspend work or reduce the rate of work at any time, but not less than 7 days after the Borrower having received the suspension notification from the Bank.”

**Sub-Clause 16.2.1**

**Notice**

Sub-paragraph (j) is deleted in its entirety.

At the end of sub-paragraph (i): “; or” is replaced with: “.”

sub-paragraph (f) is replaced with:

“(f) the Contractor does not receive a Notice of the Commencement Date under Sub-Clause 8.1 [*Commencement of Works*] within 180 days after receiving the Letter of Acceptance, for reasons not attributable to the Contractor.”

**Sub-Clause 16.2.2**

**Termination**

The following is added at the end of Sub-Clause 16.2.2:

“In the event the Bank suspends the loan or credit from which part or whole of the payments to the Contractor are being made, if the Contractor has not received the sums due to him upon expiration of the 14 days referred to in Sub-Clause 14.7 [Payment] for payments under Interim Payment Certificates, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under Sub-Clause 14.8 [Delayed Payment], take one of the following actions, namely (i) suspend work or reduce the rate of work under Sub-Clause 16.1 above, or (ii) terminate the Contract by giving notice to the Employer, with a copy to the Engineer, such termination to take effect 14 days after the giving of the notice.”



**Sub-Clause 16.3**  
**Contractor's Obligations**  
**After Termination**

*[If the Employer has made available any Employer- Supplied Materials and/or Employer's Equipment in accordance with Sub-Clause 2.6, include the following:]*

“and” is deleted from the end of sub-paragraph (b), sub-paragraph (c) deleted and the following added:

“ deliver to the Engineer all Employer- Supplied Materials and/or Employer's Equipment made available to the Contractor in accordance with Sub-Clause 2.6 *[Employer-Supplied materials and Employer's Equipment]*; and

- (c) remove all other Goods from the Site, except as necessary for safety, and leave the Site.”

**Sub-Clause 17.1**  
**Responsibility for Care of**  
**the Works**

On the fourth and fifth lines of the first paragraph, replace “Date of Completion of the Works” with “issue of the Taking-Over Certificate for the Works”.

*[If Employer- Supplied Materials are listed in the Specification for the Contractor's use in the execution of Works, include the following provision. See also Sub-Clause 2.6 *[Employer-Supplied Materials and Employer's Equipment]*]*

After the two instances of “Goods” in the last paragraph, the following is added: “Employer- Supplied Materials”.

*[If Employer's Equipment are listed in the Works' Requirements for the Contractor's use in the execution of Works, include the following provision. See also Sub-Clause 2.6 *[Employer-Supplied Materials and Employer's Equipment]*]*

After the two instances of “Goods” in the last paragraph, the following is added: “, Employer's Equipment,”.

**Sub-Clause 17.3**  
**Intellectual and Industrial**  
**Property Rights**

On the first line of the second paragraph, replace “notice” is replaced with “a Notice”.

**Sub-Clause 17.7**  
**Use of Employer's**  
**Accommodation/Facilities**

The following Sub-Clause is added as 17.7:

“The Contractor shall take full responsibility for the care of the Employer-provided accommodation and facilities, if any, as detailed in the Specification, from the respective dates of hand-over to the Contractor until cessation of occupation (where hand-over or cessation of occupation may take place after the date stated in the Taking-Over Certificate for the Works)

If any loss or damage happens to any of the above items while the Contractor is responsible for their care arising from any

cause whatsoever other than those for which the Employer is liable, the Contractor shall, at its own cost, rectify the loss or damage to the satisfaction of the Engineer.”

**Sub-Clause 18.1**

**Exceptional Events**

Sub-paragraph (c) is substituted with:

“(c) riot, commotion, disorder or sabotage by persons other than the Contractor’s Personnel and other employees of the Contractor and Subcontractors;”

**Sub-Clause 18.4**

**Consequences of an  
Exceptional Event**

The following is added at the end of sub-paragraph (b) after deleting the “.”:

“, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Exceptional Events, to the extent they are not indemnified through the insurance policy referred to in Sub-Clause 19.2 [ Insurance to be provided by the Contractor].”

**Sub-Clause 18.5**

**Optional Termination**

In sub-paragraph (c), “and necessarily” is inserted after ““was reasonably”.

**Sub-Clause 19.1**

**General Requirements**

The following paragraphs are added after the first:

“Wherever the Employer is the insuring Party, each insurance shall be effected with insurers and in terms acceptable to the Contractor. These terms shall be consistent with terms (if any) agreed by both Parties before the date of the Letter of Acceptance.

This agreement of terms shall take precedence over the provisions of this Clause.”

**Sub-Clause 19.2**

**insurance to be provided  
by the Contractor**

The following is inserted as the first sentence in Sub-Clause 19.2:

“The Contractor shall be entitled to place all insurances relating to the Contract (including, but not limited to the insurance referred to Clause 19) with insurers from any eligible source country.”

**Sub-Clause 19.2.1**

**The Works**

On the last line of the second paragraph, “Clause 12 [*Tests after completion*]” is deleted.

**Sub-Clause 19.2.5**

**Injury to employees**

The second paragraph is replaced with:

“The Employer and the Engineer shall also be indemnified under the policy of insurance, against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any

person employed by the Contractor or any other of the Contractor's Personnel, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Employer or of the Employer's Personnel."

**Sub-Clause 20.1**

In a): "any additional payment" is replaced with "payment".

**Claims**

**Sub-Clause 20.2**

The first paragraph is replaced with:

**Claims for Payment and/or EOT**

"If either Party considers that it is entitled to claim under 20.1 (a) or (b), the following claim procedure shall apply:"

**Sub-Clause 21.1**

The following is added at the end of the first paragraph:

**Constitution of the DAAB**

"The DAAB shall also review and decide on any SEA/SH Referral submitted to the DAAB pursuant to Sub-Clause 6.27.2 [*Receipt of SEA/SH allegations*] and Sub-Clause 6.27.3 [*Contractor's non-compliance with SEA/SH contractual obligations*], in accordance with Sub-Clause 21.9 [*SEA/SH Referrals*].

In the second paragraph, at the end of the first sentence after deleting: ".", the following is added: ", each of whom shall meet the criteria set forth in Sub-Clause 3.3 of Appendix-General Conditions of Dispute Avoidance/ Adjudication Agreement."

After the second paragraph insert the following paragraph: "If the Contract is with a foreign Contractor, the DAAB members shall not have the same nationality as the Employer or the Contractor."

**Sub-Clause 21.2**

**Failure to Appoint DAAB Member (s)**

For both (a) and (b): "by the date stated in the first paragraph of Sub-Clause 21.1 [*Constitution of the DAAB*]" is replaced with: "within 42 days from the date the Contract is signed by both Parties"

**Sub-Clause 21.6**

**Arbitration**

In the first paragraph, "unless otherwise agreed by both Parties:" is deleted and replaced with: "The Parties agree:"

**The following new Sub-Clauses 21.9 to 21.11 are added**

**Sub-Clause 21.9 SEA/SH Referrals**

SEA/SH Referrals pursuant to Sub-Clause 6.27 shall be submitted by the Employer to the DAAB in writing, copied to the Contractor and the Engineer. For a DAAB of three persons, the SEA/SH Referrals shall be deemed to have been received by the DAAB on the date it is received by the chairperson of the DAAB.

Upon receipt of a SEA/SH Referral, the DAAB shall request the Contractor in writing (copied to the Employer and the Engineer) to submit a statement demonstrating its compliance, including the compliance of any Subcontractor identified in the SEA/SH Referral, with the SEA/SH Prevention and Response Obligations, including the actions taken in response to a SEA/SH allegation and/or any Engineer's Notice to Correct for non-compliance with the SEA/SH contractual obligations. The Contractor shall within 28 days of receipt of this request, submit in writing such statement to the DAAB copied to the Employer and the Engineer.

In reviewing the Referral, the DAAB shall focus exclusively on compliance of the Contractor, including any Subcontractor identified in the SEA/SH Referral, with the SEA/SH Prevention and Response Obligations, including the actions taken in response to the SEA/SH allegation and/or any Engineer's Notice to Correct for non-compliance with the SEA/SH obligations. The DAAB shall not assess the merits of an underlying allegation, including the factual aspects of the alleged SEA and/or SH incident.

The DAAB decision, which shall state that it is issued under this Sub-Clause 21.9, shall be provided in writing to the Parties with a copy to the Engineer within 42 days of receiving the SEA/SH Referral. The decision of the DAAB taken pursuant to this Sub-Clause 21.9 shall be binding on the Parties and any of its Subcontractor/s as applicable.

The DAAB decision arising from an allegation of SEA/SH incident shall state whether the Contractor, including any Subcontractor identified in the SEA/SH referral, was in compliance with its SEA/SH obligations at the time of occurrence of the alleged incident. The DAAB decision shall not disclose the name of the alleged survivor nor of the alleged perpetrator.

#### **Sub-Clause 21.10**

##### **Dissatisfaction with DAAB's decision on SEA/SH Referrals**

If either Party is dissatisfied with the DAAB's decision issued under Sub-Clause 21.9 [SEA/SH Referrals], such Party may give a NOD to the other Party in accordance with Sub-Clause 21.4.4 [Dissatisfaction with DAAB's decision]. Sub-Clause 21.5 [*Amicable Settlement*] shall not apply.

If the DAAB's decision has not become final and binding pursuant to Sub-Clause 21.4.4, the matter shall be finally settled by arbitration in accordance with Sub-Clause 21.6 [*Arbitration*].

Where arbitration is conducted pursuant to the ICC Arbitration Rules, the parties agree that the time limit set in Article 1.6 of Appendix V to the ICC Arbitration Rules shall be 10 days from the notification of the Emergency Arbitrator Order unless the President of the ICC International Court of Arbitration determines that a longer period is necessary.

**Sub-Clause 21.11**

**Bank's disqualification of the Contractor and its Subcontractor/s**

The Employer shall immediately notify the Bank of the DAAB's decision on SEA/SH Referral, any notification received on the commencement of Emergency Arbitration, and the Emergency Arbitrator Order if any.

If the DAAB determines that the Contractor has failed to correct identified non-compliance with SEA/SH Prevention and Response Obligation or it was non-compliant with such obligations at the time of an alleged incident, the Bank may disqualify the Contractor, as well as any Subcontractor/s determined to be non-compliant, from being awarded a Bank-financed contract unless the ICC Emergency Arbitrator grants an order in favor of the Contractor. The disqualification period shall be for two years unless the Contractor receives an arbitration award in its favor within the two year period. The Contractor's disqualification under this Sub-Clause is without prejudice to the Parties' rights and obligations under the Contract.

**Appendix- General Conditions of Dispute Avoidance/Adjudication Agreement**

**Title**

"General Conditions of Dispute Avoidance/Adjudication Agreement" is replaced with "General Conditions of DAAB Agreement".

**1. Definitions**

Sub-Clause 1.2: In both the first and third lines, "DAA Agreement" is replaced with "DAAB Agreement".

Sub-Clause 1.3:

In the first line, "Dispute Avoidance/Adjudication Agreement" or "DAA Agreement" means" is replaced with:

"DAAB Agreement" is as defined under the Contract and is".

In the first line of sub-paragraph (c), "DAA Agreement" is replaced with "DAAB Agreement".

In sub-paragraph (c)(ii), "chairman" is replaced with "chairperson".

Sub-Clause 1.3 "DAAB Activities" is replaced with Sub-Clause 1.4 "DAAB Activities" and the subsequent Sub-Clauses under Clause 1 "Definitions" renumbered:

Sub-Clause 1.4 “DAAB Activities”. At the end, the following is added: “This also includes handling of SEA/SH Referrals in accordance with Sub-Clause 21.9 of the Conditions of Contract.”

Sub-Clause 1.7 to 12: Replace all instances of “DAA Agreement” with “DAAB Agreement”.

In Sub-Clause 1.8 a(i):” authorised representative of the contractor or of the Employer” is replaced with: “Contractor’s Representative or authorised representative of the Employer”.

## **2.General provisions**

Sub-Clause 2.2 is deleted in its entirety.

## **3.Warranties**

Sub-Clause 3.3 is deleted and replaced with the following:

“When appointing the DAAB Member, each Party relies on the DAAB Member’s representations, that he/she:

- (a) has at least a bachelor’s degree in relevant disciplines such as law, engineering, construction management or contract management;
- (b) has at least ten years of experience in contract administration/management and dispute resolution, out of which at least five years of experience as an arbitrator or adjudicator in construction-related disputes;
- (c) has received formal training as an adjudicator from an internationally recognized organization;
- (d) has experience and/or is knowledgeable in the type of work which the Contractor is to carry out under the Contract;
- (e) has experience in the interpretation of construction and/or engineering contract documents;
- (f) has familiarity with the forms of contract published by FIDIC since 1999, and an understanding of the dispute resolution procedures contained therein; and
- (g) is fluent in the language for communications stated in the Contract Data (or the language as agreed between the Parties and the DAAB).”

## **7. Confidentiality**

In Sub-Clause 7.3: “or” is deleted after sub-paragraph (b), and the following added:

“or (d) is being provided to the Bank.”

**9. Fees and Expenses**

In Sub-Clause 9.1 (c): “business class or equivalent” is replaced with: “in less than first class”.

In Sub-Clause 9.4: “and air fares” and “other” are deleted from the first and second sentences respectively.

**10. Resignation and Termination**

In Sub-Clause 10.3: “the DAA Agreement” is replaced with: “a DAAB member’s DAAB Agreement”.

**Annex- DAAB Procedural Rules**

Rule 3.3 In 3.3 (b), “140 days” is replaced with: “90 days”.

Rule 3.7 The following is added after the sentence: “The agenda shall include review of the (i) Contractor’s compliance with the SEA/SH Prevention and Response Obligations; and (ii) Engineer’s failure to discharge its duties under the Contract in this regard, including as specified in Sub-Clause 6.27 of the Contract Conditions.”

Rule 3.10 The following is added at the end of the paragraph: “The report shall identify any issue which raises SEA and/or SH concerns, including details of any potential noncompliance of the Contractor, including its Subcontractor/s, with the SEA/SH Prevention and Response Obligations.”

The DAAB shall also provide a report to the Employer on any potential failure of the Engineer to discharge its duties in regard to the SEA/SH Prevention and Response Obligations, including on identifying the Contractor’s failure to comply with the obligations, and the Notice to Correct and notification duties in accordance with Sub-Clause 6.27 of the Contract Conditions.”

Rule 4.2 On the fourth line, “chairman” is replaced with “chairperson”.

Rule 8.3 On the sixth line, “chairman” is replaced with “chairperson”.

**Form of Dispute Avoidance/Adjudication Agreement**

All instances of “DAA Agreement” are replaced with : “ DAAB Agreement”.

In C (b): “chairman” is replaced with “chairperson”.

## Particular Conditions

### Part C- Fraud and Corruption

*(Text in this Particular Conditions - Part C shall not be modified)*

#### 1. Purpose

1.1 The Bank's Anti-Corruption Guidelines and this annex apply with respect to procurement under Bank Investment Project Financing operations.

#### 2. Requirements

2.1 The Bank requires that Borrowers (including beneficiaries of Bank financing); bidders, consultants, contractors and suppliers; any sub-contractors, sub-consultants, service providers or suppliers; any agents (whether declared or not); and any of their personnel, observe the highest standard of ethics during the procurement process, selection and contract execution of Bank-financed contracts, and refrain from Fraud and Corruption.

2.2 To this end, 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;
- ii. "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
- iii. "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- iv. "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- v. "obstructive practice" is:
  - (a) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening,



harass or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

- (b) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under paragraph 2.2 e. below.
- b. Rejects a proposal for award if the Bank determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- c. In addition to the legal remedies set out in the relevant Legal Agreement, may take other appropriate actions, including declaring misprocurement, if the Bank determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement process, selection and/or execution of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;
- d. Pursuant to the Bank's Anti- Corruption Guidelines and in accordance with the Bank's prevailing sanctions policies and procedures, may sanction a firm or individual, either indefinitely or for a stated period of time, including by publicly declaring such firm or individual ineligible (i) to be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner<sup>1</sup>; (ii) to be a nominated <sup>2</sup> sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-financed project;
- e. Requires that a clause be included in bidding/request for proposals documents and in contracts financed by a Bank loan, requiring (i) bidders, consultants, contractors,

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<sup>1</sup> For the avoidance of doubt, a sanctioned party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.

<sup>2</sup> A nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider (different names are used depending on the particular bidding document) is one which 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 allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower.

and suppliers, and their sub-contractors, sub-consultants, service providers, suppliers, agents personnel, permit the Bank to inspect <sup>3</sup> all accounts, records and other documents relating to the submission of bids and contract performance, and to have them audited by auditors appointed by the Bank.

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<sup>3</sup> Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Bank or persons appointed by the Bank to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.

## Particular Conditions

### Part D- Environmental and Social (ES)

#### Metrics for Progress Reports

*[Note to Employer: the following metrics may be amended to reflect the specifics of the Contract. The metrics that are required should be determined by the ES risks and impacts of the Works and not necessarily by the size of the Contract]*

*Metrics for regular reporting:*

- a. *environmental incidents or non-compliances with contract requirements, including contamination, pollution or damage to ground or water supplies;*
- b. *health and safety incidents, accidents, injuries that require treatment and all fatalities;*
- c. *interactions with regulators: identify agency, dates, subjects, outcomes (report the negative if none);*
- d. *status of all permits and agreements:*
  - (i) *work permits: number required, number received, actions taken for those not received;*
  - (ii) *status of permits and consents:*
    - *list areas/facilities with permits required (quarries, asphalt & batch plants), dates of application, dates issued (actions to follow up if not issued), dates submitted to resident engineer (or equivalent), status of area (waiting for permits, working, abandoned without reclamation, decommissioning plan being implemented, etc.);*
    - *list areas with landowner agreements required (borrow and spoil areas, camp sites), dates of agreements, dates submitted to resident engineer (or equivalent);*
    - *identify major activities undertaken in each area in the reporting period and highlights of environmental and social protection (land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation);*
    - *for quarries: status of relocation and compensation (completed, or details of activities and current status in the reporting period).*
- e. *health and safety supervision:*
  - (i) *safety officer: number days worked, number of full inspections & partial inspections, reports to construction/project management;*
  - (ii) *number of workers, work hours, metric of PPE use (percentage of workers with full personal protection equipment (PPE), partial, etc.), worker violations observed*

(by type of violation, PPE or otherwise), warnings given, repeat warnings given, follow-up actions taken (if any);

*f. worker accommodations:*

- (i) number of expats housed in accommodations, number of locals;
- (ii) date of last inspection, and highlights of inspection including status of accommodations' compliance with national and local law and good practice, including sanitation, space, etc.;
- (iii) actions taken to recommend/require improved conditions, or to improve conditions.

*g. Health services: provider of health services, information and/or training, location of clinic, number of non-safety disease or illness treatments and diagnoses (no names to be provided);*

*h. gender (for expats and locals separately): number of female workers, percentage of workforce, gender issues raised and dealt with (cross-reference grievances or other sections as needed);*

*i. training:*

- (i) number of new workers, number receiving induction training, dates of induction training;
- (ii) number and dates of toolbox talks, number of workers receiving Occupational Health and Safety (OHS), environmental and social training;
- (iii) number and dates of communicable diseases (including STDs) sensitization and/or training, no. workers receiving training (in the reporting period and in the past); same questions for gender sensitization, flag person training.
- (iv) number and date of SEA and SH prevention sensitization and/or training events, including number of workers receiving training on Code of Conduct for Contractor's Personnel (in the reporting period and in the past), etc.

*j. environmental and social supervision:*

- (i) environmentalist: days worked, areas inspected and numbers of inspections of each (road section, work camp, accommodations, quarries, borrow areas, spoil areas, swamps, forest crossings, etc.), highlights of activities/findings (including violations of environmental and/or social best practices, actions taken), reports to environmental and/or social specialist/construction/site management;
- (ii) sociologist: days worked, number of partial and full site inspections (by area: road section, work camp, accommodations, quarries, borrow areas, spoil areas, clinic, HIV/AIDS center, community centers, etc.), highlights of activities (including violations of environmental and/or social requirements observed, actions taken), reports to environmental and/or social specialist/construction/site management; and

- (iii) community liaison person(s): days worked (hours community center open), number of people met, highlights of activities (issues raised, etc.), reports to environmental and/or social specialist /construction/site management.
- k. *Grievances: list new grievances (e.g. number of allegations of SEA and SH) received in the reporting period and number of unresolved past grievances by date received, complainant's age and sex, how received, to whom referred to for action, resolution and date (if completed), data resolution reported to complainant, any required follow-up (Cross-reference other sections as needed):*
  - (i) Worker grievances;
  - (ii) Community grievances
- l. *Traffic, road safety and vehicles/equipment:*
  - (i) traffic and road safety incidents and accidents involving project vehicles & equipment: provide date, location, damage, cause, follow-up;
  - (ii) traffic and road safety incidents and accidents involving non-project vehicles or property (also reported under immediate metrics): provide date, location, damage, cause, follow-up;
  - (iii) overall condition of vehicles/equipment (subjective judgment by environmentalist); non-routine repairs and maintenance needed to improve safety and/or environmental performance (to control smoke, etc.).
- m. *Environmental mitigations and issues (what has been done):*
  - (i) dust: number of working bowsters, number of waterings/day, number of complaints, warnings given by environmentalist, actions taken to resolve; highlights of quarry dust control (covers, sprays, operational status); % of rock/ spoil lorries with covers, actions taken for uncovered vehicles;
  - (ii) erosion control: controls implemented by location, status of water crossings, environmentalist inspections and results, actions taken to resolve issues, emergency repairs needed to control erosion/sedimentation;
  - (iii) quarries, borrow areas, spoil areas, asphalt plants, batch plants: identify major activities undertaken in the reporting period at each, and highlights of environmental and social protection: land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation;
  - (iv) blasting: number of blasts (and locations), status of implementation of blasting plan (including notices, evacuations, etc.), incidents of off-site damage or complaints (cross-reference other sections as needed);
  - (v) spill clean-ups, if any: material spilled, location, amount, actions taken, material disposal (report all spills that result in water or soil contamination);
  - (vi) waste management: types and quantities generated and managed, including amount taken offsite (and by whom) or reused/recycled/disposed on-site;

- (vii) details of tree plantings and other mitigations required undertaken in the reporting period;
- (viii) details of water and swamp protection mitigations required undertaken in the reporting period.

*n. compliance:*

- (i) compliance status for conditions of all relevant consents/permits, for the Work, including quarries, etc.): statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance;
- (ii) compliance status of C-ESMP/ESIP requirements: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
- (iii) compliance status of SEA and SH prevention and response action plan: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
- (iv) compliance status of Health and Safety Management Plan re: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance

other unresolved issues from previous reporting periods related to environmental and social: continued violations, continued failure of equipment, continued lack of vehicle covers, spills not dealt with, continued compensation or blasting issues, etc. Cross-reference other sections as needed.

## Particular Conditions

### Part E- Sexual Exploitation and Abuse (SEA) and/or Sexual Harassment Performance Declaration for Subcontractors

*[The following table shall be filled in by each subcontractor proposed by the Contractor, that was not named in the Contract]*

Subcontractor's Name: *[insert full name]*

Date: *[insert day, month, year]*

Contract reference *[insert contract reference]*

Page *[insert page number]* of *[insert total number]* pages

SEA and/or SH Declaration
<p>We:</p> <p><input type="checkbox"/> (a) have not been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations.</p> <p><input type="checkbox"/> (b) are subject to disqualification by the Bank for non-compliance with SEA/ SH obligations.</p> <p><input type="checkbox"/> (c) had been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations. An arbitral award on the disqualification case has been made in our favor.</p> <p><input type="checkbox"/> (d) had been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations for a period of two years. We have subsequently demonstrated that we have adequate capacity and commitment to comply with SEA /SH obligations.</p> <p><input type="checkbox"/> (e) had been subject to disqualification by the Bank for non-compliance with SEA/ SH obligations for a period of two years. We have attached specific evidence demonstrating that we have adequate capacity and commitment to comply with SEA and SH obligations.</p>
<p><b><i>[If (c) above is applicable, attach evidence of an arbitral award reversing the findings on the issues underlying the disqualification.]</i></b></p>
<p><b><i>[If (d) or ( e) above are applicable, provide the following information:]</i></b></p>
<p>Period of disqualification: From: _____ To: _____</p>
<p>If previously provided on another Bank financed works contract, details of evidence that demonstrated adequate capacity and commitment to comply with SEA/SH obligations (<b>as per (d) above</b>)</p> <p>Name of Employer: _____</p> <p>Name of Project: _____</p> <p>Contract description: _____</p> <p>Brief summary of evidence provided: _____</p>

<p>_____</p> <p>Contact Information: (Tel, email, name of contact person): _____</p> <p>_____</p>
<p>As an alternative to the evidence under (d), other evidence demonstrating adequate capacity and commitment to comply with SEA/SH obligations (<b>as per (e) above</b>) <i>[attach details as appropriate]</i>.</p> <p>_____</p> <p>_____</p> <p>_____</p>

Name of the Subcontractor \_\_\_\_\_

Name of the person duly authorized to sign on behalf of the Subcontractor \_\_\_\_\_

Title of the person signing on behalf of the Subcontractor \_\_\_\_\_

Signature of the person named above \_\_\_\_\_

Date signed \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Countersignature of authorized representative of the Contractor:

Signature: \_\_\_\_\_

Date signed \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_





## Section X - Contract Forms

### Table of Forms

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## Notification of Intention to Award

***[This Notification of Intention to Award shall be sent to each Bidder that submitted a Bid.]***

***[Send this Notification to the Bidder's Authorized Representative named in the Bidder Information Form]***

For the attention of Bidder's Authorized Representative

Name: *[insert Authorized Representative's name]*

Address: *[insert Authorized Representative's Address]*

Telephone/Fax numbers: *[insert Authorized Representative's telephone/fax numbers]*

Email Address: *[insert Authorized Representative's email address]*

***[IMPORTANT: insert the date that this Notification is transmitted to Bidders. The Notification must be sent to all Bidders simultaneously. This means on the same date and as close to the same time as possible.]***

**DATE OF TRANSMISSION:** This Notification is sent by: *[email/fax]* on *[date]* (local time)

## Notification of Intention to Award

**Employer:** *[insert the name of the Employer]*

**Project:** *[insert name of project]*

**Contract title:** *[insert the name of the contract]*

**Country:** *[insert country where RFB is issued]*

**Loan No. /Credit No. / Grant No.:** *[insert reference number for loan/credit/grant]*

**RFB No:** *[insert RFB reference number from Procurement Plan]*

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period you may:

- a) request a debriefing in relation to the evaluation of your Bid, and/or
- b) submit a Procurement-related Complaint in relation to the decision to award the contract.

### 1. The successful Bidder

**Name:** *[insert name of successful Bidder]*

**Address:** *[insert address of the successful Bidder]*

**Contract price:** *[insert contract price of the successful Bid]*

**2. Other Bidders** *[INSTRUCTIONS: insert names of all Bidders that submitted a Bid. If the Bid's price was evaluated include the evaluated price as well as the Bid price as read out.]*

Name of Bidder	Bid price	Evaluated Bid price (if applicable)
[insert name]	[insert Bid price]	[insert evaluated price]
[insert name]	[insert Bid price]	[insert evaluated price]
[insert name]	[insert Bid price]	[insert evaluated price]
[insert name]	[insert Bid price]	[insert evaluated price]
[insert name]	[insert Bid price]	[insert evaluated price]

**3. Reason/s why your Bid was unsuccessful**

*[INSTRUCTIONS: State the reason/s why this Bidder's Bid was unsuccessful. Do NOT include: (a) a point by point comparison with another Bidder's Bid or (b) information that is marked confidential by the Bidder in its Bid.]*

**4. How to request a debriefing**

**DEADLINE:** The deadline to request a debriefing expires at midnight on [insert date] (local time).

You may request a debriefing in relation to the results of the evaluation of your Bid. If you decide to request a debriefing your written request must be made within three (3) Business Days of receipt of this Notification of Intention to Award.

Provide the contract name, reference number, name of the Bidder, contact details; and address the request for debriefing as follows:

**Attention:** [insert full name of person, if applicable]

**Title/position:** [insert title/position]

**Agency:** [insert name of Employer]

**Email address:** [insert email address]

**Fax number:** [insert fax number] *delete if not used*

If your request for a debriefing is received within the 3 Business Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Business Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.

The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of the Contract Award Notice.

## 5. How to make a complaint

**Period:** Procurement-related Complaint challenging the decision to award shall be submitted by midnight, *[insert date]* (local time).

Provide the contract name, reference number, name of the Bidder, contact details; and address the Procurement-related Complaint as follows:

**Attention:** *[insert full name of person, if applicable]*

**Title/position:** *[insert title/position]*

**Agency:** *[insert name of Employer]*

**Email address:** *[insert email address]*

**Fax number:** *[insert fax number]* **delete if not used**

At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.

### Further information:

For more information see the [Procurement Regulations for IPF Borrowers \(Procurement Regulations\)](https://policies.worldbank.org/sites/ppf3/PPFDocuments/Forms/DispPage.aspx?docid=4005) [\[https://policies.worldbank.org/sites/ppf3/PPFDocuments/Forms/DispPage.aspx?docid=4005\]](https://policies.worldbank.org/sites/ppf3/PPFDocuments/Forms/DispPage.aspx?docid=4005) (Annex III). You should read these provisions before preparing and submitting your complaint. In addition, the World Bank's Guidance "[How to make a Procurement-related Complaint](http://www.worldbank.org/en/projects-operations/products-and-services/brief/procurement-new-framework#framework)" [\[http://www.worldbank.org/en/projects-operations/products-and-services/brief/procurement-new-framework#framework\]](http://www.worldbank.org/en/projects-operations/products-and-services/brief/procurement-new-framework#framework) provides a useful explanation of the process, as well as a sample letter of complaint.

In summary, there are four essential requirements:

1. You must be an 'interested party'. In this case, that means a Bidder who submitted a Bid in this bidding process, and is the recipient of a Notification of Intention to Award.
2. The complaint can only challenge the decision to award the contract.
3. You must submit the complaint within the period stated above.
4. You must include, in your complaint, all of the information required by the Procurement Regulations (as described in Annex III).

## 6. Standstill Period

**DEADLINE:** The Standstill Period is due to end at midnight on *[insert date]* (local time).

The Standstill Period lasts ten (10) Business Days after the date of transmission of this Notification of Intention to Award.

The Standstill Period may be extended as stated in Section 4 above.

If you have any questions regarding this Notification, please do not hesitate to contact us.

On behalf of the Employer:

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title/position:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Email:** \_\_\_\_\_

## Beneficial Ownership Disclosure Form

**INSTRUCTIONS TO BIDDERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM**

*This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful Bidder<sup>1</sup>. In case of joint venture, the Bidder must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.*

*For the purposes of this Form, a Beneficial Owner of a Bidder is any natural person who ultimately owns or controls the Bidder by meeting one or more of the following conditions:*

- *directly or indirectly holding 25% or more of the shares*
- *directly or indirectly holding 25% or more of the voting rights*
- *directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Bidder*

**RFB No.:** *[insert number of RFB process]*

**Request for Bid No.:** *[insert identification]*

**To:** *[insert complete name of Employer]*

In response to your request in the Letter of Acceptance dated *[insert date of letter of Acceptance]* to furnish additional information on beneficial ownership: *[select one option as applicable and delete the options that are not applicable]*

(i) we hereby provide the following beneficial ownership information.

### Details of beneficial ownership

Identity of Beneficial Owner	Directly or indirectly holding 25% or more of the shares (Yes / No)	Directly or indirectly holding 25 % or more of the Voting Rights (Yes / No)	Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Bidder (Yes / No)
<i>[include full name (last, middle, first), nationality, country of residence]</i>			

**OR**

(ii) *We declare that there is no Beneficial Owner meeting one or more of the following conditions:*

- directly or indirectly holding 25% or more of the shares
- directly or indirectly holding 25% or more of the voting rights
- directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Bidder

**OR**

(iii) *We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. [If this option is selected, the Bidder shall provide explanation on why it is unable to identify any Beneficial Owner]*

- directly or indirectly holding 25% or more of the shares
- directly or indirectly holding 25% or more of the voting rights
- directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Bidder”

**Name of the Bidder:** \**[insert complete name of the Bidder]*\_\_\_\_\_

**Name of the person duly authorized to sign the Bid on behalf of the Bidder:** \*\**[insert complete name of person duly authorized to sign the Bid]*\_\_\_\_\_

**Title of the person signing the Bid:** *[insert complete title of the person signing the Bid]*\_\_\_\_\_

**Signature of the person named above:** *[insert signature of person whose name and capacity are shown above]*\_\_\_\_\_

**Date signed** *[insert date of signing]* **day of** *[insert month]*, *[insert year]*\_\_\_\_\_

\* In the case of the Bid submitted by a Joint Venture specify the name of the Joint Venture as Bidder. In the event that the Bidder is a joint venture, each reference to “Bidder” in the Beneficial Ownership Disclosure Form (including this Introduction thereto) shall be read to refer to the joint venture member.

\*\* Person signing the Bid shall have the power of attorney given by the Bidder. The power of attorney shall be attached with the Bid Schedules.



## LETTER OF ACCEPTANCE

*[letterhead paper of the Employer]*

*[date]*

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

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 *[amount in numbers and words] [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 (i) the Performance Security and an Environmental and Social Performance Security ***[Delete ES Performance Security if it is not required under the contract]*** within 28 days in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms and the ES Performance Security Form, ***[Delete reference to the ES Performance Security Form if it is not required under the contract]*** and (ii) the additional information on beneficial ownership in accordance with BDS ITB 47.1, within eight (8) Business days using the Beneficial Ownership Disclosure Form, included in Section X, Contract Forms, 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 \_\_\_\_\_ of \_\_\_\_\_ (hereinafter “the Employer”), of the one part, and \_\_\_\_\_ of \_\_\_\_\_ (hereinafter “the Contractor”), of the other part:

WHEREAS the Employer desires that the Works known as \_\_\_\_\_ should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.

- (a) the Letter of Acceptance;
- (b) the Letter of Bid;
- (c) the addenda Nos \_\_\_\_\_ (if any);
- (d) the Particular Conditions;
- (e) the General Conditions;
- (f) the Specification;
- (g) the Drawings; and
- (h) the completed Schedules and any other documents forming part of the contract, including, but not limited to:
  - i. the ES Management Strategies and Implementation Plans; and
  - ii. Code of Conduct for Contractor’s Personnel (ES).
  - iii. Sexual Exploitation and Abuse (SEA), and/or Sexual Harassment (SH) Declaration

3. In consideration of the payments to be made by the Employer to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.

4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of \_\_\_\_\_ on the day, month and year specified above.

Signed by \_\_\_\_\_ (for the Employer)

Signed by \_\_\_\_\_ (for the Contractor)

## Performance Security

### Option 1: Demand Guarantee

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** *[insert name and Address of Employer]*

**Date:** \_\_\_\_\_ *[Insert date of issue]*

**PERFORMANCE GUARANTEE No.:** \_\_\_\_\_

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that \_\_\_\_\_ (hereinafter called "the Applicant") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with the Beneficiary, 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 Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (\_\_\_\_\_),<sup>1</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

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

---

<sup>1</sup> The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency(cies) of the Contract or a freely convertible currency acceptable to the Beneficiary.

<sup>2</sup> Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Employer should note that in the event of an extension of this date 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 Beneficiary'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 (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

---

*[signature(s)]*

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

## Performance Security

### Option 2: Performance Bond

By this Bond \_\_\_\_\_ as Principal (hereinafter called “the Contractor”) and \_\_\_\_\_] as Surety (hereinafter called “the Surety”), are held and firmly bound unto \_\_\_\_\_] as Obligee (hereinafter called “the Employer”) in the amount of \_\_\_\_\_, for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Contractor has entered into a written Agreement with the Employer dated the day of \_\_\_\_\_, 20\_\_\_\_, for \_\_\_\_\_ in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Employer to be, in default under the Contract, the Employer having performed the Employer’s obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a Bid or Bids from qualified Bidders for submission to the Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive Bidder, arrange for a Contract between such Bidder and Employer and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the total amount payable by Employer to Contractor under the Contract, less the amount properly paid by Employer to Contractor; or
- (3) pay the Employer the amount required by Employer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors, and assigns of the Employer.

In testimony whereof, the Contractor has hereunto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its legal representative, this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

SIGNED ON \_\_\_\_\_ on behalf of \_\_\_\_\_

By \_\_\_\_\_ in the capacity of \_\_\_\_\_

In the presence of \_\_\_\_\_

SIGNED ON \_\_\_\_\_ on behalf of \_\_\_\_\_

By \_\_\_\_\_ in the capacity of \_\_\_\_\_

In the presence of \_\_\_\_\_

# Environmental and Social (ES) Performance Security

## ES Demand Guarantee

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** *[insert name and Address of Employer]*

**Date:** *[Insert date of issue]*

**ES PERFORMANCE GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that \_\_\_\_\_ (hereinafter called "the Applicant") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with the Beneficiary, 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 Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (\_\_\_\_\_),<sup>1</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its Environmental and/or Social (ES) obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

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

<sup>1</sup> The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency (cies) of the Contract or a freely convertible currency acceptable to the Beneficiary.

<sup>2</sup> Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Employer should note that in the event of an extension of this date 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 Beneficiary'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 (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

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*[signature(s)]*

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

## Advance Payment Security

### Demand Guarantee

*[Guarantor letterhead or SWIFT identifier code]*

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** \_\_\_\_\_ *[Insert name and Address of Employer]*

**Date:** \_\_\_\_\_ *[Insert date of issue]*

**ADVANCE PAYMENT GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that \_\_\_\_\_ (hereinafter called “the Applicant”) has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with the Beneficiary, 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 \_\_\_\_\_ (\_\_\_\_\_) is to be made against an advance payment guarantee.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (\_\_\_\_\_) <sup>1</sup> upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

(a) has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or

(b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary’s bank stating that the advance payment referred to above has been credited to the Applicant on its account number \_\_\_\_\_ at \_\_\_\_\_..

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

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified 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 ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the \_\_\_\_ day of \_\_\_\_, 2\_\_\_\_,<sup>2</sup> whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

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*[signature(s)]*

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

## Retention Money Security

### Demand Guarantee

\_\_\_\_\_ [Guarantor letterhead or SWIFT identifier code]

**Beneficiary:** \_\_\_\_\_ [Insert name and Address of Employer]

**Date:** \_\_\_\_\_ [Insert date of issue]

**RETENTION MONEY GUARANTEE No.:** [Insert guarantee reference number]

**Guarantor:** [Insert name and address of place of issue, unless indicated in the letterhead]

We have been informed that \_\_\_\_\_ [insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture] (hereinafter called "the Applicant") has entered into Contract No. \_\_\_\_\_ [insert reference number of the contract] dated \_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ [insert name of contract and brief description of Works] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retains moneys up to the limit set forth in the Contract ("the Retention Money"), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, payment of [insert the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and, if required, the ES Performance Security] is to be made against a Retention Money guarantee.

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ [insert amount in figures] (\_\_\_\_\_) [amount in words]<sup>1</sup> upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without your needing to prove or show grounds for your demand or the sum specified therein.

<sup>1</sup> The Guarantor shall insert an amount representing the amount of the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and denominated either in the currency(ies) of the second half of the Retention Money as specified in the Contract, or in a freely convertible currency acceptable to the Beneficiary.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the second half of the Retention Money as referred to above has been credited to the Applicant on its account number \_\_\_\_\_ at \_\_\_\_\_ *[insert name and address of Applicant's bank]*.

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

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

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

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<sup>2</sup> Insert the same expiry date as set forth in the performance security, representing the date twenty-eight days after the completion date described in GC Clause 11.9. The Employer should note that in the event of an extension of this date 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 Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."